Filed 1/30/14 C.F. v. Super. Ct. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

C.F., Petitioner, v. THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; SAN FRANCISCO HUMAN SERVICES AGENCY et al., Real Parties in Interest.	A140066 (San Francisco City & County Super. Ct. No. JD12-3322)

MEMORANDUM OPINION[1]

Christian F., the father of Brendan F. (Father), petitions this court for extraordinary writ review of a juvenile court order terminating his reunification services after a contested six-month review hearing and setting a selection and implementation hearing. He contends the juvenile court erred in finding the San Francisco Human Services Agency (Agency) provided him reasonable reunification services. Specifically, Father complains the Agency failed to amend his case plan upon learning he was incarcerated at a county jail facility where services were not available; and failed to

[1] We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1 (a "memorandum or other abbreviated form of opinion" is appropriate when an appeal "rais[es] factual issues that are determined by the substantial evidence rule"). (§ 8.1(3).)

identify a therapist to conduct a psychological evaluation, as required by his case plan. (Welf. & Inst. Code, § 366.21, subd. (e).)[2] We disagree and deny his petition.

FACTUAL AND PROCEDURAL BACKGROUND

On November 5, 2012, Tiffany F. (Mother) was admitted to St. Luke's Hospital in San Francisco on a 72-hour psychiatric hold (§ 5150) after she was found wandering barefoot on the streets looking confused and disoriented and muttering gibberish. She said she had a one-year-old baby, but she did not know where he was or with whom she had left him. Following the filing of a missing persons report on November 8, the baby was found at the Essex Hotel with a friend of Mother who reported that Mother left the baby with her on November 1 and failed to return. The baby was in good condition, but he smelled of marijuana smoke and there was a large amount of marijuana in the apartment.

An Agency social worker located Father through a contact at Larkin Street Youth Services (Larkin Street). Father said he was homeless; he and Mother "were having 'issues,' " and were "both crazy and [] not very good parents." Father expressed interest in visiting with his son as soon as possible and claimed he always intended to care for him.

On November 13, 2012, the Agency filed a dependency petition alleging that 12-month-old Brendan F. was a child coming within section 300, subdivision (b) in that Mother had a serious history of mental health concerns which impacted her ability to safely parent the child; substance abuse issues; and had left the child with an unrelated caregiver whose home contained a large quantity of marijuana. The petition also alleged that Father had a substance abuse problem which impacted his ability to care and provide for the child, and may also have mental health issues for which assessment and treatment were needed. Brendan was detained and placed in foster care following a detention hearing on November 14 attended by both parents.

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[2] All further statutory references are to the Welfare and Institutions Code.

As of December 14, the date of the disposition report, both parents were homeless and neither parent had responded to the social worker's phone calls. Nevertheless, on December 19, 2012, Father appeared in court and submitted to the allegations of the petition recited above. Mother failed to appear. When she again failed to appear at the disposition hearing on February 14, 2013, the court found true the allegations of the petition in her absence. The court confirmed Brendan's foster care placement, granted both parents six months of reunification services, and set a review hearing for August 22, 2013.

Service requirements recommended for Father's reunification with Brendan included: completing a substance abuse assessment and following the recommendations of the assessment; attending group counseling therapy for anger management; attending parenting education classes; finding and maintaining suitable housing, with the Agency providing housing referrals as needed; visiting with his son regularly, as arranged by the child welfare worker; making his whereabouts known to the child welfare worker at all times; and undergoing a psychological evaluation.

