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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

J.P.,

Petitioner,

v.

THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS
ANGELES,

Respondent.

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Real Party in Interest.

B282058

(Los Angeles County
Super. Ct. No. CK54482)

ORIGINAL PROCEEDING. Petition for extraordinary writ. Robert S. Wada, Judge. Petition denied.

Law Office of Danielle Butler Vappie, Amy Esther McAllister and Courtney Fisher for Petitioner J.P.

No appearance for Respondent.

Children's Law Center of Los Angeles, (CLC 1), Ronnie Cheung and Patsy Moore, for Annabelle T.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Annabelle T. is the first child of father Jairo P. (father) and the eleventh child of mother Monica T. (mother). When mother tested positive for drugs at the time of Annabelle's birth, hospital staff contacted the Los Angeles County Department of Children and Family Services (DCFS). DCFS detained Annabelle and placed her in foster care. Father was incarcerated at the time of the jurisdiction/disposition hearing three months later, and the court denied father reunification services. Father petitioned for extraordinary writ relief, and we set an order to show cause. We find that the court's findings are supported by substantial evidence, and therefore deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

When Annabelle was born in December 2016, mother tested positive for opiates and barbiturates; Annabelle tested negative. Hospital staff contacted DCFS. Mother had a long history with DCFS: Through multiple juvenile court cases, mother's parental rights to nine of her children had been terminated, and the tenth child was in the custody of that child's father. When asked about her positive toxicology tests, mother denied taking drugs while she was pregnant, saying that she only

had taken penicillin, Advil, and Tylenol for a toothache. The toxicology lab director told the DCFS social worker that penicillin, Advil, and Tylenol could not have caused mother's positive drug test results.

The social worker interviewed mother and father at the hospital. Father said that he and mother had not been in a relationship for several months. Mother told the social worker that she did not know the address of her residence. Father initially said he lived with his mother (paternal grandmother), but later said he did not live with paternal grandmother and did not have a stable living situation. Father suggested that paternal grandmother could care for Annabelle, but said he could not live at paternal grandmother's house because he does not get along with paternal grandmother's husband. The social worker agreed to have paternal grandmother's home assessed for Annabelle's placement. Mother and father both refused to sign any DCFS documentation. The social worker told father to be fingerprinted and drug-tested, and father agreed.

DCFS placed a hospital hold on Annabelle. Paternal grandmother arrived at the hospital and the social worker spoke with her. Paternal grandmother said she was interested in caring for Annabelle. The social worker went to paternal grandmother's home to do an assessment, but paternal grandmother was not home and called the social worker to cancel the appointment. Paternal grandmother told the social worker that her husband was not interested in caring for Annabelle because he and father do not get along. When the social worker said that father does not have to live in the home, paternal grandmother said she would try to get her husband to change his mind.

The same day, December 22, 2016, father called the social worker and admitted that he uses methamphetamines and marijuana. He also said he was out on bail for a charge involving the receipt of stolen property. Father said he was willing to do whatever was necessary to get custody of Annabelle. Father went to the DCFS office to be fingerprinted and pick up a letter for drug screening, but he did not have a California identification card and therefore he could not be fingerprinted. The Live Scan technician suggested that father apply for an identification card as soon as possible and get fingerprinted as soon as he receives the card. Father's drug test was positive for amphetamine, methamphetamine, cannabinoids, and alcohol.

The hospital social worker called the DCFS social worker on December 22, 2016 and reported that mother and father were seen at the hospital "and attempted to 'get into the doors leading to the babies' without consent." Security officers were summoned, and mother and father ran out of the hospital and left in a truck. The hospital remained on high alert with security patrolling the maternity ward.

Mother and father each had extensive criminal histories. Father's criminal history included 2009 convictions for driving under the influence, hit-and-run causing death or injury, and vandalism; a 2010 conviction for vandalism and a parole violation; 2015 convictions for burglary and vandalism; and additional arrests.

