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

SHANE B.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F065619

(Super. Ct. No. JD126612-00)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jon Edward Stuebbe, Judge.

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

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Brian Van Wyk, Deputy County Counsel, for Real Party in Interest.

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

Shane 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 reunification services and setting a section 366.26 hearing as to Shane's five-year-old son, Drake. Shane acknowledges that he delayed in initiating his court-ordered services but contends he has since made progress and asks for custody of Drake and additional time to reunify. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In June 2011, the Kern County Department of Human Services (department) took then three-year-old Drake into protective custody after his mother, Sara, struck a parking lot pillar at approximately 50 miles per hour while driving under the influence of prescription medication and with Drake as a passenger in the car. Sara was arrested for driving under the influence (DUI) and child endangerment. This was not, however, her first DUI. She was also arrested in 2009 and 2010 for DUI and was involved in six vehicular accidents between November 2008 and June 2011. She admitted using at least 40 prescribed Norco and 20 prescribed Soma on a daily basis.

Sara told the investigating social worker that she and Drake's father, Shane, lived together for approximately five years but separated sometime around April 2010 after which she and Shane shared legal custody of Drake. She also stated that she and Shane had another son, Ryder, who died in May 2010 while in Shane's care. She explained that Shane was sleeping with Ryder in the bed and rolled over onto him. Shane awoke to find Ryder dead. The coroner listed the cause of then six-month-old Ryder's death as "sudden unexpected death associated with bedsharing and aspirated gastric contents." At the time of Ryder's death, Shane tested positive for benzodiazepines, cocaine, and marijuana.

¹ All further statutory references are to the Welfare and Institutions.

Shane told the social worker that he was aware of Sara's use of prescription medication and her DUI. He said that he normally smoked marijuana before going to bed but had not smoked it in approximately two months. He declined to identify any other drugs he used and referred the social worker to the police report taken at the time of Ryder's death.

The department filed a dependency petition under section 300, subdivision (b) (subdivision (b)), alleging that Sara and Shane's drug use and inadequate protection and supervision placed Drake at a substantial risk of harm. The department subsequently amended the petition to include a subdivision (b) allegation that Shane was aware of Sara's history of using prescription pain medication and driving under the influence, provided Sara prescription narcotics (Norco and Soma) approximately two to three times a week since approximately 2004 and allowed Drake to remain in her custody unsupervised.

In August 2011, at an uncontested jurisdictional hearing, the juvenile court sustained the amended dependency petition and found the allegations true. The following month, at an uncontested dispositional hearing, the juvenile court exercised its dependency jurisdiction, ordered Drake removed from Shane and Sara's custody, and ordered each a plan of reunification that required them to participate in counseling for child neglect, grief, parenting and substance abuse, and submit to random drug testing. The juvenile court also ordered twice weekly supervised visitation and set the six-month review hearing for March 2012. Drake was placed with a relative.

Over the ensuing six months, neither Shane nor Sara complied with their services plan. Shane attended an initial appointment at Haven Counseling Center for parenting and neglect classes but did not return. He also met with the "Gate Keeper" for substance abuse counseling in June 2011 but refused to sign up for classes. He was placed on a wait list but was removed from the list for failing to participate in interim services. In

addition, Shane refused to drug test despite repeated requests and urging by the social worker. He told his social worker that he was unable to participate in services because he worked out of town. He declined her offer to arrange for drug testing in the county where he was working and refused on-the-spot drug testing. During a visit in February 2012, Shane stated that he expected to regain custody of Drake at the hearing in March. The social worker advised him that the department would probably recommend termination of services given his lack of progress and refusal to drug test. According to the social worker, Shane appeared shocked and stated that the juvenile court should return Drake to his custody because he had had a difficult time since Ryder's death. He stated, "since I haven't pissed dirty for you guys, you don't have anything on me and there isn't any reason not to give me my son back."

In its report for the six-month review hearing, the department informed the juvenile court that Shane regularly visited Drake and was engaging and patient with him. Sara, on the other hand, had not visited Drake since December 2011 or kept in contact with the social worker.

In March 2012, the juvenile conducted the six-month review hearing and continued reunification services for Shane and Sara. Sara was not present at the hearing. However, Shane was present and the juvenile court advised him that the only reason it continued services was because Drake was three years old at the time he was initially removed and the statute required it. The juvenile court also warned him that if he did not progress by the 12-month review hearing in June 2012, that it would go "a different direction."

