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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

MICHAEL B., Petitioner, v. THE SUPERIOR COURT OF TULARE COUNTY, Respondent; TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Real Party in Interest.	F065363 (Super. Ct. Nos. JJV065562A, JJV065562B & JJV065562C) **O P I N I O N**

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Hugo J. Loza, Commissioner.

Michael B., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Abel C. Martinez, Deputy County Counsel, for Real Party in Interest.

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

Michael B. 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 (Welf. & Inst. Code, § 366.21, subd. (f))[1] terminating his reunification services and setting a section 366.26 hearing as to his four-year-old daughter, Melody, and two- and one-year-old sons, Zachary and Robert respectively. Michael contends that the juvenile court erred in finding that it would be detrimental to return the children to his custody and that he was provided reasonable services. Further, he contends that his court-appointed attorney was ineffective.[2] We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Michael and Rebecca,[3] an unmarried couple, are the parents of Melody, Zachary and Robert, the subjects of this writ petition. In July 2011, Rebecca gave birth to Robert. She and Robert tested positive for methamphetamine and Robert was exhibiting signs of in utero drug exposure. A social worker from the Tulare County Health and Human Services Agency (agency) questioned Rebecca about her drug use. Rebecca admitted using methamphetamine the day before and about twice a month for the prior two years. She claimed that Michael was unaware of her drug use. Rebecca did not believe she needed drug treatment and could quit using drugs on her own.

Michael said he did not know that Rebecca was using drugs but suspected it. He confronted her and she denied it. He told the social worker that he could care for the children without Rebecca's help and had done so before. He explained that when

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

[2] Though Michael does not explicitly identify these as the legal issues he raises, we derive them the arguments he makes. Further, given our discretion to liberally construe a writ petition (Cal. Rules of Court, rule 8.452(a)(1)) and being mindful that Michael is not represented by appellate counsel, we exercise our discretion to so construe the petition.

[3] Rebecca did not file a writ petition.

Melody was a baby, Rebecca left him and Melody to "party and do her thing." Approximately four to six months later, he returned home to find Rebecca asleep in the bed. He never asked where she had gone and they had been together ever since.

The social worker invited Michael to attend an agency meeting regarding his case the next day. He said he would attend and could use his mother's truck to get there. However, the following day, he called to say he no longer had use of the truck and he did not attend the meeting. Given Rebecca's refusal to accept drug treatment and Michael's failure to attend the meeting, the agency filed a dependency petition on the children's behalf alleging under section 300, subdivision (b) that Rebecca's drug use and Michael's failure to protect the children from it placed them at a substantial risk of harm.

The juvenile court sustained the petition and ordered a plan of reunification for Michael and Rebecca requiring them to complete classes pertaining to parenting and drug-exposed infants, participate in Bright Start Services with Robert to assist with his developmental delay and submit to random drug testing. Rebecca was additionally required to complete an alcohol and drug assessment. The children were placed together in foster care.

By the six-month review hearing set for January 2012, Michael and Rebecca completed the parenting and drug-exposed infant classes and were drug testing with negative results. They also attended Robert's appointment to establish eligibility for Bright Start and he was scheduled to begin services. In addition, Rebecca enrolled in outpatient drug treatment. However, she was discharged after approximately a month for missing treatment sessions. She arranged for another assessment and, by late December 2011, was participating in a drug treatment program.

In its report for the six-month review hearing, the agency reported that Michael and Rebecca's interactions with the children during visitation were limited, but that the

children appeared happy to see their parents. The agency recommended that the juvenile court continue reunification services for another six months.

In January 2012, the juvenile court continued services for Michael and Rebecca to the 12-month review hearing which it set for July 2012. The juvenile court also ordered a mental health assessment for Rebecca to address her lack of interaction with Melody and Zachary.

In its report for the 12-month review hearing, the agency reported that Michael and Rebecca were living together and that Rebecca was pregnant. Michael doubted that he was the father of the child. The agency further reported that Rebecca was discharged from drug treatment in February 2012 for multiple absences. The agency subsequently referred her several times for a reassessment which she finally completed in August 2012. She was assessed as having a low probability of substance abuse but qualified for drug treatment. She claimed to have been abstinent since July 2012 and was testing negative for drugs. Meanwhile, in April 2012, Rebecca was arrested for failure to comply with drug court and spent four days in jail. According to Rebecca, she was arrested because the district attorney refiled drug charges stemming from a search of Michael's mother's ranch in 2010. During the search, law enforcement found drugs in Zachary's crib and a smoking device in Rebecca's possession.

The agency also reported that Michael attended three of Robert's Bright Start treatment sessions but changed his contact number without telling the agency and did not attend again until the annual review meeting in June 2012. He and Rebecca also missed 19 visits from January through May 2012, explaining that one or both were sick or they had car problems. According to the visitation social worker, visits sometimes went well and Michael and Rebecca took turns playing and feeding the children. However, she said they sometimes limited their interaction with the children. For example, Rebecca held Robert, but neither parent engaged with or supervised Melody and Zachary.

The court-appointed special advocate for the children observed several visits. She reported that she never saw Rebecca demonstrate any affection towards the children but observed Michael regularly hug them and tell them "good-bye."

The agency recommended that the juvenile court terminate reunification services for Michael and Rebecca at the 12-month review hearing and set a section 366.26 hearing to implement a permanent plan of adoption with the children's foster parents. The agency opined that Rebecca failed to substantially comply with her court-ordered services and that it would be detrimental to return the children to her custody. As to Robert, the agency perceived him as acquiescing to Rebecca's desires and as incapable of caring for the children on his own.

