Filed 6/4/18 In re Anthony M. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Anthony M., a Person Coming Under the Juvenile Court Law.	B285953 (Los Angeles County Super. Ct. No. CK93586E)
Anthony M., Objector and Appellant, v. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa R. Jaskol, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Objector and Appellant Anthony M.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Appellant.

Minor Anthony M. appeals from the court's order after a review hearing under Welfare and Institutions Code section 366.3.[1] Anthony contends the court erred when it found petitioner and respondent Los Angeles County Department of Children and Family Services (Department) provided reasonable services to Anthony. We dismiss the appeal for lack of standing because Anthony cannot show how he has been aggrieved by the court's order.

FACTUAL AND PROCEDURAL BACKGROUND

Anthony was detained after he and mother both tested positive for methamphetamine at birth. Mother claimed she could not identify Anthony's father. She also acknowledged having an open dependency case involving two other children who were placed with maternal grandmother. At the detention hearing in February 2017, the court ordered the Department to conduct a search for father and

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

investigate the possibility of placing Anthony with maternal grandmother. The Department placed Anthony with maternal grandmother, who was already caring for two of mother's young children, both under two years old. Maternal grandmother was willing to care for and adopt Anthony as well.

In early March, the court sustained the dependency petition allegations under section 300, subdivisions (b) and (j) and ordered that mother would not receive reunification services based on her failure to reunify with Anthony's siblings. (§ 361.5, subds. (10), (11).) Finding the plan of permanent placement with maternal grandmother to be appropriate, the court set for July 18, 2017, a hearing for termination of parental rights under section 366.26, and ordered the Department "to prepare an assessment plan" and "to initiate an adoptive home study within the next week." The court also scheduled a post-permanency review hearing for August 16, 2017, finding that to be the likely date by which the Department would finalize Anthony's permanent plan.

By early April, the Department had identified Anthony's biological father as D.P. He was the father of the two other children placed with maternal grandmother, but he had not visited or participated in reunification services. The Department filed a subsequent petition under section 342, adding domestic violence and drug abuse allegations against D.P. D.P. did not appear in court until May 26, 2017. Based on questions about paternity, the court ordered

additional DNA testing, but the Department was unable to collect a blood sample to conduct the testing. On June 26, 2017, the court sustained the section 342 petition, ordered that D.P. would not receive family reunification services, and noted that the hearing under section 366.26 was already scheduled for July 18, 2017.

The Department's section 366.26 report for the July 18, 2017 hearing stated that Anthony remained placed with maternal grandmother, who was bonded with the child and willing to adopt him. The Department requested a 180-day continuance for the concurrent planning assessment (CPA) and adoption home study to be completed. The Department reported, "the [CPA] recommendation for child, Anthony [M.] is adoption. As of the writing of this report the signed and approved CPA has not been completed. Furthermore, an adoption [social worker] has not been assigned to complete the home study."

At the section 366.26 hearing on July 18, 2017, minor's counsel alerted the court that mother had not been properly noticed. Minor's counsel also objected to the Department's requested 180-day continuance and stated she planned to set the August 16, 2017 permanency review hearing for a contest on the question of whether the Department had provided reasonable services. Minor's counsel pointed out that the court had ordered the Department to conduct an assessment and initiate a home study four months earlier, and there had been no progress. The Department claimed that the matter had been sidetracked by the section 342

petition. The court ordered the section 366.26 hearing continued to September 18, 2017, because notice to mother was inadequate. It also ordered the Department to provide a status update on notice to mother, the adoption assessment, and the name of the adoption social worker.

The Department's August 16, 2017 permanency review report summarized the Department's efforts towards permanency for Anthony. A Department social worker contacted mother in July 2017 and referred her to the voluntary relinquishment unit, but mother did not show up for her appointment and did not return phone calls. Department social workers later learned that mother had been incarcerated but were unable to locate mother within the jail system. Anthony and two siblings remained placed with maternal grandmother.[2] All three children were bonded to their caregivers and were thriving. The caregivers had moved from a one-bedroom to a two-bedroom apartment, and the new apartment still needed to be reassessed. A CPA for Anthony was reportedly completed on June 15, 2017, but was "still in process for the assignment of [a social worker]."

Mother appeared at the August 16, 2017 permanency review hearing, and she was given notice of the September 18, 2017 section 366.26 hearing, with a backup date of October 2, 2017. Minor's counsel requested that the permanency review hearing be set for a contest on the issue

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[2] The report states that the children are living with maternal grandmother and step grandfather, Mr. and Mrs. P.

of reasonable services, and the court scheduled the contest for September 18, 2017.

