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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re S.G., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

B237558

(Los Angeles County
Super. Ct. No. CK83155)

APPEAL from an order of the Superior Court of Los Angeles County,
Marilyn Mordetzky, Juvenile Court Referee. Reversed and remanded with directions
Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, Acting County Counsel, Jacklyn K. Louie, Principal Deputy
County Counsel, for Plaintiff and Respondent.

A.G. (mother) appeals an order of the juvenile court extending additional family reunification services to father with respect to 14-year-old S.G. Mother contends father was not entitled to family reunification services and the juvenile court's refusal to terminate jurisdiction constituted an abuse of discretion. We agree father was not entitled to family reunification services. We therefore reverse the juvenile court's order and remand the matter with directions to determine whether continuing jurisdiction is necessary under Welfare and Institutions Code section 364.¹

FACTS AND PROCEDURAL BACKGROUND

On July 20, 2010, S.G.'s oldest sibling, 21-year-old D.G., called 911 from a gas station on the highway. He told sheriff's deputies father blamed mother for the family's financial problems and had kicked her out of the house on July 19, 2010. After mother left, father threatened to kill himself and D.G. hid father's gun. When father discovered mother had left town by bus, he began driving to Bakersfield, California, with three of the children in the car. Father drove erratically at high speeds and almost caused several traffic collisions. When father stopped for gas, D.G. took the car keys. D.G. indicated father is controlling and his behavior is "very extreme." The deputies recovered a loaded semiautomatic pistol from D.G.'s backpack.

Father, described by the deputies as agitated, admitted driving 80 to 85 miles per hour but denied nearly causing collisions. Father told the deputies he wanted to kill himself earlier in the week and, when he looked for his gun, he could not find it because one of the children must have taken it. S.G. and her sibling, A.G., were interviewed separately and stated they feared father and believed he might hurt mother.

The deputies detained father for a 72-hour mental health evaluation. (§ 5150.)

Mother told a social worker she and the children feared father, who has insinuated a murder suicide scenario, and she will not return to the family home. Mother stated father has been emotionally and mentally abusive for years. Mother and the three older

¹ Subsequent unspecified statutory references are to the Welfare and Institutions Code.

children are in therapy as a result of this abuse. Father was severely abused as a child but refuses to attend counseling. stated father owns three guns and two of the weapons are still in the home.

The Department of Children and Family Services (the Department) filed a dependency petition with respect to S.G. and A.G., who was 17 years of age at the time. The juvenile court granted father monitored visitation.

The jurisdiction report included mother's statement the family did not object to father's use of marijuana because it has a calming effect on him and father has not been compliant with prescribed medications. Father indicated he is a general manager for Denny's restaurants and is the only certified manager trainer in the chain. A letter from Douglas Garner, MA LMFT, indicated father began therapy on July 29, 2010, to work on anger management and he had attended four sessions.

Before the adjudication, mother filed an application for a restraining order against father. Her declaration stated that, on October 18, 2010, father followed mother, who was driving the children and their friends. Father approached mother's vehicle and yelled. Also, father frequently appears where the children are. He telephones and texts mother and the children "incessantly, subjecting them to humiliating lecture[s]." The juvenile court granted a temporary restraining order pending a hearing.

An addendum report indicated S.G. had not visited father and does not want to speak to him. S.G. told the social worker father "is crazy and very manipulative." S.G. feared a restraining order would not prevent father from going "into a ballistic rage or becom[ing] suicidal. It's a delicate balance; we don't want to make him mad."

The report indicated Roy Del Presario, M.D., stated father had been under his care from August through November of 2010 for a depressive disorder not otherwise specified. Father was treated briefly with medication with good results and medication was discontinued with no complications.

At the adjudication, S.G. testified father's behavior has become increasingly bizarre over the years. Although father has been ordered to stay away from her, he has followed her in his car and has sent her many text messages. If father got help, S.G.

might want to have a relationship with him but she does not feel safe around him at present.

The juvenile court granted mother's request for a permanent restraining order, sustained the petition as to S.G. and ordered the child removed from father's custody.² The juvenile court ordered father to participate in random drug testing, parent education and individual counseling with a licensed therapist, not a marriage counselor, to address mental health issues. Father also was to be assessed by a psychologist for medication and was to cooperate with the psychologist's recommendation. The juvenile court directed the Department to develop a schedule for father's monitored visitation, referred the matter to family preservation services and ordered S.G. to remain in individual counseling in the care of mother.

