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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.J. et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. EARL J., Defendant and Appellant.	D066928 (Super. Ct. No. J516993 B-C)

APPEAL from an order of the Superior Court of San Diego County, Kimberlee A. Lagotta, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Jennifer Stone, Deputy County Counsel, for Plaintiff and Respondent.

Earl J. appeals from an order of the juvenile court on juvenile dependency petitions filed by the San Diego County Health and Human Services Agency (the Agency) on behalf of his minor children, M.J. (born 2012) and N.J. (born 2013, together the children). Earl contends the Agency failed to assist him in accessing services. He seeks reversal of the juvenile court's finding that reasonable services had been provided with directions to the Agency to provide him an additional six months of services. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2013, Mother gave birth to N.J., with both Mother and N.J. testing positive for amphetamines and marijuana. Earl and Mother also had a 10-month-old, M.J. At the time of N.J.'s birth, Earl was disabled and receiving in-home support services. Earl also had an extensive criminal history that involved arrests for possession and sale of drugs.

In July 2013, the Agency filed petitions for the children. At a detention hearing, the juvenile court found prima facie evidence that the children were described by Welfare and Institutions Code section 300, subdivision (b). (Undesignated statutory references are to the Welfare and Institutions Code.) It ordered N.J. detained in foster care, detained M.J. in the paternal grandfather's home and ordered supervised visitation. At the jurisdictional/dispositional hearing in August 2013, the court found the allegations in the dependency petitions to be true. It placed M.J. in Earl's custody based on the social worker's recommendation following interviews with Earl and his in-home service provider showing Earl's ability to appropriately care for the child. The court removed N.J. from her parents' custody and placed her in foster care.

In December 2013, the Agency filed a supplemental dependency petition under section 387 alleging that M.J.'s placement with Earl had not been effective because Earl was incarcerated. Earl had been arrested in November 2013 for driving on a suspended license and violating his probation. M.J. was with the paternal grandfather at the time of the arrest. The juvenile court made a prima facie finding that M.J. was described by sections 300 and 387, and detained him in foster care. At M.J.'s jurisdictional/dispositional hearing in January 2014 the juvenile court removed custody of M.J. from Earl and placed M.J. in licensed foster care.

At the April 2014 six-month review hearing for N.J., the court found the Agency had provided reasonable services to the parents, terminated services to Mother and continued Earl's services. In October 2014, the juvenile court held the contested six-month review hearing for M.J. and the 12-month permanency hearing for N.J. The juvenile court found by clear and convincing evidence that reasonable services had been provided to Earl and terminated his services. The court noted a prior order that Earl provide the Agency with a medical release so that the Agency could determine whether or not Earl's medical condition impacted his ability to engage in services, however, Earl "did not follow through and, therefore, we are all left with a lack of information about [Earl's] physical condition and whether or not it prevents him [from] participating in further services." Earl timely appealed.

DISCUSSION

The purpose of a reunification plan is "to overcome the problem that led to removal in the first place." (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738,

1748.) "Each reunification plan must be appropriate to the particular individual and based on the unique facts of that individual." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 (*Misako*).) To support a finding of reasonable services, "the record should show that the supervising 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.)

"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." (*Misako*, *supra*, 2 Cal.App.4th at p. 547.) The remedy for failing to offer or provide reasonable services is to extend the reunification period and continue services. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975.) When a party challenges the finding that reasonable services were offered or provided, we determine whether there is substantial evidence to support the court's finding by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*Misako*, *supra*, at p. 545.)

Earl concedes the Agency correctly identified the problems that led to him losing custody of his children and designed a reunification plan that appropriately responded to those problems. He argues that his disabilities prevented him from participating in services and that the Agency failed to make reasonable efforts to assist him. We conclude he forfeited this argument by failing to raise it below.

It is undisputed that at the commencement of the case, Earl suffered from a neck injury that caused him to suffer chronic pain, spasms, and "seizure-like symptoms." He took morphine and other medications and received daily living help from In Home Support Services to assist him with meals, bathing and household chores. Nonetheless, Earl initially maintained he could properly care for M.J. and only had difficulty with fine motor skills, such as putting on M.J.'s socks. Additionally, N.J.'s foster mother stated that other than Earl needing someone to position N.J. in his arms, Earl did not have difficulty with N.J. during visits. At an August 18, 2014, settlement conference Earl's counsel never indicated that Earl's physical limitations prevented him from accessing services.

M.J. lived with Earl from August 29, 2013 until Earl's arrest on November 19, 2013. Earl cites to nothing in the record during this time period showing he had informed the Agency that he needed assistance to access services. Rather, in October 2013, the social worker noted the family appeared to need additional support and referred Earl to Home Family Preservation Program for in-home services. A social worker called Earl four times in October for "intensive in[-] home support services," but Earl never returned the telephone calls and services were closed.

Earl was incarcerated from November 19, 2013 until April 5, 2014. (All subsequent date references are to 2014.) When the Agency contacted Earl shortly after his release to discuss his services, he denied any limitations to attending services. At the end of May, Earl stated he was having difficulty attending services due to a lack of transportation and the need for one-on-one assistance to help him leave his home. The social worker asked Earl for documentation regarding his medical limitations. Although

Earl argues the Agency sought complete access to his entire medical file, nothing in the record supports this contention. Rather, the Agency reasonably asked Earl for documentation regarding his medical limitations when he first expressed difficulty accessing services so it could accommodate him.

A subsequent status review report documented difficulties the Agency had contacting Earl from May 30 to early August. Ultimately, in a letter dated June 25, Earl's physician stated Earl was unable to perform basic daily activities due to his disabilities such as dressing, cooking, cleaning, bathing, walking for long periods and going to the bathroom. Earl could not drive himself and cautioned that Earl needed to take it easy and not over-exert himself as it would "exacerbate his conditions." The social worker telephoned and faxed a letter to the physician to inquire if Earl's injuries would prevent him from attending services. Earl's physician's office indicated Earl needed to sign a release before it could provide the information, but it could not contact him to obtain the release. At the August 26, six-month review hearing, Earl's counsel requested a continuance to get more information about Earl's medical condition, but she never argued to the court that the Agency failed to make reasonable efforts to assist him in accessing services.

At the October 7, pretrial status conference, Earl's counsel confirmed the matter for trial indicating his issues were "reasonable services and continuing services." Counsel never argued that the Agency failed to make reasonable efforts to assist Earl in accessing services. Finally, on October 14 when the juvenile court issued the appealed from order, Earl's counsel did not cross-examine the social worker and produced no

affirmative evidence. Although Earl's counsel argued reasonable services had not been provided, she did not argue the Agency failed to make reasonable efforts to assist him in accessing services.

Generally, a party is precluded from urging on appeal any point not raised in the trial court. (*In re Riva M.*, *supra*, 235 Cal.App.3d at pp. 411-412.) Although forfeiture is not automatic, we should exercise our discretion to excuse it in rare instances only, particularly in dependency cases. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The record here shows Earl forfeited the issue by not raising it below. " '[R]eunification services are voluntary, and cannot be forced on an unwilling or indifferent parent.' " (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414.) If Earl believed the Agency failed to make reasonable efforts to assist him in accessing services he needed to call upon the court to help or seek assistance from his attorney. (*Id.* at p. 416.) The law helps the vigilant, before those who sleep on their rights. (Civ. Code, § 3527.)

DISPOSITION

The order is affirmed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

NARES, J.