In a last minute information report dated September 18, 2017, the Department reported that the CPA was completed on September 6, 2017, and Anthony was assessed to be adoptable. A different social worker was yet to be assigned to complete the last stage of the adoption process. The home study was not yet complete. The Department reported on its progress, noting that it still needed to review the lease agreement and revise a financial resources evaluation.

At the September 18, 2017 permanency review hearing, minor's counsel argued that the adoption assessment and home study had been unnecessarily delayed. The court had ordered the assessment and home study to be initiated within one week of the March 14, 2017 disposition hearing, but instead a draft CPA was not submitted until June 15, 2017, and was not approved until September. Minor's counsel characterized the delay and the Department's request for an additional six months as outrageous and a violation of the court's March 14, 2017 order. She pointed out that adoption had been the only plan for Anthony since March, so the Department's lack of progress was unconscionable and unreasonable.[3] She asked

[3] The reporter's transcript reflects this argument being made by counsel for the Department—not minor's counsel—but both parties note that the argument was made by minor's counsel.

the court to make a no reasonable services finding as to Anthony. Responding to the court's question about what the repercussions of such a finding would be, minor's counsel argued that the court had to make a finding as whether reasonable services had been provided, and in this case they had not.

The Department objected to the requested finding, pointing out that such a finding would impact funding for the Department.[4] Counsel acknowledged the Department could have done things differently, and "has not moved towards adoption as quickly as one would hope but that doesn't mean that the Department hasn't made efforts, and I would ask that the court make the reasonable efforts finding today."

After additional argument from the Department and minor's counsel, the court stated "I think this is a very serious breach of the Department's responsibilities. I'm very

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[4] "Federal law requires that additional findings be made at subsequent hearings to ensure the flow of federal dollars to support the child's stay in foster care. For example, at review hearings and at the permanency hearing, the court must find the agency has complied with the case plan by making reasonable efforts to return the child home or to finalize a permanent placement for the child [42 U.S.C. § 671(a)(15), (16); 42 U.S.C. § 675(5)(B), 42 U.S.C. § 675(5)(C)]. Agency counsel should ensure the court makes the necessary findings so that federal funding is not jeopardized." (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2018) § 2.63[2][g][iv], p. 2–256.)

unhappy about it. I certainly hope that my unhappiness is discussed among the Department's -- amongst the senior personnel. It is hard to see -- and this probably isn't the right test -- but it is hard to see how it has harmed Anthony." The court noted that Anthony was seven months old and had not suffered from the delay. It declined to make a no reasonable services finding, noting that the case was unusual based on confusion and possible deception about the parents' identity. It concluded, "I'm going to reserve the no reasonable services finding for egregious acts in the future where the child is harmed." Minor's counsel argued there had been harm because the longer the family is in the system, the more frustrating it becomes, and the court responded that it expected to see significant progress in the next six months. The court ordered the Department to continue permanent placement services for Anthony and scheduled a permanency review hearing for March 19, 2018.

The court continued the section 366.26 hearing for Anthony to October 2, 2017. At the October 2, 2017 hearing, the court terminated parental rights as to Anthony and set a permanency review hearing for March 19, 2018, finding that to be the likely date for finalizing Anthony's adoption. The court ordered the plan of adoption to continue as the permanent plan.

Minor's counsel filed a notice of appeal on October 2, 2017. The notice identified the order being appealed as the reasonable efforts finding at the September 18, 2017 hearing under section 366.3.

DISCUSSION

Anthony contends the lower court's reasonable services finding was erroneous and urges this court to reverse the finding. The Department moves to dismiss mother's appeal, either because the court's finding is not appealable or because Anthony lacks standing to appeal. Alternatively, the Department argues the reasonable services finding does not constitute reversible error. Anthony also argues that if this court concludes the trial court's reasonable services finding cannot be challenged on appeal, we should treat his appeal as a petition for writ of mandate.

Statutory framework and reasonable services findings

Before examining the parties' arguments about appealability and standing, we briefly summarize the statutory framework within which the dependency court made its reasonable services finding. "Services are offered to children and families throughout juvenile dependency proceedings, but these services are treated differently by statute at different stages." (*In re Christian K.* (2018) 21 Cal.App.5th 620, 627 (*Christian K.*).)

In the early stages of a dependency case, if a child is removed from parental custody, the court must order reunification services unless specific exceptions apply.

(§ 361.5, subd. (a); Cal. Rules of Court, rule 5.695(g)(1).)[5] While the parent is being provided reunification services, the court must hold statutory review hearings and find by clear and convincing evidence that reasonable reunification services have been provided. (§366.21, subds. (e), (g); 366.22, subd. (a)(3); *In re Alvin R.* (2003) 108 Cal.App.4th 962, 971 [reasonable reunification services finding must be made upon clear and convincing evidence].) "If the juvenile court finds that reasonable services have not been provided during the earliest stage, the first 12 months of the reunification period, the court is prohibited from terminating services and must order that additional services be provided." (*Christian K.*, *supra*, 21 Cal.App.5th at p. 627.)

