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

MATTHEW T.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F069000

(Super. Ct. Nos. 12CEJ300281-1,
12CEJ300283-1)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas,
Commissioner.

Matthew T., in pro. per., for Petitioner.

No appearance for Respondent.

Daniel Cederborg, County Counsel, and Amy K. Cobb, Deputy County Counsel,
for Real Party in Interest.

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

Matthew T., in propria persona, seeks extraordinary writ review of 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 sons, 17-year-old Dustin and six-year-old Malachi. Matthew contends the juvenile court erred in finding the Fresno County Department of Social Services (department) provided him reasonable services. We conclude substantial evidence supports the juvenile court's reasonable services finding and deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In November 2012, Matthew was involuntarily hospitalized after exhibiting unusual behavior. Then 16-year-old Dustin and 4-year-old Malachi, who have different mothers and were living with Matthew, were taken into protective custody by the department. Dustin and Malachi were initially placed together in foster care but by the 12-month review hearing were living with their paternal grandparents.

The juvenile court ordered Dustin and Malachi detained and the department referred Matthew for parenting classes, substance abuse, mental health and domestic violence evaluations and random drug testing. The department also arranged supervised visitation.

Matthew promptly completed the evaluations, resulting in referrals for domestic violence counseling, a psychological evaluation and intensive outpatient substance abuse treatment. As part of his substance abuse evaluation, Matthew was asked to drug test. He registered for drug testing through Avertest Drug Testing Services, the county-approved testing site, and tested positive for methamphetamine and a very high level of alcohol. He subsequently declined to drug test, stating he had nerve damage which made it difficult to urinate. He gave the social worker letters from his doctors dated two years

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

prior and offered to provide blood and/or hair samples for analysis. The social worker told him he needed to provide more recent letters or drug test.

In January 2013, Matthew began intensive outpatient substance abuse treatment at Fresno New Connections. However, within the month, he was discharged from the program after becoming so angry with another client that the police had to be called. Fresno New Connections would not accept him back without proof that he was mentally stable.

The juvenile court declared Dustin and Malachi its dependents and ordered Matthew to complete the services previously offered, as well as a psychological evaluation. The court also ordered reunification services for Dustin and Malachi's mothers and set a six-month review hearing.

Matthew promptly completed his parenting class and domestic violence counseling. He also completed a psychological evaluation but rejected the psychologist's opinion that he suffered from intermittent explosive disorder and required therapy. He also refused to drug test at Avertest because he believed they intentionally falsified his results. He offered to test at another facility by hair follicle analysis at his own expense but his social worker explained hair follicle analysis did not test for alcohol use and that his alcohol use was a concern to the department. The social worker suggested Matthew speak to his attorney about asking the juvenile court to eliminate the substance abuse drug testing requirement or to authorize testing from another facility. Instead, Matthew provided the results of a hair follicle test performed at Omega Laboratories in July 2013, showing negative results for the commonly tested illegal drugs.

Matthew resisted substance abuse treatment but by July 2013 was receiving intensive outpatient substance abuse treatment through ASI Counseling Services. Over the next three months, Matthew was discharged twice from ASI, once for nonattendance and again for aggressive and defiant behavior in group. Matthew's social worker told him he had to test at Avertest unless the juvenile court authorized otherwise and

explained the consequences of not participating in his services plan. He was also told he had to attend one Alcoholics/Narcotics Anonymous (AA/NA) meeting a day for 30 consecutive days and test through Avertest for 30 days.

At the six-month review hearing, the juvenile court found the department provided Matthew reasonable services and that his progress was minimal to moderate. The court continued reunification services to the 12-month review hearing.

In the months preceding the 12-month review hearing, there was very little change in Matthew's attitude and progress. He refused to test at Avertest. As a result, he was not participating in substance abuse treatment. He began individual therapy in September 2013 and regularly attended his sessions. In November 2013, his therapist reported that Matthew was more receptive to treatment but had not met his treatment goals.

In its report for the 12-month review hearing, the department recommended the juvenile court terminate Matthew's reunification services because he had not made sufficient progress to warrant continuing them. The department also recommended the court terminate reunification services for Malachi's mother because she was not prepared to assume custody of him and for Dustin's mother because she had not participated in her services or attempted to visit Dustin and her whereabouts were unknown.

Matthew challenged the department's recommendations at a contested 12-month review hearing conducted in March 2014. The juvenile court granted county counsel's request to attach copies of certain documents to the department's report, including two negative test results from samples collected from Matthew in December 2013, one a hair follicle analysis for drugs from Omega Laboratories and the other a drug and alcohol analysis from Medtox Laboratories, Inc.

Social worker Hillary Leroux testified Matthew's therapist told her in a telephone conversation in January 2014 that Matthew continued to attend counseling, was becoming more receptive, but was still resistant. Leroux did not believe Matthew could reunify with Dustin and Malachi by the 18-month review hearing in May 2014 because

he had not even progressed to the point that the providers could estimate completion dates for him.

Matthew testified he participated in ASI for seven weeks and learned to “remove [himself] from active addiction” and people who might cause him to engage in “that lifestyle.” He said he last used methamphetamine in November 2012 and alcohol in September 2012 and was not struggling to abstain from using them. He attended AA/NA meetings four times a week and considered himself in recovery.

