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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.F., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.F.,

Defendant and Appellant.

A131827

(San Francisco County
Super. Ct. No. 508845)

After several hearings, the juvenile court issued an order on March 4, 2011, terminating its dependency jurisdiction over A.F. based on a petition filed by the San Francisco Human Services Agency (agency). A.F. seeks reversal of the order on the grounds of abuse of discretion and insufficient evidence, and the agency's failure to provide him with information to which he is entitled pursuant to section 391 of the Welfare and Institutions Code.¹ We conclude the court properly terminated its

¹ All further unspecified statutory references are to the Welfare and Institutions Code. Operative as of January 1, 2012, section 391 has been rewritten regarding the continued dependency of youths from the ages of 18 to 21. (Stats. 2010, ch. 559, § 28, operative Jan. 1, 2012; amended by Stats. 2011, ch. 459, § 11, eff. Oct. 4, 2011, operative Jan. 1, 2012; Stats 2011, ch. 464, § 2.5.) However, for convenience, we refer in the present tense to the version of the section as it existed at the time of the proceedings in the

dependency jurisdiction over A.F. However, we conditionally reverse the order, and remand the matter so that the court may ensure that A.F. receives the information to which he is entitled pursuant to section 391.

FACTUAL AND PROCEDURAL BACKGROUND²

When A.F. was born in January 1992, both he and his mother tested positive for cocaine. The juvenile court detained him when he was 14 days old based on the agency's section 300 dependency petition alleging, among other things, his mother's history of drug use and emotional problems.³ At about five months, A.F. was placed under the court's jurisdiction as a dependent. A.F. remained a dependent in foster care throughout his childhood, except for one month when at the age of thirteen he was returned to his mother's care with family maintenance services. On March 18, 2008, when A.F. was 16 years old, he was placed with his current caretaker in the East Bay.

During his childhood, A.F. was developmentally delayed and as he got older he had behavioral problems. He was diagnosed with attention deficit disorder, oppositional defiant disorder, as well as mild mental retardation. The agency provided A.F. with individual and family therapy services, and he was treated with psychotropic medications by psychiatrists. Despite years of therapy and various medications, A.F. continued to have difficulties with his impulsivity and aggression.

On September 15, 2010, the agency filed a JV-180 petition pursuant to section 388, requesting dismissal of the dependency proceeding and termination of the court's jurisdiction over A.F. The agency alleged that since the court's July 27, 2010, order continuing the dependency, A.F. had turned 18 years old and had received his high school certificate of completion. A.F.'s case was being managed by the East Bay Regional Center and A.F. was in "a regional center vendorized home for adults." The

juvenile court. (See *People v. McCaskey* (1985) 170 Cal.App.3d 411, 416 ["when the Legislature gives both an operative date and an effective date, the operative date is the date upon which the directives of the statute may be actually implemented".])

² We set forth only those facts necessary to resolve this appeal.

³ The whereabouts of A.F.'s father are unknown.

agency indicated that termination would be better for A.F. because all of the services necessary to assist him had been arranged and East Bay Regional Center would be managing his case. The agency also submitted a “dismissal report/388,” in which the agency’s social worker stated that A.F.’s caretaker, his foster parent since 2008, had “converted the placement to an adult vendorized facility in order to maintain [A.F.] in the home. He has all of the services in place that he needs. East Bay Regional Center [is] providing case management services, funding for the home, and ha[s] applied to be his representative payee. His mental health services and mental health needs have been transferred to the appropriate placement county. . . . Funding is in place through Medi-Cal. East Bay Regional Center now provides all case management services. All of [A.F.’s] needs are being managed by East Bay Regional Center.”

On December 16, 2010, A.F.’s counsel filed a trial brief opposing the agency’s dismissal request. According to counsel, although A.F. had reached the age of 18 and completed high school, there was “a prospect of harm” if dependency was terminated because he was in a period of transition and needed the assistance of the agency and court-appointed counsel to secure needed mental health services. According to counsel, A.F.’s psychiatrist and psychotherapist were no longer treating him, and he had not yet been assigned a new psychiatrist and no referral had been made for a new psychotherapist. Without the continued mental health services, A.F. had “a real likelihood of homelessness and other problems.” A.F. was “compliant with services” and he wanted to remain a court dependent until he was “stable.”

