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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

M.D.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
FRANCISCO COUNTY,

Respondent;

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Real Party in Interest.

A138096

(San Francisco County
Super. Ct. No. JD113358)

M.D. (father), the presumed father of M.A., petitions this court for extraordinary writ review of a juvenile court order terminating his reunification services and setting a selection-and-implementation hearing. He argues that reunification services were improperly withheld from him during his incarceration and that services were inadequate. We disagree and deny his petition.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

On December 18, 2011, M.A.'s mother, A.A. (mother), arrived at an emergency room in a psychotic state with M.A. and was hospitalized under Welfare and Institutions Code section 5150.¹ Several days later, the San Francisco Human Services Agency

¹ All statutory references are to the Welfare and Institutions Code.

(Agency) filed a juvenile dependency petition, and the juvenile court promptly ordered M.A. to be detained and placed in foster care. M.A. was later placed with the paternal grandmother.

While this was going on, father was in jail. In fact, at all times relevant to this petition, father has been incarcerated in the San Francisco or San Bruno jail.² He had been arrested in October on charges of possessing a knife and punching a police officer in the face. And before that, a restraining order had been issued against him after he reportedly punched mother in the face several times in August on a Muni bus while she was holding then one-month old M.A.

In early February 2012, the juvenile court ordered father to receive supervised visitation with M.A. That same month, the court found that M.A. was a child described by section 300, subdivision (b), after sustaining allegations that mother had mental health issues that interfered with her ability to safely parent M.A., that father had a “lengthy criminal history” and was currently incarcerated, and that father had been arrested for domestic violence against mother.

Father apparently had two or three visits with M.A. while he was incarcerated in the San Francisco jail in the early part of 2012. At some point, he told the social worker that he was involved in a fight at the jail and was “locked up for a while.” He later was released from “lock up” and in March attended three sessions of a parenting class.

By May 16, father had been transferred to the San Bruno jail, where he soon started misbehaving. A sheriff’s deputy reported that father was uncooperative and aggressive, had thrown feces at staff, and had to be transferred to an individual cell. The social worker spoke with a deputy about father’s court-ordered services and provided him with a copy of father’s reunification requirements. The deputy responded by explaining that father could not attend parenting classes until his behavior improved.

Father had supervised visits with M.A. at the San Bruno jail on May 18, June 8, and June 13. At a disposition hearing held on June 19, the juvenile court adjudged M.A.

² We do not know if father remains in custody, although at one point he told the social worker that he was scheduled to be released on April 26, 2013.

a dependent child and ordered reunification services for both parents. Father's reunification plan included, among other things, supervised visitation, individual therapy, a substance abuse assessment, and completion of parenting education and domestic violence programs.

By late July, father's discipline problems worsened, and he was placed in maximum security for regularly making death threats to jail staff, saying things such as " 'I am going to kill you' and 'I know what car you drive' while making hand motions of pulling a gun trigger pointed at staff." Visits between father and M.A. were stopped because of safety concerns. A sheriff's deputy explained to the social worker that in order for visits to be allowed, father would have to make "dramatic changes in his behavior[, including] no longer making death threats to staff." Father was later released into a less restrictive part of the jail, but was returned to segregation after only a few days because he "blew up." As of November 12, 2012, he had not started reunification services in the San Bruno jail. He was permitted around this time to have no-contact visits through glass, although this method of visitation was considered inappropriate for M.A. because she was so young.

Some time before January 2013, father was transferred back to the San Francisco jail. In the first week of January, he signed a contract of good behavior for 30 days. He insisted during a meeting with the social worker on January 15 that he had the right to visit with M.A. The social worker investigated the issue and learned that father could submit a request for visits but was currently unable to visit with his daughter because of his "unsafe behaviors and level of risk." Father was also unable to participate in other services because of his security level and his disciplinary history.

In a status review report filed at the end of January, the Agency recommended that reunification services be terminated as to both parents and that the juvenile court set a selection-and-implementation hearing (§ 366.26). A combined six-month/12-month review hearing was held in late February and early March 2013. Father did not attend. At the hearing, the social worker testified that he believed father was not allowed to participate in reunification services while in jail because father was "out of control," and

the social worker lacked the power to override the decision by the sheriff's department to deny father access to services. He acknowledged on cross-examination by father's counsel that he did not personally contact the sheriff's department about arranging services or reinstating visitation, and he instead relied on the outside agency that arranged services for incarcerated parents. The social worker also acknowledged that he did not speak with a sheriff's deputy regarding whether any accommodations or changes could be made for father to safely engage in services, or whether individual therapy or a substance-abuse assessment (elements of his reunification plan) were available to father.

Father's counsel argued that the Agency had failed to offer reasonable reunification services and urged the court to order an additional six months of services, a request that the Agency and the minor's counsel opposed. The juvenile court instead found that reasonable services had been provided, terminated those services, and scheduled a hearing under section 366.26. Father filed a timely notice of his intent to seek writ relief; mother did not.

II. DISCUSSION

Father claims that the juvenile court should have extended reunification services for an additional six months because it did not properly take into consideration the "special circumstances of [his] incarceration" and because he did not receive reasonable reunification services while incarcerated. The record does not support these arguments.

The juvenile court ordered reunification services for father notwithstanding his incarceration. This was proper since the court made no determination that reunification services would harm M.A. (§ 361.5, subd. (e)(1) [court required to offer services for incarcerated parents unless it determines services would be detrimental to child]; *V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 527.) Accordingly, the Agency was required to provide father with reasonable services during his incarceration. (*Ibid.*; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011.) These services may include, where appropriate, maintaining contact between the parent and child through telephone calls and visits, and facilitating transportation. (§ 361.5, subd. (e)(1)(A)-(C).)