On December 28, 2016, DCFS filed a juvenile dependency petition alleging that Annabelle was a child described under Welfare and Institutions Code section 300, subdivisions (b) and

(j).¹ In counts b-1 and j-1, DCFS alleged that mother had a history of substance abuse and was currently abusing opiates and barbituates. The petition noted that mother's ten other children had been removed from mother's care. Count b-1 also alleged that father failed to protect Annabelle "when the father knew or should have known of the mother's substance abuse." Count b-2 alleged that father also had a history of substance abuse, rendering him incapable of providing care for Annabelle. It also alleged that father had a criminal history, and that father's substance abuse placed Annabelle at risk of serious physical harm.

In an addendum report dated December 28, 2016, the social worker said she contacted father and informed him of the detention hearing date. Father said he would use paternal grandmother's address as his mailing address. Annabelle was still in the hospital and was doing well.

At the detention hearing on December 28, 2016, the court found a prima facie case for detaining Annabelle under section 300, subdivisions (b) and (j). The court ordered family reunification services, and ordered monitored visitation for both mother and father.

The jurisdiction/disposition report dated February 3, 2017 stated that Annabelle was in foster care. Mother's whereabouts were unknown, and DCFS had initiated a search for her. On January 27, 2017, paternal grandmother reported that she had last seen father several weeks before. Father called the social worker the same day, and said he had been in the hospital following a car accident. Father agreed to meet with the social

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

worker at paternal grandmother's home on January 31, but he later left a voicemail message cancelling that visit. The jurisdiction/disposition report noted that neither parent utilized any service program, and neither had arranged for any visitation with Annabelle.

Paternal grandmother told the social worker she was unable to care for Annabelle. No other paternal relatives were able to care for Annabelle. Nine of Annabelle's half-siblings had been adopted by two families in Indiana; the mothers of those families were sisters. The Indiana families contacted DCFS and expressed interest in adopting Annabelle.

A last-minute information dated February 3, 2017 stated that a paternal aunt called the DCFS investigator and said that father had been incarcerated on January 31, 2017. Father had been arrested and was being held on felony charges relating to possession of a stolen vehicle.

On February 3, 2017, the court continued the jurisdiction hearing to allow father to appear. On February 7, 2017, the court ordered DCFS to consider paternal relatives for Annabelle's placement. The court also found that father was Annabelle's presumed father.

On February 28, 2017, Annabelle's half-sister, Monique S., filed a section 388 petition asking the court to recognize the sibling relationship. On behalf of her siblings, Monique asked that the court order Annabelle to permanently join their family in Indiana. The court set a hearing on the 388 petition for the same day as the adjudication hearing.

An interim review report dated March 29, 2017 stated that Annabelle remained in foster care and was doing well. Mother's whereabouts remained unknown. Father had been convicted and

sentenced to 486 days in jail, with a tentative release date of September 13, 2017. Father later was convicted of two additional offenses and sentenced to 364 days for each offense. An additional charge for vandalism also was pending. The jail allowed inmates to take classes, including substance abuse and parenting classes. Father had enrolled in a substance abuse class.

The interim review report also noted that father had been shot in December 2016, and that father participates in gang activity. The report attached several pictures of Facebook posts depicting father with guns and making gang signs.

The DCFS investigator met with paternal grandmother and her husband. Paternal grandmother said she wanted to care for Annabelle, and her husband agreed as long as father would not be allowed in the home. Paternal grandmother's husband wanted nothing to do with father. The investigator also spoke with the adoptive parents of seven of Annabelle's siblings in Indiana. Steps were being taken to initiate an ICPC² evaluation of their home for the placement of Annabelle.

At the jurisdiction/disposition hearing on March 29, 2017, the court admitted as evidence the December 28 detention report, the February 3 jurisdiction/disposition report, and the March 29 interim review report. Father's counsel asked that he be dismissed from the petition, because there was no evidence that he cared for Annabelle while under the influence of drugs, so there was no evidence that he placed Annabelle at risk. DCFS argued that father's admitted history of drug use and his lack of effort to work with mother to protect Annabelle's health before

² ICPC is the Interstate Compact for the Placement of Children. See Fam. Code, § 7900 et seq.

she was born placed Annabelle at risk. The court sustained all counts asserted in the petition, including the allegations against father for failure to protect, and found Annabelle to be a person described by section 300, subdivisions (b) and (j).

