Filed 11/6/18 In re Kris M. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Kris M., Person Coming Under the Juvenile Court Law.	B285573 (Los Angeles County Super. Ct. No. CK97403)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Victor H. Greenberg, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

E.M. (Father) appeals from the July 13, 2017 order terminating his parental rights over his then 20-month-old daughter Kris M. He contends the juvenile court erred by terminating his reunification services because the Los Angeles County Department of Children and Family Services (the Department) failed to contact him to provide reunification services. We conclude there is substantial evidence to support the termination of Father's reunification services. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Mother's Prior Dependency Cases*

On December 4, 2014 the juvenile court sustained a petition on behalf of Kris's half brother, then two-year-old Jose T., under Welfare and Institutions Code[1] section 300, subdivision (b)(1). The petition alleged, as to Maria T. (Mother), that on January 15, 2013 she medically neglected her daughter, then three-month-old Kimberly T., by waiting for one and a half hours before seeking medical treatment for the infant. The paramedics found Kimberly dead in Mother's filthy and unsanitary home. On February 2, 2015 the juvenile court terminated family reunification services for Mother.

On December 11, 2014 the juvenile court sustained a section 300 petition filed on behalf of then five-year-old half brother Andy T. The petition alleged Mother violently assaulted an adult in the presence of Jose by hitting the person and pulling the person's hair; Mother medically neglected Kimberly; and the home was filthy and unsanitary.

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

B. *The Section 300 Petition and Detention*

On November 16, 2015 a social worker visited Mother and baby Kris at the hospital. Mother became agitated and swung her hand, nearly striking Kris in the head. Father took Kris from Mother and calmed Mother down. Mother had "a developmental delay" and was unable provide appropriate answers to the social worker's questions.

The social worker assessed Father's suitability for placement and determined he was unable to protect Kris because he provided conflicting answers as to his home address, whether Mother lived with him, and his knowledge of Mother's prior dependency history. A social worker assessed Father's home and found Mother in the home eating and watching television. The parents did not have formula, a crib, or warm clothes for the baby. In addition, Father owned a rabbit that roamed in Father's bedroom, leaving urine and feces on the floor. During the interview, Father asked if he could move with Kris to El Salvador once he retired. He became upset when the social worker told him the child could not travel outside of southern California without court permission. Father expressed concerns about Mother's ability to care for Kris without assistance, describing her as "neglectful." He requested daycare assistance because he did not think Kris should be left alone with Mother.

On November 19, 2015 the Department filed a section 300 petition on behalf of Kris. The petition alleged Mother medically neglected Kris's half sister Kimberly, and that Kris's half brothers, Jose and Andy, were current dependents of the juvenile court. The petition further alleged Mother failed to participate in court-ordered counseling services to address her severe neglect of Kimberly.

At the November 19, 2015 detention hearing, the juvenile court informed the parents they must notify the social worker, their attorney, and the court in writing if they moved or changed their telephone numbers. The court detained Kris from Mother and Father. The juvenile court granted Mother and Father monitored visits with Kris twice per week for two hours each visit. The court ordered the Department to provide family reunification services to Mother and Father.

C. *The Jurisdiction and Disposition Hearing*

According to the jurisdiction/disposition report, Father was interviewed by telephone on December 3, 2015. Father had been living at his current address for approximately a year and a half. Mother had been living in the home since she was three months pregnant with Kris. When the social worker asked whether Father would like to provide an alternative contact in case the Department lost contact with him, the father declined, stating, "I will take care of this and remain in contact."

According to the February 18, 2016 last minute information for the court, on January 21, 2016 the assigned social worker provided the parents with referrals for low and no cost individual therapy, family therapy, and parenting education. Father told the social worker he had not broken any laws and would not participate in services until the court ordered him to do so. The social worker advised Father that enrollment in parenting classes before the adjudication hearing would reflect well on him, but he declined services at that time.

Mother and Father attended the February 18, 2016 jurisdiction and disposition hearing. At the hearing, the juvenile court sustained the allegations in the petition under section 300, subdivisions (b)(1) and (j). The court removed Kris from the

parents' custody pursuant to section 361, subdivision (c)(1). The court ordered the Department to provide the parents with family reunification services. The court ordered Mother to attend anger management and parenting classes and to participate in mental health and individual counseling to address case issues. The court ordered Father to attend parenting classes and individual counseling to address case issues.[2] The court granted Mother and Father monitored visits, with the Department having discretion to liberalize the visits.