A progress report filed March 1, 2011, indicated father left a voicemail message for the social worker in which he indicated he would not participate in the case plan.

On March 1, 2011, the juvenile court continued the case to August 1, 2011, for a review hearing under section 364 as to mother and a status review hearing under section 366.21, subdivision (e) as to father.

A social report filed for that date indicated father continues to refuse to participate in the case plan. S.G. did not wish to visit father in any setting and stated the last year during which she did not live with father "has been wonderful" The Department recommended termination of father's reunification services and termination of jurisdiction with a family law order giving mother custody of S.G.

The juvenile court continued the matter to September 19, 2011, for a contested review hearing and ordered a supplemental report to address father's therapy.

² As sustained, the petition alleged father placed S.G. in an endangering and detriment situation by driving in a dangerous manner with the child and her siblings as passengers. Father also possessed guns in the home within access of the children. Further, father has mental and emotional problems, a history of illicit drug abuse and is a current abuser of marijuana which renders father incapable of providing regular care.

The juvenile court struck A.G. from the petition as she had reached the age of 18 years.

A report prepared for the hearing indicated father enrolled in individual counseling with a licensed psychologist, Dr. Bloomfield, on August 25, 2011. Father also has drug tested six times in the past seven months but has not provided proof of a psychiatric evaluation or enrollment in parenting class.

At the contested review hearing, the social worker testified she had encouraged S.G. to visit father and had advised S.G. the social worker would monitor the visits but S.G. has refused to visit. During the social worker's last contact with S.G., the child was curious about visitation because she had not seen father in a year. However, S.G. again stated she did not wish to see father. The social worker testified S.G. was aware of the order for monitored visitation with father, "but since she's 14 [years of age], she's able to make the choice to have a visit with her father, and she at no time told me she wanted to see him." The social worker "did what [she] could . . . to encourage [S.G.], but she still stated that she didn't wish to see her father."

Regarding individual therapy, the social worker testified Dr. Dan los Rios, the mental health facilitator, had evaluated S.G. and concluded she did not require therapy. The social worker did not investigate visitation in a therapeutic setting because S.G. consistently has stated she did not wish to visit father.

The Department, mother's counsel and S.G.'s counsel requested termination of jurisdiction, noting father had not complied with the case plan.

Father's counsel argued father was entitled to 12 months of family reunification services and only six months of services had been provided. Counsel asserted the Department had failed to investigate visitation in a therapeutic setting and had allowed S.G. to determine whether father's visits would occur.

The juvenile court conceded father had not complied with the case plan but observed the Department also had obligations, given that S.G. had been removed from father's care. Specifically, the juvenile court found the Department did not have the right "to just say, 'the visits aren't to occur.' That's an integral part of reunification services; so that integral part of reunification services was not even explored. This child should have been in some sort of therapy [¶] It's disconcerting to this court that the family

preservation counselor didn't say, 'why aren't we doing therapy here? Why aren't we looking at therapy for this child so that . . . we can go to some sort of therapeutic situation?' But to just ignore visitation . . . is definitely contrary to the law." The juvenile court found: "There was no attempt to make visitation as part of this case – absolutely none; so reasonable services were not offered."

The juvenile court granted father six additional months of family reunification services and found continued jurisdiction was necessary because the conditions that justified jurisdiction continued to exist. The juvenile court ordered visitation once a week in a therapeutic setting and directed father to cooperate with the Department and the therapist.

Mother appealed the juvenile court's order.

CONTENTIONS

Mother contends father was not entitled to family reunification services and, because S.G. was safe in mother's care, the circumstances that necessitated the juvenile court's intervention no longer existed. Therefore, the juvenile court abused its discretion in failing to terminate jurisdiction. Also, the order for visitation in a therapeutic setting was not supported by the evidence, given that father previously had refused to comply with case plan.³

DISCUSSION

S.G. was never removed from mother's care. Because S.G. at all times remained in the care of a custodial parent, father was not entitled to family *reunification* services. (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19-22; *In re A.L.* (2010) 188 Cal.App.4th 138, 145-146; § 16507, subd. (b) ["Family reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court."].)

