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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.G., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.G.,

Defendant and Appellant;

K.G. et al.,

Defendants and Respondents.

E059919

(Super.Ct.No. J25714)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Dismissed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant minor, T.G.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Respondent father, A.G.

Teri Kanefield, under appointment by the Court of Appeal, for Defendant and Respondent mother, K.G.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

T.G. (the child) challenges the juvenile court's order granting family reunification services to A.G. (father). He contends the court erred in offering services because he was adjudicated a dependent pursuant to Welfare and Institutions Code¹ section 361.5, subdivision (b)(6).

I. PROCEDURAL BACKGROUND AND FACTS

In May 2013, K.G. (mother) and father were living together with mother's minor children, a boy (half sibling) and a girl.² Mother was pregnant with T.G. Father suffers from paraplegia and is confined to a wheel chair. Because he weighs 350 pounds, it is a great effort to get him up from his wheelchair. He has a lengthy criminal history. Mother also has a recent drug-related criminal history.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The biological father of mother's two older children was in prison.

The parents came to the attention of the San Bernardino County Children and Family Services (CFS) when the half sibling's paternal grandmother³ called the police with a report of child sexual abuse. She claimed the then four-year-old half sibling had disclosed that father had been touching his penis. She explained that the half sibling had shown her that he could pull his foreskin back when he went to the bathroom and told her that father had showed him how to do it. The half sibling said that father had touched his penis with a back-and-forth motion and called it a game where his penis was a fish and he was trying to make it get big. The half sibling said that mother was asleep when this happened; however, she hit father and temporarily kicked him out of the home after finding out about the game.

The half sibling initially confirmed grandmother's report, explaining that the "fish game" was played at night when it was dark, in his bedroom, and that father had touched him on four occasions. The half sibling claimed he never touched father while playing the game, he had never seen father without clothes on, and father had never touched him with any other part of his body. The half sibling also claimed that father hits him and mother. During CFS's investigation, it was discovered that the paternal grandmother had walked in on her son (the half sibling's biological father) and the half sibling when they were in the bathroom and she caught the biological father fondling the half sibling's penis when he was approximately two years old. The paternal grandmother reported her son's behavior to his parole officer but was told not to worry because her son was going to prison. Shortly thereafter, the half sibling's biological father left for prison. Refusing to

³ This is not father's mother. It is the half sibling's biological father's mother.

repeat his initial allegations, the half sibling referred to his penis as a “pickle,” and reported that mother had “touched [his] pickle where the big fish with the mouth comes out from.” The half sibling denied that anyone else touched his “pickle.”

Physical examinations conducted at the Children’s Assessment Center (CAC) came back normal, and further interviews produced no additional evidence of sexual abuse.

On May 23, 2013, CFS filed juvenile dependency petitions on behalf of the half sibling and his sister. CFS alleged jurisdiction based on the parents’ failure to protect (§ 300, subd. (b)), sexual abuse of the half sibling by both father and biological father (§ 300, subd. (d)), biological father’s inability to provide support while incarcerated (§ 300, subd. (g)), and abuse of a sibling (§ 300, subd. (j)).⁴ Mother met with a social worker and expressed her opinion that the paternal grandmother had invented the reports because mother was no longer in a relationship with her son and was pregnant with another man’s child. On July 29, 2013, the children were removed from mother’s custody and reunification services were ordered.

⁴ Father was not named in the petition, and thus was not a party to the proceedings. On February 27, 2014, the child requested that we take judicial notice of the July 29, 2013, minute orders in the dependency cases involving the child’s half-siblings (case Nos. J249616 and J249617). We reserved ruling for consideration with the appeal. We grant the request.

After the half sibling and his sister were removed from mother's custody, the child was born.⁵ Father and mother were living together and in a relationship.⁶ CFS took the child into protective custody, placing him with his paternal uncle.