The court proceeded to disposition. Mother testified that she had started taking classes in an attempt to get custody of Annabelle, but she also acknowledged that she had never visited Annabelle. DCFS asked that no further reunification services be ordered for parents. As to father, DCFS requested that reunification services be denied under section 361.5, subdivision (e)(1). That statute provides that if a parent is incarcerated, “the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered[,] . . . the likelihood of the parent’s discharge from incarceration . . . within the reunification time limitations described in subdivision (a), and any other appropriate factors.” (§ 361.5, subd. (e)(1).) For children under the age of three, “court-ordered services shall be provided for a period of six months from the dispositional hearing . . . , but no longer than 12 months from the date the child entered foster care. . . .” (§ 361.5, subd. (a)(1)(B).)

DCFS argued that father was incarcerated and was not expected to be released until September 13, 2017, and that due to expected sentences for his additional offenses, his incarceration would exceed the time for reunification. Annabelle’s counsel joined DCFS in asking that no reunification services be ordered.

Father's counsel asked for reunification services, arguing that there had been no showing that reunification would be detrimental to Annabelle. Father's counsel also argued that father's convictions carried concurrent sentences, and his September 2017 release date was within the time limitation for reunification services. Father was in a substance abuse class at the jail, and he could take a parenting class afterward.

DCFS countered that father could not do individual counseling while he was incarcerated. DCFS also argued that there was no parent-child bond, since Annabelle had been detained at birth and father had been incarcerated shortly thereafter. DCFS also suggested that father's additional convictions would extend his release date.

The court denied reunification services for both parents. As to father, the court said, "[T]he court will find under Welfare & Institutions Code 361.5(e) that the father is incarcerated or institutionalized. And the court finds by clear and convincing evidence that reasonable services to reunify the child and father would be detrimental to the child and will order no F.R. [family reunification] services for the father." The court set a hearing under section 366.26, ordered an expedited ICPC assessment for the siblings' family, and ordered that DCFS consider placement of Annabelle with paternal grandmother.³

Father filed a petition for extraordinary writ in this court on May 15, 2017, and requested a stay of the section 366.26 hearing. We set an order to show cause and stayed the section

³ Because paternal grandmother's husband had a criminal history, a waiver was required before Annabelle could be placed in the home.

366.26 hearing. DCFS filed a return asking that father's petition be denied, and Annabelle joined DCFS's return.

STANDARD OF REVIEW

Father argues that substantial evidence does not support the court's finding that reunification services for father would be detrimental to Annabelle. An order denying reunification services is reviewed for substantial evidence. (*In re D.H.* (2014) 230 Cal.App.4th 807, 815; *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) Under that standard, "we must decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence." (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839-840.)

DISCUSSION

As noted above, section 361.5, subdivision (e)(1) provides that if a parent is incarcerated, "the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the length and nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered[,] . . . the likelihood of the parent's discharge from incarceration . . . within the reunification time limitations described in subdivision (a), and any other appropriate factors." (§ 361.5, subd. (e)(1).)

"Section 361.5 subdivision (e)(1) does not require that each listed factor exist in any particular case, nor does it specify how much weight is to be given to a factor bearing on detriment, listed or not." (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13,

18.) “The statutes governing reunification services and review hearings must be considered in light of the juvenile dependency system as a whole. [Citation.] The overall objective of that system is the protection of abused or neglected children and the provision of permanent, stable homes if they cannot be returned to parental custody within a reasonable time. [Citation.] The general purpose of dependency law is to safeguard the welfare and best interests of children. [Citations.]” (*In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1241.)

