Filed 10/15/19 In re A.C. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 A.C., a Person Coming Under the Juvenile Court Law.	B295635 (Los Angeles County Super. Ct. No. DK22451A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Martha Matthews, Judge. Affirmed.

Paul A. Swiller, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey

F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Abraham C. was two years old when the juvenile court assumed dependency jurisdiction over him based on allegations that M.C. (Father) physically abused Abraham and L.F. (Mother). The juvenile court ordered family reunification services for the parents, including an anger management program for Father and domestic violence programs, parenting classes, individual counseling, and regional center services for both. In this appeal by Father from an order terminating his parental rights, we consider whether substantial evidence supports the juvenile court's finding that the Department provided him reasonable reunification services before ordering no further services to be provided.

I. BACKGROUND

A. The Juvenile Court Assumes Jurisdiction Over Abraham

Abraham was born in May 2015. Mother was 24 years old at the time and Father was 20. Both parents have intellectual disabilities. Mother cannot read, tell time, or cook. She was a regional center client before this case commenced.[1] Father was diagnosed as having a mild intellectual disability. He had been a

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[1] "[T]he State Department of Developmental Services contracts with private nonprofit corporations to establish and operate regional centers. (Welf. & Inst. Code, § 4621.) These regional centers are 'responsible for determining eligibility, assessing needs and coordinating and delivering direct services to individuals with developmental disabilities and their families within a defined geographical area. [Citation.]' [Citation.]" (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 479, fn. 3.)

regional center client as a young child, but his father "took him out of the program" because he "did not believe in it."

The Los Angeles County Department of Children and Family Services (the Department) initially investigated Abraham's welfare shortly before his first birthday, when Mother called the police to report Father had hit Abraham on the leg and tried to hit her when she intervened. The Department established a voluntary family maintenance case plan with Mother and Father that required them to live separately and participate in parenting and domestic violence classes. Father was removed from the plan after a few months because he moved to Texas.

Shortly before Abraham's second birthday, when Father returned from Texas, Mother and Abraham went to live with Father. The Department then filed a juvenile dependency petition based on Father's prior abuse of Abraham—including the incident in which he hit Abraham's leg, and other instances in which he had hit and pinched Abraham—and Mother's failure to protect the child. The Department subsequently amended the petition to add allegations concerning Father's abuse of Mother[2] and both parents' failure to comply with the voluntary family maintenance case plan. Abraham was removed from Mother and Father and, when his maternal aunt proved unable to care for him after the detention hearing, placed in foster care.

In the period between the detention hearing and the combined jurisdiction and disposition hearing, Mother and

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[2] The amended petition alleged Father pulled Mother's hair and hit her in the stomach when she was pregnant with Abraham.

Father lived with Abraham's paternal grandmother. In an interview with a Department social worker, Father admitted to hitting Abraham and Mother. The social worker observed Father "had difficulty regulating his emotions and responded [to questions] in simple terms," but was "able to carry on a conversation and ma[k]e appropriate, on subject responses with minimal redirection." He "appeared remorseful" and said he wanted help controlling his anger. He was eager to enroll in parenting classes and had begun participating in Project Fatherhood, a group therapy program focused on topics including appropriate child discipline and child development.

The juvenile court sustained the dependency petition in June 2017. The court ordered Father to complete an anger management program and ordered both parents to participate in domestic violence programs, parenting classes, individual counseling, and all services recommended by the regional center.

B. Six-Month Review

Prior to the juvenile court's six-month review hearing in December 2017, the Department reported on Father's compliance with his case plan. According to the Department, the regional center to which Father was assigned had referred him to a vendor called Options for Independence (Options) to coordinate his court-ordered services. A Department social worker spoke with an Options representative "multiple times regarding services needed for [F]ather," but he had not been enrolled in any services (apart from Project Fatherhood) until two months after the disposition hearing, i.e., August 2017.[3] By that time, Father

[3] A Department social worker noted Father was "anxious to start and did not want to wait for proper referrals." Instead, he

was enrolled in a parenting skills course and a combined anger management and domestic violence course.[4]

There was no progress, however, in enrolling Father in individual counseling. In a letter dated a couple weeks prior to the six-month review hearing, an Options employee explained to a Department social worker that "Options ha[d] contacted numerous providers to no avail. The issue seems to be a lack of providers willing to accept Medi-Cal and of those who do there is a lengthy waitlist." Father was on several waitlists.