On August 14, 2013, CFS filed a petition alleging that the child was described by section 300, subdivisions (b) and (j). Primarily, the allegations were based on the evidence developed in the dependency case involving the child's half siblings. It was specifically pled that "The father, [A.G.] sexually abused the child[s] . . . half sibling . . . which places the child at risk of abuse and neglect." On August 15, the court found that prima facie evidence supported CFS's allegations and detained the child.

In the jurisdiction/disposition report, CFS asked that the court remove the child from parental custody and that both parents be provided reunification services. On September 5, 2013, the child's attorney opposed the request, stating the need to take judicial notice of the evidence in the siblings' case in order to argue in favor of bypassing reunification services for father. The matter was set contested.

CFS interviewed father. He was open about his criminal history, reporting he was an ex-gang member. He confirmed that he was a paraplegic, he reported using medical marijuana to treat his pain, and he admitted pushing mother in the past. Father denied touching the half sibling inappropriately. He explained that his physical limitations would have prevented him from entering the half sibling's room alone at night. He also

⁵ Father is the presumed father of the child.

⁶ We note that mother claimed they were not living together; however, father claimed they were. Father admitted that he would leave for a few days when they argued.

believed the half sibling was coached by the paternal grandmother. Finally, he stated that he was now separated from mother.

In its addendum report, CFS pointed out that the half sibling's sexual abuse allegations had not been confirmed in the CAC interview. CFS continued to recommend reunification services for both parents.

At the contested jurisdiction/disposition hearing on October 8, 2013, father and the social worker testified. Father confirmed his prior statements to the social worker regarding his criminal history, pushing mother in the past, and denying the sexual abuse allegations. Father elaborated on his paraplegia, explaining that he had nerve damage and could not get around without assistance. He also noted that the half sibling's claims had not triggered any criminal charges.

The social worker opined that the half sibling's allegations against father did not justify orders bypassing reunification services. She did not believe that the court in the half sibling's case had found that the half sibling had been the victim of "severe sexual abuse." She reported that father was cooperating with CFS. In her opinion, the child's interests were served by offering reunification services to father so that the child could develop a relationship with his father.

Counsel for CFS and for mother argued in favor of offering services to father. The child's attorney argued that father's behavior towards the half sibling qualified as severe sexual abuse because "there was manipulation of the child's genitals," and asked the court to bypass reunification services for both parents under section 361.5, subdivision (b)(6). Father's counsel argued that father is a very large man who requires "an awful lot

of space to get around,” the half sibling’s accusations were not consistent, there was no finding of severe sexual abuse, and there was no opportunity to father to sexually abuse the half sibling.

Regarding the child’s request that the court find severe sexual abuse, the court denied it, finding that “reunification services should be offered to both parents In that the conduct here before the Court does not amount to severe sexual abuse. [¶] The Court will follow the spirit of the law on that. Technically, if I read this, and it applied absolutely no common sense, I could find that skin-to-skin contact, hand-to-penis, in a stroking motion is severe sexual abuse; however, I don’t believe that the statute intended -- as written, intended a hand motion, stroking of a penis of a child to be severe sexual abuse, and I don’t have any other information before me for any other conduct or any severe physical harm to the child. The half sibling of [the child].” Additionally, the court found that given the young age of the child, reunification services would benefit him. Thus, the court sustained the allegations in the petition, as amended, removed the child from parental custody, and ordered CFS to provide reunification services.

II. DISMISSAL OF APPEAL

After this case was fully briefed and a tentative opinion drafted and mailed to the parties, and after oral argument had been scheduled, on August 26, 2014, the court received a letter from child’s counsel stating that “the appeal is now moot as a result of the subsequent [trial court] proceedings” terminating father’s services. Counsel attached a copy of a minute order for April 21, 2014, in the juvenile case No. J250714.

Pursuant to California Rules of Court, rule 8.244(c)(2), “On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.” Thus, dismissal is discretionary. Here, because subsequent trial court proceedings have rendered the appeal moot, we grant the request.

III. DISPOSITION

The appeal is dismissed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

RICHLI

J.