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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

M.M.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Real Party in Interest.

H041841

(Santa Clara County

Super. Ct. No. 113-JD021997)

M.M. (father) seeks writ relief (Welf. & Inst Code, § 366.26, subd. (l); Cal. Rules of Court, rule 8.452)¹ from the juvenile court's order made at the 12-month review hearing (§ 366.21, subd. (f)), terminating reunification services and setting a hearing pursuant to section 366.26 to consider selection and implementation of a permanent plan for his daughter C.R. (child, born 2013). He argues substantial evidence does not support the juvenile court's conclusion that he received reasonable services. We reject his claims and deny the petition.

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

FACTUAL AND PROCEDURAL BACKGROUND²

In July 2013, The Santa Clara County Department of Family and Children's Services (Department) filed a petition alleging child came within the provisions of sections 300, subdivision (b) (failure to protect) and (j) (abuse of sibling). Mother's partner at the time, W.R., requested a paternity test because he was unsure if he was child's father. Child was temporarily placed with her maternal great-grandmother. A month later, the juvenile court concluded a prima facie showing that child came within the provisions of section 300 had been made and ordered her detained.

On October 9, 2009, the Department filed its jurisdiction/disposition report recommending the juvenile court sustain the section 300 petition and not offer services to mother or W.R. The maternal great-grandmother reported that mother and W.R. were residing in Lancaster, California, and she was not aware if the two had plans to return to Santa Clara County. The Department recommended the court order a plan of adoption for child, who remained with maternal relatives. Approximately a week later, the Department filed an addendum report. Child was staying with her maternal aunt, Y.C., and her husband, C.R. Y.C. and C.R. stated they would like to be a concurrent home for child.

That same day, the juvenile court held a jurisdiction and disposition hearing. The court bypassed services for both mother and W.R. and found the allegations in the section 300 petition true. The court found the date of child's entry into foster care to be September 29, 2013. The court also set a section 366.26 hearing.

² Along with his petition, father has also filed a request for judicial notice of the briefs in his appeal in case No. H041334 and a motion to incorporate the record in case No. H041334. We grant both the request for judicial notice and the motion to incorporate the prior record. (Evid. Code, §§ 452, subd. (d), 459; Cal. Rules of Court, rule 8.147(b).)

On December 18, 2013, the Department filed a section 388 petition requesting W.R. be excluded as the biological father, because he had completed a DNA test that confirmed he was not child's father. On January 9, 2014, the juvenile court granted the petition.

A month later, the juvenile court held an initial section 366.26 hearing. Mother was incarcerated at the time and was transported to the hearing. Mother disclosed that father, M.M., was potentially child's father. Mother said she had written to father about child, but had not received a response. She had not contacted him earlier because she did not "want him in the picture." The court continued the hearing and ordered paternity testing for both father and R.S., another individual mother identified could be child's father.

On March 27, 2014, the juvenile court put the matter on calendar to discuss paternity issues. DNA testing results had established father was child's biological father. Father was appointed counsel to represent him in the proceedings.

The Department submitted an addendum report that detailed father's criminal history, which included multiple convictions related to controlled substances. At the time the report was prepared, father was in custody for allegedly committing a hit and run.

On April 9, 2014, the court excluded R.S. as child's father and found father to be child's legal and biological father. Father was ordered back for the next section 366.26 hearing.

On May 27, 2014, father filed a motion to establish presumed father status and to receive services. Father asserted he had first heard about the dependency proceedings in January 2014 after mother contacted him. Father previously lived with mother for approximately three years and had financially supported her during that time. Mother was pregnant during part of the time they lived together, but she had told father that W.R.

may be the child's father. Father said he tried to contact mother in the interim but was unsuccessful.

The Department filed a report in support of father being granted presumed father status and being provided with reunification services. In an interview with the Department, mother had indicated she did not believe father was child's biological father because they had been in an on-and-off-again relationship. She also thought father was violent.

