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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GERALD C.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G049767

(Super. Ct. No. DP-023313)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Caryl Lee, Judge. Petition denied.

Lawrence A. Aufill for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

No appearance for the Minor.

* * *

Petitioner, Gerald C., the father of now two-and-a-half-year old William C., challenges orders made at the 12-month review hearing terminating reunification services and setting a permanency hearing under Welfare and Institutions Code section 366.26. He claims real party in interest, Orange County Social Services Agency (SSA), did not provide reasonable services and another six months of services should be ordered, including making up lost visitation.

The evidence supports a finding reasonable services were provided and we deny the petition.

FACTS AND PROCEDURAL HISTORY

In November 2012, after Sara H., the child's mother,¹ reported father had abducted the child,² the police found father and the child in a motel room and took the child into custody. SSA filed a petition seeking to have the child removed from parental custody. It alleged both parents had mental health problems; according to father he suffers from bipolar disorder and posttraumatic stress disorder, for which psychotropic drugs have been prescribed. Father also has a history of cocaine abuse. In addition he has a criminal record including arrests and/or convictions for grand and petty theft, receiving stolen property, burglary, and possession of controlled substances and drug

¹ Mother is not a party to this appeal.

² Father stated mother had kicked him and the child out of her home.

paraphernalia. There were three child abuse reports, inconclusive because of conflicting information from the parents. The court ordered the child detained and granted father six hours' monitored visitation per week.

Subsequently, the child was placed with his maternal aunt, Katie B. (caretaker), residing in San Diego County. Father's visits were scheduled half in Orange County and half in San Diego. SSA requested a train pass to facilitate father's travel to San Diego, as well as a bus pass, which were subsequently approved. The visits went well.

At the January 2013 jurisdictional hearing the court granted father reunification services and ordered that father have an Evidence Code section 730 psychological evaluation. The case plan required, among other things, that father complete a drug treatment program, including drug testing, abstain from illegal drug use, remain sober, attend a 12-step program, participate in therapy to deal with his mental illness and drug abuse problems, complete a parenting class, and maintain a home appropriate for the child.

In April 2013 the psychological report stated father overall "demonstrated a lack of candidness and honesty" and had shown "very little insight or understanding of his behaviors." It explained father would benefit from residential treatment for at least one year. It reported he had made little progress on resolving mental health and illegal drug use issues, which was likely to diminish his ability to care for the child.

According to his psychiatrist, father was current on his medication. He was attending his therapy sessions and most drug tests were negative except one showing traces of alcohol. But his mood was good and his mental health "stable." One of father's counselors noted his "semi[-]regular attendance" and reported father was "not reliable or connected to the program," "not stable psychologically," "easily irritated [and] extraordinarily opinionated and his thinking is not in line with reality at times."

Originally the visits went well. Father was appropriate and the child seemed happy. Father missed some visits, partly due to his failure to timely confirm them.

As visits progressed, not all of them were positive, including two at the San Diego train station. One time father was angry and aggressive about the caretaker's continuing custody of the child. And when the visit was over he told the child things such as "I don't want you to go" and "don't you miss me." Another time father walked away from the caregiver with the child, despite the fact the visit was to be monitored and over the caretaker's protests. Father screamed so loudly the caregiver called 911 and the police had to intervene. The police suggested the caretaker obtain a restraining order.

In March 2013 father's visits totaled only three and a half hours a week, all in San Diego, due to the social worker's leave of absence, the lack of availability of monitors, and father's aggressiveness toward the caregiver in prior visits. Make up visits were scheduled for San Diego. Father missed one and cancelled another due to illness. Another was cancelled because the monitor was sick. Father became angry when he was advised SSA was still working on making up visits in Orange County. Visits were difficult to schedule because the monitor had limited availability. Father did not want to add hours to his San Diego visits.

In the May report SSA explained father was scheduled for six hours of visits a week plus additional time in San Diego to make up for missed visits. Father rejected weekly make up visits, agreeing only to every other week. Father also refused to add on time to his regularly scheduled visits. SSA again reported the visits went well.

Father's counselor at the Department of Veterans Affairs reported father attended individual and group sessions only every other week. In addition, his expectations about return of the child were unrealistic. Father believed he was "entitled" to reunification because he no longer used cocaine. When confronted about having two

drinks, father stated he was not an alcoholic; he also said having two drinks would not interfere with treatment. The psychiatrist reported father had maintained prescriptions for psychotropic drugs and was stabilized.

Problems with visitation continued in August. Father advised he no longer would visit in San Diego because it was physically too difficult for him to travel that far. He did not appear for two scheduled visits at Orangewood although the child had travelled from San Diego. He also twice declined to extend visiting time at Orangewood because he could not give the child a nap there.

In August the social worker again offered father additional visitation time at Orangewood. Father refused again. In September father asked about visiting during the week in San Diego. When the social worker reminded him he had refused visits in San Diego, he denied it. He stated he just did not want to go to Chula Vista because it was too far. The social worker agreed to arrange San Diego visits.

