Filed 5/3/12 In re Grady M. CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re GRADY M., JR., et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. GRADY M., SR., Defendant and Appellant.	D060949 (Super. Ct. No. SJ12517A-D)

APPEAL from a judgment of the Superior Court of San Diego County, Garry G. Haehnle, Judge. Affirmed.

This is an appeal in the juvenile dependency case of four children: two boys, Grady M., Jr., and John M.; and two girls, B.M. and A.M.[1] The children's father, Grady M., Sr.,

[1] Grady, Jr., and John are referred to as the boys; B.M. and A.M. as the girls; and all four children together as the children.

challenges an order granting the modification petition (Welf. & Inst. Code, § 388)[2] of the San Diego County Health and Human Services Agency (the Agency) and terminating Grady, Sr.'s, reunification services. We affirm.

BACKGROUND

In March 2011, the Agency filed dependency petitions for eight-year-old Grady, Jr., seven-year-old John; five-year-old B.M.; and two-year-old A.M. The petitions alleged the children were periodically exposed to violent confrontations in the family home between Grady, Sr., and the children's mother, K.J. (together, the parents). Specifically, on March 1, Grady, Sr., hit K.J. in the face and forehead with a cell phone, injuring her. In the children's presence, Grady, Sr., threatened to chop off K.J.'s head with a knife.

The boys were detained in one foster home and the girls were detained in another. At the March 8, 2011, detention hearing, the court issued a restraining order protecting K.J. from Grady, Sr., and ordered separate supervised visits for the parents. The court directed the Agency to provide referrals for voluntary services. On March 16, the Agency gave Grady, Sr., referrals for domestic violence programs. On April 19, the Agency mailed him referrals for parenting classes and substance abuse treatment programs.

On April 25, 2011, the court entered true findings on the petitions and ordered the children placed in foster care. The court ordered reunification services for the parents and a psychological evaluation for Grady, Sr. Grady, Sr.'s, case plan included a domestic violence

---

2 Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

program, parenting education, substance abuse testing and treatment and Narcotics Anonymous (NA) meetings.

On May 31, 2011, psychologist Warren O'Meara evaluated Grady, Sr. Dr. O'Meara rendered diagnoses including delusional disorder, mixed type (grandiose and paranoid); alcohol and cannabis abuse; and personality disorder not otherwise specified with paranoid, schizoid, antisocial and narcissistic features. Dr. O'Meara believed that Grady, Sr.'s, substantial, chronic psychological difficulties required ongoing supervision. Grady, Sr., had limited insight and poor judgment, and use of alcohol and marijuana could precipitate paranoid ideation and aggression. Grady, Sr., minimized his behavior and its impact on the children, and unless this changed, the risk factors would remain high. Dr. O'Meara concluded Grady, Sr., had a mental disability within the meaning of Family Code section 7827; his high levels of paranoia rendered him incapable of utilizing reunification services; and his high levels of paranoia, narcissism and sociopathy made it highly unlikely his symptoms would abate so as to allow reunification within statutory time limits. Dr. O'Meara recommended that Grady, Sr., be referred to a substance abuse treatment program, undergo a psychiatric evaluation and, if needed, resume taking psychiatric medications.

On June 17, 2011, the Agency suspended Grady, Sr.'s, telephone contact and visitation with the children. The suspension was precipitated by Grady, Sr.'s, inappropriate behavior, including calling the foster homes at all hours while intoxicated; discussing violent events with the children; and promising to buy them a house, a horse, a ranch and a boat, and to take them on trips when they came home. Additionally, Grady, Sr., told the children not to tell others what he told them. He verbally abused the children, and in their

presence verbally abused the social worker and the boys' therapist. The children said they were afraid of Grady, Sr., reported past physical abuse and became extremely aggressive before and after contact with him. The children's therapists believed Grady, Sr., should have no contact with the children.

In June 2011, the Agency recommended a second, independent psychological evaluation for Grady, Sr., to assist the court in determining the appropriate course of action regarding reunification services. The second evaluation, by psychologist Judy Matthews, took place in July.

