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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

R.A.,

Defendant and Appellant.

G050779

(Super. Ct. No. DP024644)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Craig Arthur, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

Defendant R.A. (father), the presumed father of S.R. (child), appeals from an order of the juvenile court denying him family reunification services, based upon a finding that he is suffering from a mental disability which renders him incapable of utilizing those services. (Welf. & Inst. Code, § 361.5, subd. (b)(2); further undesignated statutory references are to this code.) We conclude the court did not err and affirm.

FACTS AND PROCEDURAL HISTORY

1. Detention, Petition and Jurisdiction

In February 2014, plaintiff Orange County Social Services Agency (SSA) took then nine-month-old child into protective custody, and filed a section 300 petition on her behalf. The petition alleged generally child was at risk of suffering serious physical harm or illness, as a result of her parents' failure or inability to adequately supervise or protect her, and their inability to provide regular care for her due to their mental illness or substance abuse. The petition alleged four specific instances or areas of concern.

First, father and the mother of child (mother) had abducted child's half sibling A.K., and took both A.K. and child to Mexico. When they failed to stop at a checkpoint, Mexican police shot out their tires. Their car rolled several times and caught fire, and they were injured. Mother was arrested for abducting A.K.

Second, father and mother had previously absconded with A.K and Z.M., another of father's children. They shaved the children's heads, stole a van, and painted it pink. No criminal charges were filed against mother because she was under duress from father and because she was mentally and emotionally unstable. Father was arrested for custodial interference, unauthorized use of a vehicle and criminal mischief.

Third, mother and father had an unresolved history of domestic violence. Father had threatened to kill mother, and had been arrested for striking and choking her. They had separated as a result but subsequently reunified. Father also had a history of domestic violence with the mother of Z.M., and she had obtained a restraining order against him. Mother also had experienced domestic violence with the father of A.K.

Fourth, father had mental health issues. Father reported he suffered from severe depression, and was under the care of a psychiatrist who believed he suffered from bipolar disorder. He also stated he had been diagnosed with schizophrenia in 2009. His grandmother reported he had been diagnosed with bipolar disorder, and had not been taking his medication. Father acknowledged he had stopped taking his psychotropic medication but believed his mental health issues had been resolved.

In March 2014, SSA filed a jurisdiction/disposition report which provided additional details regarding the allegations in the petition, including father's mental health issues. SSA recommended the court sustain the petition, declare child to be a dependent, provide reunification services to mother and father, order section 730 evaluations of father and mother in order to determine how best to address their mental health needs, and consider suitable placement orders.

On April 2, 2014, the court conducted a jurisdictional hearing. Father and mother both signed written waivers and submitted the petition on the SSA reports. Based upon those waivers and a written stipulation, the court found the allegations of the petition true, bringing the child within section 300, subdivision (b). Thereafter, the parties stipulated to court ordered section 730 evaluations of mother and father for case plan development and treatment purposes.

Father refused to submit to the initial section 730 evaluation as ordered. However, mother's section 730 evaluator, psychologist Charles Scott, interviewed father and reported he had "bizarre ideas and actions in his history that would suggest a psychotic disorder." Father told Dr. Scott he was hospitalized after a suicide attempt in 2007, was diagnosed with schizophrenia in 2009, and was on medication for bipolar disorder. Dr. Scott diagnosed father under Axis I with "Schizophrenia, Paranoid" and "Bipolar Disorder, Severe with Psychotic Features." Under Axis V, Dr. Scott found father had "Serious Symptoms: Everyday adaptive functioning impaired. Highly likely to be problematic."

2. Section 730 Evaluations of Father

Based in part on father's refusal to submit to the initial section 730 evaluation which had been ordered for case plan development and treatment purposes, the court ordered two additional section 730 evaluations of father for purposes of assessing a potential bypass of family reunification services to father under section 361.5, subdivision (b)(2). The court appointed psychiatrist Ted Greenzang and psychologist Gerardo Canul to conduct these evaluations. Dr. Greenzang and Dr. Canul both evaluated father and filed written reports which were later admitted into evidence at the disposition hearing.

a. Dr. Greenzang's Report

Dr. Greenzang diagnosed father under Axis I with mood disorder not otherwise specified; alcohol abuse by history, currently in early full remission; cannabis abuse by history, in early full remission; and opioid abuse by history, in sustained full remission. Dr. Greenzang reported it was difficult to distinguish whether father was manifesting a depressive disorder not otherwise specified or a bipolar disorder not otherwise specified. Dr. Greenzang also diagnosed father under Axis II with paranoid and passive aggressive personality traits.

