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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

GERARDO N.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B241708

(Los Angeles County
Super. Ct. No. CK86135)

ORIGINAL PROCEEDING; Petition for extraordinary writ. Elizabeth Kim,
Juvenile Court Referee. Petition denied.

Law Office of Alex Iglesias, Steven Shenfeld and Jaclyn Smith for Petitioner.

No appearance for Respondent.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Navid Nakhjavani, Deputy County Counsel, for Real Party in Interest.

Gerardo N. (father) has filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452) challenging an order of the juvenile court terminating reunification services with his 16-year-old daughter, Lauren, and setting a hearing pursuant to Welfare and Institutions Code section 366.26.¹ Father contends the juvenile court abused its discretion when it terminated family reunification services at the six-month review hearing. (§ 366.21, subd. (e).) We conclude the court did not abuse its discretion, and accordingly deny the petition.

FACTS AND PROCEDURAL HISTORY

On October 10, 2011, Lauren ran away from home. Apprehended the next day, she told Los Angeles County Sheriff's deputies she had run away because father had verbally abused her. She also claimed that five years earlier, father had rubbed her buttocks and anus while she slept. Lauren reported the incident to her then-stepmother, Sandra C., who removed Lauren and her siblings from the family home and rented a motel room. After discussing the matter with a therapist friend of her father, it was agreed that Lauren would have her own bedroom with a lock. Lauren also said that recently father had kicked her on the arms, legs and buttocks after she had been caught shoplifting. Lauren said she "[could] not take it anymore" and did not want to live with father.

Father denied Lauren's allegations of sexual and emotional abuse. Father said Lauren was mad at him because he was a strict parent and Lauren did not want to follow house rules. Father believed his ex-wife, Sandra C., was behind "all 'this.'"

Based on Lauren's allegations, father was arrested on October 13, 2011, and charged with committing a lewd act on a child (Pen. Code, § 288, subd. (a)).

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On October 18, 2011, DCFS filed a section 300 petition alleging father had sexually abused Lauren on a prior occasion, and had physically abused her by kicking her in the arms, legs and buttocks.

On November 21, 2011, the juvenile court sustained the petition and directed the Los Angeles County Department of Children and Family Services (DCFS or Department) to provide father and Lauren with family reunification services. Father was to participate in individual counseling with a DCFS-approved counselor. Father was also allowed monitored visitation, but DCFS was not given discretion to liberalize father's visits.

The case was assigned to DCFS social worker Robert Dennis. In early December 2011, Mr. Dennis provided father with appropriate referrals and, during a telephone conversation with father, requested that father maintain contact with DCFS. Father acknowledged he had received the referral information and stated he intended to follow through on attending an intake for counseling.

In a status report prepared for the May 21, 2012 six-month review hearing, Mr. Dennis reported that father had not made himself available to DCFS since his initial contact in December 2011. Lauren, meanwhile, was content in her foster placement and "has maintained that she does not want to have contact with her father at all." Mr. Dennis described Lauren as a "bright, polite, and respectful youth who has demonstrated developing plans including where she wants to reside when she turns 18 and pursuing college enrollment."

Mr. Dennis noted that DCFS had "made considerable efforts to offer Family Reunification Services and father has failed to comply." He recommended that the juvenile court terminate father's reunification services at the six-month review hearing.

The six-month review hearing was scheduled for May 21, 2012. On that date, the juvenile court ordered DCFS to prepare a supplemental report addressing the Department's position on limiting father's educational rights for Lauren, an update on father's participation in reunification services, and the status of father's contact with Lauren. The court continued the six-month review hearing to May 29, 2012.

On May 24, 2012, Mr. Dennis was able to make phone contact with father, who reported that he had participated in two individual counseling sessions and two sex offender classes. Father could not recall offhand the name of the agency at which the sessions were held, so Mr. Dennis asked father to provide written verification as soon as possible. On May 25, 2012, DCFS received a letter from the West Advisory Christian Counseling Center dated May 7, 2012, certifying that father had enrolled in the center's sex offender group therapy sessions for perpetrators and its parenting/child abuse program.

In his supplemental report prepared for the May 29, 2012 hearing, Mr. Dennis stated that father's criminal case was still pending and the criminal court had ordered that father not have contact with Lauren. Lauren remained adamant that she did not want to have contact with father "telephonically or in person." DCFS was working with Lauren on placement options, including transitional housing, and she had been assigned an adoptions social worker.

