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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re VANESSA G. et al., Persons Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

ANTHONY G.,

Defendant and Appellant.

G046981

(Super. Ct. Nos. DP020600,
DP020601)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Richard Y. Lee, Judge. Affirmed.

Shobita Misra, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

Anthony G. (the father) appeals the court's order terminating reunification services as to his teenage daughters Vanessa and Erica.¹ He asserts the court lacked substantial evidence to conclude that he received reasonable services and that returning his daughters to his care would be detrimental. We conclude these arguments lack merit. He also asks this court to continue the 18-month review hearing for six months. Because the father has not demonstrated such a continuance is warranted, we deny his request and affirm the order.

I
FACTS

Detention

In November 2010, L.G. (the mother) and her boyfriend were arrested for burglary at a retail store. The mother had E. in her care at the time of the crime and when she was arrested. Several days later, the Orange County Social Services Agency (SSA) filed a dependency petition pursuant to Welfare and Institutions Code, section 300, subdivision (b),² alleging failure to protect. Specifically as to the father, the petition alleged his whereabouts were unknown and that he had failed to ensure the children's needs were met. It was further alleged there was an active domestic violence restraining order, dated early November 2010 that prevented the father from contacting the mother until 2015. The court detained all three children. The teenagers were placed at Olive Crest.

¹ The third child, E. is not part of this appeal, and is discussed only as relevant. Vanessa will turn 18 in early February 2013. Erica is now 15 years old.

² Subsequent statutory references are to the Welfare and Institutions Code.

Jurisdiction and Disposition

SSA prepared a report prior to the jurisdiction/disposition hearing. Research revealed a history of prior contacts with the family. With respect to the father, in 2006, allegations of general neglect due to domestic violence were substantiated. The father also had a criminal history dating back to 1994, including arrests for carrying a concealed weapon, driving under the influence, domestic violence against the mother, and probation violations. He was also arrested in 2009 for possession of a controlled substance and had failed to complete a court-ordered batterer's program.

Vanessa, age 14 or 15 at the time, reported that she had not seen the father in several months. She told SSA the father had left the home when she was approximately 12 years old, and her mother had told her about domestic violence between the parents, although she had not witnessed it. She recalled one instance when police came to the home, and she said the father had a gun and was acting "crazy." She felt the father should have helped them financially, and did not keep promises. Erica, age 13 at the time, reported her last visit with the father was in the summer of 2010. She did want to visit him, but she felt the father makes promises and breaks them.

The father was contacted by SSA on December 10, 2010 and was interviewed several times thereafter. He lived in Hemet. He stated that he and the mother had divorced in 2008, and denied domestic violence. He had not completed the batterer's program and claimed nothing had happened. He denied there was a restraining order, stating he had never been served. He also denied he had drug or alcohol problems. He was unemployed and received food stamps, but had been denied for SSI benefits. The father stated he had sciatica and back problems as well as depression. He was not taking any medication and lacked health insurance.

With respect to the allegations against the mother, the father said he knew the children were left unsupervised, and they had informed him about the mother's drug use in the bathroom of the motel where they resided. He believed Vanessa had herpes

and described both teenagers as “crazy.” He said he was a “strict parent” and the teenagers had not wanted to remain in his care because he would be sure they were doing what they were supposed to do. He wanted the children to live with him, but did not want to force them.

In December, Erica disclosed that when she was 11 years old, the mother had a boyfriend who exposed himself to her and watched pornography in her presence. The father admitted that Erica had told him what happened, but he did not contact law enforcement. He told the mother and the maternal grandmother and felt they could take care of the situation. This was at least in part because the mother had full custody and because of the restraining order (the existence of which he denied on at least one other occasion).

The social worker believed the issue of drug abuse needed to be explored, based on the father’s 2009 arrest and statements by the maternal grandmother. The father had told the maternal grandmother that he and the mother had used drugs together.

On December 14, 2010 the father signed the initial case plan. The father was referred to parenting education and counseling, drug abuse treatment, and a batterer’s treatment program. He was advised to locate a program in Riverside but to notify SSA if he wanted to attend programs in Orange County. He later chose to enroll in most services in Orange County. He also requested bus passes, which were later provided. SSA arranged monitored visits which began by mid-January. SSA reported that the father was motivated to reunify, willing to participate in services, and to travel long distances for visits.

In January 2011, SSA amended the petition to allege the father’s unresolved drug problem and that both parents had failed to protect the children from the risk of sexual abuse.

In late January, the father completed a parenting class at Olive Crest with positive remarks from the instructor. He was also consistent with his visits. Despite this,

however, he was sometimes inappropriate with the children, telling them on the telephone on one occasion that he was participating in services while the mother was not. He also told Erica that he was not a “weirdo” and was never convicted of child molestation. He also denied ever hitting the mother. SSA informed the girls’ case manager that the father must be told to desist if such remarks recurred in the future.

