Filed 6/29/17 In re J.O. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.O. et al., Persons Coming Under the Juvenile Court Law.	B279794 (Los Angeles County Super. Ct. No. DK13401)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DANIEL O., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Robert S. Draper, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Daniel O. (Father), the noncustodial parent of J.O. (DOB 8/2003) and D.O. (DOB 12/2009) (collectively, the children), who resides in Mexico, appeals the November 14, 2016 Welfare and Institutions Code[1] section 366.21, subdivision (f) orders of the juvenile court (1) declining to place the children with him at that time, and (2) determining he had been provided reasonable reunification services. As substantial evidence supports the orders, we affirm.

STATEMENT OF THE CASE AND FACTS

In August 2015, the family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) after D.O. stated in school that she did not have a father, was living in a car and not eating. Upon investigation, DCFS determined that Araceli M. (Mother), who had a history of homelessness, and her children, D.O., J.O. and I.M. (DOB 10/1997)[2] were sleeping either in Mother's car or in the home of the children's maternal grandmother (MGM).[3] Mother and children showered and usually ate their meals in the home of MGM.

MGM told DCFS Mother began drinking at a young age, "continues to have an issue with drinking" and MGM did "not see [Mother] improving." Mother tested positive for methamphetamine (meth) in September 2015, and after initially lying about using drugs, disclosed she had been using meth for

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 I.M. has a different biological father.

3 At the time of detention J.O. was 12 years old, D.O. was five years old and I.M. was 17 years 11 months old. Although she was originally detained with her half siblings, I.M.'s case was later severed after she turned 18; she is not a party to this appeal.

six months.[4] I.M., who acted as de facto parent to her younger siblings, reported that Father and Mother had sold drugs while they were together.

DCFS first spoke with Father by telephone on September 14, 2015. Father had been alerted to DCFS's removal of the children from Mother by his brother who lived in southern California and who was aware of the children's location. Father stated he had been deported three years earlier (in late 2011 or early 2012) because he had been arrested for driving under the influence and had agreed to deportation in lieu of criminal prosecution.[5]

Father told DCFS he would be willing to take the children into his home in Mexico while Mother worked to comply with court orders. He denied he or Mother had ever sold drugs.

DCFS filed a section 300 detention petition on September 16, 2015. The dependency court held the detention hearing that day, found Father to be the presumed father of the children, and detained the children in shelter care. The court denied Father visits with the children until he "ma[d]e contact with" DCFS. (The court appears to have been unaware Father had contacted DCFS two days prior to this hearing.)

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[4] The drug test for meth administered through DCFS revealed such a high level of the drug in Mother's system that she was advised she would have had a heart attack if she had only used meth a single time. It was after she was so advised that she admitted to prior meth use.

[5] Father's arrest record does not support this claim. Instead, his CLETS record indicates a single law enforcement contact, an arrest, and conviction four days thereafter (apparently by plea), for possession of a controlled substance.

On October 5, 2015, the court held the jurisdiction hearing, found the minors to be persons described by section 300, subdivision (b),[6] and sustained the petition. An attorney was appointed "to make contact with [Father]."

On October 13, 2015, the court held the disposition hearing. Only Father was absent; his attorney was present and waived notice of Father's personal appearance. The court found by clear and convincing evidence there was a substantial risk of danger to the physical health of the children by their being placed with Mother. It also found detriment in placing the children with Father in Mexico, but ordered that he could have monitored telephone contact with his children which DCFS could liberalize to unmonitored. DCFS was ordered to provide family reunification services to Father.

In November 2015, Father called DCFS, expressed interest in regaining custody of the children and stated he was not sure what he had been ordered to do by the court. DCFS advised him he needed to complete parenting classes. Father stated he understood and would contact the Mexican social services agency (DIF) to arrange to comply. DCFS provided necessary documentation in response to a request from Mexican authorities in mid-December 2015.

On April 11, 2016, the dependency court held the six-month review hearing pursuant to section 366.21, subdivision (e). Father was present at the hearing through counsel and personally by telephone. DCFS reported it had spoken with Father in February 2016 and at that time Father had not yet begun his parenting classes. DCFS also reported Father continued to live

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6 The petition alleged Mother's history of drug abuse, rendering her "incapable of providing regular care of the children" and which "endangers the children's physical health and safety and places the children at risk of serious physical harm and damage."

in Mexico, Father was calling and speaking with the children approximately once per week, and while the children stated they enjoyed talking with Father, they did not want to live with him in Mexico, but wanted to continue to live with their foster mother or with Mother.

DCFS recommended continuing reunification services for Father to give him the opportunity to ensure his participation in, and completion of, the court-ordered parenting classes.

The court found Father in partial compliance with the case plan, found return of the children to either parent would create a substantial risk of detriment, and found DCFS had made reasonable efforts toward reunification.