Once a dependency court denies or terminates reunification services and moves to the permanency planning stage, the focus shifts to protecting a child's stability and facilitating permanency. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The court maintains jurisdiction and must review the case every six months. The Department must file a report about the child's current placement and efforts to finalize adoption. (§ 366.3, subds. (a), (d), (g), rule 5.740(a)(1); see also *Christian K., supra*, 21 Cal.App.5th at p. 626.) At review hearings conducted under section 366.3, the court must make various determinations, including "whether or not reasonable efforts to make and finalize a permanent placement for the child have been

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[5] Subsequent references to rules are to the California Rules of Court.

made" (§ 366.3, subd. (d)), the agency's efforts to complete "whatever steps are necessary to finalize the permanent placement of the child" (§ 366.3, subd. (e)(4)), and the "adequacy of services provided to the child." (§ 366.3, subd. (e)(6)). "The court terminates its jurisdiction when an adoption is granted. (§ 366.3, subd. (a); rule 5.740(a)(3).)" (*Christian K.*, *supra,* 21 Cal.App.5th at p. 626.)

Notably, section 366.3 "does not mandate a particular consequence if adequate services are not provided. (§ 366.3, subds. (a), (d), (e), (g).)" (*Christian K.*, *supra*, 21 Cal.App.5th at p. 627.) "Because no consequence is mandated for the failure to provide reasonable services, the statute confers discretion upon the court to issue any appropriate order to protect a child's stability and to expedite the child's permanent placement—which may or may not include further services—regardless of whether services are found to have been wanting." (*Ibid.*)

Keeping in mind the differences between reasonable services findings made during the reunification process (and particularly the adverse impact on a parent who does not receive such services), and reasonable services findings made once reunification services have been terminated (and particularly the adverse impact on a child seeking permanent placement who does not receive such services), we turn to the question of whether Anthony may appeal the reasonable services finding in this case.

Appealability and standing

"Because the right to appeal is strictly statutory, a judgment or order is not appealable unless a statute expressly makes it appealable. [Citations.] 'Appeals in dependency proceedings are governed by section 395 . . . .' [Citations.] Section 395 provides in pertinent part that '[a] judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment . . . .' [Citations.] [¶] '"Juvenile dependency law does not abide by the normal prohibition against interlocutory appeals . . . ."' [Citation.]' [Citation.] '[T]he general rule in juvenile dependency cases is that all orders (except for an order setting a section 366.26 hearing), starting chronologically with the dispositional order, are appealable *without limitation*.' [Citations.] Therefore 'juvenile dependency proceedings are proceedings of an ongoing nature and often result in multiple appealable orders.' [Citation.]" (*In re Michael H.* (2014) 229 Cal.App.4th 1366, 1373–1374, fn. omitted.)

The published case law on whether a party may appeal a reasonable services finding arises in the context of reunification, and courts addressing this issue have reached different results. In analyzing these appeals, the cases focus on whether the appeal has properly been taken from an appealable order (as opposed to a non-appealable finding)

and whether the appealing party has standing to appeal. In *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147 (*Melinda K.*), Division Two of this court concluded section 395 did not authorize a mother's appeal of the court's reasonable services finding where the dependency court ordered that mother would continue receiving reunification services, reasoning that mother had not been aggrieved by the lower court's finding. (*Id.* at p. 1153 ["mother was not aggrieved by the finding that reasonable reunification services were provided, given that services were continued for at least another six months and no negative consequence flowed from the reasonable services finding"].) The court reasoned that section 395 did not permit "a party to appeal a finding in the absence of an adverse order resulting from that finding. Accordingly, [the court concluded] that there is no right to appeal a finding that reasonable reunification services were provided to the parent or legal guardian unless the court takes adverse action based on that finding, because, in the absence of such action, there is no appealable order resulting from that finding." (*Id.* at p. 1154.)

Later, in *In re T.G.* (2010) 188 Cal.App.4th 687 (*T.G.*), the Fourth District considered a father's appeal of the court's reasonable services finding. The *T.G.* court distinguished *Melinda K.*, reasoning that father had been aggrieved because the trial court not only found that reasonable services had been provided, but that father's progress had been inadequate and there was no substantial probability the children would be returned to him. Thus, the *T.G.* court

could not conclude the trial court's finding had resulted in no negative consequences, even though the trial court ordered continued reunification services for father. (*Id.* at pp. 693–694.) In a more recent case, the Fourth District reversed a reasonable services finding without even considering the question of appealability. (*In re A.G.* (2017) 12 Cal.App.5th 994 (*A.G.*).)[6]

The parties do not cite, and we have not found, a published case examining whether section 395 authorizes the appeal of an order implicating whether a social services agency has provided reasonable services in the permanency planning stage of a dependency case. (*See Christian K., supra*, 21 Cal.App.5th at p. 628 [deciding appeal of order following reasonable services finding without examining question of appealability].)

