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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

M.S.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Real Party in Interest.

G046244

(Super. Ct. No. DP021141)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Jane Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Juvenile Defenders and Bryan Patridge for Petitioner.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Real Party in Interest.

* * *

M. S., father of minor (now nine months old), seeks relief from the juvenile court's order terminating reunification services and scheduling a permanency hearing pursuant to Welfare and Institutions Code section 366.26.¹ Father contends the court erred in finding he was offered reasonable reunification services. Because substantial evidence supports the court's finding that Orange County Social Services Agency (SSA) offered him reasonable services, we deny father's petition for a writ of mandate.

FACTS

Detention, Jurisdiction, and Disposition

Upon his birth in April 2011, minor tested positive for methamphetamine and amphetamine.² Mother denied using drugs (other than Sudafed and aspirin) during her pregnancy, but admitted she used marijuana in July 2010 and heroin in November 2009.³ Newborn minor was taken into protective custody.

At the detention hearing, the court found father is minor's presumed father. The court vested temporary custody of minor with SSA. Minor was placed with the

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

² All dates refer to the year 2011 unless otherwise stated.

³ Because mother is not the petitioner, our factual recitation focuses primarily on father.

parents of a long-time friend of mother. Mother and father were granted daily supervised visitation of three hours with minor.

In a section 300 petition filed in April and amended in June, SSA alleged mother and father had failed or were unable to protect and to provide regular care for minor. (§ 300, subd. (b).) SSA alleged, inter alia, (1) minor tested positive at birth for methamphetamine and amphetamine, (2) mother had an “unresolved substance abuse history dating back to at least November 2009,” and (3) father had an unresolved history of substance abuse.

In an interview with SSA, father opined that minor tested positive for methamphetamine because, during the pregnancy, parents lived in a two-bedroom hotel room with a co-resident who often smoked methamphetamine. Father, who was 21 years old at the time of the interview, said he (father) had been sober for about nine to 10 days. Father claimed to have completed a 90-day drug treatment program in February 2010 and to have rarely used drugs since then.

SSA’s case plan for father included the following objectives: (1) stay sober and comply with drug tests; (2) maintain relationship with minor by complying with visitation plan; and (3) inform the social worker of pertinent changes such as new address and phone number within 48 hours of the change. Father’s responsibilities were: (1) to successfully complete an SSA-approved drug treatment program, including random testing; (2) to participate in Narcotics/Alcoholics Anonymous; (3) to successfully complete an SSA-approved parenting class; and (4) to participate in therapy and counseling.

From mid-May to early June, father tested negative for drugs five times and positive for marijuana twice, and missed a test once (treated as a positive test result). In June, parents withdrew their applications to participate in dependency drug court.

At the jurisdictional hearing on June 9, the court declared minor a dependent child, ordered custody of him vested in SSA, and approved the recommended case plan and visitation plan.

Six-Month Review Period

In July, after missing two scheduled meetings with the social worker, father dropped in on her. During that meeting, father signed his case plan and confirmed he had already received referrals from his previous social worker, including a list of approved parenting courses. The social worker gave father an additional referral to Social Services Resource Support. The social worker read father his case plan and discussed with him each objective and each responsibility.

At the July meeting, father told the social worker he had missed his drug treatment courses the previous week because the courses conflicted with his work schedule, and that he had missed some drug tests because he forgot about them or called late in the day after he was already at work. The social worker suggested that father schedule his drug tests for mornings before he went to work. Father told the social worker he was not visiting minor due to his work schedule. Again, the social worker suggested father visit his son in the morning before he went to work. Father reported he had tested positive for amphetamines on July 2 because he was getting a tattoo and “got ‘stressed out and broke down in tears.’” Father said he hated Narcotics Anonymous, but agreed to attend the meetings.

In August, the social worker phoned father because he had missed another drug test. Father spoke in a “slow slurred voice” and was hard to understand. He scheduled a meeting with the social worker to discuss relinquishing his parental rights, but failed to show up for the meeting.