Alex Wade, a social worker for the Child Protective Services division of the Agency, was assigned to Father's case on March 7, 2013. Court records indicate Mr. Wade initiated a search for Father's whereabouts on June 10, 2013. Father had been arrested on February 22, 2013 for sexual assault and was in custody at San Francisco County Jail No. 3, located at 850 Bryant Street (Jail No. 3).[3]

Mr. Wade testified at the review hearing that during the investigation stage of the case he referred Father to Foster Care Mental Health for a psychological evaluation and made other referrals as well. However, Jail No. 3 did not provide psychological evaluations, or offer drug or mental health programs. Jail No. 3 did offer parenting classes and facilitated visitation. Father attended one parenting class on June 17, 2013,

[3] At the six-month review hearing, Mr. Wade recalled that Mother told him in March that Father was probably in jail. Mr. Wade researched to see which jail Father was in and also contacted the Larkin Street shelter to see what they knew. Mr. Wade thought he probably saw Father in late March or early April 2013 at Jail No. 3.

and visited with his son the same day. He was overcome with emotion, and speechless at seeing his son doing so well. He missed the parenting class on June 18.

Father was supposed to be transferred to the jail in San Bruno where anger management classes were available, as well as parenting classes and visitation. Mr. Wade made his monthly visit to Father at Jail No. 3 on June 26. However, when Mr. Wade contacted San Bruno County Jail on July 1, he learned that Father was no longer in custody as of June 27.

Court records show Mr. Wade initiated a second parent search for Father on July 1, 2013, after learning that Father had been released on June 27, 2013. On July 3, a cell phone number for Father was obtained; he was contacted and referred to Mr. Wade. Shortly thereafter, Mr. Wade visited Father at a half-way house in San Francisco, re-referred him to the Tenderloin Outpatient Clinic and Homeless Prenatal to get help with his substance abuse and mental health issues, housing, parenting and anger management. Mr. Wade also re-referred Father to Foster Care Mental Health for a psychological evaluation, and gave him a Muni fast pass so he could attend a scheduled visit with his son on July 10. Father missed the visit.

As of the six-month review hearing held on October 21, 2013, Father had connected with a case worker at Homeless Prenatal, which makes comprehensive services available to clients. Since his release from jail, Father had attended two out of six scheduled visits with his son. Like the meeting in the jail, Father remained nonverbal during the visits. Foster Care Mental Health had yet to identify a therapist to do the evaluation; Mr. Wade did not know the reason for the delay, since Father was now stabilized with a phone and a case worker. Mr. Wade had spoken with the case worker the previous week and had been pushing for a therapist to be identified.

On October 21, 2013, the juvenile court terminated reunification services to Father (and Mother) and scheduled a permanency planning hearing pursuant to section 366.26. The court recognized that Father was in custody for a period of time. However, the court noted that "father did not make any efforts based on the evidence before me to advise the Department or the Court about his custody status." Moreover, "the extent of progress

made by mother and father toward alleviating or mitigating the causes necessitating placement has been minimal." The court specifically noted that Father had availed himself of only two out of six opportunities to visit with his son. The court found by clear and convincing evidence that "reasonable services were provided." The court also found there was not a substantial probability of return of the child to Father in the next six months and set the section 366.26 hearing for February 26, 2014. Father timely filed an intent to file a writ petition from the court's order setting the section 366.26 hearing and terminating reunification services.

DISCUSSION

The standard of review for orders terminating reunification services and setting a permanency planning hearing under section 366.26 is whether substantial evidence supports the challenged orders. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216 [review of orders under § 361.5]; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763 [review of orders under § 366.26].) "Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. [Citation.] We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact." (*In re Albert T., supra,* 144 Cal.App.4th at p. 216.) If there is substantial evidence in the record to support the challenged orders, then the appellate court must affirm.

Here, the minor was under the age of three at the time of removal. Ordinarily, when a child under the age of three years old is removed from parental custody, reunification services are not to exceed a six-month period. (§§ 361.5, subd. (a)(2), 366.21, subd. (e).) (See *Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 611–612 ["The stated purpose of the new six-month provisions is to give juvenile courts greater flexibility in meeting the needs of young children, 'in cases with a poor prognosis for family reunification, (e.g., chronic substance abuse, multiple previous removals, abandonment, and chronic history of mental illness).' [Citation.]"].) Section 366.21,

subdivision (e), provides that if the court finds at the six-month review hearing that the parent has failed to participate and make substantive progress in his or her court-ordered treatment programs, the parent is not entitled to further services unless the court finds a substantial probability that the child will be returned to parental care within six months or that reasonable services have not been provided.