D. *The Six-month Review Report and Hearing*

The September 8, 2016 status review report stated that during the six-month period of supervision, the parents were partially compliant with visitation. The juvenile court had ordered monitored visits for the parents twice per week for two hours, but the parents only visited twice a month at the Department's Lakewood office. Although Mother scheduled visits for herself, Father attended the visits with her. The parents would sometimes fail to show up or arrive 20 to 30 minutes late. The foster father monitored the visits. During the visits, Father carried Kris, but if she needed a diaper change, he would direct Mother on how to perform the task. Mother and Father separately left the room for 20 or more minutes during the visits.

Mother asserted she had completed 18 hours of parenting classes and submitted a certificate of completion. However, the social worker could not confirm Mother's progress because the certificate did not identify the service provider's address or phone number. Mother did not attend individual counseling and

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[2] Father did not appeal the juvenile court's dispositional orders.

became verbally aggressive over the phone and in person when the social worker requested progress letters for the court-ordered services.

During the prior six months the social worker was unable to contact Father by telephone or mail. The social worker sent three letters to his home address in March and April 2016, but received no response. She called Father on five separate days in March, April, August, and September 2016, and attempted to leave voicemails for him, but his phone was not set up to receive voicemail.

In the November 17, 2016 last minute information for the court, the Department recommended termination of the parents' reunification services. The social worker reported Mother and Father had not complied with court orders and had not provided enrollment documents to the Department. The social worker mailed Mother and Father notice of the six-month hearing and the Department's recommendation. The six-month review hearing was continued to January 20 and then to February 17, 2017.

At the February 17, 2017 six-month review hearing, the juvenile court found notice had been provided to all the parties.[3] Mother attended the hearing, but Father did not. Father's attorney was present at the hearing and stated she was ready to proceed on the Department's request for termination of reunification services. Father's counsel requested admission of a certificate of completion, dated May 24, 2016, showing Father attended 18 hours of parenting classes. The juvenile court

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[3] The appellate record does not contain notice of the February 17, 2017 hearing sent to Father or Mother. However, Father does not contend a failure to give notice.

marked but did not admit the document after counsel for the Department and Kris objected because the Department was unable to confirm the services were provided given the absence of contact information for the service provider.

The Department contended that although Father was a nonoffending parent, he was ordered to participate in individual counseling and had not complied. The Department noted the social worker made attempts to contact Father by telephone and mail. The Department argued, "The mother is in frequent contact with the Department, so it's not that the father is unable to contact the department or to determine how to get a hold of the social worker."

Father's counsel asked the juvenile court to "consider allowing [Father] to go over to the next statutory date." Father's counsel argued Father had "engaged in the process," had maintained contact with Kris, and was a nonoffending parent. Mother's counsel argued the Department had not made reasonable efforts to provide family reunification services in light of Mother's special needs. Father's counsel did not address whether the Department provided Father with reasonable reunification services.

The juvenile court found by clear and convincing evidence the parents had not completed parenting classes and individual counseling and had not made substantive progress with court-ordered services. The court terminated reunification services, finding "[t]here is clear and convincing evidence that reasonable services were provided, and it is in the best interest of the minor to set a hearing to select a permanent plan of adoption, guardianship, or other planned living arrangement." The juvenile court set a section 366.26 hearing and advised all parties present that they must file a writ petition to challenge the order.

The court directed the clerk to provide a written advisement of the need to file a writ petition to parties who were not present. However, the court clerk mailed the writ petition advisement only to Mother and Jose's father.

E. *The Section 366.26 Report and Hearing*

The section 366.26 report stated the parents continued to limit their monitored visits with Kris to twice a month. Mother stayed for two hours each visit, but she would lose focus and had to be directed to meet Kris's needs. Father did not notify the foster father about his visits, but would show up with Mother when she visited. Father stated he could only visit Kris for an hour because he had to leave for work. Father interacted with Kris during his hour-long visits, but if the child had a need, he would instruct Mother on how to meet it.

At the July 13, 2017 section 366.26 hearing, the juvenile court found Kris was likely to be adopted and designated the foster parents as her prospective adoptive parents. The court found no exceptions to adoption and terminated parental rights.