As of August 2013 father had completed 15 individual therapy sessions but needed additional sessions. He had made little progress as to his substance abuse though there was some improvement in anger management. Although father rescheduled missed sessions in November and December, the therapist advised if he missed another, his therapy would be suspended. When father was told this he became agitated and advised that at his next hearing he would inform the court he had not been given services.

During the period December 2012 to July 2013 father missed 12 of 27 drug tests. In addition he was not attending his 12-step program. At some point he told SSA he did not need to go. In addition, in two drug tests father tested positive for a high level of methamphetamine and amphetamine and at least one time appeared to be under the influence. He missed the appointment to have his drug patch replaced. As of the 12-month review hearing report he had not obtained a new patch.

At trial the social worker testified the current visitation schedule was six hours per week plus some make up visits. She confirmed father had never received more

than four and a half hours of visits in any given week, for a variety of reasons. Early on, father had been unclear about the terms of the order and the child had been sick. There had been a one-month delay in providing the train pass because of a staffing problem at SSA. Father had failed to confirm some visits in advance as required.

Father declined to attend some of the make up visits in San Diego because he was stressed by the travel. Although he had the opportunity to have six hours of visitation in Orange County, he had rejected the idea. He thought the visits would be too long and would interfere with the child's nap time, and father just did not want to.

Father's visits with the child did go well and the child considers him to be his father.

Father had been dropped from his therapy program and the social worker was unable to reinstate it because of his numerous absences.

Father testified his visits with the child went well; the child was affectionate. He continued to seek increased visitation time, twice a week, four hours a visit. But the response was always, "I'll check into it." He testified he stopped attending the health care agency perinatal program because he had reached a "crisis point" based on "the abuse and the treatment [he] was receiving from the social workers."

Father stated visitation decreased the child's and his own anxiety. He denied canceling any visits and was willing to visit in San Diego. Father stated he was drug free and doing his drug testing, and attended his 12-step meetings. He did not bring any documents to support this.

The court found it would be detrimental to return the child to father's custody. Although reasonable services had been provided, father made "minimal" progress in mitigating the problems causing the original detention. Neither anger management nor substance abuse had been resolved.

There was no documentation showing attendance at the required 12-step meetings or group therapy sessions or of his drug testing. The court did not find father

credible and his testimony about attendance was insufficient. The court also did not believe father's testimony he "never" had a methamphetamine problem; there were positive drug tests to the contrary.

Further, the court was "concern[ed]" there was minimal attendance at a health care agency class. Father had not taken responsibility for "a good portion" of his problems; he always had an excuse.

As to visitation, the court observed father had visited and the visits were positive. The court acknowledged there had been some missed visits, some due to lack of communication with SSA. But at least some of the miscommunication was due to father's failure to deal with his core problems causing detention of the child.

When SSA tried to reschedule a missed visit or otherwise accommodate him, father did not cooperate nor was he flexible; it was "all or nothing." Further, he later denied saying things to the social worker. Again, the court did not find father credible and did not believe that all problems were SSA's fault. Both father and SSA bore some responsibility for missed visits but "there is certainly no evidence to support that the services that were provided or offered were not reasonable under the circumstances."

Even if the court could find there had not been reasonable services, given that "there had been almost no effort at the case plan," there was no realistic probability the child could be returned to father even if services were extended an additional six months. "It's just not possible when there's this much to do." The court found it would be detrimental to return the child to father, terminated services and set the permanency hearing.

DISCUSSION

Father's only challenge is that he did not receive reasonable reunification services, specifically, his visitation was insufficient. "In reviewing the reasonableness of the services provided,' including visitation, 'this court must view the evidence in a light

most favorable to the respondent. We must indulge in all legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.’ [Citation.]” (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 70.) Father has the burden to show the insufficiency of the evidence. (*Ibid.*) He did not do so here.

Father complains that, although the court ordered he have six hours of visitation per week, the most he ever received was four and a half hours. He challenges being labeled as “difficult” for not following court orders by SSA when in fact, he claims, it was SSA who failed to comply.

Father relies on *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1791, and its interpretation in *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 509, for the proposition that SSA’s failure to provide reasonable visitation was a ground for finding services had not been sufficient. But in addition to other distinctions with those cases that we need not discuss, the evidence here does not support a finding SSA failed to provide reasonable visitation. That father did not receive all the hours ordered was due to a variety of factors, including the lack of availability of monitors, and not the least of which was father’s inflexibility in scheduling, as even he admits in his petition.

Father also points out the visits went well. He and the child had a good relationship, and the child was affectionate, and called him “dada.” SSA documented this in virtually every report, contrary to father’s argument SSA “has attempted to tear down” his relationship with the child. But that is not relevant as to whether father’s visitation was reasonable.

Moreover, visitation is only one facet of services. And father did not avail himself of the other services offered to help him meet the requirements of his case plan. In his brief father makes little mention of his unresolved issues including an apparently serious drug problem, which continued throughout the reunification period.

“[I]n reviewing the reasonableness of the reunification services provided, . . . in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. [Citation.]” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) We agree with the court reasonable services were provided to father.

DISPOSITION

The petition is denied.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.