Filed 1/9/13 In re P.S. CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re P. S., a Person Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. Pa. S., Defendant and Appellant.	C070378 (Super. Ct. No. JD229516)

Father, Pa. S., appeals the dispositional order in which the juvenile court denied him reunification services with his daughter, the minor. He contends the juvenile court erred in denying him reunification services under Welfare and Institutions Code section 361.5 without having made a removal order or stating the factual basis for that order.[1] We affirm.

[1] Undesignated statutory references are to the Welfare and Institutions Code.

RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In 2009, the minor and her siblings were placed into protective custody as a result of severe beatings inflicted on them by father, father's threats to kill the children and mother, and father's long-term substance abuse problem.[2] Father's substance abuse problem increased the violence he inflicted on mother and the children. The children were removed from the home and the parents participated in family reunification services, including drug counseling and anger management for father. The children were ultimately returned to their parent's home and jurisdiction over the children was terminated in November 2010.

In January 2012, a new section 300 petition was filed, alleging father cut mother with a sword, attempted to stab the minor, and then stabbed himself repeatedly in the abdomen. Father was incarcerated and the minor remained in mother's custody. The court granted mother a temporary restraining order. Mother also reported she was filing for divorce. Father admitted the sword incident and indicated he wanted to again participate in reunification services.

The Sacramento County Department of Health and Human Services (DHHS) concluded father's behavior demonstrated he had not benefitted from the previously provided reunification services. Since father was now out of the home, DHHS recommended the minor remain in mother's custody and mother receive family maintenance services, while father be denied reunification services under the bypass provisions of section 361.5.

The juvenile court sustained the petition and found it was in the minor's best interest to leave her in mother's home and custody with family maintenance services. The juvenile court found father had an "extensive, abusive and chronic use of drugs or

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[2] Minor's siblings are now over 18 years old and are not involved in the current proceedings.

alcohol and [had] resisted treatment . . . or refused to comply with a program of drug or alcohol treatment . . . on at least two occasions." The juvenile court also found father was incarcerated and providing him reunification services would be detrimental to the minor. The court adopted the DHHS findings "to remove the child from the father, not from the mother" and found "having removed the child from the father the bypass provisions apply and the court will adopt the findings and orders as to the father to bypass services for him . . . ." The DHHS report does not contain findings regarding removal from father.

DISCUSSION

Father argues that the court improperly applied the reunification bypass provisions of section 361.5, because it did not make a proper finding "for removal of the child from the custody of the father." Father, however, acknowledges "the facts of this case would easily provide grounds for a properly memorialized finding . . . ." We agree that the juvenile court erred in failing to state reasons for removal and in applying the bypass provisions of section 361.5; however, we find these errors harmless.

A. Failure to State Findings Supporting Removal

After the juvenile court finds a child within its jurisdiction, the court must conduct a dispositional hearing at which it determines where the child will live while under the court's supervision. As relevant in this case, a "dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence" (§ 361, subd. (c)) that "the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal." (*In re R.V.* (2012) 208 Cal.App.4th 837, 849; § 361, subd. (c)(1).) Section 361, subdivision (d), requires the court state the facts on which the removal decision is based.

Here, the juvenile court ordered the minor removed from father's custody, but did not state the facts upon which it based its removal decision. It purported to adopt the findings of the social worker's report, but that report did not contain findings regarding removal. In general, on appeal we "indulge all reasonable inferences favorable to the judgment." (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078.) But, where the Legislature has required an explicit statement of reasons for a decision, this "doctrine becomes potentially subversive," depriving the Legislative requirement of force. (*Ibid.*) Thus, where the court is required to explicitly state the facts underlying its decision, "the doctrine of implied findings may be given limited scope." (*Ibid.*) Accordingly, in this case, we will not imply a statement of reasons and the court's failure to state the basis of its decision to remove the minor was error.

Finding error, however, does not end the inquiry. Rather, before we reverse a judgment, "it must appear that the error complained of 'has resulted in a miscarriage of justice.' (Cal. Const., art. VI, § 13.) Reversal is justified 'only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' (*People v. Watson* (1956) 46 Cal.2d 818, 836; see 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Reversible Error, § 7, p. 450.) A reasonable probability for these purposes does not mean an *absolute* probability; the likelihood that the error affected the outcome need not be greater than the likelihood that it did not. [Citation.] The test is satisfied, and prejudice appears, if the case presents 'an equal balance of reasonable probabilities.' (*People v. Watson, supra*, 46 Cal.2d at p. 837.)" (*In re J.S., supra*, 196 Cal.App.4th at pp. 1078-1079.)

