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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re ISABELLA G., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B260765
(Super. Ct. No. JV51169)
(San Luis Obispo County)

RAUL G.,

Petitioner,

v.

SUPERIOR COURT, COUNTY OF SAN
LUIS OBISPO,

Respondent;

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,
Real Party in Interest.

Raul G. (Father) is the presumed father of Isabella G., who was born in May 2014 and detained in foster care the next day. Father seeks extraordinary writ relief (Cal. Rules of Court, rules 8.452, 8.456) from the juvenile court's order denying reunification services and setting the matter for a permanency planning hearing. (Welf. & Inst. Code, § 366.26.)¹ He contends the court's jurisdictional order is not supported by

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

substantial evidence and that the juvenile court erred when it denied reunification services. We deny the writ.

Facts

Hospital staff contacted respondent within hours of Isabella's birth because Father and Isabella's biological mother, M.W. (Mother), were yelling obscenities and threatening to harm each other. Mother tested negative for substances when admitted to the hospital, but exhibited "bizarre and violent" behavior during Isabella's delivery. Isabella showed no signs of drug withdrawal after her birth. During and immediately after the delivery, Father appeared to be intoxicated. He had rapid, slurred speech and was acting in an angry and aggressive manner. He was verbally abusive to both Mother and the hospital staff. Hospital staff contacted law enforcement to calm the parents down.

Mother refused to cooperate with respondent's investigation because, she said, she "was not going to get caught up in the child welfare web." Father also refused to cooperate, threatening to cut off Isabella's security bracelets, "beat up" hospital staff and run off with her.

Father and Mother had another biological child, Destiny G., in August 2012. Destiny became a dependent of the juvenile court in September 2012. Reunification efforts failed and the parental rights of Destiny's biological parents were terminated in February 2014. We denied Father's petition for extraordinary writ relief from the order terminating reunification services in that matter. (In re Destiny G., No B250377, October 31, 2013.)

Mother has a significant history of substance abuse and of incarceration for drug-related offenses. When Father was granted custody of Destiny, he failed to protect the infant from Mother's drug use because, contrary to his case plan and his agreement with respondent, he allowed Mother to reside with them whenever she was not in custody. Father also refused even to enroll in required anger management classes and failed to take Destiny to therapy and medical appointments.

The dependency court held a jurisdictional and dispositional hearing for Isabella on June 12, 2014. Father and Mother waived their right to a trial on the petition and the juvenile court found the allegations in the original petition to be true. Isabella was returned to the custody of her biological parents under a voluntary agreement for informal supervision by respondent. Father's case plan required him to participate in drug and alcohol testing, complete anger management/domestic violence classes and counseling, and appropriately parenting Isabella at all times. Mother and Father also agreed to attend couples counseling.

On September 29, 2014, respondent filed a section 387 supplemental petition alleging that Mother and Father had not followed through on their agreements to participate in domestic violence prevention services. Father had not started anger management or domestic violence classes. Neither parent had started counseling. Mother also resumed using drugs, having tested positive for amphetamine and alcohol on August 25, 2014. Mother failed to appear for testing on three subsequent occasions and was dropped from the program.

Isabella remained safe, according to respondent, because Father left her in the care of his mother, Isabella's paternal grandmother. Father had, however, picked Isabella up and taken her out with Mother. He also threatened to remove Isabella from the grandmother's house.

Respondent's detention report, filed the next day, explained that Isabella was at risk of harm because Mother had resumed using drugs, Father had a recent DUI arrest and both parents continued to engage in domestic violence. Mother visited Isabella infrequently during August and September 2014. During those visits, Mother did not feed, bathe or change the baby. Father and Mother argued frequently, but Father refused to separate from her. The juvenile court took Isabella into protective custody.

On September 30, respondent filed a subsequent dependency petition pursuant to section 342, based on the same factual allegations concerning Mother's drug use, Father's engaging in domestic violence, his failure to protect Isabella from Mother and his failure to attend counseling or domestic violence prevention classes. Respondent

recommended that reunification services be denied for Father and Mother, based on their failure to reunify with Destiny and their failure to follow through with services as they had previously agreed. (§ 361.5, subd. (b)(10), (b)(11).)

The jurisdiction and disposition report prepared for the section 342 subsequent petition summarized an interview respondent conducted with Father. Father stated "he does not understand why Isabella was detained by the Court." Father denied that he was still in a relationship with Mother and said he could protect Isabella from her. He also stated that he would "never agree to alcohol or drug treatment or any kind of domestic violence treatment program" Respondent concluded Father "has shown both currently and historically that he is unable to prioritize the needs of his child over his relationship with [Mother]. He has made it evident that he is unable and unwilling to keep Isabella safe from [Mother]." Respondent further noted that the circumstances of Isabella's detentions were very similar to the circumstances that led to Destiny's detention. Father and Mother "have not adequately addressed the issues that led to the termination of their parental rights in Destiny's case and have not shown any indication that they are prepared to address those issues at this time."

