

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

O.A.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

F068953

(Super. Ct. No. 66590)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Juliet L.
Boccone, Judge.

Mary Steele for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Amy-Marie Costa, Deputy County
Counsel, for Real Party in Interest.

-ooOoo-

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

O.A. (father) seeks extraordinary writ relief (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 12-month review hearing terminating his reunification services and setting a Welfare and Institutions Code section 366.26 hearing¹ as to his five- and four-year-old sons, Jose and Fabian respectively. Father contends his services plan as designed was unreasonable because the domestic violence and substance abuse programs were scheduled at the same time. He further contends he substantially complied with his substance abuse program and had not engaged in any domestic violence incidents while participating in services. Therefore, he argues the juvenile court should have returned his sons to his custody under family maintenance services so he could complete the domestic violence program. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In November 2012, Jose and Fabian, then four and three years old, and their four older half-siblings were removed from the custody of their mother, Maria, by the Tulare County Health and Human Services Agency (agency) because of Maria's drug use and neglect. Maria said father had not been in contact with Jose and Fabian for approximately a year. She believed he was living in Mexico. The children were placed together in foster care.

Father returned to Tulare County after discovering the children were taken into protective custody and was arrested on outstanding warrants for cultivating marijuana, using a controlled substance, domestic violence and child cruelty. In December 2012, a social worker from the agency located him at the Tulare County Men's Correctional Facility. Father said he and Maria were in an exclusive relationship and lived together until he went to Mexico approximately eight months before to take care of his ailing father. He said he worked regularly to support his children and held them out as his own.

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

The social worker asked father about his drug use and his knowledge of Maria's drug use. He said he began using methamphetamine in 2009 after Maria introduced him to the drug. He knew Maria was using methamphetamine and asked her to stop. He quit using methamphetamine when he went to Mexico to help his father.

The social worker also asked father about his criminal charges. He said he was arrested for domestic violence after he bit Maria's lip during an argument. He was ordered to complete a batterer's treatment program, but did not because he went to Mexico. According to the record, the domestic violence incident occurred in September 2011. At the time, Maria's 15-year-old daughter reported she tried to intervene, but father pushed her against the wall and grabbed her throat with one hand. She believed he was going to choke her.

In January 2013, father was released from custody and ordered to participate in the county outpatient drug court program. He was required to pay for drug court services which included three hours a week of group counseling, 30 minutes a week of individual counseling and random urinalysis. Father enrolled himself in parenting classes and by the end of January had completed 15 of the 18 required classes.

In February 2013, the juvenile court exercised its dependency jurisdiction over the children and ordered father and Maria to participate in reunification services. Father's services plan required him to complete a 52-week batterer's treatment program, undergo an alcohol and drug abuse assessment and follow any recommended treatment and submit to random urinalysis for drugs and alcohol. The juvenile court set the six-month review hearing for July 2013.

In February 2013, father's social worker referred him to a domestic violence batterer's treatment program; however, he did not enroll. The social worker advised him multiple times over the ensuing months to comply with the court's order to complete the program. Father said he intended to participate in the program, but first wanted to complete 18 months of drug court. He explained he was busy working full time,

attending drug court services and an English literacy class and visiting the children. In late June, father was scheduled for an assessment but did not attend. The social worker attempted to contact father to inquire about his absence but spoke to Maria because father was working. Maria was aware that father could not reunify with the children if he did not complete the domestic violence program. Maria said they would separate if necessary so she could regain custody of the children.

By July 2013, father and Maria were living together and he was working full time Monday through Saturday as a field worker. He was participating in drug court and testing negative for drugs and was expected to complete the program in July 2014. He also completed a substance abuse assessment for the agency and reported a history of methamphetamine, marijuana and alcohol use. In addition, father visited the children regularly and had a good relationship with them.

In July 2013, the juvenile court conducted an uncontested six-month review hearing, found the agency provided reasonable services and continued them for father and Maria until the 12-month review hearing.

In its report for the 12-month review hearing, the agency recommended the juvenile court terminate Maria's reunification services because she was not compliant with any of her services and father's because he had not completed a domestic violence program. Father said he worked Monday to Saturday until approximately 4 p.m. After work, he went directly to the outpatient drug treatment center. He said he had to complete the program in 18 months or he would be deported to Mexico or incarcerated for three years. He said there was a domestic violence class taught from 5:30 to 7:00 p.m., but it was not contracted through the agency and he could not afford the class fee. Even if he could afford it, he said he would not be able to attend because of his work and drug court schedules.

In February 2014, the juvenile court conducted the contested 12-month review hearing. Father's attorney made an offer of proof that father, if called, would testify that

he would complete drug court on March 21 and would be free to participate in the domestic violence program. He was unable to participate in the domestic violence program because it was conducted on the same days he had to attend drug court and he could not pay for both. He asked that the children be returned to his custody. He believed he resolved his drug problem and could support them. He was also willing to separate from Maria and terminate their relationship in order to regain custody of them.

During argument, the juvenile court focused father's attorney (counsel) on father's failure to complete a domestic violence program. Counsel argued father's participation in drug court and the need to work prevented him from participating in the program. Counsel further argued the juvenile court should find there was no detriment in returning the children to father because he maintained sobriety and there were no reports of domestic violence subsequent to the September 2011 incident.

Following argument, the juvenile court terminated father and Maria's reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Father contends the juvenile court should have returned Jose and Fabian to his custody under family maintenance services. Therefore, he contends, the juvenile court erred in finding it would be detrimental to return them to his custody and in terminating his reunification services. We conclude substantial evidence supports the juvenile court's finding and order.

A parent's failure to participate regularly and make substantive progress in court-ordered services is prima facie evidence that returning the child to that parent's custody would be detrimental. (§ 366.21, subd. (f).) In this case, father's failure to participate in a domestic violence program is more than sufficient to support the juvenile court's finding of detrimental return, particularly given father's need for the service and the severity of the domestic violence incident prompting the requirement. Since we conclude the juvenile court properly determined Jose and Fabian could not be safely returned

home, father's contention the juvenile court erred in not providing him family maintenance services must fail as well.

Father also contends for the first time his reunification services were unreasonable because a scheduling conflict prevented him from participating in drug court and domestic violence counseling at the same time. This contention must fail as well for several reasons. First, father consented to a services plan that required him to complete both programs and he did not challenge the reasonableness of the plan content from the dispositional order or from the juvenile court's reasonable services finding at the six-month review hearing. Additionally, he has not shown that subsequent events rendered the requirement that he complete both services simultaneously unreasonable. As a result, he forfeited his claim and cannot raise it now. (*In re S.B.* (2009) 46 Cal.4th 529, 532.)

Further, even assuming arguendo father did not forfeit his reasonable services claim, substantial evidence supports the juvenile court's reasonable services finding. Father was first ordered to complete a domestic violence program around March of 2012. Instead, he went to Mexico. Nearly a year later, in February 2013, the juvenile court ordered him to complete the program but he did not even attempt it. He now claims a scheduling conflict prevented his participation but does not cite to evidence in the record of an actual conflict. We have no doubt participating in both programs while working full time would have been rigorous. However, father's complete failure to participate in domestic violence counseling strikes this court as unwillingness rather than inability.

We find no error on this record.

DISPOSITION

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