Here, father had a significant history of domestic violence against the minor, her siblings, and mother. He had a long standing substance abuse problem from which he had failed to rehabilitate and his violence increased when under the influence of alcohol. The incident which led to this dependency proceeding involved father stabbing mother,

attempting to stab the minor, and stabbing himself several times. There was no indication in the record father had made any progress in addressing either his substance abuse or domestic violence problems or reducing the risk they posed to the minor. In spite of his previous participation in reunification services, he continued to engage in domestic violence and substance abuse. Father did not contest removal at the trial level[3] and does not argue on appeal that removal from his custody is not supported. In fact, he admits the facts "easily provide grounds" for removal. We appreciate that a statement of reasons for a decision can improve the adjudicatory process by influencing the court's actual reasoning. However, in this case based on this record, we see no reasonable probability that compliance with the statutory requirement of stating the factual basis for removal would have resulted in a different outcome. (*In re J.S.*, *supra*, 196 Cal.App.4th at pp. 1079.) Thus, the error was not prejudicial.

B. Father Not Entitled to Reunification Services

When a child is removed from the parent's home, reunification services may be offered to the parent, " 'in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.]' [Citations.] Section 361.5, subdivision (b) sets forth certain exceptions — also called reunification bypass provisions — to this 'general mandate of providing reunification services.' [Citations.]" (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) "When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be ' "an unwise use of governmental resources." ' [Citations.]" (*Ibid.*)

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[3] Father argued there had not been a removal of the child and therefore the bypass provisions of section 361.5 could not be applied, but did not argue that the child could not or should not be removed from his custody.

Father argues the juvenile court erred in applying the bypass provisions of section 361.5, as the minor was not properly removed from his custody. We agree with father that the court's application of the bypass provisions of section 361.5 was in error, but not for the reason father claims. Nor do we find this error requires reversal. Father's argument is premised on the misconception that he was entitled to reunification services under section 361.5, subdivision (a). He was not.

Section 361.5, subdivision (a), requires: "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide *child welfare services* to the child and the child's mother and statutorily presumed father or guardians." (Italics added.) " 'Child welfare services' " include "a continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services . . . ." (§ 16501, subd. (a).) The term "child welfare services" does not necessarily imply reunification services. (*In re A.L.* (2010) 188 Cal.App.4th 138, 144.) Instead, both reunification services and family maintenance services are a subset of the term "child welfare services."

Reunification services are "designed to provide time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and needs temporary foster care . . . ." (§ 16501, subd. (h).) These services "shall *only* be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court." (§ 16507, subd. (b), italics added; see also *In re A.C.* (2008) 169 Cal.App.4th 636, 650, 652 [the reunification provisions of section 361.5 are inapplicable in the absence of a disposition ordering a placement with someone other than a former custodial parent].) Here, the minor was in her mother's custody and home when the petition was initiated and was continued in her mother's custody and home at disposition. As such, reunification services were not necessary, appropriate, or authorized. (*In re Pedro Z.* (2010)

190 Cal.App.4th 12, 20; *In re A.L., supra,* 188 Cal.App.4th at p. 145.) The juvenile court satisfied the requirement of section 361.5, subdivision (a), by ordering family maintenance services for mother. "[W]hen the child remains in a parent's home, . . . the court is not concerned with reunification, but in determining 'whether the dependency should be terminated or whether further supervision is necessary.' [Citations.] . . . The goal of dependency proceedings—to reunify a child with at least one parent—has been met when, at disposition, a child is placed with a former custodial parent and afforded family maintenance services." (*Pedro Z., supra,* 190 Cal.App.4th at p. 20.) That is precisely what happened in this case. Because mother was a custodial parent at the initiation of the proceedings and the juvenile court ordered that custody remain vested in her at the disposition hearing, the juvenile court was not authorized to order reunification services for father. To the extent the juvenile court's reference to the bypass provisions of section 361.5 constituted error, it was harmless.

DISPOSITION

The dispositional order of the juvenile court is affirmed.

BLEASE, J.

We concur:

RAYE, P. J.

NICHOLSON, J.