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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

L.M., Petitioner, v. THE SUPERIOR COURT OF SAN LUIS OBISPO COUNTY, Respondent; SAN LUIS OBISPO COUNTY DEPARTMENT OF SOCIAL SERVICES, Real Party in Interest.	2d Civil No.B251052 (Super. Ct. No. JV-51164) (San Luis Obispo County)

L.M., the father of M.G., a minor coming under the juvenile court law (Welf. & Inst. Code, § 300),[1] seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to review a juvenile court order which set a hearing under section 366.26 after it terminated his family reunification services. After a six-month pre-permanency hearing pursuant to section 366.21, subdivision (e), the trial court found that L.M. did not adequately participate in court-ordered services provided by the San Luis Obispo County Department of Social Services (DSS) and did not make substantive progress in his case

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

plan. Contrary to L.M.'s contention that the trial court erred in these findings, we conclude substantial evidence supports them. We deny the petition.

FACTS

On September 25, 2012, DSS filed a juvenile dependency petition (§ 300, subd. (b)), alleging L.M. had a history of criminal convictions, substance abuse and "was unable to provide care for" M.G., an eight-month-old girl. In August 2012, L.M. had an argument with S.G., the child's mother. He grabbed the child and held her "while sitting on a deck railing one story off the ground." Relatives called law enforcement because they were afraid L.M. would drop the child. The police called DSS. The child's mother told a DSS worker that L.M. hit the child in the head while he "was intoxicated and fighting with his brother."

At a September 26, 2012, hearing, the trial court ruled there would be a "substantial danger to the physical health of the minor" if she were not removed from the custody of L.M. and the child's mother. It found "detention of the minor[] is required." DSS placed the child in the care of a relative "at a confidential address."

In a disposition report, DSS said L.M. was the "alleged father" of M.G. It set forth a case plan and family reunification services in expectation that the court would ultimately accept L.M.'s claim of "presumed father status." The report listed the DSS case worker who was assigned to assist L.M. with family reunification services. The case plan listed goals involving his participation in a parenting education program, a domestic violence program, drug and alcohol "assessment and treatment," substance abuse testing, and supervised visitation with the child. The plan provided that L.M. must "*sign, and keep in force, all needed Releases of Information to allow communication between* [DSS] and service providers." (Italics added.)

On December 21, 2012, the trial court sustained the dependency petition. It found L.M. was the "presumed" father. It scheduled a three-month review hearing and a six-month pre-permanency hearing.

In a December addendum report, the DSS worker said L.M. receives "supervised visits" arranged by DSS. But on November 9, 2012, L.M. "did not show up

for" the visit. He did not return the DSS worker's call to schedule another visit. He also did not attend a scheduled meeting with the DSS worker on November 20th.

In a second addendum report, the DSS said L.M. refused to take a "court-ordered paternity test" and he had been arrested for a drug possession offense.

On March 20, 2013, DSS filed an interim review report. It noted that the child was "attaching well with her caregiver and is well adjusted." L.M. had "inconsistent visitation" with the child because he had been "in and out of jail." He was released from jail on January 16, 2013, but he did not contact the DSS worker "to arrange for visitation," and he did not cooperate with DSS. He did not sign release of information forms that DSS sent to him. This impeded DSS's ability to "set up services" for his case plan. L.M. was consequently not in compliance with his domestic violence, parenting education and drug and alcohol case plan requirements. The DSS worker said that "[a]t three months into a six month case," L.M. has "not begun to engage" in his case plan requirements and he has not visited the child in "over two months."

In a September 3, 2013, status review report, DSS recommended that family reunification services for L.M. be terminated. The DSS worker said L.M. was not in compliance with his drug and alcohol "services assessment" requirement. L.M. participated in an SRS Recovery group domestic violence program, but William Curd, the SRS representative, said he had an "arrogant" and "cocky attitude." Curd said L.M. "is goal oriented, but he is not sure [L.M.] will 'actualize' the information or 'humble himself.'" L.M. participated in parenting classes at Turning Point. But this was not a program approved by DSS. He had supervised visits with the child from October 2012 to January 2103. The community service aid noticed that the child "took thirty to forty minutes to warm up to [L.M.] and did not appear to recognize him." The DSS worker said that L.M. "arrived late to most visits and [he] no-showed to two visits in November without calling or notifying anyone of not being able to attend those visits." In February 2013, a parole agent told DSS that L.M. violated his parole conditions and there was a warrant for his arrest. In March, L.M. was arrested and "remained incarcerated until April 11, 2013, when he was released to Turning Point in Visalia, CA."