Father argues that “the juvenile court did not appear to consider on the record any of the factors outlined in section 361.5(e)(1) and instead only made one factual finding: that the father was incarcerated.” He argues that this case is similar to *In re Kevin N.* (2007) 148 Cal.App.4th 1339 (*Kevin N.*), in which the court denied a father reunification services based on both an erroneous calculation of the reunification period and the fact that father’s release date was only shortly before the reunification period ended. The court held that the court erred by not making a finding of detriment, and the error required reversal: “Reunification services *must* be offered to an incarcerated parent *unless* the juvenile court finds services would be *detrimental to the child*. (§ 361.5, subd. (e)(1).) The focus is on the child, and there must be a finding of detriment before an incarcerated parent may be denied services. The juvenile court never addressed this issue, so the order must be reversed to allow it to do so.” (*Id.* at pp. 1344-1345.)

DCFS argues that this case is unlike *Kevin N.* because the court did make a finding that reunification would be detrimental to Annabelle. Indeed, the court expressly found “by clear and convincing evidence that reasonable services to reunify the child

and father would be detrimental to the child.” The court did not expand on its reasoning for this finding, but because it did make the finding, the court did not err under the standard of *Kevin N.*

Moreover, substantial evidence supports the court’s finding under the factors in section 361.5, subdivision (e)(1). Father had no bond with Annabelle—he had never been her caregiver.

Although the court at the detention hearing allowed for visitation, father presented no evidence suggesting that he made any effort to visit Annabelle before he was incarcerated, or that he attempted to arrange visits while incarcerated. In addition, although the court ordered reunification services at the detention hearing, on the one occasion father arranged to visit with the social worker, he later cancelled that appointment. In the absence of a bond between Annabelle and father, there was no detriment to Annabelle if reunification services were not provided.⁴ In addition, throughout the case father had no stable home, and although he wanted paternal grandmother to assist him with Annabelle, it was clear that familial support would be limited due to the contentious relationship between father and paternal grandmother’s husband. There was no indication that reunification services might be beneficial to Annabelle, or that such services could serve their intended purpose. (See *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 [“As a general rule, reunification services are offered to parents whose children are

⁴ In his reply, father argues that considering detriment to Annabelle if services are not provided “shifts the burden of proof to the father.” However, section 361.5, subdivision (e)(1) explicitly states that “the degree of detriment to the child if services are not offered” is a factor to consider in determining detriment. Consideration of this factor does not alter the burden of proof.

removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child.”].)

Annabelle was only one day old when she was detained, and her young age is also a consideration under section 361.5, subdivision (e). For children under the age of three, “court-ordered services shall be provided for a period of six months from the dispositional hearing . . . , but no longer than 12 months from the date the child entered foster care. . . .” (§ 361.5, subd. (a)(1)(B).) The dispositional hearing was on March 29, 2017; six months from that date was September 29, 2017. Father’s tentative release date was set for September 13, 2017, less than two weeks before the six-month cutoff date. Annabelle was detained on December 22, 2016, so the 12-month cutoff date was December 22, 2017—less than three months after father was due to be released. Father admits that the jail did not have certain resources available, such as individual counseling, to assist with the reunification process. The evidence provided no suggestion that such a short period of reunification services following father’s incarceration was likely to be successful in reunifying father and Annabelle. (See *In re Aryanna C.*, *supra*, 132 Cal.App.4th at p. 1242 [“Under most circumstances, it is reasonable to expect a parent will receive at least six months of reunification services.”].)

Although “there is ample and familiar case authority holding incarcerated parents must generally be provided reasonable services,” there is no requirement that services must be attempted under circumstances likely to fail, which serve only to delay permanency for a child. (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1031.) Here, the evidence showed

that father had no stable home, he had only limited support from paternal grandmother, he had an extensive criminal history and had been convicted of several different crimes since Annabelle had been detained. In addition, he made no effort to establish a bond with Annabelle through visitation, and he did nothing to work with DCFS toward reunification other than taking a drug test on the day Annabelle was detained, which was positive for multiple drugs. Under the standards in section 361.5, subdivision (e)(1), substantial evidence supports the court's finding that delaying permanent placement for Annabelle in an attempt to reunify her with father would be detrimental to Annabelle.

DISPOSITION

The petition for extraordinary writ relief is denied on the merits. The stay imposed by this court is lifted. This opinion is final as to this court. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.