Relying on *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996 (*Mark N.*), Father contends the court should not have found that reasonable services were provided because the Agency failed to amend his case plan after learning that the required services were not available in the jail where he was incarcerated. Father's argument might have some traction if he had: (a) timely notified the Agency or the court of his situation at any time during the four months of his incarceration or after his premature release from jail, or (b) taken advantage of those services which were offered to him at the jail, namely, parenting classes and visitation. But he did not do so. Instead, he never maintained contact with his social worker, who was repeatedly forced to go looking for him. And, he attended only the one parenting class that was required prior to visitation, skipping the subsequent one, even after finding himself too emotional to connect with his son at the visit. Under these circumstances, where the parent showed no inclination to contact the social worker about his case plan or adhere to it, the Agency was not required to amend the case plan for the short period between the time Mr. Wade located Father and Father's unanticipated release. Wade had initially referred Father for services before learning of Father's incarceration, arranged for parenting classes and visitation at Jail No. 3, and further contacted the jail about arranging for those and additional services available in the San Bruno jail. After Father's surprise release, Wade re-referred Father for those services upon discovering Father's whereabouts.

Mark N. is distinguishable. There, the department failed to contact the father during 13 of the 17 months of his incarceration, made "*no* effort to determine whether any services were available or could be provided," and instead concluded there was no need to "take any action to facilitate the reunification process." (*Mark N., supra,* 60 Cal.App.4th at pp. 1012–1013, original italics.) Our case could not be more different.

Father also contends the court erred in finding reasonable services were provided because the Agency failed to identify a therapist to conduct the required psychological evaluation. We disagree. Father was first referred to Foster Care Mental Health by the Agency's social worker for an evaluation during the investigative stage of the case. Apparently, Father did not followup on the referral prior to his incarceration. He then failed to maintain contact with his social worker while incarcerated, or upon his release from jail. He was then re-referred by the social worker to Foster Care Mental Health after the social worker relocated Father's whereabouts post release. The social worker testified he had "been pushing" the caseworker to assign Father an evaluator prior to the hearing.

An evaluator should have been assigned to Father after he was re-referred to the appropriate service provider in July. But there was no evidence presented from which it could be inferred that *if* a therapist had been assigned to Father, Father would have followed up with the evaluation and therapy. There was no evidence that Father engaged in any of the elements of the case plan under Father's control, including visitation with his son. In our view, substantial evidence supports the juvenile court's conclusion that, looking at the big picture, reasonable services were offered, and *In re K.C.* (2012) 212 Cal.App.4th 323 (*K.C.*), on which Father relies, does not persuade us otherwise. In *K.C.*, the father had demonstrated his commitment to reunification by undergoing the initial psychological evaluation recommended in his case plan. When the evaluator recommended an additional evaluation for use of psychotropic drugs, the social services agency referred the father to a clinic which determined that the father neither symptomatically nor financially met its treatment criteria. (*K.C.*, *supra*, at pp. 327–328.) The agency failed to followup with help finding someone who would do the second evaluation. Here, on our record, Father did not demonstrate any commitment to fulfilling his case plan. He did not maintain contact with the Agency, nor take advantage of any of the Agency's referrals for services. The only thing he did is attend one parenting class and one visit in the jail, and attend two of six arranged visits with his son during the four

months after his release. Under the standard of review that we must apply, we cannot conclude that the court erred in finding the Agency provided reasonable services.

DISPOSITION

Father's petition for an extraordinary writ is denied on the merits. (See *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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Dondero, J.

We concur:

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Margulies, Acting P.J.

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Banke, J.