DSS concluded the child should not be returned to L.M. In its status review report, it said, "[L.M.] has only recently begun to engage in services and his minimal participation in services over the life of the case has inhibited his ability to participate in visitation and develop a bond" with the child. He had a "negative" attitude while working with DSS. He made "rude comments" to DSS staff which made it "difficult to coordinate services." He "spent the initial seven months from September 2012 until April 2013 in and out of custody in both San Luis Obispo and Kings County." He "did not have visitation with [the child] between January 3, 2013, and April 9, 2013, due to not being willing to check in with Parole and make himself in good standing with his parole officer."

DSS social worker Katie Mitchell testified she believed the child could not "safely return" to L.M.'s home even if the court granted him an additional six months of services. L.M. needed an "intensive batterer's intervention program," which would require at least 52 weeks of training. Mitchell said that on several occasions she wrote letters to warn him that he was not complying with his case plan. She sent release of information forms that were needed to initiate case plan services which he did not sign. DSS was not aware of any attempt by L.M. to participate in any case plan services, or any other rehabilitation services "at the time of the three-month review." Seven days before that three-month review, L.M. tested positive for methamphetamine. He entered a substance abuse treatment program on April 18, 2013. But that Turning Point program was not approved by DSS and he was advised he had to enter an approved program under the case plan. L.M. had not been "regularly" tested for controlled substances in the last four to six months. He entered a domestic violence program in July, but that was not an approved program by DSS.

Melissa Depoorter, a DSS social worker and an expert on domestic violence, testified that she determined that L.M. should attend a one-year "batterer's intervention" program. She made four or five requests that he sign release of information forms to begin case plan services. Each time he refused. During a meeting regarding the

releases, L.M. said he wanted to challenge her ability and qualifications to make service assessments for him and he refused to sign any releases.

L.M. testified his conduct at that meeting was "childish." He was currently enrolled in a "52-week batterer's treatment program" and he had attended four sessions. He completed a residential treatment program with Turning Point and a parenting program. He "finally signed releases of information" on July 25, and since that time he had complied with his case plan. Mitchell did not send him letters stating that he was not in compliance with his case plan.

L.M. called several witnesses. Tomara Demasters, a substance abuse counselor for Kings View Counseling, testified that L.M. did not need drug abuse treatment because he had recently completed a residential drug treatment program. On cross-examination, she said L.M. told her he had a history of drug use, including using marijuana for eight years and methamphetamine for four years. Bunnie Ripley, a Turning Point case manager, testified L.M. completed a 30-day residential treatment program. L.M. was tested for drugs "once a week, maybe twice a week" and the results were negative. On cross-examination, Ripley said his program had issued two suspicion-of-drug-use determinations in June. DSS asked for the drug test results, but his program did not provide them.

William Curd, a certified addiction specialist for SRS Recovery Services and a domestic violence facilitator, testified that a DSS status review report did not correctly quote him. It incorrectly said he determined that L.M. was "arrogant or cocky." But he only told Mitchell that "[L.M.] can be arrogant. . . . Yes, he can be cocky as all parolees can be." L.M. has a prior conviction for a domestic violence offense. He successfully responded to a batterer's intervention program. The services that Curd provided did not include the 52-week batterer's treatment program which DSS had required.

The trial court found: 1) DSS made "reasonable efforts to return the child to a safe home through the provision of reasonable services," 2) L.M. made minimal "progress toward alleviating or mitigating the causes necessitating placement," and 3)

L.M. "failed to participate regularly and make substantive progress in a court-ordered treatment plan." It terminated reunification services.

