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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JOSHUA B.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061063

(San Diego County
Super. Ct. No. NJ13446C)

PROCEEDINGS for extraordinary relief after reference to a Welfare and Institutions Code section 366.26 hearing. Blaine K. Bowman, Judge. Petition denied, request for stay denied.

Joshua B. seeks writ review of juvenile court orders terminating reunification services regarding his son, Gage B., and setting a hearing under Welfare and Institutions

Code¹ section 366.26. He contends the court erred by not continuing his reunification services to the 18-month date. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2010, the San Diego County Health and Human Services Agency (the Agency) petitioned under section 300, subdivisions (b) and (g), on behalf of two-week-old Gage, alleging he was at risk because his parents used methamphetamine and were unable to arrange for his care. Three days earlier Gage's mother and Joshua had been arrested. At the time of the arrests, they were under the influence of methamphetamine, and police found a knife, brass knuckles and a pipe containing methamphetamine residue in Joshua's truck.

Joshua recently had been released from the U.S. Navy under other than honorable circumstances due to his use of methamphetamine. The social worker provided him with referrals for services and he was allowed two hours of supervised visitation with Gage each week.

At the jurisdictional hearing in December 2010, the court dismissed the section 300, subdivision (g) allegation and found the subdivision (b) allegation to be true.

In January 2011 Joshua was arrested again for being under the influence of a controlled substance. In February the social worker referred him to a substance abuse specialist to facilitate his enrollment in a substance abuse program. She requested he drug test, but he asked to test the next day. At the dispositional hearing in February, the

¹ Statutory references are to the Welfare and Institutions Code.

court removed Gage from parental custody and ordered Joshua to comply with his case plan, which consisted of counseling, parenting education, outpatient substance abuse treatment, drug tests and 12-step meetings. The court gave the Agency discretion to place Gage with paternal relatives out of state.

Joshua was arrested again in April 2011 for being under the influence of a controlled substance and possession of the controlled substance and drug paraphernalia. In June, as a condition of probation, he entered residential substance abuse treatment.

Joshua was dismissed from residential treatment in September 2011 because he could not afford the service. He was then referred to the MITE program. At the six-month review hearing that month, the court found he had made some progress and ordered six more months of services for him. In October Gage was placed with the out-of-state relatives.

The social worker reported she had provided Joshua with a list of therapists as early as March 2011. In September Joshua said the therapist he had called had no openings, so the social worker provided more referrals and learned two therapists had space for Joshua. He made an appointment with one, but did not appear for the appointment and did not reschedule. He finally attended his first therapy session on November 6. He enrolled in the MITE substance abuse program in November and started attending a parenting class in September.

At the 12-month hearing on December 6, 2011, the social worker testified Joshua had had fairly regular visitation with Gage, and, after Gage moved out of state, they visited through Skype. The social worker said Joshua had enrolled in substance abuse

treatment in June, but because of his work schedule and inability to afford the program, he was terminated. He was then referred to the MITE program. He had been testing drug free since May, but did not always test on the day he was required to do so, and the social worker was concerned that waiting until the following day gave him the chance to try to flush the drugs out of his system. By the time of the hearing, he had attended two or three therapy sessions and had attended four weekly sessions of a three-month parenting program.

Joshua testified he had had loving visits with Gage, and after Gage moved, he telephoned him every couple of days. He said he had left his first drug treatment program after two and one-half months because he finished work too late to attend the group meetings. He entered the MITE program after receiving a referral from his probation officer. At the MITE program he participated in parenting classes and drug treatment. He said he had had three sessions of therapy.

After considering the evidence and argument by counsel, the court found Joshua had not made substantive progress with the provisions of his case plan and there was not a substantial probability Gage could return to his care by the 18-month date, which was only three and one-half months away. The court terminated services and set a section 366.26 hearing.

Joshua petitions for review of the court's orders. (§366.26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

Joshua contends the juvenile court erred by terminating his reunification services. He argues he made substantial headway in overcoming the problems that led to Gage's removal and met the criteria to allow services to continue to the 18-month date.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' [Citation.]" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Under section 366.21, subdivision (g)(1), a court may continue a case to the 18-month date only if there is a substantial probability the child will be returned to the parent's physical custody and safely maintained in the home by that time. In considering whether to extend the case for 18 months, the court must make all of the following three findings:

"(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

"(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

"(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs."

As the court found, Joshua had met the first of these three criteria by consistently visiting and contacting Gage. However, he did not satisfy the other two requirements to allow the continuation of services to the 18-month date. He did not begin to make much progress in resolving the problems that led to Gage's removal until shortly before the 12-month hearing. He struggled with his drug addiction and was arrested in January 2011 for being under the influence of methamphetamine and spent time in custody. The social worker met with him on February 9 before the court hearing and referred him to a substance abuse specialist, whose office was in the courthouse, so he could enroll in a substance abuse treatment program, and she asked that he drug test that day. He did not enroll in substance abuse treatment or submit to a drug test.

Joshua was arrested again on April 19, 2011, for being under the influence of a controlled substance and possession of drugs and of drug paraphernalia. When he was released on June 2, as a condition of probation, he entered the Fellowship Center for drug treatment. He left that facility in September and was then referred to the MITE program. He attended a parenting class in September. In mid-November, three weeks before the 12-month hearing, he began substance abuse treatment at MITE. He had been provided with therapy referrals since March, but did not begin therapy until November. At the time of the hearing, he had attended therapy for just one month. It was uncertain how long he had been drug free because, although he had had four months of clean drug tests, for three consecutive drug tests he tested on the day after he was ask to test, giving him time to flush the drugs out of his system.

Joshua did not shown he had the capacity and ability to complete the objectives of his treatment plan and provide for Gage's safety, protection and physical and emotional well-being by the 18-month date. At the December 6, 2011 hearing, the 18-month hearing was only three and one-half months away. Joshua had been drug free for at most four months and he had completed only four parenting classes and three therapy sessions during the year that he had been offered services.

The court stated Joshua appeared to be "finally getting it and finally participating in services," but in view of his late start and short time of participating in services, the court did not err by finding there was not a substantial probability Gage could be safely returned to his care by the 18-month date. Substantial evidence supports the court's order terminating reunification services and setting a section 366.26 hearing.

DISPOSITION

The petition is denied. The request for stay is denied.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

AARON, J.