Father timely appealed from the July 13, 2017 order.

DISCUSSION

A. *Father May Appeal the Juvenile Court's Termination of Family Reunification Services Because He Was Not Advised of the Requirement To File a Writ Petition*

The Department contends Father forfeited his challenge to the juvenile court's termination of reunification services at the February 17, 2017 hearing because he did not file a petition for an extraordinary writ to review the order terminating reunification services and setting a section 366.26 hearing. We

disagree. Ordinarily, an order denying or terminating family reunification services and setting a section 366.26 hearing is not appealable and may only be reviewed by way of a writ petition. (*In re T.W.* (2011) 197 Cal.App.4th 723, 729; *In re Athena P.* (2002) 103 Cal.App.4th 617, 624-625; see § 366.26, subd. (*l*)(1), (2).) Section 366.26, subdivision (*l*)(3)(A), requires the court, after terminating reunification services and issuing an order setting a section 366.26 hearing, to "advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues."

However, "where the juvenile court fails entirely to advise a parent of his or her right to seek writ review of an order terminating reunification services and setting a section 366.26 hearing, claims of error relating to provision of reunification services are cognizable on appeal from the order terminating parental rights." (*In re X.Z.* (2013) 221 Cal.App.4th 1243, 1250-1251; accord, *In re A.A.* (2016) 243 Cal.App.4th 1220, 1235 ["when a parent is not properly advised of his or her right to challenge the setting order by extraordinary writ, . . . good cause exists to consider issues relating to the setting hearing in an appeal from the order terminating parental rights"]; *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110 [mother could challenge order terminating her reunification services where she did not receive writ advisement]; *In re Harmony B.* (2005) 125 Cal.App.4th 831, 838-839 [because father was not given notice, he could raise issues concerning the setting hearing in appeal from orders following the § 366.26 hearing]; *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1038 [mother could challenge termination of reunification services based on lack of advisement of right to writ review].)

Here, the juvenile court failed to provide Father with oral or written advisement of the writ petition requirement. Father was not present at the February 17, 2017 hearing, at which the court terminated reunification services, set the section 366.26 hearing, and advised all parties present that they must file a writ petition to challenge the order. Although the juvenile court directed the court clerk to provide written notice to the parties who were not present, the clerk did not mail the writ advisement to Father. Accordingly, Father may challenge termination of his reunification services on appeal from the order terminating his parental rights. (*In re Lauren Z., supra*, 158 Cal.App.4th at p. 1110; *In re Maria S., supra*, 82 Cal.App.4th at p. 1038.)

B. *Standard of Review*

"The juvenile court's finding that reasonable services were provided is reviewed for substantial evidence." (*T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1238; accord, *In re A.G.* (2017) 12 Cal.App.5th 994, 1001.) "We consider the evidence in the light most favorable to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court's ruling." (*In re A.G.*, at p. 1001; accord, *Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1028 (*Fabian L.*).) Father has the burden "to show that the evidence is insufficient to support the juvenile court's findings." (*In re A.G.*, at p. 1001; accord, *In re A.L.* (2015) 243 Cal.App.4th 628, 645.)

C. *Substantial Evidence Supports the Juvenile Court's Finding That the Department Provided Reasonable Reunification Services*[4]

A parent of a child under the age of three on the date of the initial removal order shall receive family reunification services for "6 months from the dispositional hearing . . . , but no longer than 12 months from the date child entered foster care . . . , unless the child is returned to the home of the parent or guardian." (§ 361.5, subd. (a)(1)(B).) If the child is not returned to the parent's custody at the six-month review hearing, the juvenile court may set a section 366.26 hearing if it "finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e)(3); see *Fabian L., supra*, 214 Cal.App.4th at p. 1027; *Kevin R. v. Superior Court*

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[4] The Department argues Father forfeited his challenge to the reasonable services finding by failing to raise this issue before the juvenile court. (See *In re Lauren Z., supra*, 158 Cal.App.4th at p. 1110 [mother's contention that she received inadequate reunification services was waived by her failure to object at the time services were terminated, but court proceeded to consider claim on the merits].) In his reply, Father argues a challenge to the sufficiency of the evidence supporting a judgment can be raised on appeal, citing to *People v. Butler* (2003) 31 Cal.4th 1119, 1128 ("questions of sufficiency of the evidence are not subject to forfeiture"). (See *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1158 ["Because it is the Department's obligation to provide family reunification services, we conclude that mother did not waive the issue here by failing to raise [it] prior to the first six-month hearing . . . ."].) Even if Father did not forfeit this issue, we conclude Father's challenge to the termination of reunification services lacks merit.

