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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ANTHONY C. et al., Persons Coming
Under the Juvenile Court Law.

B246470
(Los Angeles County
Super. Ct. No. CK80432)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

EDDIE C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Rudolph Diaz, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

Appellant, Eddie C., appeals from a dispositional order. Appellant was incarcerated when this dependency action was initiated, and was sentenced to a prison term longer than the reunification services period to which he would normally be entitled. We find that the dependency court did not err by denying appellant reunification services.

FACTS

Anthony C. was born in November 2008. His sister, V. C., was born in October 2010. On May 29, 2012, the Department of Children and Family Services (DCFS) received a referral alleging neglect by Marlene M. (Mother). The referral stated that Anthony was born with fetal alcohol syndrome and was enrolled in a special education program. He was supposed to attend school for three hours a day but was consistently two hours late at least twice a week. After school, Mother was supposed to meet Anthony when the school bus brought him home. But on multiple occasions, Mother was not present to meet him, and he was brought back to school by the bus driver.

A DCFS social worker interviewed the maternal grandmother, who stated that Mother had a history of methamphetamine abuse. The grandmother was concerned that Mother had relapsed. She further stated that Mother and Eddie C. (Father) had an extensive history of domestic violence and that Father was currently incarcerated on domestic violence charges.

According to the maternal grandmother, Anthony had extreme temper tantrums, would throw objects around the house, and would attack his baby sister and Mother. Anthony and V. were staying with the maternal grandmother at the time of the DCFS interview. While the social worker observed Anthony, he grabbed a bag of food and hit V. with it.

After numerous attempts to locate Mother, the DCFS social worker was finally able to interview her on June 8, 2012, at the family home. Mother stated that the family was being kicked out of their house even though the rent was current, and that she was experiencing stress looking for a new home. Mother stated that Father was an abuser of drugs, but she would not say what kind of drugs he used. She said that she began using methamphetamine when she was 13 years old and used it until she was 16, and then

started using it again sporadically when she was pregnant with Anthony. She claimed to be clean for the past three years. Mother said that Anthony had severe tantrums and hits Mother and V. She further stated that Father had a criminal history and was currently incarcerated for domestic violence and another crime. According to Mother, Father, while on drugs, broke into her home and vandalized it, attempted to stab her, and attempted to kill her by choking her. She lost consciousness; when she woke up several hours later Father was gone. Despite this incident, Mother stated that she still loved Father.

After the interview with Mother, the social worker took Mother to test for drugs. The test showed a positive result for methamphetamine.

The social worker confirmed that Father was being held in a correctional facility in Castaic. He was charged with assault with a deadly weapon and inflicting corporal injury on a spouse or cohabitant, both felonies. Bail was set at \$165,000, and he was awaiting trial. Father had an extensive criminal history, including 2009 convictions for possession of a controlled substance, vehicle theft, and carrying a loaded firearm.

Both parents had previously been involved in dependency proceedings. A petition was sustained in January 2010 alleging Mother's abuse of methamphetamine, Father's unresolved history of drug abuse, and Father's history of domestic violence against Mother.

The detention hearing in this matter was held on June 15, 2012. Father did not appear but was found to be the presumed father. The children were ordered detained. At a further hearing a week later, Father appeared, in custody. Father had not seen the children in six months, during his time in jail. The dependency court ordered DCFS to assist with monthly visits for the children with Father.

As of early July 2012, Father remained incarcerated and had not had an in-person visit with the children, though he had called to speak with them. The maternal great-grandmother stated that she was willing to transport the children to the jail to visit with Father. A DCFS report noted that in 2011, Father had participated in and/or completed a 52-week domestic violence program, but that he was arrested for domestic violence

against Mother in January 2012. DCFS recommended that Father and Mother receive reunification services.

Father was interviewed by a social worker on July 5, 2012. He denied that he had committed domestic violence, and claimed that Mother falsely accused him of doing so.

According to the police report for the incident, dated January 7, 2012, Mother stated that when she returned home early in the morning, she found Father under the covers in her bed. He got up and pushed her onto the bed, punched her near her right eye, and proceeded to choke her. He pulled a knife and stabbed her on the arm. She eventually calmed him down and he fled. The police officers observed a bruise under her right eye and a small puncture wound on her left forearm.

On July 20, 2012, Father pled guilty to the charge of assault with a deadly weapon. He was sentenced to three years in state prison and given a total credit of 388 days in custody, consisting of 194 days' actual custody and 194 days for good time and/or work time. Due to the length of Father's sentence, which would exceed the standard family reunification services timeframe, DCFS recommended that reunification services not be provided to him.

Father was present at the jurisdictional hearing on August 3, 2012. The dependency court sustained two counts under section 300, subdivision (b),¹ one alleging that Mother had a history of drug abuse and was a current user of methamphetamine, rendering her incapable of providing regular care to the children, and the other stating that Mother and Father had a history of engaging in violent altercations in the presence of the children. The court declared the children dependents of the court.