Rebecca did not contest the agency's recommendations but Michael did and, at a contested hearing in July 2012, testified. He testified that he was employed and had been all along. He acknowledged only attending three Bright Start appointments with Robert but said he was never given a schedule of the appointments even though he repeatedly asked for one. Michael further testified that he missed only three visits, not 19 as reported by the agency. He said he interacted with the children by reading with them or giving them piggyback rides. He said he brought them toys, puzzles and coloring books and was told to ignore them if they cried. He disagreed that he showed little affection or interest in them.

Michael further testified that he and Rebecca were no longer living together. He said he gave her notice in June to move out after he found out she stopped participating in her program. She moved out a few days before the hearing.

At the conclusion of the hearing, the juvenile court adopted the agency's recommended findings, terminated reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

I. Detriment

Michael contends that he is in full compliance with his court-ordered services. He points out that he separated from Rebecca, maintains a suitable home for the children and owns a vehicle to transport them. He thus argues that the juvenile court erred in finding that it was detrimental to return the children to his custody and asks that they be returned to him. We disagree that the juvenile court erred.

At the 12–month review hearing, there is a statutory presumption that a dependent child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child's safety, protection or well–being. (§ 366.21, subd. (f).) In assessing detriment, the juvenile court first determines whether the parent regularly participated in his or her court-ordered services and whether the parent made substantive progress. (*Id*.) If the parent has not done so, the juvenile court may find prima facie evidence that it would be detrimental to return the child. (*Id*.) In other words, the juvenile court may find that it would be detrimental to return the child simply based on the parent's failure to participate and progress in services. However, even if the juvenile court finds that the parent participated and made progress, the court may still decide that it would be detrimental to return the child for other reasons. (*In re Dustin R*. (1997) 54 Cal.App.4th 1131, 1141-1143.)

In this case, Michael failed to regularly participate in the Bright Start program which the juvenile court considered an important part of his services plan. Thus, prima facie evidence supported the juvenile court's finding that it would be detrimental to return the children to Michael's custody. In addition, Michael continued his relationship with Rebecca even though she did not participate in drug treatment and was apparently using drugs. Though Michael contends that he and Rebecca are separated, he has a

history of separating from her and resuming their relationship despite the risk she poses to the children. In light of the evidence, the juvenile court did not err in finding that it would be detrimental to return the children to Michael's custody.

II. Reasonable Services

Michael contends the agency mismanaged his case. As evidence of that, he directs this court to an order from an unrelated case that appears in the clerk's transcript, asserts that it demonstrates the agency's inappropriate case management and questions the pervasiveness of this sort of mismanagement in the agency's handling of his case and the affect on the juvenile court's decisions. It is apparent that the inclusion of the order in the other case was a filing error. Aside from that one order, there is no evidence that the juvenile court record reflects anything other than the proceedings as they occurred in this case or that the one misfiled order had any bearing on this case.

Michael also faults the agency for arranging visitation at fast food restaurants, asserting that it was not conducive to a positive experience for the children or him. In essence, Michael challenges the reasonableness of visitation provided by the agency, however, fails to show how visitation as conducted was unreasonable.

In providing reunification services, the agency has a duty to assist the parent in accessing and utilizing services. (*In re Riva M*. (1991) 235 Cal.App.3d 403, 414.) However, reunification services need not be perfect to be reasonable. The "standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. [Citation.]" (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Further, reunification services are voluntary and the agency cannot force an unwilling and/or indifferent parent to participate in the case plan. (*In re Ronell A*. (1996) 44 Cal.App.4th 1352, 1365.)

In assessing the reasonableness of reunification services, the juvenile court evaluates not only the agency's efforts to assist the parent in accessing the services, but

also the parent's efforts to avail himself or herself of the services. (*In re Ronell A.*, *supra*, 44 Cal.App.4th at p. 1365.) On appeal, the petitioner bears the burden of demonstrating error. (*Winograd v. American Broadcasting Co*. (1998) 68 Cal.App.4th 624, 632.)

In this case, there is no evidence that conducting visitation at the fast food restaurants prevented Michael from engaging with the children. On the contrary, according to the record, Michael's interaction with them was limited by his conduct. Further, there is no evidence that Michael at any time objected to the quality of visitation or requested that it be conducted somewhere else. We conclude Michael fails to show that the agency's choice of location rendered visitation unreasonable and that the juvenile court erred in finding he was provided reasonable services.

III. Ineffective Assistance of Counsel

Michael contends that his "appointed attorney DID NOT represent [him] to the best of his ability in this case and may have made some biased decisions in judgment here." We find no evidence on this record to support a claim of ineffective assistance of counsel.

A petitioner asserting ineffectiveness of counsel must prove trial counsel's performance was deficient, resulting in prejudicial error. (*In re Kristin H*. (1996) 46 Cal.App.4th 1635, 1667-1668.) We need not evaluate counsel's performance if petitioner fails to prove prejudicial error; i.e., absent counsel's errors, there is a reasonable probability of a more favorable outcome. (*In re Nada R*. (2001) 89 Cal.App.4th 1166, 1180.) Therefore, to prevail on a claim that his attorney was ineffective, Michael would have to identify the specific acts that rendered his attorney ineffective and show that but for those acts the juvenile court would have ruled in his favor.

In this case, Michael merely asserts counsel's ineffectiveness without specifying how counsel was ineffective or pointing this court to specific parts of the record where counsel's conduct was objectionable. Consequently, Michael failed to meet his burden of

demonstrating ineffectiveness of counsel. Further, this court does not independently review the record for possible errors. (*In re Sade C*. (1996) 13 Cal.4th 952, 994.) We find no error on this record.

DISPOSITION

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