At the six-month review hearing held on May 29, 2012, the juvenile court received into evidence the DCFS reports of May 21 and May 29, 2012, the "Last Minute Information" DCFS submitted concerning father's enrollment in counseling, and the restraining order issued in father's criminal case. The court took judicial notice of the sustained petition and the case plan for father. Counsel for DCFS urged the court to terminate father's reunification services at that time, and Lauren's counsel joined in that request. Father's counsel urged the court to continue reunification services for an additional six months. Counsel stated father had not been visiting with Lauren because of the restraining order the criminal court had issued in January 2012, but that father could try to get the order modified.

After argument, the juvenile court found, by a preponderance of the evidence, that returning Lauren to father's custody at that time would create a substantial risk of detriment to her safety, protection, and physical and emotional well-being. The court also found, by clear and convincing evidence, that DCFS had complied with the court-

ordered case plan in making reasonable efforts to return Lauren to a safe home and completing any steps necessary to finalize her permanent placement.

The juvenile court cited father's failure to participate in court-ordered services, contact the social worker, or modify the restraining order issued by the criminal court. The court also noted that it was not permitted to order any futile acts. The court terminated father's reunification services and set the matter for a hearing pursuant to section 366.26.

DISCUSSION

Both parties to this proceeding agree that we should evaluate the juvenile court's decision to terminate father's reunification services after six months under the abuse of discretion standard. Under that standard, "[t]he juvenile court has broad discretion in crafting a disposition pursuant to a child's best interest. [Citation.] A reviewing court will not disturb a juvenile court's custody determination unless it "exceeded the limits of legal discretion.'" (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.)

Section 366.21, subdivision (3), provides that at the review hearing held six months after the date the child entered foster care, the juvenile court must return the child to the parent's custody unless it finds, by a preponderance of the evidence, that return of the child to the parent would create a substantial risk of detriment to the child's safety, protection, or the physical or emotional well-being. The juvenile court made that finding here, and father does not contest it. However, father contends that there are only two situations where a juvenile court may set a section 366.26 hearing at the six-month review: (1) where the child has been left without any provision for support, and the parent's whereabouts are still unknown (§ 300, subd. (g)), and (2) where the parent has been convicted of a felony indicating parental unfitness. Father asserts that because neither situation is present here, the juvenile court "has not legislatively been given a choice to not go to the 12-month status review date."

Father is incorrect when he suggests that the Legislature has tied the juvenile court's hands. In fact, there are many instances in which a court is not required to order *any* reunification services at all. (See § 361.5; *In re Derrick S.* (2007) 156 Cal.App.4th 436, 445 (*Derrick S.*)) “Nowhere is it provided that a *minimum* of 12 months is required. To the contrary, the emphasis throughout the statutes is upon setting outside limits to the length of time a child may be kept in foster care before a permanent plan is established.” (*In re David H.* (1995) 33 Cal.App.4th 368, 388.) “[T]he juvenile court has the discretion to terminate the reunification services of a parent at any time after it has ordered them, depending on the circumstances presented.” (*In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1242 (*Aryanna C.*)) As the court in *Aryanna C.* observed, such a rule is “consistent with the purposes underlying the dependency system. Where, as the record shows in this case, the likelihood of reunification is extremely low, . . . a continuation of the reunification period would waste scarce resources and delay permanency for dependent minors. Our interpretation of the pertinent statutes is consistent with the legislative intent behind the statutory scheme—‘to balance efforts to reunify the family with the child’s need for stability.’” (*Ibid.*)²

This case presents exactly the kind of circumstances under which it would be appropriate for a juvenile court to terminate reunification services at six months. At the time of the six-month review hearing, Lauren was 16 and one-half years old, nearing the age of majority and looking toward a transitional living arrangement and attending college. She was content in her foster placement and had made significant academic improvement since leaving father’s home. Father had been charged in a criminal case arising from acts he allegedly committed against Lauren, and was prohibited from having contact with Lauren due to a restraining order issued by the criminal court. Father had

² Although *Aryanna C.* involved the termination of reunification services after four months, for a child under the age of three, *Derrick S.* held that the rule announced in *Aryanna C.* was “equally applicable to dependents over the age of three.” (*Derrick S.*, *supra*, 156 Cal.App.4th at p. 439.)

not even enrolled in a counseling program until two weeks prior to the scheduled six-month hearing. Lauren was adamant that she did not want to see or even speak with father, and she was at an age at which the juvenile court could and should give significant weight to her wishes. Given all these circumstances, the juvenile court acted well within its discretion when it terminated reunification services at the six-month hearing.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is made final forthwith as to this court.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