Meanwhile, on June 27, 2011, the Agency filed its first section 388 petition. The petition sought modification of the March 8 order allowing Grady, Sr., supervised visitation, and asked the court to prohibit contact between Grady, Sr., and the children. On June 28, the court made a prima facie finding on the petition and suspended Grady, Sr.'s, visitation. On July 25, the court granted the petition, found it would be detrimental to the children to have contact with Grady, Sr., and gave the Agency discretion to reinstate supervised visits.

At the July 25, 2011, hearing, the court added individual therapy to Grady, Sr.'s, case plan. Social worker Caitlin McCann and Grady, Sr., were present, and Grady, Sr., received therapy referrals at the hearing. The court suggested Grady, Sr., review his psychological evaluation with Dr. O'Meara so Dr. O'Meara could explain the diagnosis and recommended treatment. The court further suggested that Dr. Matthews explain her findings to Grady, Sr., during the upcoming evaluation. The court set a hearing for August 25 to receive an update from the social worker concerning Grady, Sr.'s, understanding of the evaluations, but on August 25, no one mentioned the update.

McCann attempted to arrange for Dr. O'Meara to review his findings with Grady, Sr., but Dr. O'Meara said "he wouldn't do it in the office." McCann wrote Grady, Sr., a letter, telling him how to contact Dr. O'Meara. McCann sent the letter to Grady, Sr.'s, address of record, but the letter was returned to McCann.

On July 25, 2011, Dr. Matthews evaluated Grady, Sr. Her diagnoses included delusional disorder, grandiose, provisional; and cannabis abuse. Dr. Matthews noted that Grady, Sr., was impulsive and lacked empathy for others, and his longstanding substance abuse exacerbated his hostility and aggression. Grady, Sr., lacked insight, tended to minimize, externalize and excuse his behavior, and did not learn from consequences. Dr. Matthews concluded Grady, Sr., had a mental disability within the meaning of Family Code section 7827; his chronic mental health difficulties prevented him from parenting safely; and it was unlikely there would be a reduction in symptoms that would allow safe parenting. Dr. Matthews believed Grady, Sr.'s, lack of insight and impulse control, and his chronic narcissism, paranoia and antisocial tendencies rendered him incapable of benefitting from reunification services. Dr. Matthews recommended that Grady, Sr., continue to participate in his substance abuse program, and suggested a medication evaluation. She warned, however, that "[t]ypically, individuals with this presentation for this length of time are not successful in treatment."

In early August 2011, therapist Eric Buckenmeyer told McCann that Grady, Sr., had contacted him to start therapy. Forgetting that the court had added therapy to the case plan, McCann told Buckenmeyer it was not part of the plan and asked if he charged on a sliding scale. Buckenmeyer said "yes." McCann's coworker called Grady, Sr., and told him the

Agency would not pay for therapy because it was not part of the plan, but Grady, Sr., could contact Buckenmeyer "and work out something."

On August 25, 2011, the Agency filed the section 388 petition at issue in this appeal. The petition requested termination of Grady, Sr.'s, reunification services based on the findings in the two psychological evaluations that his mental disability rendered him unable to utilize services and safely parent the children "at this time or in the near future." On August 25, the court made a prima facie finding on the petition (§ 388, subds. (a) & (c)).

At the September 8, 2011, pretrial status conference for the section 388 hearing, Grady, Sr.'s, counsel announced she would call Buckenmeyer as a witness and, as an offer of proof, said the Agency had not approved or authorized payment for therapy. Deputy county counsel, who was not the deputy who had appeared on July 25, stated her understanding that therapy was not part of the case plan. The court corrected counsel, and McCann, who was at the hearing, realized her error in communicating with Buckenmeyer and Grady, Sr. That day, McCann authorized payment for therapy, contacted Grady, Sr., and forwarded the psychological evaluations and other material to Buckenmeyer. The same day, Buckenmeyer declined to accept Grady, Sr., as a client, noting Grady, Sr.'s, "prognosis would be very poor." McCann immediately gave Grady, Sr., three more referrals.

On September 30, 2011, the court granted the Agency's modification petition, terminated Grady, Sr.'s, services and confirmed October 25 as the date for the six-month review hearing. In granting the petition, the court relied on section 388, subdivisions (a) and (c)(1)(A).