At the six-month review hearing, the juvenile court found both parents had made partial progress towards completing their case plans, the Department had made active efforts to provide or offer the ordered services, and family reunification services should continue because there was a substantial probability Abraham would be returned to Mother and Father's physical custody.

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would "enroll[ ] and re-enroll[ ] several times at various programs," which he found "on the internet, from other people, [when he] saw a flyer on a wall in a building[,] etc." A social worker contacted at least one such program to determine whether it would accommodate Father's intellectual disability, but Father did not attend an intake assessment on the assigned day.

[4] The director of the anger management and domestic violence program told a Department social worker that she offered separate anger management and domestic violence courses but the "combination class is better suited for people with limited funds."

C. Twelve-Month Review

Prior to the 12-month review hearing at the end of July 2018, the Department reported Father completed his parenting course, was receiving hands-on parenting instruction during his visits with Abraham, and was continuing to attend his anger management and domestic violence course.[5] Since February 2018, he had also been attending a "52 weeks certified [batterer's intervention program]."

The social worker had also "made several calls in an attempt to find housing" for Mother and Father, who had been evicted from their previous home. The social worker could not find a suitable placement, and Mother and Father refused group home placements offered by the regional center. Mother and Father later reconsidered and accepted regional-center-offered housing when their preferred housing options did not materialize.

In the meantime, Father still had not received individual counseling. A Department social worker contacted a representative from Options, who reported that "as soon as [Father's] insurance is cleared he will be assigned a therapist." The social worker called two therapists directly (leaving voice

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[5] A May 2018 letter from the facilitator of the anger management and domestic violence program reports Father "enrolled in our 52-week Anger Management Program on 8/22/17." A December 2017 letter from the same facilitator reports Father enrolled in "our Parenting and Anger Management/Domestic Violence Program[s]" on August 22, 2017. Because both letters state the same enrollment date, we do not read the May 2018 letter to suggest that Father left the combined anger management and domestic violence program for a standalone anger management program.

messages) and "emailed [the Options representative] a list of psychologists in [F]ather's area who provide services to . . . Regional Center clients as well as [a] list of agencies providing licensed [marriage and family therapists]." The Options representative reported that "they ha[d] tried everything, called every referral [the social worker] provided for [F]ather's therapy, called additional therapists, [and] contacted [the regional center] without being able to obtain therapy for [F]ather." The regional center "declined to pay for services and [F]ather's Medi-Cal was not accepted." Additionally, Options found Father "difficult to work with" because he did not "make himself available."[6]

The social worker discussed these issues with Father's service coordinator at the regional center, who said she would arrange to have Father enrolled in "in-home counseling" through the regional center. In May 2018, the Options representative reported the regional center would "start providing individual therapy within two weeks." It is not clear from the record whether that occurred.

The Department also reported on visitation issues in the months before the 12-month review hearing. Father "tend[ed] to engage more" during visits when he was accompanied by a hands-on parenting coach, but he often arrived late and, "[a]fter spending 5-10 minutes with [Abraham], . . . [gave] the child his phone to play with and . . . wait[ed] for [M]other's visits to start."

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[6] The Options representative previously reported Father was "very defensive and [offered] 'very lame excuses'" when they discussed his "many missed visits" with Abraham and Options. He also "kept saying that he 'did not want to do all this' and [that] he was already doing what he needed to do."

During a visit at a pizza restaurant/arcade, a social worker observed Father would "tire quickly and . . . go off by himself to play games on the machines." The caregiver informed the social worker that, during another visit, Father "'raised his voice and was squeezing Abraham'" when Abraham "'was upset and was throwing a fit.'"

The social worker further reported Father had been "caught . . . in many contradictions" and was "not . . . forthcoming." For instance, Father told Abraham's caregiver that he "'has 13 brothers and sisters that are going to help him,'" despite apparently having no siblings. Someone at Project Fatherhood "was surprised to learn that [Abraham] was in foster care . . . because [F]ather stated that . . . the child was with the mother and they . . . spent weekends together, going to ball games and do[ing] all kinds of activities together."

At the 12-month review hearing (the key hearing for purposes of this appeal), the Department recommended the juvenile court terminate family reunification services and schedule a Welfare and Institutions Code section 366.26 permanency planning hearing.[7] Mother disagreed with the recommendation, arguing her progress in court-ordered services was hampered by her "special circumstances," which were not adequately addressed. Father likewise disagreed and emphasized his participation in Project Fatherhood, as well as parenting, domestic violence, and anger management courses. Father asked the juvenile court "to find that the Department did not make reasonable efforts in assisting these parents" because

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[7] Undesignated statutory references that follow are to the Welfare and Institutions Code.