After doing some random drug testing from mid-May to mid-July (with three positive results), father missed all his scheduled drug tests in August through November. In total, he missed 21 out of 34 drug tests.

Minor, living with his caretakers, was a happy baby with no developmental problems. Because his current caretakers were not interested in keeping him long term, SSA decided to place minor with father's aunt and her husband (the great aunt and uncle). The great aunt and uncle were willing to adopt minor if reunification failed. A home assessment study had approved their home for the baby's placement. The great aunt contacted minor's caretaker every day about his well-being.

Father stated that if reunification failed, he wanted the great aunt to adopt minor. At one point, father and mother had said they could not provide for minor's basic needs and felt he would have a better life with the great aunt. Several times father and mother had expressed their desire to relinquish parental rights, only to change their minds.

After August, father's whereabouts became unknown to SSA. The great aunt reported father had moved to Northern California to reside with his parents who were "meth users." Father had not informed the social worker of his change in address and telephone number. To the social worker's knowledge, father had not participated in counseling, parenting education, or a 12-step program. Father had not provided proof of any such participation. He appeared to have made no progress in his case plan.

In November, father visited minor for about 15 minutes at the caretakers' home for the first time in two months. Thereafter, father visited minor almost daily for about two weeks.

On December 3, when father arrived to visit the minor, he happened to run into the social worker who was leaving. Father gave the social worker his address in San Jose, California, where he was living with his father. Father said he planned "to attend counseling, an outpatient program, submit to random drug testing and attend a Twelve-

Step Program” at a community center. The social worker asked father why he had previously stopped working on his case plan. Father replied: “[H]e was ‘busy with work,’ distracted with the child’s mother, quit his job, and ‘moved up North to get away from [mother].’ [Father] stated that he had smoked marijuana once and used methamphetamine once since the last time he had met with the [social worker in July]. [Father] stated that he was ready to remain sober, enroll in a substance abuse treatment center, and that he still wanted to reunify with the child. [Father] stated that he was not in agreement that [the great] aunt and uncle adopt the child.” Father preferred for the great aunt and uncle to obtain temporary guardianship of minor. But father did agree to placement of minor with the great aunt and uncle.

Father later told the social worker that he was on a waiting list for the program at the community center. The social worker followed up with the community center program to confirm father did not need a referral from SSA. Father missed all his drug tests in November.

Minor was placed with the great aunt and uncle. The great aunt preferred that father visit only twice a week for two hours, rather than every day. The great uncle reported minor “had made a ‘wonderful transition’” into their home.

In SSA’s status review report for the six-month hearing, the agency recommended terminating reunification services for parents and scheduling a section 366.26 hearing.

At the six-month review hearing in December, the court found that father, until just recently, had not been “involved in a meaningful way in any drug treatment program.” Father had missed some drug tests, once because he was “stressed out’ and “getting tattoos,” which did not “seem to be a good reason for missing a test.” In light of the statute and minor’s age (then eight months old), the court found that returning him to parents would create a substantial risk of detriment to him and that father had been provided or offered reasonable services. The court found father had made minimal

progress in alleviating or mitigating the causes necessitating minor's detention and failed to participate regularly and make substantive progress in his case plan. Accordingly, the court ordered a section 366.26 hearing to be held within 120 days. The court adopted SSA's recommendations, which included terminating father's services.

DISCUSSION

Father contends substantial evidence does not support the court's finding he received reasonable services. He argues SSA failed to refer him to an *inpatient* substance abuse treatment program and made no efforts to help him ameliorate the problems that led to minor's detention. He relies on his July meeting with the social worker, when he told her his work schedule was interfering with his attendance in the drug treatment program and that he had a relapse because "he had some kind of breakdown" He also notes he told her "that [Narcotics Anonymous] meetings were [not] helpful for him."