³ The Department has filed a "no position" letter in which it indicates it agreed with mother's position below. Therefore, father is the appropriate party to respond. Father has not appeared.

Under the circumstances of this case, “the applicable statutory provision is section 362, subdivision (b), which provides that ‘[w]hen a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.’ (§ 362, subd. (b).)” (*In re Pedro Z.*, *supra*, 190 Cal.App.4th at pp. 19-20.)

“The services referred to in section 362, subdivision (b), are not reunification services but *family maintenance services*, which are provided ‘in order to maintain the child in his or her own home’ (§ 16506), and are available to families ‘whose child or children have been adjudicated a dependent of the court under Section 300, and where the court has ordered the county welfare department to supervise while the child remains in the child’s home’ (§ 16506, subd. (a)).” (*In re Pedro Z.*, *supra*, 190 Cal.App.4th at p. 20.)

Under section 362, the juvenile court may “make ‘any and all reasonable orders to the parents or guardians of the child . . . as the court deems necessary and proper . . . to eliminate those conditions that led to the court finding that the child is a person described by Section 300.’ (§ 362, subd. (c).)” (*In re A.L.*, *supra*, 188 Cal.App.4th at p. 145.)

“[W]hen the child remains in a parent’s home, the court reviews the status of the case every six months under section 364; under such review, the court is not concerned with reunification, but in determining ‘whether the dependency should be terminated or whether further supervision is necessary.’ [Citations.] This is so because the focus of dependency proceedings ‘is to reunify the child with *a parent*, when safe to do so for the child. (§§ 300.2, 361.5, subd. (a), 16507.)’ [Citation.] The goal of dependency proceedings – to reunify a child with at least one parent – has been met when, at disposition, a child is placed with a former custodial parent and afforded family maintenance services.” (*In re Pedro Z.*, *supra*, 190 Cal.App.4th at p. 20.)

Here, the juvenile court indicated it was proceeding under section 364 as to mother and under section 366.21, subdivision (e) as to father. However, because father was not

entitled to family reunification services, the juvenile court should have reviewed the case plan exclusively pursuant to section 364. Under that section, the only issue presented is whether continued jurisdiction is necessary. Section 364, subdivision (c) provides: “After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court *shall* terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” (§ 364, subd. (c), italics added.)

Here, the juvenile court indicated, in making its ruling, the conditions that justified jurisdiction continued to exist. However, we cannot conclude the juvenile court would have made the same finding had it not been under the false impression father was entitled to family *reunification* services. Given that belief, the juvenile court was required to consider visitation a “necessary and integral component” of the case plan. (*In re S.H.* (2003) 111 Cal.App.4th 310, 317 [“Visitation is a necessary and integral component of any reunification plan. [Citations.]”].)

In determining whether to terminate jurisdiction under section 364, the juvenile court properly could have considered S.G.’s need for additional family *maintenance* services. (See *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.) In this regard, the juvenile court could have found the Department improperly had granted S.G. authority to decide whether visitation with father would take place. (See *In re S.H.*, *supra*, 111 Cal.App.4th 310 at pp. 319-320; *In re Julie M.* (1999) 69 Cal.App.4th 41, 51.) Although these findings might have permitted continued jurisdiction under section 364, subdivision (c), we cannot find the juvenile court would have made the same order had it known family reunification services were not in issue and the only relevant consideration was whether continued jurisdiction was required. Consequently, we shall reverse the juvenile court’s order to the extent it directed the Department to provide additional family reunification services to father and remand the matter for review under section 364.

Finally, although father initially did not comply with the case plan, he recently had commenced individual therapy with a licensed therapist, Dr. Bloomfield, as the juvenile court had ordered. Further, the juvenile court reasonably could find visitation with father was in S.G.'s best interests, despite her protestations. We therefore reject mother's claim the order for visitation with father in a therapeutic setting was an abuse of the juvenile court's discretion under either section 364 or section 366.21, subdivision (e).

DISPOSITION

The order of the juvenile court awarding father additional family reunification services is reversed and the matter is remanded with directions to review the case plan pursuant to section 364.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.