Dr. Greenzang stated: "I am asked to assess whether [father] is suffering from a mental disorder which renders him incapable of benefitting from family reunification services within six to twelve months. . . . Based upon [father's] recent actions as well as his history of mood instability, emotional lability, and volatility, his prognosis for progressing to a point at which his child could be safely returned to him within six to twelve months is guarded. In my opinion it is unlikely that he would progress during that period of time to the point at which he could function as the primary caretaker I cannot state at the current time that he has a mental disorder which renders him incapable of benefitting from family reunification services."

Dr. Greenzang explained: “Despite [father’s] noted emotional difficulties and emotional volatility he apparently had not manifested a pattern of inappropriate or irresponsible behavior in regard to his [child] prior to the [Mexico abduction] incident in question. As such in my opinion he does not manifest a mental disorder which renders him definitively incapable of benefitting from family reunification services. His prognosis in that regard is guarded as noted above. In my opinion services should be provided although the situation requires careful monitoring. In all likelihood [father] can continue to play a role in his [child’s] life but his prognosis for progressing to the point at which his [child] could safely be returned to him to care for her independently within six to twelve months is guarded to poor.”

b. Dr. Canul’s Report

Dr. Canul diagnosed father under Axis I with bipolar disorder and thought content challenges (delusions). Dr. Canul found father had significant psychological dysfunction and severe personal challenges which would interfere with his parenting capacity. Regarding whether father had a mental disorder which rendered him incapable of benefitting from reunification services such that child could be safely returned to him within six to 12 months, Dr. Canul stated: “Without a significant time line of adherence to both psychotherapeutic treatment and in particular a strict adherence to psychiatric treatment his benefitting from reunification services will be minimal.” Dr. Canul concluded father’s “[p]rognosis is poor.”

3. Disposition Hearing and Ruling

In August 2014, the court conducted a three-day contested disposition hearing. The original SSA jurisdiction/disposition report and various addenda were entered into evidence. The SSA report again recommended the court provide reunification services to mother and father. The section 730 evaluation reports described above were also entered into evidence, and Dr. Greenzang and Dr. Canul both testified as well.

a. Dr. Greenzang's Testimony

Dr. Greenzang testified he diagnosed father with a mood disorder not otherwise specified, and an Axis II personality disorder. He said Axis II personality disorders are lifelong patterns of maladaptive behavior that affect functioning and relationships and are difficult to treat.

Dr. Greenzang explained why the prognosis for father progressing to the point at which child could safely be returned to him within six to twelve months was "guarded to poor." He said while father did not present with a disorder that precluded receiving reunification services and being involved as a parent in child's life, it would be difficult for father to be [child's] primary caregiver. He opined, based on the totality of father's history, father had a 10 to 25 percent chance of being able to reunify safely with child, as child's primary caretaker, within six months.

Regarding the 10 to 25 percent opinion, Dr. Greenzang testified:

"I think 10 to 25 percent is an attempt to put a number on the language of guarded to poor. It's not an absolute thing.

"Is there a possibility [father] - yes, I'm saying there's a possibility [father] could do okay with treatment and stabilization and sobriety and learning some behavioral skills in therapy and that's why I made the recommendation I did."

As to whether that could happen within six months, Dr. Greenzang said:

"Well, consistent, I think, with what I said in the report, I thought most likely not to the point of being the independent, sole, primary responsibility parent, but yes, to remain a force and parenting figure in the child's life."

When asked whether the prognosis would change if father participated in the recommended services and had a support system in place, Dr. Greenzang replied:

"Well, I don't think I can predict the future and that's essentially what I'm saying in the report, all I can do is make an assessment based on the facts and the history and my assessment at the time. And I'm making an opinion based on that."

b. Dr. Canul's Testimony

Dr. Canul testified he diagnosed father as bipolar, with anger issues that presented a danger to himself and others. Father had a history of not consistently taking his prescribed psychiatric medications, which limited his ability to live independently, to provide for his own needs, and to be a parent to child. Not taking medication or becoming volatile led father to make choices he thought were in his best interests, but in fact were irrational and risky. Father had low insight regarding his need for continued psychiatric treatment.

Father's low insight made it less likely he would follow a psychiatric treatment plan. Without adhering to that plan, father would not benefit or be able to effectively parent child. Father's plan should include medication, counseling, and instruction in anger management. Father would need at least three to six months of consistent adherence and participation to benefit. Even then, given his history, it was not likely father would be able to safely and independently parent child within six months. Over a six to twelve month time frame, it was "a guarded possibility" he could do so.

c. Arguments

Counsel for SSA argued reunification services should be provided to both parents, although as to father, she acknowledged Dr. Greenzang and Dr. Canul both opined it was unlikely father could benefit from services within the statutory time frame "given that we are dealing with a very young child." Counsel for father also argued father should be provided reunification services. She asserted: "In order for the (b)(2) bypass to apply to father, there would have to be evidence from two experts stating that father had a mental disability that would render him incapable of benefitting from reunification services. . . . [¶] [and] I don't believe there's clear and convincing evidence that he won't." Counsel for child argued against providing reunification services to father.

