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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

RICHARD B.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062574

(San Diego County
Super. Ct. No. J518119)

PROCEEDINGS for extraordinary relief after reference to a Welfare and Institutions Code section 366.26¹ hearing. David B. Oberholtzer, Judge. Petition denied; request for stay denied.

Richard B. seeks writ review of a juvenile court order terminating reunification services in a dependency proceeding involving his minor daughter, Lydia B., and setting a section

¹ Statutory references are to the Welfare and Institutions Code.

366.26 hearing. Richard contends the court erred by finding the San Diego County Health and Human Services Agency (Agency) provided him with reasonable reunification services. We deny the petition and Richard's request for stay of the hearing.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2011, Agency filed a petition in the juvenile court under section 300, subdivision (b), alleging eight-day-old Lydia was at substantial risk of harm because her mother, W.H., had a history of alcohol abuse and psychiatric hospitalizations, and W.H. drank excessive amounts of alcohol and took prescription drugs following Lydia's birth. W.H. showed little interest in Lydia and wanted her placed for adoption. W.H. had previously attempted suicide. Richard was aware of W.H.'s drinking and mental health issues, but was unable or unwilling to intervene. Instead, he enabled W.H. The court detained Lydia in the home of the paternal grandmother (grandmother). The social worker recommended Richard's case plan include a parenting education program, in-home parenting and individual counseling to help him understand how W.H.'s alcohol abuse and mental illness negatively impacted Lydia and to help him develop the skills necessary to be a protective parent.

In July 2011, the social worker met with Richard and asked if he would drug test. Richard initially agreed, but after being told a "no show" would be considered a positive test, he refused. When the social worker asked Richard if he was using drugs, he became agitated and vehemently refused to drug test.

Richard and W.H. continued to live together and enable each other. Richard was visiting Lydia, but was unreliable and inconsistent. He was not willing to be primarily

responsible for Lydia's care when he was not at work. The social worker suspected Richard was using drugs.

The court sustained the allegations of the petition, declared Lydia a dependent, removed her from parental custody and placed her with the grandmother. The court ordered the parents to comply with the provisions of their case plans.

The social worker referred Richard to individual therapy, but Richard failed to keep an appointment he made. The social worker gave Richard a list of additional therapists, but Richard said none of the therapists were geographically convenient.

In August 2011, Richard tested positive for methamphetamine. The social worker gave him a referral to a substance abuse recovery program, but he did not enroll for two months. The court amended his case plan to include drug treatment and on-demand drug testing.

While Richard was engaged in substance abuse treatment, he tested positive for methamphetamine six times between August 14 and December 16, and failed to test on two other occasions. Richard's drug treatment counselor recommended inpatient treatment for Richard, but was willing to work with him in an intensive outpatient program. Richard was told he could not be referred to individual therapy while he was using drugs.

When Richard produced a clean drug test in January 2012, the social worker gave him another list of approved therapists. Two of Richard's choices had no openings and three had not yet responded. In the meantime, Richard continued to use drugs. Based on Agency's therapy referral decision tree,² the social worker determined Richard should not be referred to

² Because individual therapy is not a routine element of a case plan, the Decision Tree for Requesting Therapy for a Parent is used to determine if therapy is appropriate for a particular parent.

individual therapy until he showed he was clean and sober. Significantly, even when confronted with a positive test, Richard denied any drug use. The social worker noted that although Richard was "going through the motions of completing his services," he had not accepted responsibility for his role in Lydia's dependency.

At the six-month review hearing, the court extended services for Richard to the 12-month date and continued Lydia's placement with the grandmother.

According to a July 2012 status review report, Richard had received outpatient drug treatment, relapsed and entered a detoxification program, which he left after nine days. Richard claimed his recovery was going well and he was able to abstain from drug use, but again tested positive for methamphetamine. A drug test indicated he had used a very large quantity. He refused to enter a residential drug treatment program and was discharged from his outpatient program. Richard was reassessed by a substance abuse specialist, who referred him back to the outpatient program. At intake, Richard admitted he had used methamphetamine earlier that month.

