

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

A.R.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

Real Party in Interest.

F064913

(Super. Ct. Nos. JJV061031A,
JJV061031B)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charlotte Wittig, Commissioner.

A.R., in pro per, for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

-ooOoo-

* Before Kane, Acting P.J., Detjen, J. and Franson, J.

A.R.¹ (father) in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 12-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26² hearing as to his 10-year-old son A.R. and nine-year-old son R.R. He contends he fully complied with his court-ordered services and was not provided the conjoint counseling ordered by the juvenile court. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Father and Rosemary are the parents of A.R. and R.R. who were removed from Rosemary's custody in 2006 and 2011. Given the lengthy history of juvenile court jurisdiction and its relevance to the proceedings we review, we begin our summary of the case with the dependency proceedings initiated in August 2006.

Prior Dependency Proceedings

In August 2006, then five-year-old A.R. and three-year-old R.R. were removed from Rosemary's custody because of her drug use. Father admitted using drugs and knowing that Rosemary used them as well. At the time there was a restraining order prohibiting father from having contact with Rosemary and the children. Apparently father was such a physical threat that the court that issued the order expressed its fear that father was going to seriously hurt Rosemary and advised counsel to inquire about revoking father's bail.

In October 2006, the juvenile court sustained allegations that father and Rosemary failed to protect the children from drug use and adjudged the children dependents of the court. The court denied father reunification services but ordered services for Rosemary.

¹ We substitute first and last initials for petitioner and his children's names in order to maintain the children's anonymity. (Cal. Rules of Court, rule 8.401(a)(2).)

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The court also denied father visitation because he was aggressive and threatening toward the foster mother and frightened the children.

In April 2007, father appeared at the six-month review hearing and requested visitation. The juvenile court advised him that he would have to first complete a psychological evaluation.

In October 2007, at the 12-month review hearing, the juvenile court returned the children to Rosemary's custody under a plan of family maintenance. Father did not appear at the hearing and the Tulare County Health and Human Services Agency (agency) reported that he refused to complete a psychological evaluation and had not contacted the agency since the April 2007 hearing.

In March 2008, the juvenile court granted Rosemary sole legal and physical custody of the children and terminated its dependency jurisdiction.

Instant Dependency Proceedings

The instant dependency proceedings were initiated in April 2011 after Rosemary left then nine-year-old A.R. and eight-year-old R.R. alone in a motel room with heroin, methamphetamine and drug paraphernalia. The agency took the children into protective custody and placed them in foster care. Father read about the children in the newspaper and inquired about them at the agency. He said that he was released on parole in January 2011 after serving two years for possession of methamphetamine and had not seen the children in over two years. He also said he was drug testing and seeing a psychiatrist for depression.

A social worker asked the children how they felt about visiting father. They were leery about visiting him and remembered him hitting them. R.R. also remembered being choked. Father denied ever hitting the children or Rosemary.

In early May 2011, the juvenile court conducted the detention hearing. Father appeared and was appointed counsel. Rosemary did not appear and her whereabouts were unknown. The juvenile court ordered the children detained and ordered the agency

to refer them for individual counseling and arrange one supervised visit a week for them with father.

In late May 2011, the juvenile court exercised its dependency jurisdiction, denied Rosemary reunification services and ordered a plan of reunification for father that required him to complete a domestic violence batterer's program, a parenting program and a mental health assessment, submit to random drug testing and continue in therapy with his psychiatrist.

In its report for the six-month review hearing, the agency reported that father was compliant with his services plan and he and the children appeared to enjoy their visits, however, both children were adamant that they did not want to return to his custody. Consequently, the agency recommended that the juvenile court continue father's reunification services but modify his case plan to include conjoint counseling when deemed appropriate by the children's therapist.

In November 2011, at the six-month review hearing, the juvenile court amended father's case plan to include conjoint counseling and continued father's services to the 12-month review hearing which it set for April 2012.

In its report for the 12-month review hearing, the agency reported that father made substantial progress in his services plan and that visitation was reportedly positive, however, the children did not want to reunify with him and asked that visitation be decreased. The agency also reported that it was difficult to determine the causes of their fear and apprehension toward their father since their therapist had not deemed conjoint counseling appropriate. The agency opined that if given additional time, father and the children could progress toward conjoint therapy and address the barriers thwarting their relationships. Consequently, the agency recommended that the juvenile court continue father's reunification services at the 12-month review hearing.

In April 2012, the juvenile court convened the 12-month review hearing. Rosemary appeared in custody. The court continued the hearing at county counsel's request and set it for a contested hearing in May 2012.

In May 2012, at the contested 12-month review hearing, the juvenile court found that father was provided reasonable services but that there was not a substantial probability the children could be returned to his custody if services were continued for another six months. Consequently, the court terminated his reunification services and set a section 366.26 hearing. In doing so, the court acknowledged that father made "some progress" but could not find a substantial probability that the children could be returned to his custody given their "significant fear" of him and the fact that they had not progressed beyond supervised visitation. The court further stated "the children are not emotionally ready to be returned, are not even at a point where we can start conjoint counseling with dad. In fact, the information before the Court is that their behavior has worsened around these court hearings where there is an anticipation [that] the Court may [continue services]." The court did not, however, foreclose the possibility of father participating in conjoint counseling, stating that the therapist could include him if appropriate. Additionally, the court stated that if father were able to participate in conjoint counseling prior to the section 366.26 hearing, it would consider a section 388 petition to reconsider its order terminating his services.

This petition ensued.

DISCUSSION

Father contends he was in full compliance with his court-ordered services and was not provided conjoint counseling as ordered. Therefore, he further contends the juvenile court erred in terminating his reunification services and setting a section 366.26 hearing. We disagree.

Reunification services are generally provided for a period of 12 months where, as here, the children were over the age of three when originally removed from parental

custody. (§ 361.5, subd. (a)(1)(A).) Nevertheless, the juvenile court may continue reunification services beyond the 12-month review hearing if it finds that the parent was not provided reasonable services or that there is a substantial probability that the child will be returned to the parent's physical custody and safely maintained in the home within the extended period of time. (§ 366.21, subd. (g)(1).)

In arguing that the juvenile court erred in not providing him conjoint counseling, father is in essence arguing that the agency did not provide him reasonable services, however, such is not the case. The juvenile court conditioned conjoint counseling on the therapist's determination that it was appropriate for the children. Unfortunately, the children were still processing memories of father's anger and abuse and the therapist did not believe they were ready to include father in their counseling. Under those circumstances, the agency's failure to provide father conjoint counseling was not unreasonable.

Further, father's argument that he fully complied with his services is essentially a challenge to the juvenile court's finding that there was not a substantial probability the children could be returned to him with extended services. In order to find a substantial probability of return, the juvenile court must find the parent met the following three requirements: (1) regularly visited the child; (2) made significant progress in resolving the problem prompting removal of the child; and (3) demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child's safety, protection and well-being. (§ 366.21, subd. (g)(1).) Although father made some progress and regularly visited the children, their apprehension of him and refusal to reunify with him were obstacles to reunification and, as the juvenile court conveyed, there was no indication the circumstances were going to change within another six months.

Having found that father was provided reasonable services and that there was not a substantial probability of return, the juvenile court had no choice but to terminate

reunification services and set a section 366.26 hearing. (§ 366.21, subd. (g)(1)(2).) We find no error on this record.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.