Filed 6/20/17 J.S. v. Superior Court CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

J.S.,

Petitioner,

v.

THE SUPERIOR COURT OF VENTURA COUNTY,

Respondent;

VENTURA COUNTY HUMAN SERVICES AGENCY,

Real Party in Interest.

2d Juv. No. B281748
(Super. Ct. No. J071154)
(Ventura County)

In a petition for writ of mandate, J.S. (Father) challenges the juvenile court's order bypassing reunification services and setting the matter for a permanency plan hearing.

(Welf. & Inst. Code, §§ 361.5, subd. (b)(11), 366.26.)[1] We deny the petition.

BACKGROUND

Father has two daughters, L.S. (born June 2015) and V.S. (born August 2016). The Ventura County Human Services Agency (HSA) initiated dependency proceedings for L.S. when her mother, C.M. (Mother), tested positive for amphetamines at birth. Father did not qualify for appointed counsel during those proceedings. HSA recommended that the juvenile court bypass reunification services because Father did not submit to random drug testing, did not initiate the services outlined in the case plan, and was cited for possession of drug paraphernalia and obstruction of a police officer in December 2014. The court bypassed services in October 2015, and terminated Father's parental rights five months later. Father was not present at either hearing. We dismissed as abandoned his appeal from the court's termination order. (*In re L.S.* (Nov. 28, 2016, B272252) [nonpub. opn.].)

In August 2015, police arrested Father for spousal battery on Mother. Police arrested him again for domestic abuse three months later. Police arrested him a third time the following July after a reported domestic disturbance. Father was arrested a fourth time, just before V.S.'s birth, after he allegedly hit Mother while driving in Nevada.

In August 2016, Ventura County Medical Center personnel referred V.S. to HSA after Mother came to the emergency room and requested pain pills. A social worker and police officer went to Mother and Father's home. Mother said

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

that she and Father were arrested for domestic violence in the past, but had no recent incidents. Father arrived while the social worker and police officer were at the house, but quickly left. The officer's database indicated that Father had an outstanding warrant for a drug-related arrest.

The social worker made four unsuccessful attempts to meet with Father and Mother at their home over the next two days. During the last attempt the social worker saw an eviction notice on the front door and multiple boxes in the living room. She filed a missing persons report on V.S. Police arrested Father at the house later that night. He declined to speak to the social worker, and refused to provide any information on V.S.'s whereabouts.

An aunt took custody of V.S. in September 2016. Father had two supervised visits with V.S. over the next month. He was late to both. At the visits he spoke to his daughter in a "hushed and loving tone." He missed one scheduled visit in September, and canceled two in October. He had three more visits with V.S. in November. HSA did not approve his request for a Thanksgiving visit after he left the social worker a profane voicemail.

HSA sent Father instructions for drug testing and information on parenting education and mental health referrals in September 2016. He appeared at the wrong site for one of his drug tests. He missed three others.

At the jurisdictional and dispositional hearing, Father submitted a letter stating that he participated in individual counseling and completed a parenting program between October 2015 and January 2016. He claimed that HSA's substance abuse allegations were "completely conclusory" and

that he did not know Mother used drugs. He said that he resolved his criminal warrant and that Mother's domestic abuse reports were false. He ended his relationship with her, and the two no longer lived together. He agreed to participate in services and do anything else necessary to have V.S. returned to him, including submit to drug tests and undergo substance abuse treatment. During the hearing, Father repeatedly interrupted the court, and was eventually removed from the proceedings.

HSA recommended that the juvenile court again bypass services for Father. In December 2016, the court ordered services bypassed (§ 361.5, subd. (b)(11)) and set the matter for a permanency plan hearing (§ 366.26). The court clerk mailed Father's copy of the order to an incorrect address. Father filed a notice of appeal two months later,[2] and the instant petition for writ of mandate two months after that.

DISCUSSION

Timely Filing of the Writ Petition

Father asserts, and HSA concedes, that review of the juvenile court's order by way of petition for writ of mandate is appropriate because the court did not mail its order, the writ advisement, and the requisite Judicial Council forms to his correct address. (See Cal. Rules of Court, rule 5.590(b).) We agree. When a court fails to advise a party of the right to challenge its order setting a section 366.26 hearing, good cause exists to excuse the party's failure to file a timely writ petition. (*Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th 254, 259-260.) We excuse Father's untimely filing here, and proceed to review the merits of the court's December 2016 order.

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[2] We take judicial notice of the record on appeal in case No. B280718, and dismiss that appeal by separate order.

Bypass of Reunification Services

Father contends that the juvenile court erred when it bypassed reunification services with V.S. due to "irregular circumstances" in the proceeding that terminated his parental rights to L.S. We disagree.