At the December 10, 2014 dispositional hearing, the juvenile court placed Isabella in the custody of her paternal grandmother and denied reunification services to both Father and Mother. It found that Father had made no progress toward alleviating or mitigating the circumstances that led to Isabella's detention. The matter was scheduled for a permanency planning hearing pursuant to section 366.26.

Discussion

Jurisdictional Order

Father contends the juvenile court's jurisdictional order is not supported by substantial evidence because he made adequate arrangements for Isabella's care when he voluntarily left her in the care of her paternal grandmother. He further contends there is no substantial evidence Isabella was harmed by Mother's drug use or by exposure to domestic violence. We are not persuaded.

First, we understand Father's contention to apply only to the dependency court's jurisdictional finding on the section 342 subsequent petition filed in September 2014. Father waived any challenge to the jurisdictional order on the original section 300 petition because he agreed to a mediated disposition of that petition. (*In re Andrew A.* (2010) 183 Cal.App.4th 1518, 1526-1527; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-642.)

In evaluating Father's challenge to the section 342 petition, we consider only whether the juvenile court's jurisdictional findings are supported by substantial evidence. To do so, we review the entire record in the light most favorable to the prevailing party and indulge all legitimate and reasonable inferences to uphold the juvenile court's orders. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575; *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

A subsequent petition under section 342 is appropriate where "a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300" (§ 342. See also *In re Barbara P.* (1994) 30 Cal.App.4th 926, 933.)

Here, the new facts alleged in the section 342 petition were that Father did not follow through on the services he had agreed to in the mediation "to mitigate safety concerns related to drug use, domestic violence and providing protection of the minor when [Mother] was under the influence of drugs or alcohol." Father continued his relationship with Mother despite the fact that she had resumed using drugs, failed to prevent contact between Mother and Isabella, and failed to protect Isabella from exposure to domestic violence between Father and Mother. The social worker reported that Father had not attended counseling for domestic violence or anger management, as he had agreed to do in the mediation. She further reported that respondent received a report of domestic violence between the parents on July 30, 2014. In addition, the paternal grandmother told the social worker that Father had threatened to take Isabella from her

home and that he had been taking her out to visit with Mother, despite the fact that Mother was again using drugs.

In her testimony at the jurisdictional hearing on the section 342 petition, the social worker confirmed that Father had still not attended counseling. She opined that the voluntary arrangement under which Father left Isabella with her paternal grandmother was not sufficient to protect her because the grandmother had no legal authority to prevent Father from taking Isabella or from exposing her to domestic violence. As the social explained, Father " retains the legal authority in that case. So I would have concerns that his lack of follow-through related to domestic violence would create a situation in which Isabella could still be exposed."

The social worker's reports and testimony constitute substantial evidence supporting the juvenile court's order assuming jurisdiction over Isabella. Father failed to protect Isabella from a substantial risk of serious physical harm because he did not attend counseling to resolve his history of domestic violence and because he failed to protect Isabella from Mother, despite Mother's continued drug use.

Order Denying Reunification Services

Father next contends the trial court erred when it denied reunification services. We review the order denying reunification services to determine whether it is supported by substantial evidence. (*In re D.H.* (2014) 230 Cal.App.4th 807, 815.)

Section 361.5, subdivisions (b)(10) and (b)(11) authorize the juvenile court to deny reunification services "to a parent who has failed to reunify with another child . . . if the court finds that the parent 'has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling' " (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) The reasonable effort requirement "focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' (*Cheryl P. v. Superior Court* [(2006)] 139 Cal.App.4th [87,] 99.)" (*Id.*) While the parent's efforts need not have completely resolved the parent's problems, the efforts must have been more than " 'lackadaisical or half-hearted.' " (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.) In evaluating whether a parent has made

reasonable efforts to address his or her problems, the juvenile court may consider "the duration, extent and context of the parent's efforts, as well as any other factors relating to the quality and quantity of those efforts" (*R.T. v. Superior Court, supra*, 202 Cal.App.4th at p. 914, emphasis removed.)

The record demonstrates that Father made absolutely no effort to address any of the problems that led to Destiny's removal or to the termination of his parental rights with respect to her. Father's reunification services and parental rights were terminated with respect to Destiny because Father neglected Destiny's physical, emotional and development needs, failed to protect her from Mother's drug use, and failed to engage in the domestic violence prevention services that were offered to him. Precisely the same circumstances existed after Isabella's birth. During Isabella's dependency matter, Father again refused a drug and alcohol evaluation, failed to engage in domestic violence prevention counseling or classes, and failed to separate himself from Mother. Father had violent arguments with Mother after Isabella's birth and he allowed Mother to have contact with Isabella even while Mother was actively using drugs. There is no evidence that Father made any type of effort to resolve the circumstances that led to Destiny's dependency and the termination of his parental rights to her. Consequently, the trial court properly declined to extend additional reunification services to Father.

Disposition

The extraordinary writ (Cal. Rules of Court, rules 8.452, 8.456) is denied.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Theresa G. Klein, under appointment by the Court of Appeal, for Raul G.,
Petitioner.

Rita L. Neal, County Counsel, County of San Luis Obispo and Leslie H.
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