Filed 6/14/18 In re Samantha S. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re SAMANTHA S. et al., Persons Coming Under the Juvenile Court Law.	B285181 (Los Angeles County Super. Ct. No. DK16057)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RAUL G., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Natalie P. Stone, Judge. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant Raul G.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

This is the second appeal in this case by Raul G. (father) regarding three of his children, Samantha S. (Samantha, born July 2004), Jonathan G. (Jonathan, born Apr. 2007) and Melanye G. (Melanye, born Mar. 2008). Father contends that he was not provided with reasonable reunification services and that the visitation order cannot stand. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The children came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in March 2016, when their mother, Susana S. (mother), and the maternal grandmother were arrested transporting 20 pounds of methamphetamines in a car.[1] The children have since been residing in California with a maternal aunt, sometimes also referred to as a nonrelated extended family member.

Father was deported in 2009. Since that time, and for periods before then, he has not lived with the children, and has been largely absent from their lives. He returned to this country in 2010. Throughout the pendency of this case, he has lived in Indiana with his wife and now two young children.

Following father's first appeal, we issued an opinion affirming the juvenile court's October 21, 2016 disposition order, which found father to be the presumed father and ordered the children to remain suitably placed. (*In re Samantha S.* (Dec. 5, 2017, B278876) [nonpub. opn.].) The disposition order required father to participate in parent education and conjoint counseling with the children via Skype or telephone, at the discretion of the children's therapist.

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[1] Mother's youngest child, Daniella P., was in the car at the time mother tested positive for methamphetamines. Neither she, her father Arturo P., or mother are parties to this appeal.

The Six-Month Review Hearing

The first hearing to take place in the juvenile court after the notice of appeal was filed in the first appeal was the six-month review hearing on April 19, 2017. In preparation, DCFS reported that the social worker had been visiting the children monthly and they appeared to be happy and comfortable in their aunt's home. Conjoint therapy sessions with father and the children began on March 2, 2017. The therapist reported the first session went well, though Samantha was emotional and blamed father for leaving them. The therapist established a bi-weekly conjoint session schedule, while continuing individual sessions with the children. Father felt the conjoint sessions would be helpful because he did not always know what to ask the children.

Father was calling the children weekly. He had previously tried to call them three times per week, but they rejected his calls. While father tried to engage the children, they gave one-word responses. The children asked the social worker if talking to father meant they would have to live with him; she explained that was not the case. Samantha reported that she was not sure if she wanted to continue talking with father. All three children reported they did not want to live with father and wanted to stay with their aunt until mother was released from custody. Only Jonathan was open to the possibility of someday visiting father.

Father had not yet enrolled in any parent education. He explained that he lived in a small, rural town in Indiana that lacked community-based services. The closest urban area was an hour away, and he needed to help care for his newborn daughter. The social worker had initiated an Interstate Compact on the Placement of Children (ICPC) in Indiana.

At the six-month review hearing, the juvenile court ordered the children to remain placed with their aunt and that DCFS provide further reunification services, including continuing the conjoint counseling between father and the children and giving father referrals for online parenting programs.

The 12-Month Review Hearing

For the 12-month review hearing on June 27, 2017, DCFS reported the children were still living with their aunt and that mother was still incarcerated. On April 27, 2017, the therapist reported that she would no longer be able to conduct conjoint therapy sessions. The social worker contacted Hope for Healing Counseling, Inc. to find a new therapist. She was informed that it would be difficult to find a new therapist because any new therapist would have to be licensed in both California and Indiana. As of the date of the report, the social worker had been unable to locate a dually licensed therapist.

The social worker provided father with online referrals for parenting programs, but he did not enroll. He explained that he did not own a computer and could not always make it to the public library on time to access its computers due to his work schedule.

On May 10, 2017, father informed the social worker that he was working on the forms necessary to complete the ICPC for his home assessment. He explained that he was in the process of moving to a new home, though he could not provide a move-in date. A few days later, the social worker received a follow-up call from the child services agency in Indiana and was informed that father had still not returned the forms and that his ICPC case would be closed. The social worker attempted to call father twice

on May 16 and 17, 2017, but there was no answer and no return call.