"the highlight of this case is that both of these parents were special needs parents." Father maintained the Department did little more than provide phone contacts and assist in "being set up with regional [centers]."

Rejecting the parents' position, the juvenile court found the Department made reasonable efforts to provide the court-ordered services to both parents. The court explained "making a referral to regional center was not sort of just a random handoff. Regional center is the comprehensive source of specially tailored services for parents with disabilities. [¶] So the fact that the social worker connected—made sure the parents were connected with regional center and kept in touch with their regional center service providers is actually reasonable efforts in the context of this case and does show that the Department was aware of the parents' special needs and made reasonable efforts to ensure that their services accommodated their special needs." The juvenile court acknowledged "the parents are doing the best that they can," but did not believe "that it's likely that either one of them would actually be ready to parent [Abraham] on their own or together by October of this year. And so [the court did not] have the statutory basis [it] would need to extend services any longer." The juvenile court terminated reunification services and set a permanency planning hearing under section 366.26.

D. Termination of Parental Rights

In January 2019, the juvenile court denied Father's section 388 petition that sought to have Abraham returned to his physical custody or to resume family reunification services. The court did believe Father had shown changed circumstances "because he has done all of these programs and has participated

quite actively," but the court denied the petition because it "simply [could not] find that it would be in Abraham's best interest to release him to his father or to reopen reunification services . . . ."

On the same date, the juvenile court held a hearing under section 366.26 at which it terminated Mother and Father's parental rights and accepted the Department's recommendation for a permanent plan of adoption.

II. DISCUSSION

Father does not attack the order terminating his parental rights per se. Rather, he challenges the juvenile court's earlier decision, when terminating *reunification services*, that the Department had theretofore fulfilled its duty to provide reasonable services. Although a party challenging an order to stop reunification services must normally proceed via a petition for an extraordinary writ (§ 366.26, subd. (l)(1)), a challenge made in the context of a later appeal from a parental rights termination order is permissible when the juvenile court does not "adequately inform the parent of their right to file a writ petition." (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1240.) The Department concedes Father was not adequately informed of his right to file a writ petition and may accordingly challenge the services termination order in this appeal.

Father's position is the Department inappropriately delegated its responsibility to oversee Father's reunification services, which meant he did not timely receive all court-ordered services. There is substantial evidence, however, that the Department made reasonable efforts to place Father in individual counseling even if these efforts were unsuccessful. Similarly,

despite the delay in Father's enrollment in a certified batterer's intervention program, there is substantial evidence the Department sought to determine whether the combined anger management and domestic violence program in which Father was already participating was sufficient. These conclusions compel affirmance.

A. Legal Framework

If a juvenile court removes a child from parental custody and assumes dependency jurisdiction under section 300, the court may require the Department to provide reunification services to the parent and order participation in a counseling program "designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d); see also § 361.5, subd. (a).) The court then monitors compliance with family reunification plans at periodic hearings.

At the six-month post-disposition review hearing, the juvenile court must return the child to his or her parent's custody unless it finds by a preponderance of the evidence that such return would "create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (e)(1).) If the court finds a risk of detriment precluding the child's return, it "shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian." (§ 366.21, subd. (e)(8).)

If the court does not set a hearing under section 366.26, it must "direct that any reunification services previously ordered . . . continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5 . . . ." (§ 366.21, subd. (e)(7).) If services are continued, the Department, at the 12-month hearing, must prove by clear and convincing evidence that it has provided reasonable services to the parent; if it fails to meet this burden, family reunification services must be extended to the end of the 18-month period. (§§ 361.5, subd. (a), 366.21, subd. (g)(1); Cal. Rules of Court, rules 5.708(c) & 5.715(b)(1); *In re K.C.* (2012) 212 Cal.App.4th 323, 329.)

The Department "must make a good faith effort to provide reasonable services responsive to the unique needs of each family . . . ." (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420 (*Patricia W.*); see also *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 [social services agency must make good faith effort to create and effectuate reunification plan].) "[W]hen a parent or guardian has a mental illness or a developmental disability, that condition must be the 'starting point' for a family reunification plan which should be tailored to accommodate their unique needs." (*Patricia W.*, *supra*, at p. 420.)

"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 Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).) "Services will be found reasonable if the Department has '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 . . . .' [Citation.]" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973 (*Alvin R.*).)

We review the juvenile court's finding that reasonable services were provided for substantial evidence, considering the record in the light most favorable to the Department. (*Patricia W.*, *supra*, 244 Cal.App.4th at p. 419; see also *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.)