On November 14, 2016, the court held its 12-month "permanency hearing." (§ 366.21, subd. (f).) Father appeared telephonically and with counsel.[7] In the interval since the April hearing, at DCFS's request, DIF had twice visited Father and prepared reports for the court. DIF reported Father was living with his common law wife and his mother in a house in a safe, small town, they both had jobs and had recently become parents. There were schools near their residence. It was also determined that Father had enrolled in and completed parenting classes, and continued to speak at least weekly by telephone with his children. Father told DCFS he had no intention of returning to the United States or of reconciling with Mother. He also advised that, if the children could not be placed with him, he was interested in having them placed with his brother, who lived in southern California. DCFS

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[7] This hearing had been continued from October 4, 2016, at which time Father had requested a contested hearing on the matter of return of the children to him. At that time, DCFS had been ordered to interview the children regarding the quality and duration of their relationship with Father, and DCFS had been ordered to initiate an "international/Mexico ICPC" for Father.

assessed that the children continued to enjoy speaking with Father by telephone but had no interest in living with him. DCFS recommended Father get additional reunification services to facilitate visits to him by the children once DCFS obtained passports for the children.

The court found Father in compliance with the case plan. However, the court continued its jurisdiction, finding that return of the children to Father at that time would create a substantial risk of detriment to the children, and found DCFS had provided reasonable reunification services with respect to Father. The court also found it likely that the children would be returned to Father within six months, and ordered DCFS to obtain passports for the children and enable the children to make visits to Father, with the expectation that at least one visit would take place before the year-end holidays. Based on the DCFS report that Mother continued to have positive drug tests and was otherwise not fully complying with her case plan, the court terminated reunification services for Mother.

Father filed this timely appeal on November 16, 2016.

CONTENTIONS

Father contends the dependency court erred in refusing to return the children to him at the 12-month review hearing, arguing substantial evidence did not support the juvenile court's conclusion that their return would create a substantial risk of detriment to them. Father also contends substantial evidence does not support the court's finding that reasonable reunification services were offered to Father.

DISCUSSION[8]

I. Substantial Evidence Supports the Juvenile Court's Determination of Substantial Risk of Detriment

Father contends the juvenile court's finding at the November 2016 hearing that return of the children to him would create a substantial risk of detriment to them was not supported by substantial evidence, and that it thereby committed reversible error. We do not agree.

A. Applicable Law

"The purpose of the California dependency system is to protect children from harm and to preserve families when safe for the child. (§ 300.2; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The focus during the reunification period is to preserve the family whenever possible. (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 507.) Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. (§§ 366.21, 366.22; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788.)" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1423.)

When a child who is a dependent of the juvenile court is in and out of home placement, the court is required to periodically review the placement, including at a date 12 months from the date the child enters foster care.

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[8] In *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, cited by DCFS on another point, we concluded that a reasonable services finding is reviewable by petition for writ of mandate rather than appeal. (*Id.* at p. 1157.) There, the appellant mother did not additionally challenge the court's order denying return of her daughter at that time. Had she done so, we noted that the filing of an appeal would have been proper. As Father has also appealed the order that the children would not (yet) be returned to him, our treating his request for review as an appeal is consistent with our holding in *Melinda K.*

(§§ 361.49, 366, subd. (a)(2), 366.21, subds. (f) & (g); see also Cal. Rules of Court, rule 5.502(9)(A).)

At the 12-month hearing, "the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when . . . ." (§ 366.21, subd. (f)(1).) If the court makes an order at this hearing other than one returning the child to the home of a parent or legal guardian, the court must find "by a preponderance of the evidence, that the return of the child . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The social worker shall have the burden of establishing that detriment." (§ 366.21, subd. (f)(1).)

Evidence the parent has fully complied with the case plan is one of many factors the court considers in assessing whether the child should be returned to the custody of the parent. Substantial compliance with the case plan may be sufficient to overcome a finding of substantial risk of detriment. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1327.)

The juvenile court's determinations are reviewed on appeal for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) "Substantial evidence" means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) When a finding of fact is attacked on grounds it is not supported by substantial evidence, the power of an appellate court begins and

ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which supports the findings. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.) When two or more inferences can reasonably be deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court. (*Ibid.*) In the presence of substantial evidence, the reviewing court is without the power to reweigh conflicting evidence and alter a dependency court determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Rather, the court draws all reasonable inferences in support of the findings, views the record favorably to the juvenile court's order and affirms the order even if other evidence supports a contrary finding. (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

B. Additional Facts

At the 12-month permanency hearing, counsel for Father requested that the children be placed with Father in Mexico. Counsel noted Father has been consistent in his telephone calls with the children since dependency proceedings were instituted and the reports by DIF established Father had a suitable residence in a safe town, and he and his partner both had jobs. He also had tested negative for drugs when DIF had those tests administered. Counsel argued, "The fact that the children do not have much of a relationship with [Father] is not sufficient to say that there is a . . . substantial risk of detriment" to placement of the children in his care. Counsel asked, if the court did not return the children to Father at this hearing, it find that reasonable services were not provided.