DISCUSSION

The following questions were before the juvenile court: Did the new evidence, in the form of the two psychological evaluations, constitute clear and convincing evidence that Grady, Sr., suffered from a mental incapacity or disorder that rendered him unable to care for and control the children adequately, and rendered him incapable of utilizing reunification services? (§ 388, subd. (c)(1)(A).) By a preponderance of evidence, were reasonable services offered or provided to Grady, Sr.? (§ 388, subd. (c)(3).) We explain.[3]

When siblings are removed from parental custody simultaneously, and when one of the siblings is younger than three years at the time of removal (§ 361.5, subd. (a)(1)(C)), the Agency may petition for termination of reunification services (§ 361.5) before the six-month review hearing (§ 366.21, subd. (e)) only if one of two situations exists. (§ 388, subd. (c)(1).) The situation relevant here occurs when "a change of circumstance or new evidence exists that satisfies a condition set forth in [section 361.5, subdivision (b)] justifying termination of court-ordered reunification services." (§ 388, subd. (c)(1)(A).) Section 361.5, subdivision (b)(2) allows the court to deny reunification services "when the court finds, by clear and convincing evidence, . . . [¶] . . . [¶] (2) [t]hat the parent . . . is

---

[3] A section 388, subdivision (a) petition entails a determination whether changed circumstances exist and whether the proposed modification of an order would promote the child's best interests. (*In re Zachary G*. (1999) 77 Cal.App.4th 799, 806.) In light of our conclusion that the court properly granted the petition based on section 388, subdivision (c), we need not discuss Grady, Sr.'s, contention the court committed reversible error by making findings and orders under section 388, subdivision (a). Furthermore, "we review the lower court's ruling, not its reasoning; we may affirm that ruling if it was correct on any ground." (*In re Natasha A*. (1996) 42 Cal.App.4th 28, 38.)

suffering from a mental disability that is described in . . . Family Code [section 7827][4] and that renders him or her incapable of utilizing those services." A denial of services pursuant to section 361.5, subdivision (b)(2) requires "competent evidence from mental health professionals establish[ing] that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the [six-month] time limit[] . . . ." (§ 361.5, subd. (c).) "The court shall terminate reunification services during the [six month] period[] only upon a finding by a preponderance of evidence that reasonable services have been offered or provided . . . ." (§ 388, subd. (c)(3).)

On appeal, we first determine whether the required factual findings are supported by substantial evidence. (*In re M.V.* (2006) 146 Cal.App.4th 1048, 1059-1060.) In the absence of an express finding on a particular issue, we determine whether substantial evidence supports an implied finding. (*In re Rebekah R.* (1994) 27 Cal.App.4th 1638, 1652; *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1825.) If substantial evidence supports the required express and implied findings, we decide whether the juvenile court abused its discretion by terminating reunification services based on those findings. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) " ' "The sufficiency of evidence to establish a given fact, where

---

4 Family Code section 7827 describes a mental disability as "a mental incapacity or disorder that renders the parent . . . unable to care for and control the child adequately." (Fam. Code, § 7827, subd. (a).) The existence of a mental disability is established by "the evidence of any two experts," either or both of whom may be "a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders . . . ." (Fam. Code, § 7827, subd. (c).) Dr. O'Meara and Dr. Matthews exceeded these requirements; each had more than 25 years of experience in the diagnosis and treatment of emotional and mental disorders.

the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' [Citation.]" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881, quoted in *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) We conclude there is substantial evidence supporting the court's findings, and the court did not abuse its discretion by granting the Agency's modification petition and terminating Grady, Sr.'s, services.

The court correctly concluded the two psychological evaluations constituted clear and convincing evidence that Grady, Sr., "would not be able to benefit from services to allow him to [reunify with the children] within the time periods set forth in the code . . . ." Grady, Sr., asserts the evaluations were ambiguous. He cites Dr. O'Meara's statement that it was " highly unlikely" Grady, Sr., would be able to safely parent the children or reunify during the time allowed. Grady, Sr., also claims Dr. Matthews stated Grady, Sr., "would be limited in the progress he would be able to make in his services," but our review of the record has disclosed no such statement. Viewed in its entirety, each evaluation is unequivocal in its conclusion that Grady, Sr.'s, mental disorders rendered him unable to care for the children adequately and incapable of utilizing services.