The social worker is required to document in the child's case plan the barriers to an incarcerated parent's access to court-mandated services and the ability to maintain contact with his or her child. (§ 361.5, subd. (e)(1)(D).)

Parents are typically provided with six months of reunification services, which may be extended for another six months, for dependent minors, such as M.A., who are under the age of three at the time of removal. (§ 361.5, subd. (a)(1)(B).) The hearing held in this case was a combined six-month/12-month hearing, which means that the maximum time period for services had passed. (§ 361.5, subd. (a)(1)(B).) The juvenile court shall extend this time period “only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . within the extended time period or that reasonable services have not been provided to the parent” (§ 361.5, subd. (a)(3).) Father quotes this statutory language, but fails to discuss whether there was a substantial probability that M.A. would be returned to him in six months. This is probably because the record lacks evidence demonstrating *any* reasonable possibility (let alone a “substantial probability”) that father would gain physical custody of M.A. within six months.

Instead, father focuses on supposed deficiencies in the services provided to him. He correctly notes that the juvenile court, in determining whether court-ordered services should be extended, “shall consider the special circumstances of an incarcerated . . . parent . . . , including, but not limited to, barriers to the parent's . . . access to services and ability to maintain contact with his or her child.” (§ 361.5, subd. (a)(3); see also § 366.21, subd. (e) [when determining at six-month review hearing whether return of child to parent would be detrimental, court shall consider particular barriers faced by incarcerated parents in accessing reunification services].) He argues that it is “undisputed that father's incarceration prevented him from being able to access services and in any[]way meaningfully engage in his court ordered reunification plan.” But in doing so he fails to mention, much less take responsibility for, the fact that his inability to access reunification services was due to his own misbehavior. His placement in administrative segregation is what precluded him from participating in visits and other services, and this

placement “was not an external factor over which he had no control.” (*V.C. v. Superior Court, supra*, 188 Cal.App.4th at p. 530.) “[T]he statutory provisions calling for special consideration do not suggest the incarcerated parent should be given a free pass on compliance with the service plan or visits. That there are barriers unique to incarcerated parents is but one of many factors the court must take into consideration when deciding how to proceed in the best interests of the dependent child.” (*A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1060.) “Perfection” on the part of the incarcerated parent to complete the objectives of his or her treatment plan “is certainly not the standard, but a demonstrated lack of progress necessary for reunification, *regardless of its cause*, is absolutely relevant when the ultimate goal is expeditious resolution for the child.” (*Id.* at p. 1062, italics added.) Father’s lack of progress here was the result of his misconduct, which was absolutely relevant in the juvenile court’s determination to terminate services in order to expeditiously resolve these proceedings for the benefit of M.A.

Father also argues that the juvenile court erred when it determined that he had been provided with reasonable reunification services. “In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the [social services agency]. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] ‘If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.’ [Citation.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362.) The adequacy of a social services agency’s efforts is “judged according to the circumstances of each case.” (*Id.* at p. 1362.)

The record in this case shows that the Agency made reasonable efforts to provide reunification services to father. (*In re Ronell A., supra*, 44 Cal.App.4th at p. 1363.) The social worker repeatedly inquired whether father could receive services while incarcerated. In his writ petition, father faults the Agency for supposedly not doing more to work with the sheriff’s department to make “accommodations.” But social services agencies are not jailors and they cannot be expected to challenge determinations made by prison officials to deny a prisoner access to visits and other programs based on security

concerns. (See *ibid.* [“prisons are run by the Department of Corrections, not the department of children’s services”].) As the social worker testified, he did not have the power to override the decision of the sheriff’s department to deny father access to services based on his behavior problems.

The facts of this case stand in stark contrast to those in *Mark N. v. Superior Court*, *supra*, 60 Cal.App.4th 996, upon which father primarily relies. In *Mark N.*, the social services agency failed to contact the incarcerated parent for 13 months of a 17-month reunification period and made absolutely “no effort to determine whether any services were available or could be provided” to the parent. (*Id.* at pp. 1012-1013, original italics.) The court stated that the social services agency in *Mark N.* had “simply conclude[d]” that it “need not take any action to facilitate the reunification process.” (*Id.* at p. 1013.) Here, the Agency informed the jail of father’s reunification plan, and father initially received services as a result of the Agency’s efforts. Thus, we have every reason to believe that he could have continued to participate in court-ordered reunification services had he not engaged in serious disciplinary infractions. Under these circumstances, we conclude that there is substantial evidence in the record to support the juvenile court’s finding that the Agency provided reasonable services to father. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 971.)

The court’s decision to terminate reunification services is supported by father’s failure to challenge the court’s findings that entrusting father with M.A.’s care would have created a substantial risk of detriment to the minor and that there was no substantial probability that father would be entrusted with M.A.’s care within the maximum time allowed. “The safety valve the Legislature installed for incarcerated parents who were somehow able to make significant progress despite their incarceration was not intended to apply to parents such as Father.” (*A.H. v. Superior Court*, *supra*, 182 Cal.App.4th at p. 1063.)

III.
DISPOSITION

Father's petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452(h).) This decision shall be final at the conclusion of 10 days. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(3).) Father's request for a stay of the selection-and-implementation hearing scheduled for July 1, 2013, is denied as moot.

Humes, J.

We concur:

Reardon, Acting P.J.

Rivera, J.