

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

P.C.,

Petitioner,

v.

THE SUPERIOR COURT OF MARIN
COUNTY,

Respondent;

MARIN COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et
al.,

Real Parties in Interest.

A148133

(Marin County
Super. Ct. No. JV26089A)

Petitioner P.C. (Father) seeks writ review (Cal. Rules of Court, rule 8.452) of an order of the juvenile court setting a hearing under Welfare and Institutions Code section 366.26.¹ Father challenges the juvenile court's orders terminating reunification services and suspending visitation with K.R. (Minor). We deny the petition.

BACKGROUND²

In March 2015, the Marin County Department of Health and Human Services (the Department) filed a section 300 petition alleging Minor, then 13 months old, was at risk

¹ All undesignated section references are to the Welfare and Institutions Code.

² We omit background facts not relevant to the issues raised by this writ petition.

due to the substance abuse, homelessness, and current incarceration of his mother, M.R. (Mother). The petition alleged Mother had left Minor with his maternal grandmother, Gina R., who has a chronic history of mental illness and substance abuse and with whom Mother admitted Minor was not safe. According to subsequent Department reports, Minor was found in Gina's custody with a diaper soiled with urine and stool that was soaking through Minor's pants, a dirty face and clothes, and no clothing or supplies in the home to care for Minor. Mother and Minor are both members of the Federated Indians of Graton Rancheria (the Tribe) and the court found Minor to be an Indian child. The Tribe intervened in the proceedings. Minor was detained and placed in a foster home arranged by the Tribe.

The petition identified Minor's father as unknown. The detention report identified Father as Mother's boyfriend and reported that, according to Mother, Father is not the biological father but "has acted as [Minor's] father since his birth."³ In July 2015, Father filed a request that he be judged Minor's father. At a hearing on August 5, 2015, the juvenile court declared Father to be Minor's presumed father.

At the same August 5 hearing, the juvenile court held a hearing on jurisdiction. In a Department report written prior to the hearing, the Department stated Mother began using drugs when she was 11 years old. Starting in her teenage years, Mother used drugs, including methamphetamine, with her mother, Gina. Mother also reported a history of depression but had stopped taking her medication. Mother used heroin and methamphetamine during the early months of her pregnancy with Minor but stopped about three months into the pregnancy. During the first year of Minor's life, Mother, Father, and Minor lived with Mother's sister or Father's parents. Mother and Father were sober during this time. In the fall of 2014, Mother relapsed and the family became homeless. Mother began leaving Minor with various relatives for days at a time, without making proper arrangements for his care. In January 2015, Mother was arrested for

³ At the detention hearing, Mother stated Minor's biological father was a "one-night stand." She provided his name but stated she did not know where he lives or how to contact him.

possession of a controlled substance. Shortly before the petition was filed, Mother failed to enter a substance abuse inpatient program that the Tribe agreed to pay for. After detention, Mother entered one inpatient program, left within days, and entered another program about two months later. The juvenile court sustained the petition's allegations and set a September 10, 2015 hearing for disposition. The court ordered two supervised visits per week for both Mother and Father.

In late August, the Department filed a section 388 petition requesting Mother's visits be reduced to once per week, and that Mother be required to confirm each visit prior to 9:00 a.m. and appear one hour before the scheduled time, before Minor is transported to the visit. The petition reported that Mother had missed three out of four scheduled visits since the jurisdiction hearing. The petition stated that when Minor is brought in for a visit that does not take place, "he is restless the rest of the day, is unable to nap, and acts more aggressively in his play and interactions with his caregiver, such as hitting. Repeatedly experiencing this disappointment and insecurity around contact with his mother is harmful to [Minor's] emotional well being as it nurtures insecurity and anxiety in [Minor's] relationship with his primary caregiver." The court set a hearing on the petition for September 10, 2015.

Neither Father nor Mother appeared at the September 10, 2015 hearing. The court continued the disposition hearing to September 21. The court granted the Department's section 388 petition. The Department orally requested the same order issue regarding Father's visitation. According to a disposition report filed shortly before the hearing, Father had missed four of the seven scheduled visits since the August 5 hearing.⁴ Because the section 388 petition requested relief only with respect to Mother, the court continued Father's visitation issues to the September 21 hearing.

Father did not appear at the September 21 disposition hearing. His counsel stated her last contact with him was at the August 5 hearing and he was not returning her calls or emails. According to a Department report filed in early September, Father has a

⁴ The report provided that Father was appropriate and affectionate when he did visit.

history of substance abuse and homelessness. Father reported he stopped using drugs while Mother was pregnant with Minor and remained clean until January 2015. At the time of the report, both Father and Mother were homeless and actively using drugs. The Department recommended a case plan for Father including substance abuse treatment, drug testing, an anger management program, and parenting education. Regarding visitation, the Department recommended once per week visits with Father confirming by telephone by 9:00 a.m. and reporting to the visit one hour before it starts. The Department social worker informed the court that since the previous hearing, Father twice called by 9:00 a.m. to confirm a visit, and both times failed to appear for the visit. The Tribe agreed with the Department's plan. The juvenile court adjudged Minor a dependent of the court, removed him from parental custody, and ordered visitation once per week as recommended by the Department.

In February 2016, Minor's counsel filed a section 388 petition seeking to suspend parental visitation. Minor's counsel submitted a declaration stating that Father's last visit was in August 2015, but he had recently attempted to set up a visit. Minor's counsel stated Minor is extremely attached to his caregivers and has a very difficult time being separated from them, has a lot of anxiety, and needs constant reassurance. Minor saw Mother in November 2015 when she appeared at the caregiver's home unannounced; the visit was traumatic for Minor, who subsequently was more aggressive, had difficulty sleeping, and took days to settle down. In addition, Minor recently had a scheduled visit with Gina.⁵ Minor cried the entire ride to the visit and following the visit was extremely aggressive. The petition requested visits be suspended until the parents demonstrate sobriety and stability. The Department and the Tribe both supported the petition. Father objected, and the court set a contested hearing.

