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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ANGEL S., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

RICHARD S.,

Defendant and Appellant.

F070474

(Super. Ct. No. 516356)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Susan M. O'Brien, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

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Father Richard S. (father) appeals from a juvenile court order terminating his parental rights regarding his son Angel. (Welf. & Inst. Code, § 366.26.¹) Father's sole contention is that the juvenile court violated his due process rights by failing to provide him transportation to attend visits with Angel after reunification services were terminated. We affirm the order.

FACTS AND PROCEDURAL HISTORY

When Angel S. was born in April of 2012, his mother, Amanda C. (mother), was 17 years old.² While pregnant, mother did not follow through on adequate prenatal care. She tested positive for methamphetamine a month before Angel's birth and positive for marijuana at the time of his birth. Angel was diagnosed shortly after birth with moderate-to-severe, grade-four hydronephrosis and multiple variable-sized cortical cysts of the left kidney. Father was interviewed a week after Angel's birth and admitted that he smoked both marijuana and methamphetamine with mother.

Father and mother were offered voluntary family maintenance services to assist them in obtaining substance-abuse treatment and in following up on medical treatment for Angel; however, neither father nor mother were compliant with medical appointments and lab work for Angel, even though transportation assistance was offered and/or provided. Father and mother canceled numerous appointments, at times stating they wanted to go on their own, but then failed to attend the appointments. Father told the social worker he was doing the best he could, but that it was too much to handle. He claimed transportation was an issue but admitted he and mother had been given bus passes. Father did not begin taking drug and alcohol classes until three months after

¹Further statutory references are to the Welfare and Institutions Code unless otherwise stated.

²Mother is not a party to this appeal.

Angel was born. A protective-custody warrant was obtained and Angel detained and placed in foster care.

Detention

A section 300 petition was filed alleging father and mother failed to provide the necessary medical treatment for Angel and that both had substance-abuse issues. The report prepared in anticipation of the detention hearing stated that father had previously been offered voluntary services for a child with a different mother in 2010 and, while that mother had completed the service plan, father had not. Father's criminal history revealed multiple convictions for drug-related offenses, as well as theft, and that he had participated in two drug-deferment programs, one of which was terminated unsuccessfully in 2009.

Both mother and father appeared at the detention hearing on July 9, 2012. A guardian ad litem was appointed for mother because she was a minor. Angel was ordered detained.

Jurisdiction/Disposition

The report prepared in anticipation of jurisdiction/disposition stated that both father and mother had extensive child welfare histories from their own childhoods. Father had been a dependent of the court from 2001 until 2003 but was on runaway status and believed to have returned to live with his parents.

Father had been receiving Social Security insurance since he was a minor due to having ADHD and multiple personality disorder. He also claimed to have suffered from leukemia since he was an infant. Father had had two daughters who were both removed from his custody and later died while in foster care. Father was unable to provide the girls' last names because he could not remember their mothers' names. Father also had a son and was possibly the father of another daughter.

At the time of the report, father was sometimes living with his parents but did not have a stable residence. He had begun outpatient substance-abuse treatment, although he also continued to test positive for methamphetamine and marijuana.

A letter from Angel's pediatrician was attached to the report that stated Angel had missed five appointments between the end of April and mid-June of 2012. Angel's health, however, had not been negatively impacted as yet.

At the jurisdiction/disposition hearing on August 24, 2012, the juvenile court found the allegations of the petition true. Angel was declared a dependent of the court and removed from father and mother's custody. The Stanislaus County Community Services Agency (agency) was ordered to involve mother and father in Angel's medical appointments and to assist in transportation.

Interim review

A three-month interim review report stated that father had entered, but left, a residential treatment program at the end of August 2012. He re-entered the residential program in the middle of September 2012, and then entered a clean-and-sober living facility in the middle of November 2012. Father was visiting Angel weekly. Because he was at a residential drug-treatment program, a county driver transported him to the visits. Mother had not yet begun services.

Six-month review

The six-month status review report recommended termination of services to mother as she had not yet begun any of her programs and had not visited Angel. The report recommended that services for father be continued.

The report stated that father had had some issues at the clean-and-sober living facility with defiance, a negative attitude, and failure to attend AA/NA meetings. But the program director opined that, if father complied with the rules, he could soon transition to the father-and-child home. Father had completed 8 of 10 group parenting sessions and had been assigned an individual counselor. Father continued to visit Angel regularly and

was making progress in feeding him. Because the foster parents voiced concern that Angel was developmentally behind, he was referred to an early-start program for evaluation.

At the six-month review hearing on March 5, 2013, services were terminated for mother. They were continued for father, and the social worker was given discretion to implement overnight and weekend visits for father and Angel if and when appropriate.

12-month review

The 12-month review report recommended that services continue for father. The report stated that father was involved in another dependency case in which he was the presumed father of another child, so services were joined for the two cases.

