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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JULIAN R., JR., et al., Persons
Coming Under the Juvenile Court Law.

B238869

(Los Angeles County
Super. Ct. No. CK77774)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIAN R., SR.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Terry Truong, Juvenile Court Referee. Affirmed.

Orren & Orren and Tyna Thall Orren, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Julian R., Sr., appeals from the juvenile court's order denying his Welfare and Institutions Code section 388 petition¹ for modification, as well as from the court's order terminating his parental rights as to his two young children, who have been dependents of the juvenile court since 2009. He argues that he was not afforded sufficient reunification services and therefore those orders must be reversed. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Initiation of Dependency Jurisdiction

Appellant Julian R., Sr. (Father) and Jade M. (Mother) have two children: Julian R., Jr. (Julian, born July 2005) and Angelina R. (born March 2007).² In June 2009, the Department of Children and Family Services (DCFS) received a referral from a person who was living with Mother, saying that Mother had cut herself with a razor. Mother told the social worker that she was extremely depressed, suffered from bipolar disorder, and had abused methamphetamines in the past. She had been prescribed various psychotropic drugs but had not taken her medications for several months. Mother alleged that when she and Father lived together, he was physically abusive to her and verbally abusive to Julian. At the time, Father was serving in Iraq for the United States Army. The children were detained and placed in foster care.

DCFS filed a petition on June 16, 2009, pursuant to section 300, subdivisions (a) and (b). Mother and Father were present in court at the detention hearing held on that date, Father having obtained emergency leave from the Army. The court found a prima facie case for detaining the children. Father was granted unmonitored visitation.

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

² Mother is not a party to this appeal.

On July 6, 2009, the petition was amended and the juvenile court sustained the section 300, subdivision (b)(1) allegation, finding that Mother had mental and emotional problems. The court did not sustain an allegation regarding Father engaging in domestic violence against Mother. The court ordered the children removed from Mother's care and placed in a foster home.

Thereafter, DCFS reported that Father was stationed at a military base in Texas. Efforts to place the children with other relatives had been unsuccessful. Father indicated he had enrolled in parenting classes and individual counseling through the Army.

At the hearing on October 9, 2009, Father's counsel requested that DCFS continue to evaluate whether Father could have the children placed with him. The court granted the request and continued the matter until January 2010.

On November 24, 2009, the social worker spoke with Father. Father reported he had completed parenting classes and anger management counseling. He had obtained housing at Fort Hood, Texas. Father telephoned the children every night and had two positive visits with them. DCFS recommended initiation of an Interstate Compact for the Placement of Children (ICPC) with the State of Texas to investigate the suitability of placing the children with Father.

II. The Six-Month Review Hearing

At the six-month review hearing on January 5, 2010, Father's counsel again requested that the children be placed with Father. The court delayed ruling until more information on his living situation was obtained. The court noted that Father was nonoffending and noncustodial, but due to the children's ages and the out-of-state placement, it ordered DCFS to initiate an ICPC to obtain information about Father's living arrangements in Texas. The matter was continued until February 10, 2010, for a contested section 366.21, subdivision (e) hearing.³

³ Father filed a notice of appeal from the order denying placement of the children with him in Texas. In his appeal, Father raised only purported violations of the Indian Child Welfare Act. In a nonpublished opinion filed November 10, 2010, this court

DCFS submitted the ICPC request on January 8, 2010. The ICPC worker estimated the process would take three to four months. DCFS arranged for an informal courtesy visit to Father's home by the Texas Department of Family and Personal Services (DFPS). The investigator reported that he found no safety concerns regarding Father's home.

On January 26, 2010, the DCFS social worker spoke with Father by telephone regarding an incident that occurred in December 2009 involving Father's live-in girlfriend. Father reported he had been intoxicated and had hit his girlfriend as well as the wall of his home. The girlfriend's children were present in the home at the time. Father said he had been directed to complete a substance abuse program, but denied he had been told to enroll in domestic violence counseling. Father was allowed to return to the home, under the supervision of Texas DFPS, only after participating in counseling and substance abuse classes. DCFS recommended that the juvenile court order Father to participate in domestic violence counseling.

At the contested hearing on February 10, 2010, Father's counsel told the court Father did not wish to proceed with the contested hearing and was withdrawing his request to have Julian and Angelina placed with him. Father's counsel said he told Father he needed to contact the DCFS social worker when his case in Texas was resolved.

