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

DANIEL F.,

Petitioner,

v.

THE SUPERIOR COURT OF TUOLUMNE
COUNTY,

Respondent;

TUOLUMNE COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F072437

(Tuolumne Super. Ct.
Nos. JV7454 & JV7455)

OPINION

THE COURT*

ORIGINAL PROCEEDING; petition for extraordinary writ review. Donald I. Segerstrom, Jr., Judge.

Daniel F., in pro. per., for Petitioner.

No appearance for Respondent.

Sara Carrillo, County Counsel, and Cody M. Nesper, Deputy County Counsel, for Real Party in Interest.

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* Before Poochigian, Acting P.J., Detjen, J. and Smith, J.

Daniel F., in propria persona, seeks extraordinary writ review of the juvenile court's orders issued at a contested 18-month review hearing (Welf. & Inst. Code, § 366.22)¹ terminating his reunification services and setting a section 366.26 hearing as to his daughters, P.W. and D.F. He contends the juvenile court should have continued his reunification services because he made substantial progress in his case plan. He also contends he was unable to effectively address the issues at the hearing because his thoughts are disorganized as the result of two head injuries. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Daniel and L.F. (mother) are the parents of P.W. and D.F., the subjects of this writ petition.² Both children have significant special needs. In March 2014, the Tuolumne County Department of Social Services (department) took then five-year-old P.W. and three-year-old D.F. into protective custody after mother struck P.W., causing bruising on her buttocks. The department placed the sisters together in foster care.

Daniel denied knowing that mother injured P.W. He was, however, aware that she was severely punishing the children and he did not intervene. A week after the children were removed, Daniel forced mother to leave the family home. He was angry, believing her responsible for the children's removal.

Daniel told a social worker he functioned at an eighth grade level as the result of two head traumas he sustained at the ages of nine and 19. He was diagnosed with several disorders, including a cognitive disorder, and chronic pain for which he used marijuana.

In April 2014, the juvenile court exercised its dependency jurisdiction over the children and ordered reunification services for Daniel and mother. Daniel was ordered to participate in mental health counseling, complete a parenting program, and comply with

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

² Daniel is D.F.'s presumed father and P.W.'s stepfather. However, he was elevated to P.W.'s presumed father during the course of these proceedings. The whereabouts of P.W.'s biological father were unknown.

random drug testing. The juvenile court continued their reunification services to the 12-month review hearing.

In February 2015, Daniel participated in a psychological evaluation to determine if he had a mental health diagnosis and if he could succeed in becoming a safe parent for the children. The psychologist reported that Daniel exhibited grandiosity and believed he had an exceptionally high level of skills. At the same time, he was aware that he had poor impulse control and difficulty managing his anger. However, he did not believe he needed therapy and was reluctant to learn or develop new skills to help him better manage his impulses. Rather, he attributed his lack of control to his head injuries and claimed he only had “2% control” over his emotions.

The psychologist opined that Daniel’s head injuries directly affected his functioning and recommended that he participate in individual therapy to address any cognitive changes and learn coping skills to manage his anger and emotions. If Daniel declined to do so, the psychologist cautioned, he would continue to place the children at a high risk for maltreatment.

The same psychologist evaluated mother and diagnosed her as having a persistent depressive disorder with traits of a dependent personality disorder. The psychologist opined that she could benefit from reunification services if she could develop insight into her mental health symptoms.

The psychologist reported that if Daniel and mother discontinued therapeutic services, it would be a sign that they were not making progress.

By September 2015, the time set for the 18-month review hearing, Daniel had participated in the majority of his services and was enjoying regular visitation with the children who were excited to see him. However, he was not motivated to participate in therapy and claimed not to need it. His motivation increased for a while in April 2015 after he became upset after seeing mother in a romantic embrace with another man and totaled his car. He was not injured but nearly hit a pedestrian. Daniel acknowledged his

emotions got the best of him, causing him to place his own safety at risk. He expressed a need to work on gaining better control over his emotions. However, the following June, he got upset when his social worker refused to authorize him overnight visitation to accommodate his work schedule. He texted his therapist that he was “done getting raped by Child Welfare,” “Giving Up” and “put a bullet in my head or get my girls back.” He said that if the department did not return the children to his custody by June 12, 2015, the department could adopt the children. After Daniel’s therapist relayed her concern to the department, Daniel stopped attending therapy sessions, stating he did not want to see another therapist, unless the therapist was “neurologically certified.”

In its report for the 18-month review hearing, the department recommended the juvenile court terminate Daniel and mother’s reunification services and set a section 366.26 hearing. The department did not believe they had made sufficient progress to safely parent the children.

In September 2015, the juvenile court conducted a contested 18-month review hearing. Daniel testified and was questioned about the text messages to his therapist and his car accident. He explained that when the social worker told him he could not have the children overnight, it impacted his job which caused him stress. When he becomes stressed, he also becomes anxious. He wrote the text messages to his therapist out of frustration. He said he wrecked his car as part of an emotional response.

Daniel further testified that mother was the stressor in his life and that his mental state improved once she left. He understood that the children would cause stress but believed he had the tools to cope with that stress. He did not believe he needed individual therapy but would benefit from seeing a neurological psychologist, someone specifically trained in dealing with neurologically based mental health disorders and from parent/child interaction therapy.

At the conclusion of the hearing, the juvenile court terminated Daniel and mother’s reunification services after finding they were provided reasonable services but

did not make substantial and consistent progress. The court also found there was not a substantial probability the children could be returned to their custody after another period of reunification services and that there were no exceptional circumstances to justify continued services. The court set a section 366.26 hearing to implement a permanent plan.

This petition ensued.

DISCUSSION

Section 366.22, subdivision (b) governs the 18-month review hearing and sets forth the *only* circumstances permitting extending services for another six months. It provides, in relevant part:

“If the child is not returned to a parent ... at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent ... who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child’s return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent”

Since Daniel was not a resident of a residential substance abuse treatment program and had not been incarcerated, institutionalized or in the custody of the United States Department of Homeland Security, he was not eligible for an extension of services under section 366.22, subdivision (b).

We are nevertheless mindful that some appellate courts have upheld a juvenile court’s decision to extend reunification services beyond the 18-month review hearing under section 352 if it would serve the best interest of the child.³ However, those cases

³ Section 352, subdivision (a) authorizes the juvenile court to continue “any hearing ... beyond the time limit within which the hearing is otherwise required to be

involved an external factor that prevented the parent from participating in the case plan. (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388.)

Here, there is no evidence that anything, including Daniel's head injuries, prevented him from participating in his case plan. On the contrary, the psychologist deemed him capable of benefitting from reunification services and the department reported his near completion of his services plan. Further, to the extent Daniel argues that his head injuries prevented him from understanding and participating in the contested hearing, the record does not support his claim. According to the reporter's transcript of the hearing, Daniel testified at some length and gave meaningful responses when examined by the attorneys and questioned by the juvenile court.

As this case exemplifies, the juvenile court is constrained from continuing reunification services beyond the 18-month review hearing except in unique circumstances not present here. Consequently, we find no error on this record and deny the petition.

DISPOSITION

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

held, provided that no continuance shall be granted that is contrary to the interest of the minor." The statute further provides that "[c]ontinuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance."