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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

A.M.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
BARBARA COUNTY,

Respondent;

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Real Party in Interest.

2d Civil No. B243691
(Super. Ct. No. 1395704)
(Santa Barbara County)

A.M., the father of J.M., a dependent child, has filed a petition (California Rules of Court, rule 8.452) to contest the juvenile court's findings and orders after a six-month pre-permanency hearing (Welf. & Inst. Code, § 366.21, subd. (e)), following the filing of a Welfare and Institutions Code section 300 petition. The court found A.M. made "minimal" progress toward "alleviating or mitigating the causes necessitating" J.M.'s out-of-home placement and terminated family reunification services.

We conclude, among other things, that: 1) A.M. has not shown that the juvenile court erred by terminating his family reunification services and scheduling a permanency planning hearing (§ 366.26), and 2) substantial evidence supports the court's

findings that the Santa Barbara County Child Welfare Services (CWS) provided appropriate reunification services, but A.M. made minimal progress and "failed to participate regularly" in the services offered. We deny the petition on the merits.

FACTS

On December 9, 2011, store employees called the police claiming A.M. was a "shoplifter." When A. M. left the store, Police Officer S. Gowing approached him. A.M. told Gowing he had been "discharged from parole" and was a "drop out from the prison gang lifestyle." He said "he had used a small amount of heroin earlier in the day." Gowing arrested him for possession of drug paraphernalia.

A.M.'s girlfriend G.G. is the mother of J.M. She and J.M were in a nearby hotel room. Gowing arrested G.G after discovering there was a warrant for her arrest for a drug offense. J.M., an 18-month-old child, was in the hotel room. When a CWS worker arrived, she saw that J.M. "appeared dirty" and was "in danger of falling through" an open window. The child had "easy access" to marijuana and drug paraphernalia in the room. The worker transported the child to a hospital "to be medically cleared after being identified as a Drug Exposed Child." CWS later transported J.M. to a foster home.

On December 13, 2011, CWS filed a "juvenile dependency petition" (§ 300) alleging that: 1) A.M. and G.G. subjected J.M. to a substantial risk of "serious physical harm," 2) they failed to provide her "adequate food, clothing, shelter, or medical treatment," and 3) they were unable to provide for her care because of their "substance abuse." The juvenile court subsequently sustained the petition.

CWS suggested that A.M. enter a drug treatment program. He agreed. On December 28, 2011, A.M. went to Recovery Point for drug testing. He "tested positive for THC and Benzodiazepines." He was tested two days later and "tested positive for THC." He was scheduled for a drug test on January 1, but he failed to appear.

In January 2012, CWS filed a "jurisdiction/disposition report" indicating that it needed time to "assess the provision of Family Reunification Services for [A.M.]." The CWS worker noted that A.M. "has a history of substance abuse" and "has been in jail, prison, on probation or parole most of his adult life."

In a January 23rd "addendum report," CWS stated it would offer A.M. family reunification services and it provided a "case plan." That plan included, among other things, the requirement that A.M.: 1) must "obtain a stable and legal source of income," 2) must be able to provide a "stable living environment" for J.M., 3) must provide such environment "free from criminal activity" and "substance abuse," 4) must "attend parenting education classes," 5) must participate in a "psychological evaluation," and 6) "will not abuse illegal drugs, alcohol, and/or prescription medications" and must be subject to drug testing.

A.M. did not appear at a January 30th court hearing. The juvenile court learned that he had been arrested and was in custody. At a February hearing, the court noted he was "still in custody." On August 13, A.M. did not appear for a family drug treatment court hearing. The court continued the matter to determine why he was absent. On August 20, he told the court that he had missed his drug test appointments.

On August 24, 2012, CWS filed a "status review report" and requested the juvenile court to terminate A.M.'s family reunification services. It noted that A.M. entered a detoxification program in January 2012, but he left the program after nine days to go to Santa Barbara. A.M. was then arrested and in custody "for a brief period." Between December 28, 2011, and January 19, 2012, he "consistently tested positive for THC." On June 5, 2012, he "tested positive for morphine." At the end of June, he went to a drug treatment program in a "confused and disoriented state." He missed drug tests on January 1, 5, and 28, and on February 3 and 11, and March 27. He missed visitation appointments with J.M. on April 24, May 31, June 22 and July 10. On June 26, a CWS worker and J.M. waited for A.M. to arrive at his visitation appointment. But he did not arrive on time.

In that status report, CWS noted that A.M. also did not comply with the case plan's requirement that he obtain a "stable" source of income and a stable living environment for J.M. The CWS worker said he did not obtain housing, did not have any income, and he was "chronically homeless and without the means to care for his daughter." A CWS worker encouraged him to apply to live in a "local sober living home." But he was not interested.

