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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

ANDY V.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES et al.,

Real Parties in Interest.

B289265

Los Angeles County
Super. Ct. No. CK84904B

ORIGINAL PROCEEDINGS in mandate. Martha
Matthews, Judge. Petition granted.

Los Angeles Dependency Lawyers, Law Offices of Danielle
Butler Vappie, Christina Samons and Anne Elder, for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Jeanette Cauble, Deputy County Counsel, for Real Party in Interest Department of Children and Family Services.

Children's Law Center of Los Angeles, Patsy V. Moore and Daniel Szrom, for Real Party in Interest Eduardo V.

INTRODUCTION

In this original proceeding, Andy V. (father) challenges the juvenile court's order terminating family reunification services with his son, Eduardo V., (the minor) and setting the cause for a permanency planning hearing under Welfare and Institutions Code section 366.26.¹ Because the Department of Children and Family Services (Department) failed to provide adequate reunification services to father—a point the Department concedes—we direct the court to vacate its order and require the Department to provide appropriate reunification services.

FACTS AND PROCEDURAL BACKGROUND

The minor first came to the attention of the Department on November 29, 2016, after he was found alone in a grocery store near his home, looking for his mother.² He was seven years old at the time. After law enforcement officers were unable to find mother and observed the family home to be in an unsanitary condition, they contacted the Department. The Department detained the minor and placed him in the care of the paternal

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

² Mother is not a party to this appeal.

grandfather. At that time, the minor reported that father was homeless and that he had not seen father in a long time. Mother also reported that father was homeless and had never provided for the minor. In addition, mother told the case worker that the minor's 5-year-old sibling had been adopted two years earlier after the Department's intervention. The paternal grandfather said he had not seen or heard from father in a long time either.

At the detention hearing on December 5, 2016, the court found father to be the presumed father of the minor. The court formally detained the minor from mother and placed him with the paternal grandfather.

On January 4, 2017, the Department filed its jurisdiction/disposition report, along with a declaration of due diligence summarizing the Department's unsuccessful attempts to locate father. At the January 6, 2017 jurisdictional hearing, the court found the Department completed its due diligence efforts as required by law and that father's whereabouts remained unknown. The court's case plan for father denied reunification services³ and indicated he could not visit the minor without a Department interview.

The court held a contested disposition hearing on February 7, 2017. As to father, the court sustained the following allegation under section 300, subdivisions (b) and (j):

“The child[’s] father, Andy [V.], has a history of mental and emotional problems, including a diagnosis of Depressive Disorder, which renders

³ The case plan indicates reunification services were denied under section 361.5, subdivision (a), but the parties agree this designation was in error and should have been noted as section 361.5, subdivision (b) [whereabouts unknown].

the father incapable of providing the child with regular care and supervision. The child's sibling [J.V.] is a prior dependent of the Juvenile Court due to the father's mental health and received Permanent Placement services. Such mental and emotional problems on the part of the father endanger[] the child's physical health and safety and place[] the child at risk of serious physical harm, damage and danger."

The minor remained placed with the paternal grandfather.

The court conducted a six-month review hearing (§ 366.21, subd. (e)) on August 8, 2017. In its status review report, the Department reported that father had contacted the Department on June 20, 2017, to "get an update" and inquire about visiting the minor. The Department set a meeting with father on June 27, 2017, but father asked to reschedule due to a lack of transportation. The Department attempted to contact father on July 11, 2017 and July 13, 2017 but received no response from him. Father did not appear at the hearing.

On October 4, 2017, father filed a section 388 petition seeking to vacate the court's prior findings as to him on the ground that the Department's due diligence was defective. The court denied the petition.

The Department's last minute information dated November 14, 2017, indicated the case worker spoke to father on August 1, 2017, but father did not make any effort to schedule visitation with the minor. The paternal grandfather also reported that father would have difficulty caring for the minor because he "was never able to hold a steady job and was constantly moving from place to place." And despite knowing the minor was in the

paternal grandfather's care, father had not contacted him to ask about the minor.

On November 16, 2017, the Department recommended family reunification services for father as well as a mental health assessment, counseling, parenting classes and monitored visitation with the minor. At the hearing on November 20, 2017, the court ordered family reunification services for father. The court's case plan of that date required father to enroll in parenting classes, individual counseling, and obtain a psychological assessment and psychiatric evaluation, and required the Department to provide low cost or no cost referrals.

During the months that followed, father visited regularly with the minor. The paternal grandfather monitored the visits and reported no concerns and that the minor appeared to be bonding with father. The minor also said he was happy to see his father and the visits were "going well." The Department reported that father provided a new address on December 12, 2017, and the Department then mailed father a list of low cost/no cost referrals. Father subsequently obtained a mental health evaluation, enrolled in and attended parenting classes, and was on a waitlist for individual counseling services. Father's efforts notwithstanding, on March 19, 2018, the Department recommended terminating his family reunification services and setting the matter for a hearing under section 366.26.