On December 17, 2010, the court held a contested hearing. The agency’s social worker testified that dismissal was recommended because A.F.’s “case management services were [then] being provided by the East Bay Regional Center,” funding for his home was “in place,” his mental health services had been transferred to Contra Costa County, he was attending a post-high school educational institution at the Contra Costa College campus, and his “SSI was active.” At the time of the hearing, A.F.’s psychiatrist was no longer treating him, and Contra Costa County was to provide a new psychiatrist. A.F.’s psychotherapist was also no longer treating him, and East Bay

Regional Center “would be responsible for finding” A.F. a new psychotherapist. A.F. had received a high school certificate of completion and he was currently living in a stable placement in Richmond. He had been in that placement for two years, and his caretaker had done an excellent job of taking care of A.F. There had been no reports of any misconduct that would rise to the level of potential harm to A.F. in that placement. The social worker confirmed the agency was not paying for A.F.’s foster care. Instead, East Bay Regional Center was receiving payments directly from SSI and any other sources, which payments were then given to A.F.’s caretaker.

A.F.’s caretaker testified that A.F. had been in her care since 2008. Due to A.F.’s condition, he would need supervision basically for the rest of his life. At the time of the hearing, the caretaker was no longer receiving any agency funds for A.F.’s care. Instead, she was receiving funds from a vendor agency associated with the East Bay Regional Center. The caretaker’s home had been re-licensed as a home for disabled persons so that the caretaker could continue to care for A.F. The caretaker indicated that in order for A.F. to remain in her home, he would have to take his medication, see his mental health providers, he must not damage property, and “the violence has to stop in the community, confronting . . . women.” However, A.F. would not lose his housing with the caretaker if there was a delay in mental health services because of a change in providers. At the time of the hearing, A.F.’s psychotherapist’s internship had ended. A.F.’s former psychiatrist had made a referral for psychotherapy, but said “It’s going to take time,” and gave an approximation “anywhere from about six months.” According to the caretaker, the East Bay Regional Center had not offered to provide A.F. with psychotherapy services. The caretaker was told that East Bay Regional Center would not be able to do anything until A.F. was 21 or 22 years old. On cross-examination, the caretaker admitted she did not know for certain that A.F. would not be assigned a new psychotherapist. A.F. was at that time attending an educational program to help with his transition from high school to the young adult college program that was offered by the West Contra Costa County school board. He had been expelled from attending classes on the Contra Costa College campus because of inappropriate conduct.

However, he was allowed to attend classes at the Transition Center in Richmond. While A.F. was in the caretaker's home, he had a social worker and services through the agency. The caretaker believed that the agency should stay involved in A.F.'s case because she claimed that he had no other services as East Bay Regional Center was "not doing anything." The caretaker believed that keeping the agency involved would assure A.F.'s receipt of services because a former agency social worker had been able to arrange for needed services.

A.F. testified that he was happy in his current placement, and attending school at a transition program which was "going good." He was taking his medication, it was helping him, and as soon as he was assigned a therapist or a psychiatrist he would start seeing both.

After hearing counsel's arguments, the court tentatively ruled it would dismiss the dependency proceeding after the agency completely filled out a JV-365 form⁴ and provided A.F. with all the documents he was entitled to receive before dismissal. The

⁴ Section 391 required the agency to verify that it had provided a foster child with certain information and documents before termination of jurisdiction. In its Dismissal Report in preparation for the October 12, 2010, hearing, the agency's social worker verified compliance with section 391, noting that A.F. had been given information about his family and placement history and directions how to access his agency file, and been provided with certain identification documents. However, the report did not indicate the agency had provided A.F. with a "health and education summary as described in subdivision (a) of section 16010." (§ 391, subd. (b).) Section 16010, subdivision (a), reads, in pertinent part: "When a child is placed in foster care, the case plan for each child . . . shall include a summary of the health and education information or records, including mental health information or records, of the child. The summary may be maintained in the form of a health and education passport, or a comparable format designed by the child protective agency. The health and education summary shall include, but not be limited to, the names and addresses of the child's health, dental, and education . . . providers, . . . , a record of the child's immunizations and allergies, the child's known medical problems, the child's current medications, past health problems and hospitalizations, a record of the child's relevant mental health history, [and] the child's known mental health condition and medications . . ." As required by section 391, subdivision (d), the Judicial Council created form JV-365 for use by a social service agency to confirm its compliance with section 391. (California Rules of Court, rule 5.555; see former rule 5.740(d).)

court requested A.F.'s counsel to continue her representation for three months. In so ruling, the court stated it was confident psychiatric services for A.F. would continue. However, the court was not so confident psychotherapy services would continue, and was "very concerned" that the agency had not confirmed continuation of those services before it requested dismissal. "This is not exactly one of those cases that is totally driven by the law. It's very much a factor in this case and I think [A.F.'s] history really militates in favor of his continued participation in therapy. I haven't heard from one witness today who thinks that [A.F.] doesn't need therapy, including [A.F.] himself. ¶¶ So I would be interested in having [counsel] bird-dog that issue in particular, and secondarily, just keep track of the psychiatry referral for the medication. I feel confident that [A.F.'s former psychiatrist] is taking care of that, also based on what I have heard and what I have read. ¶¶ And the school piece also is troubling. I don't know if there will ever be a resolution of that in three months or six months, but I would like [counsel] to see what she can do."