In a July "case plan update," CWS noted that A.M. had missed parenting classes. In an August "addendum report," CWS said he missed an August 11th drug test and failed "to complete required assessments for the Family Drug Treatment Court Program."

The Hearing

At the pre-permanency hearing, A.M. testified that he was benefiting from his psychological therapy sessions with therapist Leslie Sherman. He missed his last two scheduled therapy sessions. He was willing to live at a men's "sober living" home, but "they said no" because he was taking tramadol medication. He had been living at an emergency shelter and his sister's home. He was making attempts to obtain "family transitional" housing. He missed an August 26th drug test, and two days later, he "tested dirty for spice." Spice is a substance that gives people a "high" when smoked. The CWS report refers to spice as "a type of synthetic marijuana." A.M. signed a document stating, "I freely admit use of narcotics or dangerous drugs on 8-26-12. The type of drug used was spice." He testified he signed it, but said, "I didn't admit use of nothing. I smoked my tobacco. I don't even know what spice is." He signed it because the Recover Point drug treatment program staff person said that "they got it on a test stick" and requested him to sign it.

Carollyne Wingrave, a certified addiction treatment counselor, testified she was able to qualify A.M. for admission to the Good Samaritan Clean and Sober Living home, but he did not go there because he "refused to switch his mental health medications."

Theda Parker, a CWS worker, testified that A.M. had not "successfully completed" his "family drug treatment court" requirement. There are three phases of the treatment program. A.M. was in phase two. She decided not to schedule A.M. for psychological appointments until the end of March. She needed to initially "stabilize him" with regard to his "drug treatment" before scheduling those appointments.

Robin Lariba, a parenting counselor, testified that A.M. did not attend all of his required parenting sessions. A.M. missed six sessions out of a total of 22. While in

class, "he cooperated and was receptive to the information." At a class session on July 31, Lariba handed him a worksheet. A.M. "pushed it aside and said, "I'm just tired of all of this."

Leticia Villalobos, a case manager employed by the Community Action Commission, testified that she supervised the visits between A.M. and J.M. The visits occurred "twice a week for an hour." She allowed A.M. to decide where the visits would take place. She was asked by A.M.'s counsel, "[I]s it fair to say that [A.M.] has been consistent in his visitation?" Villalobos: "No."

The juvenile court found, among other things, that: 1) CWS provided "substantial" services, 2) A.M. failed to "make substantive progress," and 3) "there is not a substantial possibility that the child would be returned to [A.M.] within six months."

DISCUSSION

Substantial Evidence

A.M. contends the juvenile court's findings are not supported by the record. He claims the evidence shows: 1) CWS did not provide "reasonable" reunification services, and 2) he "demonstrated a substantial probability of return within an extended reunification period." (Boldface omitted.)

We review the juvenile court's findings to determine whether they are supported by substantial evidence. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) The trial court may consider facts from CWS reports. (*In re Jonique W.* (1994) 26 Cal.App.4th 685, 698.) We do not weigh the evidence or decide the credibility of the witnesses. Those are matters exclusively for the trier of fact. (*Church of Merciful Saviour, Inc. v. Volunteers of America* (1960) 184 Cal.App.2d 851, 856.) The trial court may reject the testimony of any witness, even if uncontradicted. (*Lohman v. Lohman* (1946) 29 Cal.2d 144, 149.) We review the facts supporting the findings to determine whether they constitute substantial evidence. (*R.T.*, at p. 914.)

CWS "must make '[a] good faith effort to develop and implement a family reunification plan.'" (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) "The adequacy of reunification plans and the reasonableness of [CWS's] efforts are judged

according to the circumstances of each case." (*Ibid.*) The case plan should identify "the problems leading to the loss of custody," offer services designed to "remedy those problems," and the agency should make reasonable efforts to contact and assist the parents. (*Id.* at p. 1165.) The juvenile court "must consider 'whether reasonable services have been provided' and whether the parent has 'cooperated and availed himself or herself of services provided.'" (*Id.* at p. 1164.)

There is a shortened reunification services period of six months in cases where the "minor was under the age of three when removed from the physical custody of his or her parent." (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 59.) This shorter period "was meant 'to give juvenile courts greater flexibility in meeting the needs of young children, 'in cases with a poor prognosis for family reunification.'"" (*Ibid.*) "It also represents a legislative determination that in certain situations, efforts to continue reunification services beyond the statutorily mandated six months do not serve and protect a minor's interest." (*Ibid.*) "Because reunification services are a benefit, not a constitutional entitlement, the juvenile court has discretion to terminate those services at any time, depending on the circumstances presented." (*Id.* at p. 60.)