Father had completed his parenting course, including the individual sessions. He had “above-average attendance” and expressed a commitment to meeting Angel’s medical needs. He continued, however, to have issues with substance-abuse treatment, refusing to cooperate in residential treatment, being discharged, and then re-entering residential treatment between April and July of 2013. Because he was living with other active Child Protective Services clients, he could not yet have extended visits with Angel and he had not yet taken responsibility for making or arranging Angel’s medical appointments. In August of 2013, the substance-abuse treatment program reported that father was forging AA/NA attendance slips.

Angel was receiving developmental services, including infant development, occupational therapy, and feeding consultation. In addition to his kidney problem, Angel’s medical provider was concerned with his lack of growth and feeding issues.

At the 12-month review hearing on August 19, 2013, the juvenile court granted father six additional months of services.

18-month review

The 18-month status review report recommended that services for father be terminated and a section 366.26 hearing be set to establish a plan of adoption for Angel.

Angel, who had been in the same foster home since his initial placement in July of 2012, continued to receive developmental services, with the addition of speech therapy, and his eating was slowly improving.

Father was now reported to be homeless. In October of 2013, father was reported to have been involved in a verbal and physical altercation with his ex-girlfriend's 16-year-old son, whom father went to see to "straighten[] him out." The social worker reported that this incident gave the agency concern for the well-being of father's children if they were placed in his full-time care. It was also brought to the social worker's attention that father had been associating with the woman who was the perpetrator of abuse against father's older son. Father was asked to leave the clean-and-sober home at the beginning of December 2013. Since that time, father failed to produce evidence of AA/NA attendance.

In October of 2013, while still living in the clean-and-sober home, father had had a day-long visit with Angel. During that visit, father was seen with both Angel and his older son most of the day at a downtown bus station. It was reported that father was not adequately supervising either child.

Father continued not to understand Angel's medical and developmental issues, especially his dietary restrictions. Despite being told that Angel had severe difficulty swallowing, father fed him French fries, cookies, and gummy snacks. The staff at the clean-and-sober facility reported that father had never mentioned that Angel had any special dietary or medical needs. Father was not able to articulate what Angel's medical concerns were. Father repeatedly had to be reminded of the dates and times for Angel's appointments.

At the contested 18-month review hearing held on March 10, 2014, father testified that the boy with whom he had had the altercation was his "son." Father denied he had gone to see him to "straighten[] him out," but instead had come across him by chance and was pulled into the altercation in self-defense.

Father testified that, if Angel lived with him, he would take him to his medical appointments, although on cross-examination he stated he had no medical or developmental concerns for Angel. He claimed the only reason he was asked to leave the clean-and-sober facility was the incident involving his older son.

The juvenile court terminated services for father and set a section 366.26 termination hearing for July 14, 2014. Father requested that he be able to keep the current once-a-week visitation schedule, but the juvenile court changed it to twice-monthly visits.

Father filed a Notice of Intent to File Writ Petition, but he did not follow through by filing a petition.

Section 366.26

The section 366.26 report recommended that father's parental rights be terminated and adoption established as Angel's permanent plan. By this time, Angel had received a tentative diagnosis for Autism. He was receiving home help five times a week for speech and physical and occupational therapy. The caregivers with whom Angel had lived since July of 2012 wished to adopt him and had an approved home study.

According to the report, father had not visited Angel since the last court hearing in March of 2014. Because father did not appear at the scheduled visit on April 4, 2014, he was informed that he needed to come to the agency an hour early prior to the next visit, but he failed to attend that one as well. A new social worker spoke to father on April 30, 2014. Father claimed he had "transportation issues" and was not sure when the visits were scheduled. Father was told the visits were scheduled for the first and third Tuesday of each month, but father did not attend the visits. On June 6, 2014, the social worker left a message for father asking him to call, but he failed to do so.

The section 366.26 hearing convened July 14, 2014. Counsel for father requested that the agency provide bus passes for father to attend visits. The juvenile court denied the request, stating that the agency was no longer required to provide transportation once

reunification services were terminated. Because notice to mother for the July 14, 2014, hearing was defective, the contested section 366.26 hearing was continued to September 30, 2014.

At the September 30, 2014, hearing, counsel for father made an offer of proof that, if called, father would testify that the reason he did not have regular and consistent visits with Angel was due to the fact that he tried to call the agency but nobody returned his calls to set up a visit. Counsel did not make the argument at that point that father was in need of transportation assistance. The juvenile court then brought up the issue of transportation, noting that, in the section 366.26 report, father had said he had had no way to attend the visits because he was not provided a ride or bus passes. Counsel for the agency was asked to comment.

The agency then made an offer of proof that, if the social worker were called, she would testify that she was assigned the case in April of 2014; that father had called her once and left a voice message, but returned calls to father went unanswered; and that father had not visited Angel since prior to termination of reunification services.

When father's counsel questioned how the social worker knew father had requested bus passes (as indicated in the section 366.26 report), counsel for the agency stated that, according to the agency's notes, father's counsel had asked for bus passes at the end of the March 10, 2014, hearing, but that the juvenile court denied the request because services were terminated.³ The offer of proof was accepted.