The children's aunt reported that father had not called the children during the entire months of April and May 2017; they did not appear to miss his calls and they did not ask to speak to him. Father, however, reported that he called the children three times per week.

At the 12-month review hearing, the juvenile court found that reasonable services had been provided and that father was in partial compliance with the plan. The court ordered DCFS to extend family reunification services to October 24, 2017.

The Interim Review Hearing

For the interim review hearing on August 10, 2017, DCFS reported that all three children did not want to speak to father or live with him. Samantha stated, "I just don't want to because he was never there for me when I needed him." Jonathan stated, "I don't know him," and "It's weird." Melanye stated, "I just don't know him." Father had not called the children since April 2017; the aunt believed he had given up. The ICPC was closed due to father's noncompliance. Father had not enrolled in any online parenting classes. His voicemail box was full and he had not contacted the social worker. The social worker had been unable to locate a dually licensed therapist and had sent an e-mail to the Board of Behavioral Sciences for assistance.

At the hearing on August 10, 2017, the children's attorney requested that they not be forced to have contact with father, reminding the juvenile court that he had been out of their lives for the seven years preceding the dependency action.

The juvenile court ruled as follows: "Well, I do think that the father has to walk the walk rather than just talk the talk.

And at this point, I find that it is detrimental to the children to try to force them to have contact with the father. [¶] I am going to order that [DCFS] continue to try to set that up. If the father comes forward and does some part of the case plan and makes some more positive efforts—and [DCFS] should continue to try to find someone who could do the conjoint counseling—then maybe that will help."

Father filed a timely notice of appeal from the juvenile court's "orders and findings" on June 27, 2017, and August 10, 2017.

DISCUSSION

I. Reasonable Reunification Services

Father contends he was not granted reasonable reunification services and therefore remand is required so that DCFS can provide him with such services. Specifically, father claims that DCFS failed to secure conjoint therapy sessions between him and the children.

When family reunification services have been ordered, the juvenile court is required to make a finding at each subsequent review hearing as to whether reasonable services were provided during the preceding review period. (Welf. & Inst. Code, §§ 366, subd. (a)(1)(B), 366.21, subds. (e) & (f), 366.22.)[2] If reasonable services were not provided, the court must order the agency to provide additional services. (§ 366.21, subds. (f) & (g).)

In *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1154 (*Melinda K.*), this division "conclud[d]that that there is no right to appeal a finding that reasonable reunification services were provided to the parent or legal guardian unless the

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

court takes adverse action based on that finding, because, in the absence of such action, there is no appealable order resulting from that finding."

Here, the juvenile court made the finding that reasonable reunification services had been provided at the 12-month status review hearing on June 27, 2017. By that same order, the court extended reunification services to October 24, 2017. Because the children were first detained in March 2016, this extended date was beyond the 18-month statutory limit to receive reunification services. (§§ 361.5, 366.22, 366.25.) Thus, like the mother in *Melinda K.*, father was not adversely impacted by the juvenile court's June 27, 2017 order. We therefore would normally conclude that the order is not directly appealable and must have been presented instead by way of a petition for writ of mandate. (*Melinda K.*, *supra,* 116 Cal.App.4th at p. 1157.) However, because father claims that the reasonable services finding infected and invalidated the subsequent visitation order, which he simultaneously appealed, we exercise our discretion to reach the merits. In doing so, we find no basis for remand.

"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.* (2017) 12 Cal.App.5th 994, 1001.)

Although father does not set forth our standard of review, we note that "[w]hen a finding that reunification services were adequate is challenged on appeal, we review it for substantial

evidence." (*Melinda K., supra*, 116 Cal.App.4th at p. 1158.) ""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."" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.)

Here, father's case plan required him to participate in conjoint counseling with the children via Skype or phone, at the discretion of the therapist. DCFS located a therapist and the first conjoint therapy session took place on March 2, 2017. The therapist reported the first session went well and she established a bi-weekly conjoint sessions schedule while continuing to see the children individually. It is not clear from the record how many other conjoint sessions, if any, took place before the therapist informed the social worker on April 27, 2017, that she could no longer conduct the conjoint sessions, presumably because her company would not allow it. The social worker then contacted Hope for Healing, Inc. to find another therapist and was informed that the therapist had to be licensed in both California and Indiana. While father argues that "conjoint therapy was discontinued for what can only be seen as a bogus reason" and "there is absolutely no evidence in this record" to support the social worker's belief that a dual license was necessary, this is the evidence. Regardless of whether the therapist was legally required to be dually licensed, the social worker was so informed and reasonably believed what she was told.