d. Ruling

The court declared child to be a dependent, removed her from the custody of her parents, and ordered reunification services for mother but not father. The court found, pursuant to section 361.5, subdivision (b)(2), that reunification services need not be provided to father, because he was suffering from a mental disability which rendered him incapable of utilizing those services. Further, the court specifically noted the testimony of Dr. Greenzang and Dr. Canul reflected a more negative outlook for father than was reflected in their written reports. The court explained the ruling as follows:

“The court does not have clear and convincing evidence from two experts that would have the mother fall under the provisions of [section] 361.5[, subdivision] (b)(2).

“That is not the same for the father. The court does have clear and convincing evidence, clear and convincing evidence was presented. Both experts testified that he does suffer from a mental disability. Both experts testified that it’s unlikely that he would be able to utilize the services and be able to safely care for his child within the time period that the statute provides, and the court is leaning heavily on [sections] 361.5[, subdivision] (b)(2) and the section in 361.5[, subdivision] (c) in its ruling.

“In addition, the case of *Christina A.*, 213 Cal.App.3d 1073 clearly points out that the stated purpose of section 361.5, subdivision (b) is to exempt from reunification services those parents who are unlikely to benefit. And it is reasonable for the state before expending its limited resources for reunification services to distinguish between those who would benefit from services and those who would not.

“And one of those classes of parents is those with a sufficient degree of a mental disability that even if they were provided services would still be unable to care for their children within a year, the usual time period during which services are extended, and that’s quoting directly from *Christina A.*

“As indicated in the reports, I’m not going to repeat everything that’s in the [section] 730 evaluations, but both of the doctors [Greenzang and Canul] who were ordered to prepare an assessment pursuant to the court’s order came back with guarded prognoses, limited prognoses, poor to guarded, words of those nature.

“In addition, there was a third psychological evaluation that was prepared by Dr. Scott, he did not testify, but it also indicated that the father had a mental disability, and it was not likely that he would be able to parent his child even if services were provided.

“The court will note that the doctors’ testimony in this court’s opinion even was a little bit slanted more towards a negative outlook as to father than the reports. I think the reports were just a little bit more favorable, not that they were favorable but a little bit more favorable.

“When the live testimony came out, neither doctor could say that the father would benefit from the services. They were very, very guarded in their testimony as to what they wanted to predict or say, but basically they were saying that even if you give dad services . . . it’s still unlikely that he’s going to be able to parent his child. . . .

“So for those reasons the services will not be provided to the father.”

DISCUSSION

Although not stated under separate headings as required (Cal. Rules of Court, rule 8.204(a)(1)(B)), father contends the order denying him reunification services must be reversed because it is not supported by substantial evidence, and because the court abused its discretion under section 361.5, subdivision (b)(2). We disagree.

1. Governing Statutes and Standard of Review

Subdivision (a) of section 361.5 states the general rule: “(a) Except as provided in subdivision (b), . . . whenever a child is removed from a parent’s . . . custody, the juvenile court shall order the social worker to provide [reunification] services to the child and the child’s mother and statutorily presumed father”

Subdivision (b)(2) of section 361.5 states the exceptions: “(b) Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (2) That the parent . . . is suffering from a mental disability that is described in [Family Code section 7827, subdivision (a)] and that renders him or her incapable of utilizing those services.”

In this context, the term mental disability means the parent suffers from a mental incapacity or disorder that renders the parent unable to care for and control the child adequately. (Fam. Code, § 7827, subd. (a).) And a mental disability finding must be supported by “the evidence of any two experts, each of whom shall be a physician . . . [or] a licensed psychologist” (Fam. Code, § 7827, subd. (c).)

“When it is alleged, . . . that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).” (§ 361.5, subd. (c).)

The time limits specified in subdivision (a) of section 361.5 are: “(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, 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).)

“We review [father’s] claim under the substantial evidence test. The duty of a reviewing court is to determine whether there is any substantial evidence to support the juvenile court’s findings.” (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474 (*Curtis F.*)) Even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court must determine if there is any substantial evidence—that is, evidence which is reasonable, credible and of solid value—to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.)

“In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.’ [Citation.]” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.)

2. *Substantial Evidence*

The court here found, by clear and convincing evidence, based upon the reports and testimony of Dr. Greenzang and Dr. Canul, and the report of Dr. Scott, that father suffered from a “mental disability” which rendered him “incapable of utilizing” reunification services. (§ 361.5, subd. (b)(2).) The court’s finding reflects the higher standard of proof which is required under section 361.5, subdivision (b)(2), and it is supported by the evidence of three qualified experts, all of whom are physicians or licensed psychologists as required by Family Code, section 7827, subdivision (c).