On February 16, both parents appeared in court for the combined jurisdictional and dispositional hearing. The court found the allegations of the amended petition true and that vesting custody with the parents would be detrimental to the children. The court ordered services for the father, including counseling, a domestic violence program, and parent education classes. The court also ordered the father to drug test for 90 days. If he missed a test, or had a positive or diluted test, he would need to complete outpatient drug treatment. Otherwise, he would only need to test thereafter upon suspicion.

Six-Month Review

As of this review period, all three children had been placed together in a foster home. The father continued to live in Hemet, in a home he shared with six family members. He was unemployed, though he stated he was looking for a job. His sources of income were his mother and the \$200 a month he received in food stamps. He also told SSA he had a suspended driver’s license due to his failure to pay child support, and travelled to Orange County by bus or train to participate in services and visits. The father also said he wanted to find a job before following up on housing referrals.

The father’s therapist reported the father was open and motivated. He missed three sessions, however, and had to be reinstated into his anger management program. Although the father was referred to drug testing near his home, he missed five tests in March and April, claiming he did not have the contact information for the lab. After completing a series of tests, he missed two more tests in May, providing various

excuses, and completed seven tests in June and July. Based on the court's order for drug rehabilitation if the father did not complete the 90 days of testing as instructed, SSA provided him a referral for treatment. The father responded that he had tested for 60 days as ordered and he was "done." He declined to participate in treatment.

The father was authorized for weekly visitation, but he insisted that visiting every other week was sufficient. The children's caretakers reported that the father was appropriate, but cancelled numerous visits. The social worker recognized that the father was travelling a long distance via public transportation, but indicated he was only seeing the children half as much as authorized. SSA evaluated the father's overall cooperation and progress as "moderate."

At the six-month review hearing in August, the court maintained jurisdiction and ordered an additional six months of services. The father was ordered to drug test for an additional 60 days without any missed, positive or diluted tests. If he failed to do so, he would be required to complete outpatient drug treatment.

Twelve-Month Review

SSA reported that after the six-month review hearing, the father began drug testing. His test on August 22 was positive for oxycodone. When asked about the test by the social worker, the father said he had taken some old medication for back pain. When asked to provide the medication prescription or bottle, the father became upset and said the social worker was "constantly throwing these curve balls at me." The father eventually showed the social worker a prescription bottle dated September 11, 2011 (after his positive test) for "Hydroco/APAP."

The social worker and a registered nurse reviewed medical records obtained from a number of different providers. They showed that the father had valid prescriptions for Norco, Vicodin and Motrin, none of which, according to the registered nurse, would have resulted in a positive test for oxycodone. The father had five

additional positive tests for oxycodone in October and November. While he had a number of negative tests, he also missed several tests without excuses. Accordingly, SSA referred the father to a substance abuse treatment program, which he refused to attend.

When the father visited the children, his behavior was appropriate, but on one occasion he told them he did not have money, and asked the foster mother for bus fare. He canceled 10 visits in September and October, and he did not visit at all between mid-October and mid-December.

On October 21, the father had a minor heart attack and was in the hospital for several days. The social worker attempted to contact the father a number of times, but he did not respond until November 8. At that time, he said he wanted to meet the children halfway between their homes for visits. The social worker said that visits needed to accommodate the children's school schedules. The father said he would follow up, but failed to do so. The social worker made several attempts to contact the father.

In January 2012, the court held a contested 12-month review hearing. The father testified that he had completed programs in anger management and parent education as well as counseling. He admitted using methamphetamine in the past "couple years" and said he had used marijuana and cocaine as a "kid," but denied having a current drug problem. He did not believe a drug treatment program was necessary and did not want to complete it. He attributed his positive drug test to taking an old prescription for Percocet (which contains oxycodone). He admitted missing several tests, and was aware of the court's order to complete a treatment program if he missed a test. The social worker testified that she believed the father had a drug problem due to his positive test for oxycodone without a prescription for that medication, and his lack of compliance with testing.

At the hearing's conclusion, the court found that reasonable services had been provided and continued services for an additional six months. The court ordered the

father to continue drug testing and to complete an outpatient drug program. He was also ordered to see a doctor for an assessment and to develop a pain management plan.

Eighteen-Month Review

During this period, the father continued to live in a three bedroom house in Hemet with six relatives, including his sister, who SSA described as a “registered drug offender.” He told the social worker he would not follow up on housing referrals before the children were placed with him. He was still unemployed and his driver’s license was suspended.

The father began an outpatient substance abuse program in February. He missed a number of meetings for various reasons, and by April he had only attended seven out of 30 Narcotics Anonymous/Alcoholics Anonymous meetings. His drug counselor believed he was in denial and that he needed to continue to drug test. He had a prescription for Percocet, and as a result tested positive for oxycodone on a number of occasions. He also missed a number of tests in April and May. In April, he was discharged from the treatment program for excessive absences. His counselor believed the father was abusing prescription drugs, and without completing treatment, his prognosis was poor.