Counsel for the children pointed out that, prior to the commencement of these court proceedings, the children had had no other contact with Father, D.O. has no memory of her father and J.O. has not seen him in over six years.

It was also pointed out that the children have regular contacts with their half sister, I.M., and with Mother; and these contacts would be lost if the children were moved to Mexico. Children's counsel also stated there was no objection to the children visiting Father in Mexico.

The court then made a series of findings and orders, including that "continued jurisdiction is necessary because conditions continue to exist which justified the court taking jurisdiction pursuant to WIC 300. The court finds by a preponderance of the evidence that return of the children to the physical custody of the parents would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the children, creating a continuing necessity for an appropriateness of current placement."[9]

In support of these findings, the court found that Father was in full compliance with his case plan and "there is a substantial probability that the children may be returned to father within the next six months. . . . Father has . . . demonstrated the ability and capacity to provide for the children's safety, protection, physical and emotional well-being." The court also found DCFS has complied with the case plan "in making reasonable efforts to return the children to a safe home and to complete any steps necessary to

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[9] In the body of this opinion we address only Father's circumstances and contentions as he is the sole appellant. We note the court also determined there was no basis to extend additional services to Mother based on her past failures to comply with orders to enroll in and complete various programs and her positive drug tests. The court stated it could not find Mother had made significant progress in resolving the problems that led to the removal of the children from her and it terminated Mother's reunification services. The court found "there is not a substantial probability that the children will be returned to Mother within the next six months" and for that reason the court terminated reunification services as to Mother.

finalize the permanent placement of the children." The court ordered that the children remain dependents of the court under section 300.

The court also ordered DCFS to obtain passports for the children so they could visit their Father in Mexico, and it ordered DCFS to arrange for visits by the children with Father. While no deadline was given, the court stated it would be appropriate for the children to have a visit as soon as possible and that it was not limiting the order to one visit; visits were to be overnight and unmonitored. The court also explained: The issue we have . . . is we've got two children who were born in the United States, and . . . they have a very vague recollection of their father . . . ."

The court set the next hearing for May 15, 2017, with a progress hearing on February 15, 2017.[10]

C. Discussion

Father's arguments do not take into account that Father had not had any contact with his children in approximately six years, D.O. speaks no Spanish and J.O.'s Spanish is apparently rudimentary at best. While the children enjoy their telephone visits with Father, they are concerned about moving to Mexico and about losing contact with their half sister I.M. and Mother. The trial court articulated most of these factors as matters of

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10 Based on the record in this action and the circumstance that the 18-month hearing was set for May 15, 2017, we wrote counsel asking them if the matter is now moot. In response, counsel for Father asked that we take judicial notice of minute orders for hearings on February 15 and May 15, 2017. Receiving no objection from DCFS, we grant that request. (Cf. *In re Josiah Z.* (2005) 36 Cal.4th 664, 676-677 [postjudgment evidence may be appropriately considered to uphold juvenile court's orders].) The May 15 minute order continued the hearing to June 15, 2017. We later asked counsel to advise us in writing of any order made at the June 15 hearing which rendered this appeal moot. Both counsel have advised us that nothing which occurred at the June 15, 2017 hearing mooted this appeal.

concern to it and clearly weighed them in making the orders described above. And, the trial court made an additional order of significance: It ordered that DCFS arrange for passports and multiple visits by the children with Father in Mexico. The trial court was clearly attempting to have the children reintroduced to their father, and to obtain reports on the progress of those visits so that it would have that information to enable it to make an informed order on the permanent placement of the children.

We conclude there was substantial evidence to support the challenged order.

II. Reasonable Reunification Services Were Provided

Father contends the juvenile court erred in finding at the 12-month review hearing that reunification services provided by DCFS were reasonable, arguing DCFS allowed the case to languish. We do not agree.[11]

A. Applicable Law

The test for determining whether the services provided were reasonable 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 Misako R.* (1991) 2 Cal.App.4th 538, 547; see also *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164, 1166

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[11] As a remedy for the assertedly insufficient reunification services provided to Father, he asks on appeal that he "receive another period of reunification which comports with the law . . . ." However, Father does not specify what services are to be provided.

DCFS points out that one of the orders made at the November 14, 2016 hearing was that Father receive additional reunification services. The court also ordered DCFS to do what Father specifically requested: Provide additional reunification services (without specifying their nature), obtain passports for the children and facilitate multiple visits by the children with Father in Mexico. Thus, it would appear this contention is moot. (Cf. *In re Jesse C.* (1989) 215 Cal.App.3d 1384, 1387-1388; *In re Kristin B.* (1986) 187 Cal.App.3d 596, 605.) We address it in the body of this opinion nevertheless.