The Department's report described father's hit and run offense, which was the subject of his pending criminal charges. It was alleged that father ran a stop sign and struck an 80-year-old pedestrian in a crosswalk. The man suffered two broken legs, a fractured pelvis, an avulsion above his eye, and multiple abrasions. Father did not stop to aid the pedestrian after the accident, and a passenger in father's car believed he was under the influence of phencyclidine at the time. The passenger approached father after reading about the accident in the news, and father threatened that he would have to "take her out" and "kill her" if she said anything about his involvement in the hit and run. Father did not have a driver's license and did not have permission to drive the car involved in the hit and run.

On July 3, 2014, the juvenile court found father to be child's presumed father. The section 366.26 hearing was set.

The following month, the juvenile court held a contested hearing. Father was still in custody at the time but was transported to the hearing. The Department requested the court vacate the section 366.26 hearing and order reunification services for father until the 12-month review hearing. Father opposed and requested he be given a minimum of six months of reunification services.

The juvenile court agreed with the Department, ordering reunification services for father up until the 12-month review hearing. At the time, this amounted to approximately

seven weeks of services, as the hearing was set for September 29, 2014. The court indicated that at the 12-month review hearing it would determine if there was a substantial probability that child would be turned over to father's care by the 18-month review hearing. If so, it would order additional reunification services. The section 366.26 hearing was vacated. Father appealed the court's order following the six-month review hearing, arguing he was entitled to a statutory minimum of six months of reunification services.³

On September 18, 2014, father filed an ex parte motion for an order staying further proceedings pending resolution of his appeal. The Department opposed father's motion, arguing a stay would unreasonably delay permanency for child. On October 9, 2014, the court denied father's request for a stay. The court set the 12-month review hearing for November 20, 2014. Father had been notified that the Department would be recommending termination of reunification services. On November 20, 2014, the court granted father's request for a continuance and set the hearing for December 17, 2014.

On the date of the 12-month review hearing, the Department filed a status review report recommending father's reunification services be terminated and the matter be set for a section 366.26 hearing. The report indicated that child was doing well in her current placement. Father had been released from custody in August 2014. Father had been ordered to participate in and complete parenting classes, a substance abuse assessment, drug testing, substance abuse meetings (Alcoholics Anonymous (AA) or Narcotics Anonymous (NA)), and after care. He was also ordered to complete a 16-week conflict and accountability program. Father had weekly supervised visits with child. Father inadvertently missed his first scheduled visit on September 5, 2014. The next scheduled

³ In an opinion filed on this same date (case No. H041334), we affirmed the order following the six-month review hearing.

visit went well. However, father missed his next visit, because he was sick and did not want child to get sick.

The Department asserted that father was “not in a position to provide for [child],” because he had recently been released from jail, was just starting some of his services, and had not been drug tested yet. The Department noted that father had not had a lot of time to participate in services. However, the Department considered it significant that father had failed to comply in a timely manner with the drug testing requirement because of his history of substance abuse. Accordingly, the Department evaluated that there was no substantial probability that child would go home to father.

The Department also filed an addendum report prepared on November 20, 2014. The addendum report contained updates about father’s progress. Father had been ordered to attend NA/AA meetings. He indicated he was attending meetings in the community but had not provided proof of his attendance. Father had not yet scheduled drug testing. He was presently enrolled in a basic parenting class and had attended two classes. He had missed one session, and another session fell on the Veteran’s Day holiday. He had completed a substance abuse assessment but had missed his intake appointment with a recovery program.

The Department assessed that father was not consistently participating in services and had not maintained consistent contact with the social worker. While the Department reiterated that it was unfortunate that father was not involved in the case earlier, it concluded that due to his lack of progress over the past three months, it did not believe father would benefit from additional services and there was no substantial probability that child would safely return to father’s care. The report again recommended father’s reunification services be terminated and the matter set for a section 366.26 hearing.

On December 17, 2014, the department filed another addendum report. The 12-month review hearing had been continued to December 17, 2014. Father still had not

drug tested and denied having problems with drugs or alcohol, even though this information was inconsistent with his initial assessment. Father had been dropped from his parenting class, because he had missed too many sessions. Father had yet to start his conflicts and accountability program, though he was to be scheduled for an intake later in the week. The Department concluded father had failed to engage in services and again recommended terminating his reunification services.