B. Analysis

Father contends the Department relied on the regional center and its vendor, Options, to provide him with court-ordered services and, when they failed to do so, did nothing more than offer him a list of phone numbers. He argues that this approach was insufficient in light of his intellectual disability. As we shall explain, Father's argument discounts much of the reasonable efforts—some fruitful, some not—that the Department's social workers did make on his behalf.

As to individual counseling, Father contends the Department made "no efforts" and took no "action" to address the "lack of providers who were willing to accept Father's Medi-Cal and [the] lengthy waitlist for any therapist who did accept it." Contrary to Father's claim, however, this is not a case in which there was no "follow-up by the Department to move things along or to assist . . . in any respect other than a referral to a therapist with a waiting list." (*Alvin R.*, *supra*, 108 Cal.App.4th at p. 973.)

When Father had not moved off any waitlists by January 2018, a Department social worker provided Options with a list of therapists who serve regional center clients and called therapists

on her own. The social worker confirmed that Options reached out to "every referral" she provided, plus additional therapists, and sought assistance from the regional center. The social worker also followed up by arranging for individual counseling to be provided through the regional center. Father does not contend the Department was required to pay for his counseling or that the regional center would have provided individual counseling before other options were exhausted if only the Department had asked. Under these circumstances, the juvenile court's finding that the Department made reasonable efforts to place Father in individual counseling is supported by substantial evidence.[8]

Father also challenges the Department's handling of his anger management and domestic violence courses. His true complaint, however, is difficult to pin down: He objects to not having "the opportunity to engage in a standalone anger management course" and getting belated access to a "standalone domestic violence program," but at the same time he also objects to the Department arranging for him to enroll in a certified batterer's intervention program (i.e., a standalone domestic violence program) when "[he] was doing well and progressing in the combined class he was attending."

Nonetheless, taking Father's arguments on their own terms, reversal is unwarranted. Father's social worker first referred him to the batterer's intervention program soon after the

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[8] Father repeatedly states he and Mother were ordered to participate in couples counseling, which the Department also failed to provide. This was a requirement of the 2016 voluntary family maintenance case plan, but it does not appear in the court-ordered case plan made at disposition for either parent in this dependency proceeding.

adjudication and disposition hearing.[9] Father chose instead to enroll in the combined anger management and domestic violence program, and the social worker repeatedly sought to assess whether it would be satisfactory. When she apparently determined it was not, she again instructed him to enroll in the batterer's intervention program. The social worker at that point did not tell Father to stop attending the combined course, and indeed, the record indicates he continued to attend.

Finally, Father contends the Department did not ensure he was provided life skills training that Options believed would have been helpful, including training as to "money management, organizational skills, cooking and shopping." But Options explained why this training (which is offered one on one in

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[9] This was not, as Father writes in his brief, "the same 'here are some numbers, call them' referral process as is seen in many dependency cases." The social worker wrote Father a letter including the provider's address and phone number and explaining that it "has an on-going DV group every Tuesday from 6:00pm-8:00pm. There is a $70.00 enrollment fee and each group cost[s] $20.00. Again, I have asked for a lower sliding scale on your behalf. I was told that this is up [to] the instructor, Mr. James Pelk. I have also left a message for him. If you decide to go to the Tuesday group . . . , please arrive 15-30 minutes before the start of the first class to complete the enrol[l]ment paperwork. At that time ask to talk to Mr. Pelk regarding a sliding scale based on being a Regional Center client and receiving SSI . . . ." The social worker attempted to make arrangements on Father's behalf and, when she was unable to do so, clearly explained what he needed to do. There is no evidence Father was unable to follow these instructions—or, indeed, that he required any additional assistance when he did successfully enroll in February 2018.

clients' homes) was never offered: Father lacked stable housing and was financially dependent on his mother. Insofar as the regional center (via Options) was best situated to provide these services and determined it was unable to do so, the lack of life skills training does not undermine the juvenile court's reasonable services finding.

There is little doubt that the Department, with unlimited time and unlimited resources to devote to Father's case, could have placed him in individual counseling and a certified batterer's intervention program sooner than it did. But "[i]n almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect." (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) Substantial evidence supports the juvenile court's conclusion that the Department satisfied its reasonable efforts statutory obligation—on the facts here, that it reasonably attempted to address a shortage of therapists willing to accept Father's insurance and a lack of information concerning the adequacy of the combined anger management and domestic violence program.

DISPOSITION

The juvenile court's order is affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.