On January 7, 2011, the parties appeared in court to discuss, among other things, the sufficiency of the information in the agency's JV-365 form. The court directed the parties to file written submissions: A.F.'s counsel was to indicate the deficiencies in the form and the agency was to respond to the alleged deficiencies. The parties complied with the court's request for written submissions.⁵ On January 28, 2011, the court issued

⁵ As part of A.F.'s submission, his trial counsel included a packet of documents received from the agency. As part of the packet were reports of telephone contacts made by the agency's social worker regarding the status of the continuation of A.F.'s mental health services. On December 27, 2010, the agency's social worker spoke with someone at the Contra Costa Mental Health Services regarding a new psychiatrist and a new psychotherapist for A.F. A.F. had been assigned a new psychiatrist, and his first appointment was scheduled for January 4, 2011. The new psychiatrist would be able to refer A.F. to an individual therapist. Additionally, the Contra Costa Mental Health Services representative said the office would not refuse to refill any authorized prescriptions, nor would they not provide for A.F.'s psychiatric needs. On January 6, 2011, the agency social worker spoke with a case manager at East Bay Regional Center regarding A.F.'s most recent service plan with regards to the Americans With Disabilities Act. According to the East Bay Regional Center case manager, she had

an order directing the agency to “correct and augment the Health and Education Passport” in certain respects by February 18, 2011. The parties were directed to return to court on February 24, 2011 for the court’s final decision on dismissal, which would be “based on the adequacy of [A.F.’s] Health and Education Passport, and the adequacy of the plan for provision of psychiatric care for [A.F.] post dismissal.”

On February 24, 2011, the parties appeared in court. The agency’s counsel indicated the agency had attempted to comply with the court’s request to update A.F.’s Health and Education Passport, but A.F.’s counsel continued to have objections and was asking for supplemental material. A.F.’s counsel indicated the updated Health and Education Passport appeared “to still be inadequate and lacking in a lot of information.” The education portion still lacked information as to grade levels and information for many years, and there were still wide gaps in the medical history.

In response to the court’s queries, counsel addressed the agency’s compliance with the court’s order regarding the adequacy of the Health and Education Passport information given to A.F. A.F.’s counsel noted the court’s order had not addressed her arguments that A.F. did not have his medical history earlier than approximately age 14, or his birth history. The court replied, “That was not put in the Court’s order for a reason. The Court is not ordering that.” A.F.’s counsel also objected to dismissal because A.F.’s psychotherapy was not in place. Counsel conceded A.F. had a “referral . . . from his former psychiatrist to a community mental health location,” but therapy had not yet started. Counsel had not been able “to figure out whether something additional need[ed] to be done.” The agency’s counsel indicated that even if the court dismissed the dependency, the agency would work with A.F.’s counsel, “adding leverage to make sure [counsel] ha[d] the full force of the government to make sure that [A.F.] g[ot] a smooth transition to the appropriate therapist.”

already provided A.F. and his caretaker with the service plan in November 2010; that everything had been done for A.F., and the case manager thought A.F.’s dependency case had already been dismissed.

The court ordered dismissal of the dependency proceeding and termination of its jurisdiction, and continued the assignment of A.F.'s counsel for three months from February 24, 2011. On March 4, 2011, the court filed its order dismissing the dependency proceeding and terminating jurisdiction over A.F. The order also provided that A.F.'s "counsel shall stay on the case for three months." A.F. timely appealed from the order.

DISCUSSION

I. Juvenile Court's Termination of Its Jurisdiction

A.F. argues the juvenile court abused its discretion in terminating its jurisdiction because there was insufficient evidence that termination was in his best interest or the interest of justice, and there was evidence that termination would give rise to reasonably foreseeable harm to him. According to A.F., the court terminated its jurisdiction at a time when he had no regular, ongoing therapeutic support services in place, and there were no assurances that such services would be arranged through either the East Bay Regional Center or the Contra Costa County Health Services. Without both psychiatric and psychotherapy services in place, there was a foreseeable risk A.F.'s behavior would deteriorate because of gaps in his psychotropic medication regimen or receipt of psychotherapy services. We conclude A.F.'s arguments are unavailing.