Father testified that he had not visited Angel since March of 2014 because, when he spoke to the social worker shortly after services were terminated, she told him she would not provide him with bus passes or other transportation. According to father, he called the social worker "[m]ore than twice," but acknowledged he last called her in late

³This is not reflected in the reporter's transcript of March 10, 2014. It is unknown if it occurred off the record on that date or if there was confusion with the July 14, 2014 request, which is reflected in the reporter's transcript.

March of 2014, and he did not go down to the agency because he did not have transportation.

In terminating father's parental rights, the juvenile court stated that, while it was not easy to get to the agency, bus transportation was available and, "if you really want to see your child, you can recycle or something and get enough money to take the bus once a month to the [agency]." The juvenile court found that father had not regularly visited Angel and had failed to prove that it would be detrimental to Angel to terminate father's parental rights.

The juvenile court did ask father if he wished to have a "final visit" with Angel. Father replied that he would and that he was available "[w]henver you need me." When asked if father had a date that he could get to the agency for the visit, father said he could go "today if you want it." The juvenile court then suggested the following Wednesday and father agreed.

DISCUSSION

Father claims the juvenile court erred in failing to require the agency to provide transportation assistance for visitation after his reunification services were terminated. He argues this omission violated his due process interest in parenting Angel and made it impossible for him to prove the exception to adoption in section 366.26, subdivision (c)(1)(B)(i) (the parental-relationship exception). A due process claim presents a question of law, so we review father's allegation de novo. (*In re H.K.* (2013) 217 Cal.App.4th 1422; *In re Angel B.* (2002) 97 Cal.App.4th 454.) Though we question whether or not father has forfeited the issue, we nonetheless find no merit to his contention.

As discussed above, the question as to when father first requested assistance with transportation is in conflict. The record of the March 10, 2014 hearing, in which reunification services were terminated, does not state that father asked for transportation assistance at that time. There is evidence in the record that father asked for and was

denied transportation assistance at the time of the scheduled July 14, 2014, section 366.26 hearing. However, at the rescheduled section 366.26 hearing held September 30, 2014, counsel for the agency appeared to admit that father made the request at the March 10, 2014 hearing, and father's counsel accepted that offer of proof.

If father requested and was denied transportation assistance at the time of the March 10, 2014, hearing in which his reunification services were terminated and the section 366.26 hearing set, he was required to file a timely writ petition with this court in order to challenge that ruling. (§ 366.26, subd. (l)(1)(A) & (C); Cal. Rules of Court, rule 8.450.) Although father filed a Notice of Intent to File Writ Petition, he failed to file the writ and it was dismissed as abandoned. Father's failure to file a writ petition "preclude[s] subsequent review by appeal of the findings and orders made pursuant to this section." (§ 366.26, subd. (l)(2).)

If father first requested transportation assistance following termination of reunification services at the July 14, 2014, hearing set for the section 366.26 hearing (which was then rescheduled), father failed to file an appeal from that order in the requisite 60 days (Cal. Rules of Court, rule 8.406), and the issue has been forfeited.

In any event, even if we address the issue on the merits, father's contention fails. To prevail on his due process claim, father must show he had a due process liberty interest in and "entitlement" to the requested transportation assistance. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1078-1079.) He has not done so.

It is significant that father's complaint relates only to the period after reunification services were terminated. Before termination of reunification services, the state has an affirmative obligation to facilitate family reunification. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) Reunification services must include visitation between parent and child "as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).) Accordingly, during the reunification period, "[v]isitation between a

dependent child and his or her parents is an essential component of a reunification plan” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.)

In contrast, “[a]fter the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability’ [citation]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; accord, *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Post-reunification, the juvenile court does not need to consider the possibility of family reunification unless the parent affirmatively demonstrates changed circumstances sufficient to revive the issue. (*In re Marilyn H., supra*, at p. 309.) After reunification services are terminated, the juvenile court must “*permit* the parent ... to visit the child” unless visitation would be detrimental to the child (§ 366.21, subd. (h), italics added) so that the parent has a meaningful opportunity to demonstrate changed circumstances in support of a petition pursuant to section 388 (*In re Marilyn H., supra*, at p. 309), or to establish the parental-relationship exception of section 366.26, subdivision (c)(1)(B)(i). (See *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504-1505.) Here, father had visitation rights, but nothing in section 366.21, subdivision (h), imposes a mandatory duty on the juvenile court or the agency to facilitate post-reunification visitation to the extent required during the reunification period.

In the final analysis, parents do “have the right of visitation from the fact of parenthood. [Citations.] ‘The parental right to have children and to the custody of those children is included among the liberties protected by the due process clause.’” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756.) However, the time to take advantage of the due process “safeguards built into the dependency scheme” (*In re Hunter S., supra*, 142 Cal.App.4th at p. 1504), and the time to establish the factors contained in the exception to adoption of section 366.26, subdivision (c)(1)(A), occurred from Angel’s birth until reunification services were terminated. Father has failed to establish a violation of his right to due process.

DISPOSITION

The order is affirmed.

Smith, J.

WE CONCUR:

Cornell, Acting P.J.

Gomes, J.