The court found Father was in partial compliance with the case plan and that DCFS had complied with the case plan. The court ordered DCFS to provide additional family reunification services for Father, but terminated services as to Mother. The matter was continued for a 12-month review hearing to be held on July 8, 2010.

Thereafter, DCFS reported that Father had completed a substance abuse program, outpatient services, and a men's group involving anger management and communication, all of which were provided through the Army. Texas DFPS had apparently closed Father's case. DCFS reported that the ICPC results were still pending.

affirmed the juvenile court's findings and orders. (*In re Julian R. et al.* (Nov. 10, 2010, B221575).)

III. The 12-Month Review Hearing

For the 12-month review hearing, which was continued to August 16, 2010, for contest, DCFS reported that the Texas DFPS deferred making a recommendation regarding placement until additional information was obtained. Father still had misdemeanor charges pending against him regarding the assault of his girlfriend in December 2009. Because Father was participating in services, if no additional concerns came to light, placement would be recommended. Shortly thereafter, Father was convicted of making criminal threats and was placed on probation, a condition of which was his participation in a 12-month violence intervention program. DCFS recommended that an additional period of family reunification services should be provided to Father to enable DCFS to receive the recommendation regarding placement from Texas DFPS. At the hearing, Father's counsel requested the court release the children to Father's custody and, if not, to schedule a progress hearing two-months hence to get a status update on the ICPC. The court found that DCFS had complied with the case plan and ordered it to provide Father with additional family reunification services. An 18-month review hearing was scheduled for December 16, 2010.

In the interim, DCFS filed a letter written by the children's psychologist. The psychologist stated that the children were both very happy in their current placement and did not want to leave. They were reluctant to speak to Father on the phone. They were very frightened they would be forced to live with him, and "are actually afraid of him."

In addition, the social worker reported in October 2010 that he had been mistaken regarding the status of the ICPC. In fact, because Texas did not make a recommendation regarding placement, the ICPC was considered to have been denied. A new ICPC therefore needed to be ordered. The juvenile court so ordered.

IV. The 18-Month Review Hearing, the Subsequent Petition, and the Termination of Family Reunification Services

The 18-month review hearing, originally set for December 2010, was continued to January 2011 for a contested hearing. In the meantime, the children's foster parents, who

had expressed a strong desire to adopt the children, requested de facto parent status; the juvenile court granted their request.

On January 25, 2011, DCFS filed a subsequent petition pursuant to section 342 alleging that Father had engaged in a physical altercation with his girlfriend in Texas, resulting in his arrest. He pled no contest to making a terrorist threat. DCFS alleged that Father's conduct placed the children at risk of harm. At the hearing the following day, the court continued the contested 18-month review hearing as well as the arraignment on the section 342 petition.

In a status review report dated March 2, 2011, DCFS reported that on January 14, 2011, Texas DFPS had approved Father's home for placement of the children, on condition that Father continue with counseling and parenting classes. However, on February 7, 2011, Father's probation officer informed the DCFS social worker that Father had again been arrested for physically assaulting his girlfriend, whose injuries required her to be hospitalized. Father's girlfriend told the social worker that Father was drinking and became violent and started hitting her. The Army had Father undergo a psychological evaluation prior to releasing him to the police. In light of these new developments, DCFS recommended termination of family reunification services and recommended that the court designate adoption as the permanent plan for the children.

The juvenile court held a contested 18-month review hearing on March 2, 2011. Father's counsel stated he had not been in contact with Father since late January 2011. His request for a continuance was denied by the court. Father's counsel argued that Father had completed all of his programs and was in compliance with the case plan.

Counsel for the de facto parents pointed out that Father's participation in the required programs had not addressed the risk that his proclivity for domestic violence posed to Julian and Angelina. The children's counsel stated that Father had not maintained regular contact with the children and did not have a relationship with them. The children were worried about their future. Counsel for DCFS noted that Father was incarcerated with charges pending against him.

The juvenile court found that DCFS had complied with the case plan. Because Father continued to have issues that he was required to address, the court terminated Father's family reunification services. Father did not file a writ petition challenging the court's termination of services.

The section 342 subsequent petition remained to be addressed. In a report dated April 6, 2011, DCFS reported that during the January 2011 incident Father had choked his girlfriend until she lost consciousness. DCFS opined that placing the children in Father's custody would be detrimental to their well-being. The court sustained the section 342 petition after holding a contested hearing on May 2, 2011. The court found that reasonable services had been provided by DCFS and declined to order family reunification services for Father.