By the time of the June 27, 2017 hearing, the social worker reported that she had been unable to locate a dually licensed therapist. Even after the June 27, 2017 hearing, the social

worker continued to look for another therapist by contacting the Board of Behavioral Sciences for assistance. Clearly, the conjoint counseling services rendered were imperfect, but rarely will services be perfect. (*Melinda K., supra*, 116 Cal.App.4th at p. 1159.) "'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.'" (*In re A.G., supra*, 12 Cal.App.5th at p. 1001.) DCFS was making the effort to comply with the court's order for conjoint counseling.

Moreover, though father does not discuss this, his reunification case plan also required him to participate in a parent education class. After father informed the social worker that he could not locate a class in his small, rural town, the social worker provided him with online referrals. Yet, father failed to enroll. Additionally, the social worker initiated an ICPC in Indiana and kept in touch with the Indiana agency. Yet, father failed to return the required documents necessary for his home to be assessed for visits or placement. The ICPC was then closed. The social worker attempted to stay in touch with father, but he stopped communicating with her. "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.)

Thus, contrary to father's assertion that "[t]his case involves a failure to provide services altogether," the record shows that DCFS made reasonable efforts to pursue conjoint therapy, help enroll father in parenting classes, complete the ICPC, and stay in touch with him.

II. Visitation Order

In a single paragraph at the end of his argument, father claims that the visitation order, made at the August 2017 interim review hearing, must be vacated for being void.

Initially, we note that father does not address his challenge to this separate order under a separate heading, as required by California Rules of Court, rule 8.204(a)(1)(B). "This is not a mere technical requirement; it is 'designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.'" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) Nor does father cite any legal authority for his conclusion. (Cal. Rules of Court, rule 8.204(a)(1)(B).) One of the fundamental rules of appellate review is that an appealed judgment is presumed to be correct and "error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant has the burden of overcoming the presumption of correctness. This burden requires more than a mere assertion that the judgment is wrong. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.*, *supra,* 138 Cal.App.4th at p. 408.) "When an appellant 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." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.) For these reasons

alone, we are sorely tempted to find that father has forfeited his challenge to the visitation order of August 10, 2017.

But even reaching the merits, we conclude the juvenile court did not abuse its discretion in making the visitation order. We note, because father does not, that visitation orders will not be disturbed on appeal absent an abuse of discretion. (*In re John W.* (1996) 41 Cal.App.4th 961, 973–974.) "[T]he court must define the rights of the parties to visitation. The definition of such a right necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and length of visitation. The court may, of course, impose any other conditions or requirements to further define the right to visitation in light of the particular circumstances of the case before it." (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

Father argues the "nonsense about dual licensure has now affected the visitation orders and the trial court's orders on visitation are now void on their face because they contain a condition that is virtually impossible to meet." According to father, the visitation order only allows for visitation during conjoint therapy. But this is not what the juvenile court ordered. The juvenile court stated: "I find that it is detrimental to the children to try to force them to have contact with the father. [¶] I am going to order that [DCFS] continue to try to set that up. If the father comes forward and does some part of the case plan and makes some more positive efforts—and [DCFS] should continue to try to find someone who could do the conjoint counseling—then maybe that will help."

The juvenile court's order conditioning visitation on father making some sort of effort was well within the bounds of reason. Father failed to enroll in parent education. He failed to comply with the ICPC process, leading to its closure. He failed to stay in touch with the social worker. By the time of the August 10, 2017 hearing, father had not spoken to the children or reached out to them in any way in nearly six months, which meant missing Samantha's and Jonathan's birthdays. It is no wonder they did not want to be forced to talk to him. While father did initially try to reestablish a relationship with the children after being absent for the majority of their lives, it appears that he has given up.

DISPOSITION

The juvenile court's June 27, 2017, and August 10, 2017, orders are affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