In its report for the 12-month review hearing, the department informed the juvenile court that Sara had not visited Drake or contacted the department since December 2011 and her whereabouts were unknown. As to Shane, it reported that his visits with Drake continued to go well but that Shane had not enrolled in any of his

services or drug tested. Meanwhile, Drake had reportedly adjusted well to his relative caretakers and they were committed to adopting him. In light of the circumstances, the department recommended that the juvenile court terminate reunification services and set a section 366.26 hearing to implement a permanent plan.

The 12-month review hearing, originally calendared for June 2012, was continued and conducted in August 2012. In the interim, Shane told his social worker that he enrolled in Haven Counseling Center in April 2012 and had attended 12 of the 52 required parenting classes. In addition, he submitted to a drug test in mid-June 2012 and stated that the test results would be positive for marijuana.

In August 2012, Shane appeared at the 12-month review hearing with his attorney who advised the juvenile court that Shane gave him “some recent progress reports and other documents concerning his attendance” and that county counsel agreed that the juvenile court could review the documents. The juvenile court stated that it reviewed the documents and then handed them back to Shane’s attorney. The documents were not entered into evidence. Shane’s attorney conceded that Shane had a “very late start” but informed the juvenile court that he attended over 20 parenting classes and attended a “significant number of substance abuse classes” and was drug testing. His attorney argued that if given another four months of services, there was a substantial probability that Shane could complete his services plan and Drake could be returned to his custody.

After hearing argument, the juvenile court declined to continue Shane’s services and adopted the department’s recommendations. In so doing, the juvenile court recognized Shane’s efforts but stated that they were insufficient to warrant continuing reunification services to the 18-month review hearing. This petition ensued.

DISCUSSION

Shane contends that Drake was removed from Sara’s custody, not his. He also contends that he is doing everything he can to regain custody of Drake, citing his

completion of 23 of the 52 parenting classes and participation in outpatient drug rehabilitation. He further points out that he never missed a visit with Drake and never tested positive for drugs. We find no error in this case as we now explain.

With regard to Drake's removal, Shane is correct only in a limited sense. It is true that Drake was initially removed from Sara's physical custody on the day of the accident in June 2011 because she endangered him. However, subsequently, the juvenile court ordered Drake removed from Sara *and* Shane's custody after finding that Shane not only was aware of Sara's use of prescription medication and DUI and still left Drake in her care but also that he provided her the prescription medication. Thus, Shane's contention that Drake was not removed from his custody is not supported by the evidence.

With regard to Shane's efforts to reunify, there are several considerations. First, we are confined in our review to the evidence that was before the juvenile court. (*In re Zeth S.* (2003) 31 Cal.4th 396, 399-400.) According to the appellate record, the juvenile court reviewed documentation provided by Shane and heard his attorney's assertion that Shane completed over 20 parenting classes, attended a significant number of substance abuse classes, and was drug testing. Thus, our review is limited to that evidence and to the extent that Shane has included additional evidence of his progress, we cannot review it.

The second consideration is whether the juvenile court correctly ruled based on the evidence that it had. In this case, the juvenile court provided Shane 12 months of services. During the first six months of services, Shane had not, according to the juvenile court, "done anything," prompting the juvenile court's warning that it would terminate his services if he did not make progress. Even then, Shane allowed another several months to pass before he submitted to a drug test and apparently began addressing his drug use. In essence, he ignored the most important component of his services plan—drug treatment.

In order to continue reunification services at the 12-month review hearing, the juvenile court must find there is a substantial probability of return. (§ 366.21, subd. (g)(1).)² In order to find a substantial probability of return, the juvenile court must find that the parent made significant progress in resolving the problem that led to the child's removal and demonstrated the capacity and ability to complete the objectives of his or her treatment plan and provide for the child's safety, protection, physical and emotional well-being, and special needs.

In this case, Shane made no effort to demonstrate his willingness and ability to address his drug use until nearly the end of the 12-month reunification period. Moreover, his progress was not significant. Rather, it was, according to the juvenile court, minimal. Consequently, there was no reason for the juvenile court to believe that Shane could make the necessary progress and safely parent Drake after another four months of services.

As a reviewing court, we do not substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Rather, we defer to the juvenile court's assessment of the evidence and review the appellate record to determine if there is substantial evidence to support its ruling. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) In this case, given the facts as set forth in this opinion, we conclude that it does.

DISPOSITION

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

² The juvenile court must also continue reunification services at the 12-month review hearing if it finds that the parent was not provided reasonable services. (§ 366.21, subd. (g)(1).) Shane does not raise that issue.