In its motion to dismiss Anthony's appeal, the Department first argues that the court's reasonable services finding is not appealable. We construe Anthony's appeal to be from the court's order after the section 366.3 review

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[6] Although not addressed in the context of appealability, the *A.G.* court appears to have found that the father challenging the reasonable services finding was aggrieved by that finding. The *A.G.* court rejected the Agency's argument that a harmless error analysis should apply to its failure to provide reasonable services where the Agency offered continuing discretionary services to father, because the finding might have adverse consequences for the father in future dependency proceedings. (*A.G.*, *supra*, at pp. 246–247.)

hearing, rather than from the finding alone. Even though in our case, the notice of appeal states that Anthony is appealing from the reasonable services finding, we apply the principal of liberal construction and construe the notice as appealing from the September 18, 2017 order after the section 366.3 permanency review hearing. (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1450 [notice of appeal is entitled to liberal construction]; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 ["notice of appeal is to be liberally construed in favor of its sufficiency"].)

In *In re S.B.* (2009) 46 Cal.4th 529, the California Supreme Court rejected the lower court's rationale for dismissing mother's appeal, reasoning that mother was seeking a review of a court *finding* by appealing from a related *order*. (*Id.* at p. 534 ["review of findings is normally obtained by appeal from the ensuing judgment or order"].) Therefore, the order would be appealable under section 395 and the associated findings are also reviewable on appeal from the order. (See *ibid.*)

Even if we construe Anthony's appeal to be from the court's order after the section 366.3 hearing, rather than the reasonable services finding alone, the fact that the order is appealable does not establish that Anthony has standing to appeal the order. "Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal." (*In re K.C.* (2011) 52 Cal.4th 231, 236.) For purposes of standing, an

aggrieved person "is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision." (*Ibid.*)

Anthony lacks standing to appeal because he was not aggrieved by the court's order at the section 366.3 review hearing; he cannot show how the court's order to the Department at that hearing injuriously affected him. In addition to finding that reasonable services were provided to Anthony, the court ordered that adoption would continue as the permanent plan and directed the Department to provide permanent placement services to Anthony and prepare a report for the next hearing in March 2018. Although Anthony contends that the Department's several month delay in finalizing a permanent placement for him was severely prejudicial (because the delay deprived him of his legal rights to a permanent family), even crediting this as true does not make Anthony an aggrieved party for the purposes of standing to appeal. The focus in examining the question of standing is not whether Anthony was prejudiced by the Department's failure to provide permanency planning services, but rather whether he was aggrieved or injuriously affected by the court order he seeks to appeal. At a section 366.3 hearing, the court has discretion "to issue any appropriate order to protect a child's stability and to expedite the child's permanent placement—which may or may not include further services—*regardless of whether services are found to have been wanting*." (*Christian K.,*

supra, 21 Cal.App.5th at p. 627, italics added.) Because Anthony cannot demonstrate that the court's order injuriously affected him in any way, he lacks standing to appeal.

Our decision should not be construed as condoning the Department's delays in completing a home assessment and assigning an adoption social worker. Like the trial court, we are quite disappointed with the Department's delay in providing Anthony the permanency he deserves. However, "it is a court's duty to decide ""actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."" [Citation.]" (*In re N.S.* (2016) 245 Cal.App.4th 53, 58.) In this case, even if we were to conclude that Anthony did not receive reasonable services, we could order nothing more than the additional services already ordered by the dependency court. We therefore decline to reach the reasonable services question on the merits.

No petition for writ of mandate

Anticipating an adverse ruling on appealability or standing, Anthony also asks this court to treat his appeal as a petition for writ of mandate. (*Melinda K., supra,* 116 Cal.App.4th at pp. 1156–1157 [treating mother's challenge to a reasonable services finding as a petition for writ of

mandate].) "Although an appellate court has discretion to treat an imperfect appeal as a petition for writ of mandate, the power should be exercised only in unusual circumstances. [Citations.]" (*In re Marriage of Lafkas* (2007) 153 Cal.App.4th 1429, 1434.) We decline to exercise our discretion to treat this improper appeal as a petition for writ of mandate.

DISPOSITION

Because minor Anthony M. lacks standing to challenge the court's September 18, 2017 reasonable services finding, we grant the motion to dismiss filed by respondent Los Angeles County Department of Children and Family Services.

MOOR, J.

We concur:

BAKER, Acting P.J. KIN, J.*

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