DISCUSSION

Substantial Evidence

L.M. contends there is insufficient evidence to support the trial court's findings that he did not regularly participate and make substantial progress in his court-ordered treatment programs. We disagree.

Section 366.21, subdivision (e) provides, in relevant part, "If the child was under three years of age on the date of the initial removal, . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days."

L.M. relies on his testimony and the testimony of his witnesses to challenge the trial court's findings. But the issue is not whether some evidence supports his position. It is whether substantial evidence supports the judgment. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244.) The trial court's findings necessarily indicate it did not find much of the testimony of L.M. and his witnesses to be credible, persuasive or reliable. It resolved the evidentiary conflicts between L.M.'s witnesses and the witnesses testifying for DSS against L.M. We do not resolve evidentiary conflicts, weigh the evidence or decide the credibility of the witnesses. That is a matter exclusively for the trier of fact. (*Ibid.*)

L.M. contends he made progress in the case plan and entered treatment programs. But the trial court could reasonably infer from DSS's case reports and Mitchell's and Depoorter's testimony that L.M. had a long pattern of noncompliance with the case plan and that he did not timely sign release of information forms and did not cooperate with DSS staff. L.M. delayed services that DSS was trying to offer and he selected his own programs which were not approved by DSS and not part of the case plan. DSS gave him adequate notice that there would be compliance problems if, instead of entering DSS-approved programs, he "simply picked and chose whatever programs he

wanted to attend." In the September 2013 status review report, DSS said L.M. "has only recently begun to engage in services." It said he had shown only a "*minimal participation* in services over the life of the case." (Italics added.) "It defies common sense to continue reunification efforts for a parent who has made minimal efforts throughout a case." (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1505; *In re Christina L.* (1992) 3 Cal.App.4th 404, 414-415 [a parent who delays compliance until "the impetus of an impending court hearing" does not meet the required standard].) Moreover, Mitchell testified L.M. had not shown "amenability" to treatment, and the child could not be safely returned to him.

L.M. contends the evidence is insufficient to support the finding that DDS provided reasonable services. We disagree.

"The Department is required to make a good faith effort to develop and implement a family reunification plan . . . ." (*In re Christina L.*, *supra*, 3 Cal.App.4th at p. 414.) But L.M. has not shown that DSS did not act in good faith or that its plan was unreasonable. He received assistance from two DSS social workers. They provided him the opportunity to show progress in a case plan involving comprehensive services. These services were reasonably related to the problems that caused the removal of the child from home. When L.M. complained about DSS's actions, a social worker offered to meet with him. But he did not go to the meeting. When he was incarcerated, a social worker went to the jail to discuss case plan services. But L.M. simply told her "he did not have a problem with domestic violence or with drug or alcohol abuse."

L.M. claims DSS assumed he needed domestic violence treatment based on inaccurate information. He argues the DSS petition incorrectly alleged he was on parole for a felony domestic violence offense. But even if that information was incorrect, he has not shown that the required services were inappropriate or that DSS relied on the alleged incorrect information in assessing service needs. Mitchell was asked, "Do you base your opinion regarding [L.M.'s] propensity for domestic violence on information that he has been convicted of a felony domestic violence charge?" Mitchell: "No." Moreover, there is evidence of a history of domestic

violence conviction. The child's mother told DSS that her "arm was tweaked" by L.M. "during an altercation." She said "his drinking initially resulted in verbal outbursts, eventually becoming physical." The court could also find the incident that required the removal of the child involved violence and a threat to the child's safety. Consequently, the requirement for appropriate treatment and counseling was reasonable.

L.M. claims DSS should have provided more visitation services. But the juvenile court ordered those services conditioned on his compliance with his parole conditions. His conduct of violating parole and not cooperating with DSS caused the reduction in the amount of services. A parent may not claim error when his or her conduct impeded the provision of services. (*In re Laura F.* (1983) 33 Cal.3d 826, 839.)

We have reviewed L.M.'s remaining contentions and we conclude he has not shown error.

The petition is denied.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

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Heather Sutton Buckley for Petitioner.

No appearance for Respondent.

Rita L. Neal, County Counsel, Leslie H. Kraut, Deputy County Counsel, for Real Party in Interest.