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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

V.F.,

Petitioner,

v.

SUPERIOR COURT OF MONTEREY
COUNTY,

Respondent;

MONTEREY COUNTY DEPARTMENT
OF SOCIAL & EMPLOYMENT
SERVICES,

Real Party in Interest.

No. H039044

(Monterey

Super. Ct. No. J46695)

V. F. is the father of J.R., who was born in August of 2012, and was adjudged a dependent of the court, and removed from the custody of his parents on November 26, 2012. The court denied Father reunification services, because it determined reunification was not in the best interest of the child.

Father filed a petition for an extraordinary writ seeking a reversal of the court's decision.

STATEMENT OF THE FACTS AND CASE

In August of 2012, J.R. was born one month premature, and tested positive for cocaine and opiates. J.R. was placed in the neonatal intensive care unit of Salinas Valley Memorial Hospital for care, where he was expected to remain for several weeks. On August 28, 2012, the Monterey County Department of Social and Employment Services (Department) filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ The petition alleged Mother had a criminal and substance abuse history that impaired her ability to care for J.R. In addition, the petition alleged Mother had a daughter who was removed from her custody and released for adoption.

With regard to Father, the petition alleged he initially lied to the social worker and told her he had no criminal history or addictions. Upon investigation, the social worker discovered that Father was a registered sex offender for molesting his younger sister, and was currently on parole.

The detention hearing was held on August 29, 2012, during which the court found J.R. was a child described in section 300, and committed him to the Department's custody.

The Department filed the jurisdiction and disposition report on October 5, 2012, recommending that the section 300, subdivision (b) petition be sustained, J.R. be adjudged a dependant of the court, and reunification services for both Mother and Father be denied. With regard to Father, the Department recommended that Father be denied reunification services, because of his prior criminal history of sexual offenses against his younger sister, and the inherent risk of placing a nonverbal infant in the care of a registered sex offender.

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

In addition to the notations of the social worker in the report, the court also received a memorandum from licensed psychologist Michael Beck, who reported that he interviewed Father in order to assess the matter. Dr. Beck found Father had no concern for J.R.'s heroine exposure while in utero, and "maintained a smiling and humorous demeanor altogether incongruent with his family's grave situation." In addition, Dr. Beck stated that case workers who had dealt with Father found him manipulative, disrespectful, and "rageful."

During the hearing on November 26, 2012, Father testified that he was incarcerated in Monterey County awaiting sentencing on his parole violation. He testified that his prior sex conviction would not prevent him from taking good care of J.R., and he had taken care of another son in the past. Father said he loved his son, and wanted him back.

At the conclusion of the hearing, the court adopted the findings of the Department in the jurisdiction and disposition report, and denied reunification services to Father. Father filed a petition for an extraordinary writ seeking a reversal of the court's decision.

DISCUSSION

In his writ petition, Father argues the court abused its discretion in denying him reunification services, and that he showed by clear and convincing evidence that reunification with him was in the best interest of J.R.

A petition for extraordinary writ may be brought in the Court of Appeal to challenge a juvenile court's decision to terminate reunification services and to set a permanency planning hearing pursuant to section 366.26. (See Cal. Rules of Court, rules 8.450, 8.452, 5.600.) The writ procedure, as outlined in the statute and implemented in the rules, enables a party to obtain expeditious review of the juvenile court's decision. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811.)

Whether appellate review is sought in a writ proceeding or in an appeal, we apply

the general rule that the trial court's judgment or order is presumed correct and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) We review an order following a review hearing for substantial evidence. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 382 [order under § 361.5].) The party challenging the order "has the burden to demonstrate that there is no evidence of a sufficiently substantial character to support" it. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420 [proceedings under predecessor statute].)

"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." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)

Because the child was removed from the parents' custody in this case, the court was required to make orders regarding reunification services. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) "Until permanency planning, reunification of parent and child is the law's paramount concern." (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546; see §§ 361.5, subd. (a); 366.21, subd. (g)(1).) "When the state removes children from their parents, it is obliged to make reasonable efforts to reunify the family." (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) However, under section 361.5, subdivision (b)(12), reunification services need not be provided to a parent when the court finds by clear and convincing evidence that the parent of the child had been convicted of a violent felony, as defined in Penal Code section 667.5, subdivision (c). In addition, "[b]ecause reunification services are a benefit, not a constitutional entitlement,

the juvenile court has discretion to terminate those services at any time, depending on the circumstances presented.” (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 60.)

In evaluating the evidence in this case, the court found that reunification services would not be in the best interest of J.R. The court adopted the findings in the Department’s jurisdiction and disposition report, and found, by clear and convincing evidence: “[t]hat the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.” The court noted that although father visited the child while he was in the hospital, and expressed a desire to care for him, Father was a registered sex offender, and had engaged in domestic violence and sexual violence toward his sister.

In support of his petition, Father argues reunification services would be in the best interest of J.R., because he raised one of his other children for 6 years until he became incarcerated, he visited J.R. in the hospital every day, he completed 52 weeks of domestic violence counseling, and two parenting classes. Father also cites *In re Allison J.* (2010) 190 Cal.App.4th 1106 (*Allison J.*), presumably because he asserts similar arguments as the father did in that case. However, in *Allison J.*, the father was not successful in persuading the court that reunification was in the best interest of his child, despite his assertion that he was compliant with his parole requirements, and had demonstrated good parenting skills in the past. The court in *Allison J.* affirmed the trial court’s denial of the father’s request for reunification services. (*Allison J.*, *supra*, 190 Cal.App.4th at p. 1118.)

Here, the court correctly denied reunification services for Father. The court found by clear and convincing evidence that Father had been convicted of a serious felony, making bypass of reunification services appropriate (§ 361.5, subd. (b)(12)). Moreover, there was not clear and convincing evidence that reunification services would be in J.R.’s best interest. (§ 361.5, subd. (c)) Father was incarcerated at the time of the disposition

hearing awaiting sentencing for a parole violation on his sexual molestation conviction, and he is a registered sex offender who committed violent sexual abuse on his 8-year-old sister. The fact that J.R. is an infant who cannot speak makes his reunification with Father especially risky because of Father's prior sexual abuse history. Finally, Father has a history of domestic violence and substance abuse. Father's visitation of J.R. while he was in the hospital, and his completion of domestic violence and parenting classes is not sufficient to establish clear and convincing evidence that reunification would be in J.R.'s best interest.

DISPOSITION

The petition for extraordinary writ is denied.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.