"[W]henver a child is removed from a parent's . . . custody, the juvenile court shall order the social worker to provide child welfare services to the child and the" parents. (§ 361.5, subd. (a).) At the six-month review hearing, the court shall order the return of the child to the parent's physical custody unless such return "would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment." (§ 366.21, subd. (e).) The parent's failure "to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (*Ibid.*) If the child was under age three on the date of removal, and the court finds "the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days," unless "the court finds there is a substantial probability

that the child . . . may be returned to [the] parent . . . within six months or that reasonable services have not been provided” (*Ibid.*)

The sole issue on appeal is whether substantial evidence supports the court’s finding father was offered or provided reasonable reunification services. “In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] ‘If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.’” (*In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1361-1362.) Substantial evidence “‘must be reasonable . . . , credible, and of solid value’ [Citation.] The ultimate determination is whether a *reasonable* trier of fact could have found for the respondent based on the *whole* record.” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

The reasonableness of SSA’s efforts to provide father with visitation services is “judged according to the circumstances” of the case. (*In re Ronell A., supra*, 44 Cal.App.4th at p. 1362.) An agency must try “to provide suitable services, in spite of the difficulties of doing so or the prospects of success.” (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) What is needed is a good faith effort. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) “The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

In reviewing the reasonableness of the services father received, we keep in mind the statutory timeframes relevant to this case. Infants and toddlers have “unique developmental needs” and “moving to permanency more quickly is critical” for them. (*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 612.) Their parents are entitled to a shorter period of reunification services. (*Id.* at p. 610.) For a child under three years of age when removed from the parent’s physical custody, “court-ordered services shall be provided for a period of six months from the dispositional hearing . . . , but no longer than 12 months from the date the child entered foster care” (§ 361.5, subd. (a)(1)(B).) At the time of the trial, minor was barely eight months old.

Contrary to father’s assertions, substantial evidence shows SSA offered him reasonable services. Father simply failed to avail himself of them. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414 [“[r]eunification services are voluntary, and cannot be forced on an unwilling or indifferent parent,” nor must “a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions”].)

In May, at the outset of this case, SSA gave father multiple referrals for services — specifically, for outpatient and residential substance abuse treatment programs, parent education classes, housing and homeless shelter resources, employment assistance, low cost medical and dental care, adult mental health services, family resource centers, and dependency drug court. Father attended a drug treatment program only in July. When father relapsed in July, the social worker gave him counseling and parenting referrals, but no drug treatment referral since father said he was already in a drug treatment program at the Health Care Agency with a therapist named Ti-An. (Father’s opening brief states his relapse resulted from a “breakdown,” but the actual cause was father’s decision to get a tattoo.) Although father expressed his hatred of Narcotics Anonymous, he agreed to attend the meetings and signed his case plan.

As to father's work scheduling conflicts, the social worker advised father to schedule his drug tests and visits with minor for mornings. After July or August, father never contacted the social worker to say he was having trouble attending drug treatment or testing.

As to inpatient substance abuse treatment, the record does not reflect father requested such a referral or expressed a preference for inpatient treatment. (*In re Ronell A.*, *supra*, 44 Cal.App.4th at p. 1365, fn. 6 [parent has duty, with assistance of counsel, "to seek guidance from the juvenile court" if parent feels during the reunification period that services offered are inadequate].) Rather, in July, father participated in an outpatient program, and in December, he expressed his desire to participate in an outpatient program at a community center. Moreover, at the outset of father's case plan in May, SSA provided father referrals for both residential and outpatient drug treatment programs.

As SSA's counsel argued at the six-month review hearing, "While it is true the agency's under an obligation to provide reasonable services to the parent, what is equally true under the law is that the parents are obligated to take advantage of the services that are provided to them." And as the court recognized, SSA's referrals must simply be reasonable, "good ones" — not "perfect or the best possible"; nor must the services be "like[d]" by a parent, as participation in services is often "hard."

In short, substantial evidence supported the court's finding SSA provided father with reasonable reunification services.

DISPOSITION

The petition is denied.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.