A.M. cites to evidence favorable to him to challenge the juvenile court's findings. But the issue on appeal is not whether some evidence supports his position; it is whether substantial evidence supports the judgment.

Reunification Services

The juvenile court found CWS provided "substantial" family reunification services. That finding is supported by the record. CWS's case plan was very comprehensive. It focused on correcting the problems that caused the child's removal from the home - A.M.'s drug addiction and the lack of a stable home environment. The CWS worker met with A.M. "on a weekly to bi-monthly basis." A.M. received a reasonable supervised visitation schedule with J.M. He was allowed to decide where the visits would take place. He was provided with a drug treatment program, a drug testing regimen, parenting classes, psychological evaluations, psychological therapy and assistance in obtaining "clean and sober" housing.

A.M. contends CWS did not provide timely or sufficient psychological services for him. "The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A showing that more services could have been offered does not by itself demonstrate that CWS did not comply with its duty. (*Ibid.*) A.M. claims CWS unreasonably delayed until April 19 before advising him to attend psychological therapy sessions with Sherman. He notes that Robert Richey, a clinical psychologist who made a report for the court, recommended that he receive 12 to 24 hours of individual therapy and opined that such therapy "may" help him with his drug abuse problem. A.M. claims CWS consequently should have scheduled appointments with Sherman earlier in the six-month review period so he could attend more therapy appointments.

But CWS had a different approach than Richey. It concluded that A.M.'s drug abuse should be treated first to stabilize him and improve his chances to benefit from psychological therapy. The trial court was not bound by Richey's opinion. (*People v. Stoll* (1989) 49 Cal.3d 1136, 1155; *Ortzman v. Van Der Waal* (1952) 114 Cal.App.2d 167, 170-171.) It reasonably found CWS's position was appropriate. It had a valid concern about the ability of a drug-addicted person to concentrate and benefit from psychological therapy sessions until that condition improved. A.M. had a serious drug addiction.

A.M. claims CWS acted in bad faith by delaying the referral for treatment. But the trial court rejected that contention and found the agency's actions were reasonable. A.M. has not cited to evidence supporting his bad faith claim. CWS notes that part of the delay in obtaining the first therapy appointment was due to A.M.'s failure to contact the therapist to schedule an appointment. The CWS worker and the therapist had left phone messages. The therapist left messages asking A.M. to leave a message indicating when she should call him to schedule an appointment. But A.M. did not do that, and the CWS worker ultimately had to schedule the first appointment for him.

Moreover, the juvenile court could question whether A.M. was seriously committed to therapy or would benefit from it. He had four scheduled psychological

evaluation appointments. A.M. knew that Richey needed him to attend these sessions to make an assessment and a report to the juvenile court. But A.M. missed one of those appointments, he was 20 minutes late for his first session, and one and one-half hours late to his third appointment. Richey said, "[A.M.] needs to be able to demonstrate an ability to attend appointments in a timely manner. This would improve his ability to benefit from services" and "demonstrate his ability to meet the needs of his daughter." There was evidence from which the trial court could find A.M. had a negative attitude about attending appointments. During one interview, A.M. "appeared frustrated with" the interview process and gave "abrupt answers." Richey was unable to determine whether A.M. was "intentionally" withholding information. A.M. complained that "coming to appointments was a financial burden" and that he felt "like a 'guinea pig.'"

The juvenile court could also consider whether A.M. had benefited or obtained insight from prior therapy. Prior to CWS opening this case, A.M. had received individual therapy sessions while he was in prison. But Richey said, "[A.M.] was unable to specify what he worked on while in therapy."

A.M. testified that he benefited from his sessions with Sherman. But his credibility was a matter for the trial court. In a "Waiver of Rights" form (Judicial Council JV-190), he acknowledged that if he failed "to participate regularly in court-ordered treatment, at the review in six months[,] services may be terminated." But he missed half of the four sessions with Sherman, he missed three of the total of eight sessions scheduled with Sherman and Richey, and he was late to two of the remaining sessions. A.M. has not shown the juvenile court was required to extend services given: 1) this pattern of missing appointments; and 2) as will be seen, his overall pattern of missing appointments in other case plan areas and his insufficient compliance with the plan's goals. "[T]he provision for continued services beyond six months applies only when a parent . . . has participated in and made substantive progress with services and has shown there is a substantial probability of reunification" (*In re Jessie W.*, *supra*, 157 Cal.App.4th at p. 63.)

A.M.'s Compliance and Progress

The juvenile court found A.M.'s compliance with the case plan was not sufficient and he did not make adequate progress. Those findings are supported by the record.