Once a juvenile court has acquired jurisdiction over a minor, "it may retain jurisdiction until the dependent child turns 21. Under section 303, '[t]he court may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependent child attains the age of 21 years.' Conversely, under section 390, the dependency petition may be dismissed any time before the minor reaches age 21 'if the court finds that the interests of justice and the welfare of the minor require the dismissal'" (*In re Holly H.* (2002) 104 Cal.App.4th 1324, 1330.) "In 2000, the Legislature added section 391 . . . in response to concerns that dependent children who had reached the age of 18 were being removed from the dependency system before they had adequate skills or resources to support themselves [Citation.]" (*Id.* at pp. 1330-1331.) "Section 391 contains a legislative directive

that before jurisdiction of the juvenile court over a dependent child who has reached age 18 is terminated, certain minimal assistance and documentation be afforded the youth.” (*Id.* at p. 1333.) The juvenile court had the authority to continue jurisdiction if the agency had not provided the required assistance and documentation “and termination of jurisdiction would be harmful to the best interests of the child.” (§ 391, subd. (c).) However, the continuation “shall only be ordered for that period of time necessary for the county welfare department to meet the requirements” of providing the required assistance and documentation. (*Ibid.*)⁶

As conceded by A.F., we review an order terminating jurisdiction for an abuse of discretion. (*In re Robert L.* (1998) 68 Cal.App.4th 789, 793-794; see *In re Holly H.*, *supra*, 104 Cal.App.4th at p. 1333.) In so reviewing the court’s order, “when two or more inferences can be reasonably deduced from the facts, we may not substitute our decision for the juvenile court’s decision. [Citation.]” (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 419.) Additionally, to the extent A.F. asks us to assess the sufficiency of the evidence, our power as an appellate court “begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. [Citation.] All conflicts must be resolved in favor of the [agency] and all legitimate inferences indulged in to uphold the decision, if possible. We may not reweigh or express an independent judgment on the evidence. [Citation.] In this regard, issues of fact and credibility are matters for the [juvenile] court alone. [Citation.]” (*Fresno County Dept. of Children & Family Services v. Superior Court*, *supra*, 122 Cal.App.4th at p. 646.)

Contrary to A.F.’s contentions, we conclude the juvenile court used the appropriate standard in making its ultimate decision granting the agency’s petition to terminate the court’s jurisdiction. The record contains sufficient evidence to support a

⁶ “Under section 388, a party may petition to modify a prior dependency court order on grounds of change of circumstance or new evidence. (§ 388, subd. (a).) The petitioning party must also show that the proposed change would promote the best interests of the child. (§ 388, subd. (b).)” (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 644, fn. 7.)

finding that termination did not pose any existing or reasonably foreseeable future harm to A.F.'s welfare. Although it is clear A.F. needed ongoing mental health services, the juvenile court could reasonably conclude the East Bay Regional Center had appropriately arranged for the continuation of A.F.'s mental health services. On this record, we cannot conclude the juvenile court abused its discretion in terminating its jurisdiction.⁷

II. Sufficiency of Section 391 Documents

As part of its petition to terminate jurisdiction, an agency is required to submit a report to the court verifying that the dependent child has been given a summary of his health and mental health history, as described in section 16010, subdivision (a). (§ 391, subd. (b)(2).)⁸ We agree with A.F. that the updated Health and Education Passport, dated February 23, 2011, does not contain an adequate summary of his health and mental health history as required pursuant to sections 391 and 16010, subdivision (a). As noted by A.F., the challenged document, among other things, does not contain well child examination information before 2006 (when A.F. was 14 years old), and past health issues before 2007 (when A.F. was 15 years old). We are not persuaded by the agency's argument that the failure to provide A.F. with the omitted information before the ages of 14 and 15 years of age is "*de minimus*." The statutory provisions do not limit the summary of information to the most recent four or five years of a child's dependency. Nor is it the responsibility of A.F.'s court-appointed counsel to review the agency's dependency files to locate the information that the agency is statutorily required to provide to A.F. Accordingly, we will conditionally reverse the order terminating jurisdiction and direct the juvenile court to ensure that the agency provides A.F. with all the required information to which he is entitled pursuant to section 391.

⁷ *In re D.R.* (2007) 155 Cal.App.4th 480, and *In re Tamika C.* (2005) 131 Cal.App.4th 1153, are factually distinguishable, and do not support reversal in this case, as A.F. argues.

⁸ See footnote 4, *ante*.

DISPOSITION

The March 4, 2011, order terminating jurisdiction is reversed and the matter is remanded to the juvenile court with directions to order the agency promptly to comply fully with the requirements of section 391. When the court is satisfied the agency has fully complied, it shall reinstate the order terminating jurisdiction.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.