Visits were somewhat inconsistent. At the father’s request, visitation was changed from twice a week for two hours to once a week for four hours. He cancelled his first visit and did not visit until February 22. Visits generally went well, although on two occasions he fell asleep while the children were playing in the other room. Vanessa did not want to attend all the visits with her parents. In April, the social worker authorized two additional hours of visits per week. The father, although he reported moving to Orange County, missed a visit in May. Another visit in mid-May went poorly, with the father walking out of the room after an argument with Erica. Vanessa said Erica was upset because their parents were not doing “everything to get them back.”

Meanwhile, both Erica and Vanessa experienced difficulties. Erica did not return to her foster home in January, and was out of contact for two months until she contacted the father. In February and March, Vanessa ran away twice from her foster home. Both had previously run away, and both girls admitted using drugs and/or alcohol. One month after Erica returned to foster care, she was found with marijuana and a pipe.

The social worker recommended terminating services and implementing a permanent plan. The father had not completed drug testing or treatment successfully, and the social worker believed substance abuse was at the core of the family's issues. Further, she believed the children had run away from foster care at least partly out of frustration with the parents over the delay in reunification. She felt it would be unfair for them to continue to harbor false hope about reunification. She recommended long-term foster care for Vanessa and Erica.

On May 22, the court began a contested 18-month review hearing. The social worker testified about the father's lack of completion of drug treatment and the counselor's opinion as to his prognosis. She was also concerned the father did not have the capacity to address Vanessa and Erica's behavior issues.

The father testified that he was not addicted to narcotics, although he admitted he had used them with some regularity for 10 years. He had also used methamphetamine two years earlier. He claimed he was terminated from his drug treatment program because his Medi-Cal coverage ended, and his excessive absences were due to the lack of coverage. He did not inform SSA about the Medi-Cal issue. He also testified that he wanted the children placed in his care. He stated his daughters could share a bedroom with his niece in the home he shared with relatives in Hemet. He felt he had not been treated fairly by SSA, and the need to drug test was holding him back from employment.

The court heard argument from counsel. Counsel for the children joined in SSA's recommendation. The father's counsel argued that given the father's medical

conditions, his lack of transportation and his distance from the children, he had done all he possibly could. In ruling, the court noted that nearly all dependency cases had a tragic element to them, and this one was no exception. The court believed the father loved his children, but his statement that he would do anything for them was not equal to his actions. The court found the father's residence was unsuitable for the children, and was concerned about the children being placed in a home with the father's sister, who had substance abuse problems. Further, the court expressed concern about the father's progress in his case plan. The father's testimony regarding his termination from the drug treatment program was not credible, and even when father attended, reports showed he was not actively participating. The court determined the father did have an unresolved substance abuse problem, and his lack of understanding as to why the court had ordered drug testing and treatment was another concern.

The court concluded reasonable services had been provided to the parents, and it would be detrimental to place the children with either parent. The court found, as to Vanessa and Erica, that a permanent plan of foster care in a less restrictive setting was most appropriate. The father now appeals.

II

DISCUSSION

Adequacy of Services

During the initial stages of dependency proceedings, family preservation, which necessarily includes family reunification services, is the primary focus. (§§ 319, subd. (b), 361.5, subd. (a); *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.)

“Dependency law requires a “good faith effort” to provide reasonable reunification services ‘responding to the unique needs of each family.’ [Citation.]” (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1039.) “The adequacy of reunification plans and the reasonableness of the SSA’s efforts are judged according to the circumstances of each case. [Citation.]” (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.)

The juvenile court's finding that reunification services were sufficient must be based on clear and convincing evidence. (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) When that finding is challenged on appeal, we review it for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) We therefore view the evidence in the light most favorable to SSA and draw all reasonable inferences to uphold the court's order. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

The father's argument on this point is at best disingenuous and based on a selective reading of the record. He highlights every fact he believes supports his argument, including testimony the trial court flatly rejected, such as the reason he was dismissed from the drug treatment program. He then argues on the one hand that he substantially complied with his case plan, while on the other he claims he was not offered an opportunity to fully comply because his case plan was not tailored to his disabilities. Neither argument is persuasive.

There is more than substantial evidence that the father did not substantially comply with his case plan. He highlights his early progress, such as completing a parenting class and anger management class in 2011. But at the 12-month review, the court once again ordered both drug testing and treatment. The father unquestionably failed to complete treatment, and while the court rejected this argument, he continues to claim on appeal that this was due to his lack of insurance. The court had cause to reject this testimony, including the fact that he never raised this issue with his social worker at any time prior to the 18-month review and his continued denial that any treatment at all was necessary. In any event, we do not reweigh the evidence, as the father apparently asks us to do. We merely conclude that the court's determination that the father's explanation for failing to complete drug treatment was not credible is supported by substantial evidence.