A.M. claims he complied with his substance abuse requirements. But the trial court could reasonably find that was not the case. A.M. has a 35-year history of using drugs. "His drugs of choice were heroin and marijuana." He told CWS that he wanted to "break free from his history and to take advantage of the services available to him."

But in January he left a detoxification program after being there for only nine days. Between December 28, 2001, and January 19, 2012, he "consistently tested positive for THC." From January through March, he missed six drug tests. In August, he missed two more drug tests. In early June, he tested "positive for morphine." In late June, he appeared at the drug treatment program "in a confused and disoriented state." CWS said he had "his clothing on inside out and backwards and . . . he was unable to locate his vehicle, thinking it was stolen, but he had actually forgotten where he parked it." In August, he "tested dirty for spice," and he signed a statement at a drug treatment program admitting he had used a dangerous drug. He did not appear for a family drug treatment court hearing. Parker testified he did not successfully complete his "family drug treatment court" requirement.

In addition to attending drug treatment, the juvenile court had to determine whether A.M. benefited from the programs. Richey noted that A.M. claimed that "he had learned a lot in classes at" the Recovery Point drug treatment program. But when Richey asked him what he learned, A.M. "*was unable to describe the information or how he would use it.*" (Italics added.) He was "unable to" name the medications he used.

A.M. cites to the portion of Lariba's testimony where she said he "cooperated and was receptive to the information" during parenting classes. But there was other evidence showing noncompliance. He missed six parenting sessions. The juvenile court said he did not attend "27 percent of the sessions provided." During one session near the

end of the compliance period, A.M. said, "I'm just tired of all of this," and he pushed a worksheet away.

A.M.'s pattern of missing appointments extended beyond missing drug tests, a court hearing, parenting classes and therapy appointments. He also missed visitation appointments with J.M. in April, May, June and July. On some visits CWS noted that he was late. Villalobos testified he was not "consistent in his visitation." A significant portion of his noncompliance occurred at a critical time - near the end of the six-month review period.

Moreover, determining whether the parent attends case plan appointments is not the only issue. "The court must also consider the parents' progress and their capacity to meet the objectives of the plan." (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.) The case plan required A.M. to obtain suitable housing. Wingrave was able to qualify him for admission to a clean and sober home. CWS urged him to go there. In a status review report, CWS said there were two attempts to assist A.M. in the application process to enroll him into a sober living home. But on both occasions, A.M. "changed his mind." There was conflicting evidence, but the juvenile court could reasonably find from Wingrave's testimony and the CWS reports that A.M. refused to take advantage of that housing opportunity.

A.M. told CWS that his housing plan was to live with his sister in a home. But he testified he had been living in an "emergency shelter," with "[his] sister from day-to-day in a motel," and in a truck for "a couple of months." He said living with his sister was not a viable option because "she had nowhere to go." His sister paid for the motel, but that was a financial burden for her. He did not know his position on the waiting list for "transitional" housing. The case plan required A.M. to obtain a "stable" source of income so he could take care of his daughter. He testified his monthly income was \$90 from general relief and \$200 in food stamps. He told Richey that he had to obtain money from his sister and brother to cover "his bills and basic needs." The juvenile court could find there was no evidence showing he had a stable home environment. Nor did he show how he could properly take care of an infant given his housing situation.

CWS determined A.M. "has not made sufficient progress in his case plan objectives to warrant" additional family reunification services. Parker said his compliance with the case plan was "marginal." But in addition to A.M.'s case plan compliance, the juvenile court had to consider whether extending services beyond the six-month period would "serve and protect [the] minor's interest." (*In re Jesse W.*, *supra*, 157 Cal.App.4th at p. 59.) A.M. claims Richey's report shows his potential for improvement of his drug abuse problem.

But the juvenile court also had to consider J.M.'s interests. (*In re Jesse W.*, *supra*, 157 Cal.App.4th at p. 59.) A.M. had emotional problems which extended beyond drug addiction. Richey noted that he had a history of depression and "had attempted suicide at least five times between 2000 and 2008." Richey's current diagnosis was that A.M. had a "major depressive disorder," a "generalized anxiety disorder," and a "panic disorder." The court had to consider this medical history in determining the well being of the infant. Even if long term therapy might benefit A.M., the court also had to consider the impact of the time it might take to stabilize his depression on the child's immediate best interests. Richey said the child needed a parent who could provide a "reliable source of income" and "secure reliable housing." CWS said J.M. needed such stability, and the court found there had been insufficient progress by A.M. for her benefit. A.M. has not shown the court abused its discretion.

The petition is denied.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Madeleine Nantze for Petitioner.

No appearance for Respondent.

Dennis A. Marshall, County Counsel, Toni Lorien, Deputy, for Real Party in
Interest.