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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

R.D.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B292205

(Los Angeles County
Super. Ct. No. 17CCJP01480)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Natalie P. Stone, Judge. Petition granted.

Los Angeles Dependency Lawyers, Inc., Law Office of Katherine Anderson, Shannon Humphrey and Laura Leath for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Stephen D. Watson,
Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Petitioner, the father of 12-year-old K.D., a dependent of the juvenile court, has filed a writ petition challenging the juvenile court's ruling at the six-month review hearing terminating reunification services and setting a hearing under Welfare and Institutions Code section 366.26.¹ We agree with father that the juvenile court erred in denying him a contested hearing, and therefore grant the petition.

PROCEDURAL BACKGROUND AND FACTS

A. Referral and Investigation

On October 29, 2017, Department of Children and Family Services (DCFS) was notified that K.D.'s maternal aunt told law enforcement that no one could care for the child because he was throwing tantrums, behaving belligerently, and running away from home. K.D.'s mother died in November 2016, so K.D. was not living with father when the case began.

K.D. lived with father for about a month after mother died, but left to live with his adult sister because father was physically and verbally abusive. He said he and the adult sister lived with several family members but eventually no one wanted to care for

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

him. K.D. said he did not like father and refused to live with him because of past abuse. He added father used drugs, would beat him and had left him with his aunt.

The maternal aunt explained she and K.D.'s adult sister had been caring for the child since November 2016, but the boy was having behavioral problems and no one wanted to take care of him. The adult sister told the social worker she was not able to care for K.D.

Father denied physically abusing K.D., but admitted he "whooped his ass when he acts up in school or becomes defiant." Father claimed he wanted K.D. to be with him and was willing to work with DCFS. He admitted to smoking marijuana daily and being incarcerated several years ago for robbery. Father has a criminal history.

DCFS recommended father participate in parenting classes to address teenagers with behavioral issues, submit to on-demand drug testing, and participate in conjoint counseling with K.D.

B. Petition & Adjudication

On October 31, 2017, DCFS filed a petition alleging K.D. was at risk of harm due to father physically abusing him and leaving him with the maternal aunt without making an appropriate plan of care. At the November 1, 2017 detention hearing, the juvenile court detained K.D. in foster care, granted father monitored visits, and ordered DCFS to provide reunification services.

DCFS reported on January 18, 2018 that father had not visited or had any contact with K.D. The social worker (Sydney Davis) had attempted to telephone father four times since the

detention hearing, as well as visit him at his address, but he had not made himself available.

On February 20, 2018, father pleaded no contest to the allegations in the section 300 petition. The juvenile court declared K.D. a dependent, granted father a minimum of six hours of monitored visitation per week, and ordered reunification services.

C. Six-Month Review Period

For the six-month review hearing, DCFS reported social worker Davis had made several attempts to contact and interview father, all to no avail. Davis had sent father two letters requesting he contact DCFS, and father did in fact receive the letters. The social worker also tried to locate father at his home, but he was not available.

Davis was able to find father by using an online “inmate locator,” which showed father had been incarcerated on April 22, 2018, for possession of a firearm, and was transferred to North Kern State Prison on July 9, 2018. He was sentenced to two years in prison and eligible for parole in April 2019. The record suggests the social worker sent father a letter on July 23, 2018, with his court-ordered case plan to assist him with identifying programs to reunify with K.D.

Father had not provided proof of compliance with his case plan. K.D. said he did not want to speak with father on the telephone or visit him in person. DCFS opined that it would not be in the child’s best interest for father to be granted additional reunification services.

D. Six-Month Review Hearing

Father did not appear at the August 21, 2018, six-month review hearing. But his counsel asked to set DCFS's recommendation for a contested hearing, stating she wished to challenge reasonable services. The juvenile court replied that DCFS did not know father was incarcerated, so they couldn't provide reasonable services to a parent when they didn't know where he was. Counsel for DCFS objected to the court setting the hearing for a contest, and pointed out that DCFS mailed father a letter to further assist him with his case plan once they learned his whereabouts, and that father's counsel had failed to meet the burden for setting a contest.

The juvenile court agreed with DCFS's counsel and indicated it did not "see the basis for setting any kind of contest here. The father, before he went in, has done nothing. He's never indicated any desire whatsoever to participate in any aspect of this case. [¶] And this report makes clear that the father was not located until, at best late June of 2018. And then he was transferred to North Kern on July 9th. Less than two weeks later, the social worker sent him a contact letter with his case plan to assist him with identifying court-ordered programs. [¶] So I fail to understand what the basis is for setting this for [a] contest." After father's counsel indicated father would be eligible for parole in January 2019, the court found:

"All right. So he's first eligible for parole the same month that the [12-month review hearing] date is. So he's not going to be out, by any measure, before there's been 12 months of reunification services; and so there's not going to be an ability for him to reunify based on the requirements of his case plan. No matter what services are available in prison, it's not going to be

able to satisfy everything that was in the case plan. [¶] So I'm not going to set the matter for a contested hearing."

