Filed 7/16/20 M.G. v. Superior Court CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

M.G., Petitioner, v. THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Real Party in Interest.	2d Juv. No. B305267 (Super. Ct. Nos. 20JV00015 & 20JV00016) (Santa Barbara County)

The juvenile court bypassed D.R. for reunification services with her twin daughters, and ordered the matter set for a selection and implementation hearing. (Welf. & Inst. Code,[1]

[1] Unlabeled statutory references are to the Welfare and Institutions Code.

§ 366.26.) The court never elevated M.G.'s status from alleged father to biological or presumed father, and did not consider services for him. M.G. petitions for extraordinary writ review of the court's order, contending that counsel provided ineffective assistance. We deny the petition.

FACTUAL AND PROCEDURAL HISTORY

In January 2020, the juvenile court held a detention hearing after the Santa Barbara County Child Welfare Services (CWS) alleged that D.R. and M.G. failed to protect their six-month-old twin daughters, X.G. and Y.G., and did not provide for their support. (§ 300, subds. (b) & (g).) M.G., who has been in prison since before his daughters' birth and will remain there until at least 2021, was not present at the hearing. The parties submitted on CWS's report, and the court ordered X.G. and Y.G. placed in protective custody.

In February, CWS reported that X.G. and Y.G. had been placed with a maternal aunt. CWS also reported that M.G. had asked that his parents be permitted to visit their twin granddaughters. It recommended that the juvenile court offer D.R. reunification services, but did not make a recommendation regarding M.G.

In March, CWS filed an addendum to its February report, notifying the juvenile court that D.R.'s reunification services with her older child (who is not a party to this case) had been terminated due to her methamphetamine relapses. Based on that termination, the addendum recommended that the court bypass D.R. for services. (See § 361.5, subd. (b)(10) [termination of reunification services as to another child] & (13) [history of drug abuse].) The addendum also noted that M.G.'s paternity had not been established.

The juvenile court held a jurisdiction and disposition hearing in April. M.G. was not present. Through counsel, he asked the court to permit his parents to continue being able to visit X.G. and Y.G., but otherwise submitted to CWS's recommendations. The court adopted those recommendations and bypassed D.R. for reunification services. Because M.G. did not have the status of biological or presumed father, the court did not consider services for him.

DISCUSSION

M.G. contends counsel was ineffective because he did not request that the juvenile court declare him the biological or presumed father of X.G. and Y.G., which would have allowed him to receive reunification services and permit the girls to be placed with his parents. We disagree.

Parties in dependency proceedings have the statutory right to effective assistance of counsel. (§ 317.5, subd. (a).) To succeed on an ineffective assistance of counsel claim, a party must show that: (1) counsel performed deficiently, and (2) that deficiency resulted in prejudice. (*Kemper v. County of San Diego* (2015) 242 Cal.App.4th 1075, 1089.) The latter showing requires the party to prove "a "'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" [Citation.]" (*Ibid.*)

M.G.'s ineffective assistance of counsel claim fails because he does not show that the juvenile court would have ordered reunification services for him, which prevents him from proving that the result of the proceeding would have been different. When a child under three years of age is removed from a parent's home, the parent is entitled to six months of services from the date of the jurisdiction and disposition hearing.

(§ 361.5, subd. (a)(1)(B).) X.G. and Y.G. are not yet one year old. The jurisdiction and disposition hearing was held in April 2020. Thus, even if the court had determined that M.G. was the biological or presumed father of X.G. and Y.G., he would have been entitled to services only through October 2020—three months before his earliest possible release from prison. Denial of services is proper where the "'parent will be incarcerated longer than the maximum time period[] for reunification efforts.'" (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1031.)

Additionally, reunification services "need not be provided" if a parent has been convicted of a violent felony. (§ 361.5, subd. (b)(12).) In 2003, M.G. was convicted of attempted murder. Attempted murder is a violent felony. (Pen. Code, § 667.5, subd. (c)(12).) M.G. has not shown that the juvenile court would have ordered services despite his violent felony conviction. He thus cannot show that counsel's failure to pursue a biological or presumed father finding prejudiced him in any way.

DISPOSITION

The petition for extraordinary writ is denied.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

M.G., in pro. per., for Petitioner.

No appearance for Respondent.

Michael C. Ghizzoni, County Counsel, Lisa A. Rothstein, Deputy County Counsel, for Real Party in Interest.