In April 2016, the court held the six month review hearing and the contested hearing on Minor's section 388 petition. Father was present at the hearing; Mother was

⁵ According to a Department status review report filed shortly after this petition, prior to the visit Minor had not seen Gina in several months.

not. The Department's status review reports recommended reunification services for both parents be terminated. The Tribe agreed with this recommendation. According to the Department's report, Mother remained homeless and had been incarcerated twice since disposition. She had entered several treatment programs but each time left within days and continued to use drugs. With respect to Father, for the first few months following disposition he made no contact with the Department and his whereabouts were unknown. He was arrested for possession of a controlled substance in October 2015 and shoplifting in November 2015. He was in jail for about a month starting in November and then was homeless living under a bridge. In January 2016, Father entered an inpatient treatment program. The program was a requirement of his criminal probation. After the disposition hearing, Father had not attempted to visit Minor until mid-December 2015. Father had not completed his case plan objectives. He had not entered treatment until January 2016. Although he told the Department he was taking anger management and parenting classes as part of his treatment program, he did not provide the Department with the requested documentation of these classes. He has not obtained housing or employment. The Department social worker testified at the hearing. She testified that, because Father had not visited with Minor since August 2015, Father would be like a stranger to Minor.

Father testified at the hearing. He submitted documentation that he remained in the inpatient program and was scheduled to complete the program in a few days, and testified he would then be expected to participate in a 90-day outpatient treatment. He chose to enter the program instead of serving the remaining two weeks of his criminal sentence because he was "tired of the lifestyle I was living." He had been participating in anger management and parenting classes as part of the program. Father testified he had not tried to visit Minor earlier because he "was not well" and did not believe going to see Minor "the way I was, was right. . . . I was chasing after his mom trying to get her clean because I thought that was more important because I didn't -- I didn't have any fight for him because I wasn't the biological father and I felt that if I got her clean and on the same page that everything would work that way, but I was completely wrong and I regret that

for the rest of my life.” Father thought Minor would still remember him because in March 2015, Father spent 90 days in jail and Minor recognized him when he was released.

The juvenile court terminated reunification services for Father and Mother, set a section 366.26 hearing for August 1, 2016, and suspended visitation with Father and Mother. The court granted the Department discretion to allow resumed visitation.

DISCUSSION

I. Visitation

Father argues the trial court erred in suspending his visitation with Minor because there was no substantial evidence that visitation would be detrimental to Minor. We disagree.

When a section 366.26 hearing is set, “[t]he court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.” (§ 366.21, subd. (h).) “Detriment includes harm to the child’s emotional well-being.” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1357.)

Contrary to Father’s contention, there was substantial evidence of detriment. (See *Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1028 (*Fabian L.*) [on substantial evidence review, “ ‘we review the record in the light most favorable to the court’s determinations and draw all reasonable inferences from the evidence to support the findings and orders’ ”].) At the time of the six month review hearing, Minor had not seen Father in more than seven months. Minor was very attached to his caregivers and separation from them was traumatizing. Minor had been extremely upset by recent visits with Mother and Gina and had exhibited troubling behavior following the visits. Ample evidence supported the finding of detriment.

Father notes that the juvenile court did not make an express finding of detriment, but he does not argue the failure to make such a finding was prejudicial or that we are precluded from implying the finding. Any error in failing to make an express finding was harmless. (*In re G.P.* (2014) 227 Cal.App.4th 1180, 1197 [rejecting challenge to juvenile

court’s failure to make an express finding because, inter alia, “the record supports an implied finding of detriment”]; *In re Corienna G.* (1989) 213 Cal.App.3d 73, 84–85 [affirming order where “appellants were not prejudiced by the lack of an express determination” and “this determination can be implied on this record”].)

II. *Reunification Services*

Father argues the juvenile court erred in terminating his reunification services. We again disagree.

“If the child was under three years of age on the date of the initial removal . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child . . . may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.” (§ 366.21, subd. (e)(3).) “ ‘The “ ‘unique developmental needs of infants and toddlers’ ” [citation] justifies a greater emphasis on establishing permanency and stability earlier in the dependency process “ ‘in cases with a poor prognosis for family reunification.’ ” ’ ” (*Fabian L., supra*, 214 Cal.App.4th at p. 1027.)

Father does not contest the juvenile court’s findings that: he failed to participate regularly and make substantive progress in the treatment plan, there was no substantial probability Minor may be returned to Father within six months, and reasonable services were provided.⁶ Father’s sole argument is the juvenile court abused its discretion in setting a section 366.26 hearing despite these findings. (§ 366.21, subd. (e)(3) [upon such findings, “the court *may* schedule a [§ 366.26] hearing,” italics added].)

We find no abuse of discretion. (*In re Brittany C., supra*, 191 Cal.App.4th at p. 1356 [on review for abuse of discretion, “[w]e will not disturb the order unless the trial

⁶ We would have rejected any such challenge, as substantial evidence supports all of these findings.

court made an arbitrary, capricious, or patently absurd determination”].) Father attended less than half of his scheduled visits with Minor between his entry in the case and disposition. In the first few months following disposition he failed to engage in any services, did not remain in contact with the Department, and made no attempt to visit Minor. Although he had begun substance abuse treatment by the time of the juvenile court’s order, his sobriety was recent and untested. The juvenile court did not abuse its discretion in terminating services for Father.

DISPOSITION

The petition is denied. The request for a stay of the August 1, 2016 section 366.26 hearing is denied. This decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

(A148133)