The father's reliance on *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322 (*Jennifer A.*) is misplaced. In that case, there was no evidence the

mother failed to complete court-ordered treatment, and she completed 84 of 95 tests over the course of a year. (*Id.* at pp. 1342-1343.) The father points out this is the same period during which he was required to test. Over the course of a year, however, the father missed numerous tests (even when considering absences the social worker excused), at one point refused to continue testing or to enter treatment, and tested positive for oxycodone once without a valid prescription. When he did enter treatment, he failed to complete it. Unlike the situation in *Jennifer A.*, the father here did not substantially comply — he was not even anywhere close to doing so.

Further, the services provided were more than adequate. “[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.) Substantial evidence demonstrates SSA’s efforts were more than reasonable.

The father claims he had various physical disabilities, with his limitations increasing as the case progressed. He claimed SSA refused to alleviate his hardship in travelling for visits, or to modify his drug testing program. The father was provided bus passes to facilitate his travel, and when he asked to meet for visits halfway, he never followed up on this with the social worker, despite her attempts to do so. Except for his hospitalization (which was brief) and recovery period thereafter, he demonstrated he could travel to Orange County, choosing to participate in services other than drug testing in Orange County rather than closer to his home. If the father felt that additional services were necessary, either he or his counsel should have approached the court or SSA with a request. (*In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1365, fn. 6.)

Further, much of the father’s emphasis on the lack of services is with regard to visits and particularly missed visits, which the court did not rely on in choosing to

terminate services. Rather, the main issues appeared to be the father's failure to confront his substance abuse problem and his lack of an adequate home to live with his daughters. With regard to housing, the father claims SSA never offered him meaningful alternatives. Yet the record shows that the social worker regularly followed up with the father about his lack of appropriate housing, and he declined to make any changes. The father also complains that his random drug testing negatively impacted his job search, without providing any persuasive evidence of this claim. It is a particularly unpersuasive argument given the social worker's history of excusing him from missed drug tests when he had a valid excuse. We conclude the court's finding that reasonable services were provided was supported by substantial evidence.

Substantial Risk of Detriment

At the review hearing, the court must return a child to the custody of the parent "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).) The failure to make substantive progress in the case plan constitutes prima facie evidence of detriment. (*Ibid.*) We review the juvenile court's finding that returning the child to the parent would be detrimental for substantial evidence. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625.) We neither reweigh or express our own judgment on the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

We need not belabor this issue. The father claims that the court's finding of detriment was based on the "appear[ance]" of an unresolved substance abuse problem, which itself was based on the "speculations" of his recovery worker. In fact, the court's findings were based on the father's own testimony regarding his history of drug use, including his admitted lengthy history with prescription painkillers, as well as his counselor's informed opinion. His history of testing was spotty, he failed to complete his

treatment program, and claimed to have no idea testing or treatment was ordered in the first place. These facts constituted substantial evidence from which the court could conclude the father did indeed have an unresolved substance abuse problem, and it was clear he had not complied with his case plan. All of these facts support a finding of detriment.

The father's citation to *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 (*Blanca P.*), in which this court criticized the juvenile court for relying on vague statements regarding "internalize[ing]" parenting lessons, is obviously distinguishable. Among other things, in *Blanca P.*, the abuse allegations were debunked by an expert prior to the court's findings of detriment.³ (*Id.* at pp. 1745-1746.)

Further, the father's home was an inappropriate placement. He lived with six relatives in a three-bedroom house, including a registered drug offender. His plan was to have two teenagers share a bedroom with his niece. The court's conclusion that moving two teenagers with a history of running away to such an environment would be detrimental was supported by more than substantial evidence. It was particularly logical given the father's own substance abuse issues. The court's finding of detriment, therefore, was supported by substantial evidence.

Continuance

The father also claims that because reasonable services were not provided, and an extension of reunification services would not be disruptive to the children's current placement, good cause exists to continue the 18-month review under either section 352 or section 366.22, subdivision (b). As discussed above, we disagree that

³ The father's other case citations are equally inapposite. *Tracy J. v Superior Court* (2012) 202 Cal.App.4th 1415 is simply inapplicable here, as the court's conclusions were not based on a long-ago assessment, but the current state of the case. His reliance on *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789 is also misplaced, given his failure to address issues other than housing.

reasonable services were not provided. Further, the father has not demonstrated that any of the requirements of section 366.22, subdivision (b) have been met. Nor has he shown that any “exceptional circumstances” are present that would otherwise warrant a continuance. We therefore conclude no grounds exist to continue the matter.

III

DISPOSITION

The court’s order is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.