The juvenile court terminated father's reunification services and set a section 366.26 hearing to select and implement K.D.'s permanent plan. Father challenges this decision.

DISCUSSION

Father contends the juvenile court erred in denying his request for a contested hearing under section 366.21, subdivision (e), the statute governing six-month review hearings. We agree and conclude *In re James Q.* (2000) 81 Cal.App.4th 255 (*James Q.*) controls the outcome in this case.

There, the mother of two sons had not completed her case plan by the time of the six-month review hearing. She also had not visited regularly with the children, and her whereabouts became unknown during that review period. Mother had also failed to maintain contact with the social worker. As a result, the department recommended terminating her reunification services. Mother requested a contested hearing on the related issues of reunification services and visitation. The juvenile court found the mother failed to make a sufficient offer of proof to justify a contested hearing and terminated reunification services. (*James Q.*, *supra*, 81 Cal.App.4th at pp. 258–260.)

After analyzing the role and stature of review hearings within the dependency system and the statutory framework, the appellate court reversed the judgment. "As a matter of statutory construction and constitutional due process, we conclude the juvenile court cannot require a party to a review hearing to tender an offer of proof as a condition to obtaining a contested hearing. [Citations.] A party must be able to make its best case,

untrammelled by evidentiary obstacles arbitrarily imposed by the courts without legislative sanction. [Citation.] [¶] The juvenile court may make evidentiary requests of a party on any of a number of issues *during* the contested hearing itself. . . . However, the court must permit the parent to attempt to contest potentially adverse recommended findings.” (*James Q.*, *supra*, 81 Cal.App.4th at pp. 266-267.) “The court’s failure to do so resulted in a miscarriage of justice.” (*Id.* at p. 268.)

Also applicable here is *David B. v. Superior Court* (2006) 140 Cal.App.4th 772 (*David B.*), where the court followed *James Q.* Similar to *James*, father asked for a contested 18-month review hearing. By that time, the father had been incarcerated, sentenced to a jail term and then released to a residential drug treatment facility. His probation officer reported he would not be released from that facility for several more months, preventing him from complying with his case plan and reunifying with his daughter. Much like the juvenile court in this case, the court denied David’s counsel the chance to present his testimony, cross-examine his social worker or present evidence regarding reasonable services. (*Id.* at p. 776.)

The appellate court said, “Does the parent of a dependent child have a due process right to a contested review hearing, unfettered by the prerequisite of a juvenile court’s demand for an offer of proof? . . . [T]he answer we believe is yes.” (*David B.*, *supra*, 140 Cal.App.4th at p. 775.) “Family preservation, which necessarily includes family reunification services, is the primary focus during the first 12 to 18 months of dependency proceedings. . . . ‘[U]p until the time the section 366.26 hearing is set, the parent’s interest in reunification is given precedence over the child’s need for stability and permanency.’ [Citation.]

However, '[o]nce reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.' ” (*Id.* at p. 778.) “At this stage in the proceedings, where the focus remains on family reunification, ‘due process requires the juvenile court to permit a parent to avail himself or herself of the right, if he or she chooses, to a contested review hearing without conditioning that right on a demand for an offer of proof.’ [Citation.] The risk of an erroneous deprivation of a parent’s fundamental interest in his or her child outweighs [DCFS’s] interest in an expeditious decision. A contested hearing is the minimal procedural safeguard available, one which is not onerous or unwarranted.” (*Id.* at p. 780.)

Here, after father requested a contested review hearing to challenge whether DCFS provided reasonable services, the juvenile court saw no basis for such a hearing and terminated services. By doing so, the court prevented father from contesting DCFS’s recommendation to terminate services and thus his “right to be heard at this critical stage of the dependency proceedings.” (*James Q.*, *supra*, 81 Cal.App.4th at p. 268.) This was an abuse of discretion. (See *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 758–759.)

In support of its claim that the juvenile court properly denied father’s request for a contested hearing, DCFS cites to *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138 and *In re Tamika T.* (2002) 97 Cal.App.4th 1114. These cases are inapplicable here. Both *James Q.* and *David B.* rejected identical arguments because those decisions concerned section 366.26 permanency hearings, where the focus shifts from the parent’s interest in reunification to the needs of the child for permanency and stability. “Each of those cases involved section 366.26

permanency hearings, which occur *after* the termination of family reunification services. . . . [T]he termination of reunification services is a critical point in dependency proceedings, a point this case has yet to realize.” (*David B.*, *supra*, 140 Cal.App.4th at p. 780; see also *James Q.*, *supra*, 81 Cal.App.4th at p. 267 [“[U]nlike here, each of those cases involved hearings following the . . . reunification period”].)²

DISPOSITION

The petition is granted. The juvenile court is directed to (1) vacate its order of August 21, 2018 denying father a contested hearing, terminating reunification services, and setting the matter for a permanency hearing pursuant to section 366.26; and instead (2) immediately proceed with a contested six-month review hearing.

This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

BIGELOW, P. J.

We Concur:

RUBIN, J.

GRIMES, J.

² Given our decision based upon father’s right to a contested six-month review hearing, we need not address his other contentions in his writ petition.