The court’s finding is also supported by substantial evidence. All three doctors found father suffered from “a mental incapacity or disorder” that rendered him “unable to care for and control [child] adequately” within the meaning of Family Code, section 7827, subdivision (a). Dr. Greenzang diagnosed father with a mood disorder not otherwise specified, and a personality disorder with paranoid and passive aggressive personality traits. Dr. Canul diagnosed father with bipolar disorder, with thought content challenges (delusions) and anger issues that presented a danger to himself and others. Dr. Scott diagnosed father with paranoid schizophrenia, and with severe bipolar disorder with psychotic features. Dr. Scott also found father had serious symptoms, which impaired his everyday adaptive functioning, and which were highly likely to be problematic.

Furthermore, evidence from Dr. Greenzang and Dr. Canul established that, even with the provision of services, father was unlikely to be capable of adequately caring for child within the six to twelve month time limits specified.¹ (§ 361.5, subds. (a), (c).) Dr. Greenzang's report stated father's prognosis for progressing to a point at which his child could be safely returned to him within six to twelve months was guarded, and it was unlikely father would progress during that period of time to the point at which he could function as the primary caretaker. Dr. Greenzang also testified the prognosis for father progressing to the point at which child could safely be returned to him within six to twelve months was guarded to poor, which meant a 10 to 25 percent chance of being able to safely reunify with child, as primary caretaker, within six months.

Dr. Canul's report stated father's prognosis for progressing to a point at which child could be safely returned to him within six to twelve months was poor. Likewise, Dr. Canul testified it was not likely father would be able to safely and independently parent child within six months, and over a six to twelve month time frame, there was a very guarded possibility he could do so.

In sum: based upon the above-described portions of the reports and testimony of Dr. Greenzang and Dr. Canul, whether or not contradicted by other evidence in the record; and indulging in all legitimate inferences and resolving all evidentiary conflicts in favor of SSA as we are required to do; we determine there is evidence in the record which is reasonable, credible and of solid value, to support the court's finding that father suffered from a mental disability which rendered him incapable of utilizing reunification services. Accordingly, substantial evidence supports the court's denial of reunification services to father pursuant to section 361.5, subdivision (b)(2).

¹ SSA correctly points out that in this case the six and twelve month time limits expired on essentially the same date. Child entered foster care on February 13, 2014, while the disposition hearing concluded on August 18, 2014. So the twelve month period expired on or about February 13, 2015, and the six month period expired a few days later on or about February 18, 2015. (§ 361.5, subd. (a)(1)(B).)

Father's arguments to the contrary are unavailing. Father argues the mental health experts must agree the mental incapacity renders the parent both unable to care for and control a child adequately, *and* incapable of utilizing reunification services. But, "there is no requirement that both experts must agree a parent is unlikely to benefit from services before the court may deny the parent services. Instead, the statute requires a showing only of evidence proffered by both experts regarding a parent's mental disability, evidence from which the court then can make inferences and base its findings." (*Curtis F.*, *supra*, 80 Cal.App.4th at p. 474.)

Father also urges us to disregard the majority decision in *Curtis F.* and rely instead on the dissent, in which Justice Sims stated the lower court ruling denying reunification services should have been reversed because both experts did not "render professional *opinions*" that reunification was unlikely. (*Curtis F.*, *supra*, 80 Cal.App.4th at p. 475, dis. opn. of Sims, J.) We agree with the majority. But even if we agreed with the dissent, the same result would obtain because both experts here opined reunification was unlikely within the specified time limits, as a result of father's mental disability.

3. Abuse of Discretion

As noted, the substantial evidence standard is used to review the denial of reunification services. Nevertheless, father observes the application of section 361.5, subdivision (b)(2) is discretionary, so he suggests review under the abuse of discretion standard is in order. Under that standard, when a juvenile court has made a discretionary determination in a dependency proceeding, "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319, citations omitted.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." (*Ibid.*)

“The practical differences between the two standards of review are not significant. ‘[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only “if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.”’ [Citations.]” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

It requires little discussion to conclude the court did not abuse its discretion in this case. As we have said, the experts agreed father suffered from a mental disability which made it unlikely he would be capable of adequately caring for child within the specified time limits. These expert opinions are fully supported by father’s documented psychiatric history, resistance to treatment, and refusal to cooperate with court directives. Under these circumstances, the court acted well within its discretion to deny father reunification services pursuant to section 361.5, subdivision (b)(2).

DISPOSITION

The order is affirmed.

THOMPSON, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.