[reasonableness of agency's reunification efforts are judged according to the circumstances of the case].) DCFS's obligation is to make a good faith effort to develop and implement a family reunification plan, if appropriate. (*In re T.G.* (2010) 188 Cal.App.4th 687, 697.)

On appeal, "[i]n reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all reasonable and legitimate inferences to uphold the judgment. (*In re Misako R.* [, *supra,*] 2 Cal.App.4th [at p.] 545.) 'If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.' (*In re Carrie W.* (1978) 78 Cal.App.3d 866, 872.)" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361.)

B. Analysis

Our focus is on the services made available to Father and his actions, up to the November 14, 2016 hearing as that is the date of the order from which he now appeals.

The history of reunification services provided by DCFS to Father follows. At the jurisdiction hearing on October 5, 2015, the court appointed counsel to make contact with Father. That contact was established prior to the November 14, 2016 hearing at which Father appeared by telephone with counsel personally present. Father contacted DCFS directly the following month and was instructed to contact DIF to obtain assistance in locating parenting classes; DCFS provided him with a copy of the October 13, 2015 disposition order; and Father stated he would "look for classes." On December 15, 2015,[12] the Mexican Consulate called DCFS requesting

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[12] The report refers to "12/15/2016," but it is clear from context the year indicated is a typographical error.

information on programs Father needed to complete, and DCFS provided the requested information. By February 2016, however, Father had not started parenting classes. In its April 11, 2016 status review report, DCFS reported Father had advised that he had enrolled in parenting classes; DCFS also noted Father had not yet provided proof of enrollment. At the April 2016 hearing, DCFS recommended six further months of reunification services for both parents. The court found that reasonable services had been provided and ordered the requested extension.[13] Although Father's case plan required completion of parenting classes, Father would not actually complete this element until July 13, 2016.

Father also argues DCFS should have obtained passports for the children to visit Father prior to the November 14, 2016 hearing. This argument ignores that Father never asked the court to make an order that DCFS do so. Even if Father had made that request, it would have been premature until there was evidence he had complied with his case plan, in particular by completing the parenting classes—which remained uncompleted at the time of the April 2016 six-month hearing. The reporter's transcript of proceedings that day contains no indication that either Father's counsel or Father made a request for an order for DCFS to obtain passports. As the children were in the custody of the court, it would take a court order

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[13] In a letter brief Father appears to ask this court to find reunification services unreasonable for the *first* six months, from October 13, 2015, through April 11, 2016. The time to challenge the April 11, 2016 order of the dependency court (or any findings contained therein) has long since passed, and that order may not now be challenged. (See, e.g., *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705.) For this purpose, it does not matter whether such a finding had to be challenged, at the time, via a writ or via an appeal. (See *Melinda K.*, *supra*, 116 Cal.App.4th at pp. 1152-1157; § 395, subd. (a)(1).)

for the passport applications to be filed. The only contact order made and in force prior to the November 14, 2016 hearing was one authorizing Father to have monitored telephone contact with the children. That DCFS did not initiate an order for passports does not suggest it failed to provide reasonable reunification services. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46-47.) Indeed, in the absence of a request by Father that it obtain passports and without earlier completion by Father of the required parenting classes, there is no evidence of lack of good faith effort by DCFS. (*In re T.G.*, *supra*, 188 Cal.App.4th at p. 697.) Thus, Father's argument that DCFS acted unreasonably in failing to obtain passports prior to the November 2016 hearing is without merit.[14]

Although Father argues on appeal that DCFS should have cleared one of his southern California relatives to take the children in the event he could not, he ignores that his paternal uncle never followed up on an initial inquiry from DCFS to effectuate such a placement and that Father told DCFS in October 2016 that his family in California had decided it did not want to get involved.

Given the forgoing circumstances, constraints of Father's in-person unavailability, the existing phone visitation-only order that Father never challenged, and the length of time it took Father to complete the parenting

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[14] Father's argument that DCFS should have facilitated a visa for him to visit the children in the United States is novel and ignores that Father left the United States on threat of deportation. Father's counsel cites no authority for the proposition that he would be allowed to re-enter. Nor did Father's counsel ever raise this issue below. Consideration of such an argument is thus barred on appeal. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1207; see *Feduniak v. California Coastal Commission* (2007) 148 Cal.App.4th 1346, 1381, citing *Kolani v. Gluska* (1998) 64 Cal.App.4th 402, 411.)

classes, we cannot say the court erred in finding that reasonable reunification services have been provided.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

GOODMAN, J.*

We concur:

CHAVEZ, Acting P.J.

HOFFSTADT, J.

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