Matthew also testified that he benefited from his therapy sessions in that he learned tools to better manage his anger. He said he did not believe he needed any further therapy and, at his last session, his therapist told him he was finished and did not need to return. He also testified he did not accept the psychologist’s diagnosis and believed it was a deliberate attempt to portray him as an angry person.

Following testimony, Matthew’s attorney argued the department failed to provide him reasonable services by refusing to allow him to drug test at an alternate site and not referring him for substance abuse treatment after October 2013. Dustin’s mother’s attorney objected to the termination of her reunification services and Malachi’s mother’s attorney stated the mother was in favor of the proposal to leave Malachi in the care of his paternal grandparents.

At the conclusion of the hearing, the juvenile court found the parents were provided reasonable services and there was not a substantial likelihood Dustin and Malachi could be returned to parental custody by the 18-month review hearing. Consequently, the juvenile court terminated reunification services and set a section 366.26 hearing. This petition ensued.²

² Dustin and Malachi’s mothers did not file writ petitions.

DISCUSSION

Matthew contends the juvenile court erred in finding he was provided reasonable services and lists five failures on the part of the department that he claims support his contention: (1) the department failed to provide him a referral to an outpatient treatment program after October 2013; (2) the department failed to provide a written report to the court regarding his progress in mental health therapy; (3) the department failed to pay for him to participate in random drug testing at any facility other than Avertest; (4) the department waited until the day of the contested hearing to provide the court with the results of a hair follicle test performed in December 2013; and (5) the department waited until the day of the contested hearing to provide the court with the results of a second drug test performed in December 2013 that included testing for alcohol.

Matthew's assertions listed above are factually supported by the record, however, they do not undermine the juvenile court's reasonable services finding.

A reasonable services finding implies that the services ordered were specifically chosen to address the problems that required the child's removal from parental custody and that the department acted in good faith to assist the parent in accessing and utilizing those services. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) A parent who believes the specific services chosen are inappropriate can either raise the issue before the juvenile court by filing a petition under section 388 asking the court to change or modify its prior order or raise it before this court on appeal from the dispositional hearing. Further, a parent who believes the department's efforts to assist are inadequate can raise the issue on appeal from the hearing at which the juvenile court made the reasonable services finding.

In this case, Matthew tested positive for alcohol and methamphetamine and the results for alcohol were high. Consequently, the department made outpatient substance abuse treatment and random drug and alcohol testing a part of his services plan and referred Matthew to Avertest, the county-approved testing site. The problem arose when

Matthew refused to undergo testing there and was resistant to substance abuse treatment. By the six-month review hearing, Matthew was not testing and, as a result, he was not participating in substance abuse treatment. Yet, Matthew did not petition the juvenile court to remove the random analysis requirement or provide him an alternative testing site. Nor did he appeal from the juvenile court's finding that the department provided him reasonable services at the six-month review hearing. Instead, he sought testing on his own through independent laboratories and presented the negative results to the social worker. Matthew's status was essentially the same going into the 12-month review hearing except that he was participating in individual therapy.

A parent challenging the juvenile court's reasonable services finding bears the burden of demonstrating error. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) Our role is to determine whether substantial evidence supports the juvenile court's finding. In doing so, we view the evidence in a light most favorable to the respondent, indulging all legitimate and reasonable inferences to uphold the verdict. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If substantial evidence supports the juvenile court's finding, we will not disturb it. (*Ibid.*) Thus, to prevail on this petition, Matthew must show the juvenile court's finding that the department made reasonable efforts to facilitate reunification services is not supported by substantial evidence. We conclude he has failed to demonstrate error.

The department facilitated Matthew's requirement to submit to drug and alcohol testing by referring him to the county-approved testing site. We conclude the department's referral to its approved testing site was reasonable and Matthew fails to demonstrate otherwise. As the juvenile court stated, "I don't know that there's anything that requires the [d]epartment to make specific contract arrangements or to make it available that parents test at any and all facilities within the State of California." We concur.

The department also facilitated Matthew's entry into outpatient substance abuse treatment at Fresno New Connections and ASI, however, Matthew refused to test and he was uncooperative and threatening. There was no reason for the department to refer him again until he could demonstrate his willingness to comply. Therefore, it was not unreasonable when the department in October 2013 required him to test and attend AA/NA meetings for 30 consecutive days. Nor was it unreasonable for the department not to refer him for substance abuse treatment when he continually refused to test.

As for Matthew's contentions the department acted unreasonably by not submitting a written status report from his therapist for the hearing, we disagree. The department is required to advise the juvenile court of the parent's progress in completing his or her reunification services. (§ 366.21, subd. (f).) In this case, the department addressed Matthew's progress in therapy in its 12-month status review and Leroux testified as to his progress. We are unaware of any authority that requires the department to submit a separate report from a service provider and Matthew has not cited this court to any such authority. Further, nothing precluded Matthew from obtaining a written report from his therapist and submitting it to the court.

Finally, Matthew faults the department for not submitting his December 2013 test results until the 12-month review hearing but does not show how that was unreasonable. In fact, he does not even show that the department had the test results before the hearing. According to the department in its 12-month status review, Matthew promised to give Leroux a copy of the results but had not done so by the time the department finalized its report in December 2013. Further, even if the department delayed in providing the results to the court, that act alone would not render the department's efforts to help Matthew unreasonable in the overall scheme.

We conclude substantial evidence supports the juvenile court's finding the department provided Matthew reasonable services.

DISPOSITION

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