Richard told the social worker he did not want to enter inpatient drug treatment, preferring instead to have the grandmother adopt Lydia. Although Richard knew he needed to be clean and sober in order to be referred to therapy, he continued to use drugs. He told the social worker he could be a protective parent and was best able to meet Lydia's needs when he was using methamphetamine. He reported that he was attending drug treatment even after he had been discharged. The social worker believed Richard had not benefitted from his minimal participation in drug treatment because he had not been able to stay clean and sober, and he had not shown he was able to keep Lydia safe. Consequently, the social worker recommended

the court terminate reunification services and set a section 366.26 hearing to select and implement a permanent plan for Lydia.

At the 12-month review hearing, the court received in evidence Agency's reports and heard counsel's arguments. The court found, by clear and convincing evidence, it would be detrimental to Lydia to return her to parental custody and there was no substantial probability of return in the next six months. Finding Agency had provided Richard with reasonable services and he failed to make substantive progress with the provisions of his case plan, the court terminated reunification services and set a section 366.26 selection and implementation hearing.

Richard filed a petition for review of the court's orders and requested a stay of the selection and implementation hearing. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, Agency responded and the parties waived oral argument.

DISCUSSION

Richard contends Agency did not provide him with reasonable services because he did not receive individual therapy, which he asked for and needed in order to reunify with Lydia. Thus, he asserts, the order setting a selection and implementation hearing must be reversed.

A

If the juvenile court does not return a dependent child to parental custody at the 12-month review hearing, it must terminate reunification services unless it finds: (1) there is a substantial probability the child will be returned to the parent's physical custody and safely

maintained in the home by the 18-month date, or (2) reasonable services were not offered or provided to the parent. (§ 366.21, subd. (g)(1); Cal. Rules of Court, rule 5.708(e).)

The "adequacy of reunification plans and the reasonableness of [Agency's] efforts are judged according to the circumstances of each case." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) To support a finding that reasonable services were offered or provided, the record must show Agency "identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult" (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414; *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Where, as here, a parent challenges the reasonableness of services, our role is to decide "whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346.) On appeal, the

parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, Agency's efforts to provide Richard with services were more than adequate. Lydia came to Agency's attention because Richard was unable to protect her from W.H.'s drug and alcohol abuse and untreated mental health issues. Agency recommended Richard participate in a parenting education program, in-home parenting services and individual counseling to help him understand how W.H.'s problems negatively impacted Lydia and to help him develop the skills necessary to be a protective parent. Richard was given a referral to individual therapy, but failed to keep an appointment he made, and then declined other referrals because they were not geographically convenient. Even when Richard was referred to therapy, he did not follow through.

When Agency realized Richard had a drug problem, his case plan was amended to include substance abuse treatment and on-demand drug testing. Richard did not comply with drug treatment and regularly tested positive for methamphetamine. He was told on several occasions that he could not be referred to individual therapy while he was using drugs. When Richard produced a clean drug test, the social worker gave him more referrals for therapy. But once again, Richard was unable to stop using methamphetamine. The social worker, who had expertise in the areas of addiction and recovery, applied Agency's therapy referral decision protocol in determining Richard should not be referred to therapy, given his ongoing methamphetamine use.

Although Richard claims he needed therapy as well as substance abuse treatment, he refused to participate in an inpatient drug treatment program as recommended by his drug treatment counselors. At the time of the 12-month review hearing, he still had not addressed his drug addiction and thus, remained inappropriate for therapy. Richard's argument that therapy *might* have assisted him in his recovery is speculative. Substantial evidence supports a finding Agency provided reasonable services, but by Richard's own volition, he avoided the services he was provided. (See *In re Julie M.* (1999) 69 Cal.App.4th 41, 48.)

DISPOSITION

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

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.