(2010) 191 Cal.App.4th 676, 689.) "If, however, the court finds there is substantial probability that the child . . . may be returned to his or her parent . . . within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing." (§ 366.21, subd. (e)(3); see *Fabian L.*, at p. 1027; *Kevin R.*, at p. 689.)

If at the six-month review hearing "the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated." (§ 366.21, subd. (e)(8).) "To support a finding that reasonable services were offered or provided to the parent, 'the 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 A.G., supra*, 12 Cal.App.5th at p. 1001; accord, *In re J.E.* (2016) 3 Cal.App.5th 557, 566.) "'The 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.' [Citation.] The 'adequacy of reunification plans and the reasonableness of the [Agency's] efforts are judged according to the circumstances of each case.'" (*In re A.G.*, at p. 1001; accord, *In re J.E.*, at p. 556.)

Father contends there is insufficient evidence to support the juvenile court's finding that the Department provided

reasonable reunification services to him. Father faults the social worker for being unable to reach him by mail or telephone. The social worker sent Father three letters in March and April 2016 and called Father on five separate days, but was unable to leave a voicemail for him. Father argues the Department was obligated to take additional steps to contact him. Not so. "The Department has a duty initially to make a good faith attempt to locate the parents of a dependent child. Once a parent has been located, it becomes the obligation of the parent to communicate with the Department and participate in the reunification process." (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.)

As required by section 316.1, subdivision (a),[5] the juvenile court advised Father at the detention hearing that he was required to notify the court, social worker and his attorney in writing if he moved or changed his phone number. Father cannot blame the social worker for his failure to respond to her letters sent to his designated address or her calls to his contact phone number. (*In re Raymond R., supra*, 26 Cal.App.4th at pp. 441-442 [father cannot blame the department for lack of contact].)

Father contends that because the Department could not reach him by mail or telephone, it had an obligation to track him down at his monitored visits with Kris twice a month at the Department's Lakewood office. Yet Father cites to no authority

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[5] Section 316.1, subdivision (a) provides: "Upon his or her appearance before the court, each parent or guardian shall designate for the court his or her permanent mailing address. The court shall advise each parent or guardian that the designated mailing address will be used by the court and the social services agency for notice purposes unless and until the parent or guardian notifies the court or the social services agency of a new mailing address in writing."

for placing this heightened burden on the Department where it has properly attempted to contact the parent and has no reason to believe the parent did not receive notice. Father's reliance on *In re T.M.* (2009) 175 Cal.App.4th 1166, 1173 is misplaced. In *T.M.*, the Court of Appeal held once the mother's whereabouts became known—three months after the child's removal—the department had an obligation to inform the juvenile court so that reunification services could be ordered. (*Ibid.*) Here, the Department contacted Father at the address he provided to the Department after he was informed at the detention hearing that the Department would use his designated mailing address to contact him. Thus, Father's whereabouts was not unknown.

Further, the Department made reasonable efforts to assist Father in complying with his court-ordered services by providing Father with referrals to parenting classes and individual counseling before the February 18, 2016 jurisdiction and disposition hearing. On January 21, 2016 the social worker discussed the reunification services with Father and provided him with a packet of referrals for low and/or no cost individual therapy, family therapy, and parenting education. The social worker encouraged Father to enroll in parenting classes before the adjudication hearing, but he declined services at that time. In addition, Father was present at the jurisdiction and disposition hearing when the juvenile court ordered him to participate in parenting classes and individual counseling. The social worker was not required to "'escort [Father] to and through classes or counseling sessions.'" (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233 [""[r]eunification services are voluntary, and cannot be forced on an unwilling or indifferent parent""]; see *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365 [same].)

Substantial evidence supports the juvenile court's finding that the Department provided reasonable services to Father.

DISPOSITION

The order terminating parental rights is affirmed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

SEGAL, J.