The contested 12-month review hearing was held a few days later. The court admitted the Department's reports into evidence. The social worker assigned to the case, Michelle Dove, was called to testify. Dove said that a social worker may put in referrals before a court orders services for parents. In this particular situation, a case plan was not ordered until the court ordered reunification services. Dove explained that for some programs, there may be a long waitlist. Father was referred to a conflict and accountability class in August, but the next available class did not start until October. Father had the contact information for the drug testing facility but had still failed to set up drug testing. Dove was also unsure why father missed his intake appointments for his ordered programs. Father had missed one of his parenting classes through no fault of his own. Dove acknowledged that father suffered from diabetes and had previously expressed that his health condition prevented him from making it to classes or otherwise leaving his home.

Dove believed father's failure to drug test was concerning, because he had a history of substance abuse. Father had made two assessments and reported he attended meetings for substance abuse. However, Dove had yet to receive proof of his attendance.

Father testified on his own behalf. He submitted his attendance slips for his AA meetings and said he had been attending meetings twice a week since October. Father said he did not provide his meeting slips to the social worker, because he did not know he was required to do so. Father did not testify on any other issues.

Dove confirmed she believed father was attending meetings, but she never received the meeting slips to prove his attendance. However, Dove asserted father's testimony confirming his attendance at AA meetings would not persuade her to change her recommendation. Dove said that "meetings, in and of themselves, [do not] indicate that somebody is totally in recovery." She said this was particularly true in light of father's recent arrest, which involved driving under the influence.

After hearing argument from counsel, the court took the matter under submission. On January 5, 2015, the court rendered its decision, concluding that the Department had met its burden to show that returning child to father's care would cause a substantial risk of detriment to child's safety, protection, or physical or emotional well-being. The court noted it was disappointed with the "alacrity with which [father] responded to his services once released," finding that father had "failed to complete virtually all of his case plan." Specifically, the court stated father had failed to complete the parent orientation, the basic parenting class, a substance abuse assessment, an outpatient program, drug testing, and the conflict and accountability program. Based on father's lack of progress, the court concluded there was no substantial probability child could be returned to father's care by the 18-month review date.

The court then found, by clear and convincing evidence, that reasonable services had been offered and provided to father. Thereafter, the court terminated reunification services and set the matter for a selection and implementation hearing.

On January 9, 2015, father filed a notice of intent to file a writ petition.

DISCUSSION

In his petition, father argues the services provided to him were unreasonable, because he was not given enough time to remedy the problems that created a risk to child.

a. *Legal Framework and Standard of Review*

Once a child has been detained under juvenile court custody, family reunification efforts are required. (§§ 319, 361.5, subd. (a).) Reunification services are time limited. The cutoff point for fostering family reunification is the 12-month status-review hearing. (§ 361.5, subd. (a)(1)(A).) Services may be extended up to 18 months if it can be shown that a substantial probability exists that the child may safely be returned home within an extended six-month period, or if reasonable services had not been provided to the parent. (*Id.* subd. (a)(3).) At the status-review hearing, the juvenile “court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan for the children.” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1788.)

“[T]he court shall order the return of the child to the physical custody of his or her parent or legal guardian 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. The social worker shall have the burden of establishing that detriment. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided . . . and shall make appropriate findings pursuant to subdivision (a) of Section 366.” (§ 366.22, subd. (a).)

The reasonableness of reunification services is judged according to the circumstances of the particular case and assessed by its two components: content and

implementation. (*In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1362.) “[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.) “Among its components, the reunification plan must include visitation. [Citation.] That visitation must be as frequent as possible, consistent with the well-being of the minor.” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.)

We review a finding of reasonable reunification services for substantial evidence. (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) “Substantial evidence” means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) An appellate court must construe all evidence in the light most favorable to the trier of fact. (*In re Michael G.* (1993) 19 Cal.App.4th 1674, 1676.) When a finding of fact is attacked on the grounds that it is not supported by substantial evidence, the power of an appellate court begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, which supports the findings. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.) When two or more inferences can reasonably be deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. (*Ibid.*) “If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The appellate court is barred from reweighing the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.) It may not substitute its discretion for that of the trial court. In reviewing a finding of reasonable reunification services, “[t]he 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., supra*, at p. 547.) A reviewing

court must recognize that in most cases more services could have been provided, and that the services that were provided were not perfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

b. *Father's services*

Father claims the services offered to him were not reasonable. He argues he was making efforts to follow his case plan and the fact that some of his services remained outstanding at the time of the 12-month review hearing demonstrates that he did not have enough time to engage in services.⁴