Father's counsel requested a continuance of the dispositional hearing because, according to Father, he would be released from incarceration in six months and wished to receive reunification services. Father's attorney requested that DCFS, "if they could, to provide a last minute [information] with regard to the actual amount of time that Father

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

would be serving,” to which the court replied, “Okay.” The court expressed skepticism, however, that the length of Father’s incarceration would be as short as he anticipated.

On August 24, 2012, the social worker submitted a “last minute information” that the current visitation plan was for the children to visit with Father in county jail, on Saturdays or Sundays, with the paternal grandparents. The social worker reported that she contacted the district attorney’s office regarding the possibility of Father’s serving a shorter sentence, but that she did not receive a reply to her voicemail. At the continued dispositional hearing of that date, DCFS was ordered to “make efforts to obtain Father’s release date.”

On October 18, 2012, another continued dispositional hearing was held. Father’s counsel complained that DCFS had failed to determine Father’s release date. Father testified that he was scheduled for release in July 2013, information he obtained by checking a computer database at the prison. His counsel requested a further continuance of the dispositional hearing so that the actual scheduled release date could be verified. Counsel for DCFS and the children both opposed the continuance, noting that, even if Father were released in July 2013, the release date would exceed the reunification services period to which Father was entitled. Mother also opposed a further continuance.

The dependency court denied the request for a further continuance and ordered the children removed from their parents’ physical custody. Reunification services were ordered for Mother. After hearing argument, the court denied reunification services for Father, stating that Father was only entitled to six months of services and that he would still be incarcerated in six months. The court further noted that Father had served prior time in prison and that Mother and Father had both previously been subject to dependency proceedings.

DISCUSSION

Father appeals from the dependency court’s dispositional order. He contends that the dependency court abused its discretion by denying a further continuance of the dispositional hearing, and that it erred by declining Father’s request for reunification services.

We review the denial of a continuance for an abuse of discretion, keeping in mind that continuances in dependency proceedings are disfavored. (*In re David H.* (2008) 165 Cal.App.4th 1626, 1635.) If a continuance would be “contrary to the interest of the minor,” it may not be granted. (§ 352, subd. (a).)

Father argues that DCFS ignored the dependency court’s order to obtain information regarding his release date, and that the court validated DCFS’s violation of its order by refusing to order a continuance. Father misconstrues the court’s order. DCFS was ordered to “make efforts to obtain Father’s release date,” not to actually obtain the information. It appears that DCFS did make at least a minimal effort to obtain the information.

In any event, the dependency court did not abuse its discretion by declining to order a further continuance. Absent exceptional circumstances, a dispositional hearing may not be continued to a date later than 60 days after the time a child is ordered detained. (§ 352, subd. (b).) Anthony and V. were detained on June 15, 2012, more than 120 days before the October hearing at which Father sought a further continuance. No exceptional circumstances were present here that would justify a further continuance.

Moreover, we find that the dependency court did not err by declining to order that Father receive reunification services. Section 361.5, subdivision (e)(1) provides that an incarcerated parent shall receive reasonable services unless the court determines, by clear and convincing evidence, that services would be detrimental to the child. “In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime or illness, [and] the degree of detriment to the child if services are not offered” (*Ibid.*) Reunification services for an incarcerated parent “are subject to the applicable time limitations imposed in subdivision (a).” (*Ibid.*) Subdivision (a) provides, in pertinent part: “For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of

his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited” to “a period of six months from the dispositional hearing . . . but no longer than 12 months from the date the child entered foster care . . . unless the child is returned to the home of the parent or guardian.” (§ 361.5, subd. (a)(1)(C), (B).)

We review an order denying reunification services for substantial evidence. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914; *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95.) Substantial evidence supported the dependency court’s determination that reunification services would be detrimental. In determining detriment, the court is to consider the length of the incarcerated parent’s sentence. (§ 361.5, subd. (e)(1).) Father was sentenced to three years in state prison. As such, his sentence was to run much longer than any potential reunification period.

Father contends that the dependency court should have considered that he would be released in less than three years. The statute, however, is not dependent on the anticipated release date, but rather on the length of the sentence.² Furthermore, pursuant to section 361.5, subdivision (a), Father was not entitled to reunification services past the date of April 18, 2013—six months after the dispositional hearing was concluded. Thus, even assuming Father’s optimistic opinion that he would be released in July 2013 were relevant and correct, the release date would be well after the six-month reunification services period expired. “The Legislature’s goals are clear: ‘We have long recognized that providing children expeditious resolutions is a core concern of the entire dependency scheme.’ [Citation.] ‘The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.’” (*A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1061; see also *In re Jesusa V.* (2004) 32 Cal.4th 588, 601 [incarceration “made successful reunification all but impossible”].)

² Section 361.5, subdivision (e) does allow the court to consider the likelihood of the parent’s discharge from incarceration during the reunification time period, but only for children 10 years of age or older.

In addition, the dependency court considered the facts that, besides the prison term he was currently serving, Father had served a prior prison term in 2009, and dependency proceedings were previously initiated for Anthony. Given all of these factors, the court did not err by denying Father reunification services.

DISPOSITION

The dispositional order is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

FERNS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.