V. The Section 366.26 Hearing and the Section 388 Petition

DCFS filed a report for the section 366.26 hearing on September 6, 2011, stating that Father was incarcerated at the East Texas Treatment Facility. DCFS recommended that the children be freed for adoption. A continuance of the hearing until December was required, however, to attempt to notice Mother, whose whereabouts were unknown. In a status review report dated October 25, 2011, DCFS stated that the children were very happy living with their prospective adoptive parents and were thriving in their care. The juvenile court found that DCFS had complied with the case plan by making reasonable efforts to enable the children's safe return home. The section 366.26 hearing remained scheduled for December 6, 2011.

On December 6, 2011, Father filed a section 388 petition in which he requested additional family reunification services. He argued the modification was in the children's best interest because "[h]aving a meaningful relationship with a parent is always in the children's best interest." Regarding a change in circumstances justifying a change in the court's order, Father stated that he was "undergoing a rigorous individualized treatment plan at East Texas Treatment Facility offered by the Texas Department of Criminal Justice working through substance abuse issues and developing skills for healthy

relationships.” Father expected to complete the program in January 2012. Father did not contend that DCFS had failed to provide adequate family reunification services.

At the hearing on December 6, 2011, after the court permitted counsel to argue briefly regarding the section 388 petition, the court found that the petition did not state a genuine change of circumstances and that modification of the order terminating reunification services was not in the children’s best interest.

The court then proceeded with the section 366.26 hearing. The court found that Julian and Angelina were adoptable and that none of the statutory exceptions to termination of parental rights was applicable. The court terminated parental rights as to Julian and Angelina and ordered DCFS to pursue adoption as the permanent plan for the children.

This timely appeal followed.

DISCUSSION

Father contends that he was not provided with reasonable reunification services. We conclude Father forfeited his claim, and on the merits, the record does not support this assertion.

Father forfeited this issue by failing to raise it *at any time* prior to filing his opening brief on appeal. He did not raise it during any of the review hearings, and most importantly, he did not raise it in a petition for an extraordinary writ after the juvenile court terminated family reunification services in March 2011 and scheduled a section 366.26 hearing. He again failed to raise it in his section 388 petition, or in contesting termination of parental rights at the section 366.26 hearing.

While we decline to grant respondent’s motion to dismiss the appeal based on the forfeiture, we conclude that Father cannot assert this argument at this late date. The situation in this case is not the same as that in *In re Hunter S.* (2006) 142 Cal.App.4th 1497, in which the mother of a dependent child argued in a section 388 petition filed after a permanency planning hearing was scheduled that she never received reasonable

reunification services. (*Id.* at p. 1507 [“The primary thrust of the petition was that, by virtue of three years of error and judicial inattention, she had been deprived of the opportunity to revive her relationship with her son, even though, during that entire period, a valid visitation order remained in effect and *she had repeatedly raised the issue with the court.*” (Italics added.)].) Unlike in *Hunter S.*, Father here never argued, including in his section 388 petition, that he received insufficient reunification services. In that petition he did request additional reunification services, but he did not assert that he was deprived of adequate services.

We will nonetheless briefly address the merits of Father’s claim if only to demonstrate that counsel did not render ineffective assistance by failing to argue the issue. (See *Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 748, fn. 5.)

“[W]ith regard to the sufficiency of reunification services, our sole task on review is to determine whether the record discloses substantial evidence which supports the juvenile court’s finding that reasonable services were provided or offered.” (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) To that end, “the record should show that the supervising agency 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.” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414, italics omitted.)

The record reveals that DCFS identified the problems facing this family: domestic violence, substance abuse, and Mother’s mental health issues. Although Father was stationed in Texas, DCFS maintained contact with him, made efforts to support his exercise of visitation and his ability to communicate with the children, monitored and faithfully reported to the court Father’s participation in services provided through the Army and Texas DFPS, and attempted to establish whether placement of the children with Father was appropriate by way of the ICPC. While it is true that DCFS did not provide Father with referrals for services in Texas, the issue here was never a lack of services. Father participated in an abundance of services, both voluntarily and as

required by Texas authorities. The issue here was that Father did not benefit from those services, particularly the anger management and domestic violence counseling he received. Even as Texas DFPS appeared on the brink of approving him for placement of the children, his substance abuse and violent behavior landed his girlfriend in the hospital and him in a penal mental health facility. It was Father's inability to overcome his behavioral issues in the timeframe required by the dependency scheme that resulted in his parental rights being terminated, not a failure on the part of DCFS to provide adequate reunification services.

DISPOSITION

The orders denying Father's section 388 petition and terminating his parental rights are affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.