We reject father's contention that the Department did not have enough time to provide specifically tailored services to father. In fact, substantial evidence supports the trial court's conclusion that reasonable services were offered to father during the reunification period. "[T]he focus of reunification services is to remedy those problems which led to the removal of the children." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1464.) Therefore, "A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult." (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

"[I]n reviewing the reasonableness of the reunification services provided by the Department, we must . . . recognize that in most cases more services might have been

⁴ In his writ petition, father argues reasonable services were not provided. In father's pending appeal in case No. H041334, father makes a related, but different argument. In case No. H041334, father argues the juvenile court abused its discretion in ordering only seven weeks of reunification services, because it was required to order a minimum of six months of services. The Department addresses this argument in its opposition to father's writ petition. However, we need not reach the merits of this contention when addressing father's claims in this writ.

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.” (*Elijah R. v. Superior Court, supra*, 66 Cal.App.4th at p. 969.)

Here, the Department made a case plan that addressed father’s history of alcohol and drug abuse. Father was ordered to complete a basic parenting class, get drug tested, and attend substance abuse meetings. He was also ordered to complete a conflict accountability program. The social worker signed father up for these services, gave him referrals for classes that had not yet begun, and repeatedly gave father the contact information to set up drug testing. Despite these efforts, father still missed classes and appointments and failed to get drug tested.⁵

Therefore, it appears the Department, even in the shortened time frame it was given to work with, managed to offer father reasonable services. It was father who did not fully partake in the case plan. “Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent.” (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) “The requirement that reunification services be made available to help a parent overcome those problems which led to the dependency . . . is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions. A parent whose children have been adjudged dependents of the juvenile court is on notice of the conduct requiring such state intervention. If such a parent . . . waits until the impetus of an impending court hearing to attempt to [correct

⁵ In his writ petition, father argues he was dropped from his parenting class through no fault of his own. However, even assuming this is true, there is ample evidence father did not take part of other services. For example, father missed an appointment to begin his conflict accountability program and failed to get drug tested. Father did not offer any explanation during the hearing as to why he missed these appointments.

his or her own behavior], the legislative purpose of providing safe and stable environments for children is not served by forcing the juvenile court to go ‘on hold’ while the parent makes another stab at compliance.” (*In re Michael S.*, *supra*, 188 Cal.App.3d at p. 1463, fn. 5.)

Father argues the court did not acknowledge that he had been prevented, by no fault of his own, from participating earlier in the dependency proceedings. He also contends the court erred by faulting him for failing to complete his case plan, when the standard pursuant to section 366.21, subdivision (f), is whether he made substantive progress.

Contrary to father’s claims, implicit in the court’s conclusion that he failed to complete most of his case plan is the conclusion that he failed to make substantive progress. Section 366.21, subdivision (f) states in pertinent part that “[t]he failure of [a] parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs [is] prima facie evidence that return [of the child] would be detrimental.” The determination that father failed to make substantive progress is amply supported in the record. Father was repeatedly instructed to get drug tested, which he failed to do. There was also nothing in the record to indicate he had completed the parent orientation. During the 12-month review hearing, father did not offer any explanation as to why he failed to complete these services.

Lastly, father argues that due to his late appearance in the dependency proceedings the 12-month review hearing “was really an early 6-month review hearing,” and therefore the legal standards under section 366.21, subdivision (e) should have applied.

Father does not cite any legal authority for this proposition and does not provide any reasoned analysis to support this conclusory assertion. “When [a petitioner] fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to

authority, we treat the point as waived.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) Therefore, we deem this contention waived.

Additionally, even if we were to consider this claim on its merits, we would reject it. The timelines for a dependency are linked to the date the child entered foster care, not to the date a parent begins to participate in the proceedings. Section 366.21, subdivision (f) provides in pertinent part that: “[t]he permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49.” Therefore, the date of the 12-month review, and the requisite burden father was required to meet in order to extend services beyond the 12-month review date, was appropriate.

DISPOSITION

The petition is denied.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.