Grady, Sr., asserts the court should have rejected the opinions of Dr. O'Meara and Dr. Matthews in favor of the contrary opinion of Dr. Ida Greene, the facilitator of Grady, Sr.'s, anger management and domestic violence group. We may not second guess the court's implied finding that Dr. O'Meara and Dr. Matthews were more credible than Dr. Greene.[5] (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Additionally, the court correctly found, by a preponderance of evidence, that Grady, Sr., had been offered or provided reasonable reunification services. Before the court ordered services, the Agency gave Grady, Sr., referrals to domestic violence programs, parenting classes, substance abuse treatment and NA meetings. Grady, Sr., complains he was not offered individual therapy, and Dr. O'Meara and Dr. Matthews did not review their evaluations with him. The court found that although McCann had told Buckenmeyer that therapy had not been ordered and the Agency would not pay for it, McCann's mistake was unintentional, and she had quickly notified Grady, Sr., and Buckenmeyer of her error and

---

[5] The record does not reveal whether Dr. Greene met the educational and experiential requirements of Family Code section 7827, subdivision (c). The juvenile court referred to her resume, but the resume is not in the record on appeal.

acted to ensure that Grady, Sr., obtained therapy.[6] In any case, Buckenmeyer rejected Grady, Sr., as a client because his prognosis was very poor; neither Dr. O'Meara nor Dr. Matthews recommended therapy; and they concluded Grady, Sr., was incapable of utilizing services. McCann's attempt to arrange for Dr. O'Meara to explain his findings to Grady, Sr., failed because Grady, Sr., moved without reporting his new address. Although the record does not disclose whether Dr. Matthews explained her findings to Grady, Sr., during the evaluation, it does disclose that she had difficulty completing the evaluation in the allotted time because Grady, Sr., did not focus on the subject matter. In light of Dr. Matthews's findings regarding Grady, Sr.'s, lack of insight, failure to learn from consequences and "over evaluat[ion of] his own worth," it is extremely doubtful an explanation would have made a difference. The purpose of reunification services is to remedy the problems that led to the dependency. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) Substantial evidence supports the conclusion that neither therapy nor explanations by the psychologists who evaluated Grady, Sr., would have served to remedy the problems that led to the dependency.

---

6 Grady asserts the social worker should have done more than give him referrals to individual therapy; she should have called service providers and "assist[ed him] in setting something up." There is no " 'requirement that a social worker take the parent by the hand and escort him or her to and through . . . counseling sessions.' " (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233, quoting *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) Grady also complains the social worker "never discussed the therapy referrals with [him] or clarified with him directly that he did need to get into therapy." Grady was in court when the court added therapy to the case plan and the social worker gave him referrals. No further discussion or clarification was necessary. Grady's reliance on *David B. v. Superior Court* (2004) 123 Cal.App.4th 768 is unavailing. There, the social worker never disclosed the concern with the father's proposal to live with relatives, but merely "gave [him] some generic advice concerning the need for housing, along with a list of referrals . . . ." (*Id.* at p. 793.)

Finally, the Agency's modification petition alleged that terminating services would promote the children's best interests because "[t]here is not a substantial probability that the children will return to [Grady, Sr.,] given his presenting mental health and inappropriateness with the children [and t]here is currently a no-contact order . . . ." The court determined, by a preponderance of the evidence, that granting the petition would promote the children's best interests. Grady, Sr., asserts this determination was erroneous. The Agency disagrees, but citing section 388, subdivision (d), says that clear and convincing evidence of best interests was required. Section 388, subdivision (d) states: "If it appears that the best interests of the child may be promoted by the proposed change of order, . . . or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held . . . ." This does not constitute a requirement that a best interests finding be made by clear and convincing evidence, and arguably does not require a best interests finding at all. Nevertheless, the children's best interests are the paramount concern in dependency proceedings (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673), and substantial evidence supports the court's determination that termination of Grady, Sr.'s, services was in the children's best interests. Grady, Sr., suffered from longstanding and intractable mental disorders. He was violent and volatile, and the children were scared of him. Rather than having the children's best interests at heart, Grady, Sr., pursued his own agenda to the children's detriment. Contact with Grady, Sr., harmed the children.

The court did not abuse its discretion by granting the Agency's section 388 petition.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.