On March 29, 2018, the court conducted a 12-month review hearing (§ 366.21, subd. (f)). Father opposed the Department's recommendation and testified that he was then enrolled in and had begun individual counseling. He indicated that he had been on a waitlist at one facility but was frustrated with how long the process had been taking and sought services from another center. He also said he would like the minor to be in his custody at some point but he wasn't yet ready to take on the commitment due to

his unstable housing situation. Father also advised that he had been looking for work. Father's counsel pointed out during argument that the Department's report suggested the Department had only been providing meaningful reunification services for a little over one month, which did not constitute "reasonable efforts." The Department argued it had been providing reunification services for more than a year, since February 5, 2017.⁴

The court found the Department complied with the case plan by providing reunification services and that father's compliance with the case plan was "partial." The court terminated reunification services for both parents and set the matter for a permanency planning hearing (§ 366.26) on July 26, 2018.

Father filed his notice of intent to file a writ petition on April 4, 2018. After father filed his writ petition, we issued an order to show cause.

DISCUSSION

Father contends the court erred in terminating reunification services because substantial evidence does not support the court's finding that the Department provided reasonable reunification services. The Department concedes the point and we agree.⁵

Family preservation is the first priority when dependency proceedings are initiated. Reunification services implement the

⁴ The Department agrees that statement was erroneous and concedes it first provided father with a list of no cost/low cost services on December 12, 2017.

⁵ The minor's counsel agrees with the Department and does not object to vacating the court's order.

law's strong preference for maintaining the family relationship if at all possible. Consequently the Department must make a " " " " "good faith effort" " " " " to provide reasonable services responsive to the unique needs of each family through a plan that is " " "specifically tailored to fit the circumstances of each family ..., and ... designed to eliminate those conditions which led to the juvenile court's jurisdictional finding." " " (In re K.C. (2012) 212 Cal.App.4th 323, 329; Patricia W. v. Superior Court (2016) 244 Cal.App.4th 397, 420.) "The adequacy of the reunification plan and of the [D]epartment's efforts to provide suitable services is judged according to the circumstances of the particular case. [Citation.]" (In re Taylor J. (2014) 223 Cal.App.4th 1446, 1451.) In other words, a parent's difficulty meeting the case plan's requirements does not excuse the agency from continuing its effort to bring that parent into compliance with the court's orders. "The court's finding [that] reasonable reunification services had been offered or provided to father is subject to review for substantial evidence. [Citations.] We must view the evidence in the light most favorable to the [D]epartment and indulge all legitimate and reasonable inferences to uphold the order. [Citation.]" (Mark N. v. Superior Court (1998) 60 Cal.App.4th 996, 1010.)

Here, part of the delay in providing reunification services to father relates to the fact that his whereabouts were unknown at the outset of these proceedings. Further, although father surfaced in June 2017 and contacted the Department to express interest in reunifying with the minor, he cancelled his interview and failed to communicate further with the Department for some time, despite two follow-up calls from the case worker. Nonetheless, in November 2017, the Department recommended family reunification services for father.

At the hearing on November 20, 2017, the court ordered family reunification services for father for the first time. The court's case plan of that date required father to enroll in parenting classes, individual counseling, and obtain a psychological assessment and psychiatric evaluation, and required the Department to provide low cost or no cost referrals. And the Department concedes it did not provide father with referrals for the court-ordered services until mid-December 2017.

Once father received the referrals, however, he attempted to comply with the case plan. During the subsequent three months, father obtained a mental health evaluation, enrolled in and attended parenting classes, put himself on a waitlist for individual counseling services and, after becoming frustrated with the long wait, sought out a second provider of counseling services and began individual therapy. The Department did not make these arrangements for father—he accomplished these tasks on his own. Given the difficulty many parents encounter in accessing services that are in too short supply, it appears father made a substantial effort to bring himself into compliance with the court's case plan. Indeed, he acted on every aspect of the case plan and was in the process of complying with each requirement at the time the court terminated reunification services.

Admittedly, father did not complete the 12-week parenting class ordered by the court before the court held the 12-month review hearing on March 29, 2018. But it was not for lack of trying. And given that the Department provided referrals in mid-December 2017, the fact that father had completed three individual therapy sessions and attended four parenting classes before March 29, 2018, is to his credit.

The court's decision to terminate reunification services appears to rest on an error made during the hearing, when the Department represented that it first provided referrals to father

in February 2017. The Department concedes the error and agrees it did not provide referrals until December 2017.

On the basis of these facts, we conclude the court erred in terminating reunification services three months after the Department first provided referrals, particularly in light of the fact that father made significant efforts to comply with the case plan as soon as he received those referrals. “The remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing.” (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975; *In re Taylor J.*, *supra*, 223 Cal.App.4th at p. 1453.)

DISPOSITION

Let a peremptory writ of mandate issue, directing respondent court to vacate its March 29, 2018, order terminating father's reunification services and setting a permanency planning hearing under section 366.26. The court shall order the Department to provide father with additional reunification services that are appropriate and in the best interest of the minor. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.