Filed 9/5/17 In re Eduardo A. CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| In re EDUARDO A., a Person Coming Under the Juvenile Court Law. | B279017<br>(Los Angeles Co. Super. Ct. No. CK35340) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ANABEL C.,<br><br>Defendant and Appellant. | |

APPEAL from an order of the Superior Court of Los Angeles County, Debra Losnick, Juvenile Court Referee. Dismissed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Timothy M. O'Crowley, Principal Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Anabel C. appeals from the juvenile court's order finding the Los Angeles County Department of Children and Family Services had provided reasonable services to meet the needs of her son, Eduardo A. Because this finding is not appealable, we dismiss her appeal. We also deny Anabel's request that we exercise our discretion to treat her appeal as a petition for writ of mandate because such a petition would be moot.

## FACTUAL AND PROCEDURAL BACKGROUND

A family court awarded Anabel sole custody of Eduardo after Eduardo's father, with whom he had lived, was murdered in an incident Eduardo witnessed. Several weeks later, the juvenile court detained Eduardo based on Anabel's criminal history and drug use.

The juvenile court subsequently sustained a petition concerning Eduardo under Welfare and Institutions Code section 300, subdivision (b),[1] and removed Eduardo from Anabel's custody. The disposition order required the Department to provide reunification services, including conjoint counseling "when recommended by the child's therapist."

At the six-month review hearing (§ 366.21, subd. (e)), the court found Anabel in compliance with the Department's case plan but continued Eduardo's placement with a paternal aunt. The court also found the Department had provided reasonable services "to meet the needs of [Eduardo]," and ordered family

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

reunification services to continue. Anabel appeals from this order, arguing that substantial evidence did not support the finding that the Department provided reasonable services. She contends "all parties [at the six-month review hearing] agreed the Department failed to provide conjoint counseling for herself and Eduardo despite specific court orders for [that] service."

After the parties filed their briefs, the juvenile court held the 12-month review hearing. (§ 366.21, subd. (f).) The court placed Eduardo with his mother and ordered family maintenance services. The court also scheduled a review hearing under section 364 to consider whether to terminate jurisdiction.

## DISCUSSION

### A. *The Reasonable Services Finding Is Not Appealable*

The Department asks us to dismiss the appeal because the order at the six-month review hearing finding the Department had provided reasonable services is not appealable. (See § 395, subd. (a)(1).) The Department relies on *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, which held "there is no right to appeal a finding that reasonable reunification services were provided to the parent or legal guardian unless the court takes adverse action based on that finding, because, in the absence of such action, there is no appealable order resulting from that finding." (*Id.* at p. 1154.) The Department argues that, as in *Melinda K.*, the juvenile court here "made no finding of detriment based on [Anabel's] participation or lack of participation in court-ordered services," and in fact the court found Anabel was in compliance with the case plan. (See *id.* at p. 1156.)

Anabel argues the juvenile court's finding injured her rights and interests by "plac[ing] the case on the legislated fast track to the twelve month review which can be a referral hearing if reunification services have not been successfully completed." She contends the Department's failure to provide conjoint counseling during the first six months of reunification services was "highly detrimental" to her and Eduardo. She argues this case is similar to *In re T.G.* (2010) 188 Cal.App.4th 687, which disagreed with *Melinda K.* and held that an order at the six-month review hearing finding the child welfare agency had provided reasonable services was appealable. (See *In re T.G.*, at p. 696.)

The court in *In re T.G.*, however, observed that, unlike the order and findings in *Melinda K.*, the juvenile court's order and findings in that case "were not generally favorable to" the parent. (*In re T.G., supra,* 188 Cal.App.4th at p. 693.) Among other things, the juvenile court in *T.G.* "did not find [the parent] in compliance with the case plan" and found the father's progress toward mitigating or alleviating the causes necessitating placement was "inadequate." (*Ibid.*) The court in *T.G.* explained that such findings, if not supported by substantial evidence, "can put the interests of parents and children in reunification at a significant procedural disadvantage" because reunification services are generally limited to 12 months and, at the 12-month review hearing, the juvenile court can return a child to parental custody only if it finds that doing so would not create a substantial risk of detriment to the physical safety or emotional well-being of the child. (*Id.* at p. 695; see § 366.21, subd. (f).) The *T.G.* court cited several other procedural disadvantages flowing from an erroneous finding that the social services agency had

provided reasonable services. (See *In re T.G.*, at pp. 695-696.) Thus, the court in *T.G.* concluded the reasonable services finding in the order at the six-month review hearing in that case was "adverse to [the appellant's] parental interest in reunification" and was "therefore appealable under section 395." (*Id.* at p. 696; see *In re T.W.-1* (2017) 9 Cal.App.5th 339, 345 & fn. 6 [juvenile court's finding that the social services agency provided the father reasonable services was appealable where the "court also found Father had not complied with the case plan"].)

This case is closer to *Melinda K.* than *T.G.* The finding at issue here was not adverse to Anabel and did not disadvantage her. Indeed, the court found Anabel had complied with her case plan and continued reunification services. Moreover, the court here, unlike the court in *T.G.*, did not find Anabel's failure to avail herself of reunification services contributed to its finding that Eduardo's placement with his mother would create a substantial risk of detriment to his physical or emotional well-being. The court based that finding on the facts that Anabel had a long history with the juvenile court and that Eduardo had lived with his father or his father's relatives his entire life until his father was killed in a violent incident that traumatized Eduardo. As a result, the court said it wanted "to move very slowly." Because the reasonable services finding did not aggrieve Anabel, it is not appealable.

B. *A Petition for Writ of Mandate Would Be Moot*

Anabel requests that in the event we conclude, as we have, the juvenile court's reasonable services finding is not appealable, we treat her appeal as a petition for writ of mandate. (See *Melinda K.*, *supra*, 116 Cal.App.4th at p. 1157 ["a petition for

writ of mandate is the appropriate method by which to challenge a finding made by a juvenile court at a review hearing which does not result in an appealable order"].) We decline to exercise our discretion to do so because any such petition would be moot.

After the parties submitted their briefs, the juvenile court placed Eduardo with Anabel and vacated its prior order for family reunification services. (See § 361.5, subd. (a)(1)(A) [reunification services "shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care . . . , unless the child is returned to the home of the parent or guardian"]; *In re Pedro Z., Jr.* (2010) 190 Cal.App.4th 12, 19 ["[t]he language of section 361.5, subdivision (a)(1)(A) contemplates that the period for mandatory reunification services begins at the time of disposition and continues while the child is in foster care or until the child is returned to the home of the parent"].) She contends the 12-month period in which a court must provide reunification services following the removal of a child was effectively shortened by six months as a result of the juvenile court's reasonable services finding at the six-month review hearing. The court, however, has now placed Eduardo with Anabel and has ordered family maintenance services in place of family reunification services. (See *Pedro Z., Jr.*, *supra*, 190 Cal.App.4th at p. 19 [""'child welfare services'" includes both reunification as well as maintenance services"]; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303 ["family reunification services [are] for a child in an out-of-home placement," while "family maintenance services [are] for a child who remains at home"].) Thus, even if we were to treat Anabel's appeal as a petition for writ of mandate, we would not be able to provide her any effective relief,

and the petition would be moot. (See *Epstein v. Superior Court* (2011) 193 Cal.App.4th 1405, 1410 [petition for writ of mandate rendered moot by subsequent events]; see also *In re A.B.* (2014) 225 Cal.App.4th 1358, 1364 [an appeal is moot if the reviewing court cannot grant effective relief]; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 [same].)

**DISPOSITION**

The appeal is dismissed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.