Family reunification services are generally offered to a parent when a child is removed from his or her custody. (*In re A.M.* (2013) 217 Cal.App.4th 1067, 1074.) But the juvenile court may order services bypassed if it finds, by clear and convincing evidence, that (1) parental rights over one or more of the child's siblings were permanently severed, and (2) the parent has not made a "reasonable effort to treat the problems that led to removal of" the sibling(s). (§ 361.5, subd. (b)(11).) Under the first of these prongs, a father's parental rights to his child's sibling are considered permanently severed if the court terminated those rights in a section 300 proceeding. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 517.) Whether he was deemed a biological father or a presumed father in that proceeding is immaterial. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 596-599 (*Francisco G.*).) The order terminating the father's parental rights to the child's sibling cannot be relitigated in the second child's case. (*In re Joshua J.* (1995) 39 Cal.App.4th 984, 993.)

The second prong "focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' [Citation.]" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) But not just "any effort . . . even if clearly genuine" meets the "reasonable effort" standard. (*Ibid.*, italics omitted.) "'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted."' [Citation.]" (*Ibid.*) When determining whether the parent has met this standard, the

juvenile court may consider "the duration, extent, and context of the parent's efforts." (*Ibid.*, italics omitted.) The court may also consider the parent's progress—or lack thereof—"to the extent it bears on the reasonableness of the effort made." (*Ibid.*, italics omitted.) We review the court's "reasonable efforts" determination for substantial evidence. (*Ibid.*)

Regarding the first prong, Father claims the juvenile court erred when it denied him reunification services with V.S. because it based its order on his status as a "mere pro. per. biological father" in the proceedings concerning L.S. But as set forth in *Francisco G.*, *supra*, 91 Cal.App.4th 586, it is immaterial that the court deemed him a biological father in those proceedings. And as set forth in *In re Joshua J.*, *supra*, 39 Cal.App.4th 984, Father is collaterally estopped from claiming error in the proceedings concerning L.S. since he abandoned his appeal in that case. The court properly found that Father's parental rights over L.S. were permanently severed.

Regarding the second prong, Father claims that "although [he] has not yet submitted to drug testing, [he] has made efforts to treat the problems that led to [L.S.'s] removal." As evidence for this claim, he points to the January 2016 letter that states that he participated in counseling and parenting classes, and his promise to engage in services and testing in the future. But the letter concerns efforts he made between October 2015 and January 2016, two months before the juvenile court terminated his parental rights to L.S. And promises to utilize services in the future are not the same as efforts actually made. Substantial evidence supports the determination that Father has not made reasonable efforts to treat the problems that led to the removal of L.S. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 108-

109 [lack of efforts made posttermination not reasonable]; *R.T. v. Superior Court*, *supra*, 202 Cal.App.4th at p. 915 [same].) Bypassing reunification services was proper.

Best Interest of the Child

Father next argues that the juvenile court erred when it determined that reunification services would not be in V.S.'s best interest. We again disagree.

If the juvenile court makes the two requisite findings under section 361.5, subdivision (b)(11), a "presumption [arises] that reunification services would be an unwise use of governmental resources." (*In re A.M.*, *supra*, 217 Cal.App.4th at p. 1074, internal citations and quotations omitted.) In such instances, the court "shall not order reunification . . . unless [it] finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c)(2).) A parent bears the burden of demonstrating that reunification is in the best interest of the child. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) This requires the parent to give the court "some 'reasonable basis to conclude' that reunification is possible . . . . [Citation.]" (*Id.* at pp. 1228-1229.) To determine whether he or she has done so, the court considers "a parent's current efforts and fitness as well as the parent's history; the gravity of the problem that led to the dependency; the strength of the bonds between the child and the parent and between the child and the caretaker; and the child's need for stability and continuity." (*Id.* at p. 1228, internal alterations, citations, and quotations omitted.) We review the court's best interest determination for abuse of discretion. (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164-1165.)

Father fails to demonstrate that reunification services are in V.S.'s best interest. The only bases he gave the juvenile court to conclude that reunification is possible were his completion of individual counseling and parenting classes, his "appropriate" behavior during his visits with V.S., and his ability to provide for V.S.'s financial needs. But Father completed his counseling and parenting classes before, not after, V.S.'s birth. He missed or canceled as many visits with V.S. as he attended, and he was late to several that he did attend.

Other factors also weigh against reunification. Despite four positive drug tests over the course of two months and an arrest for a drug-related incident, Father considers HSA's substance abuse allegations "completely conclusory." This indicates that he is not serious about his promise to engage in services and testing in the future. In addition, Father has been arrested four times for domestic violence incidents, but instead of resolving this problem he claims that Mother's reports were false.

Father also refused to cooperate with the social worker, and used profanities when she would not schedule a requested visit. He interrupted the juvenile court so frequently during the jurisdictional and dispositional hearing that it ordered him removed from the proceedings. Father's history and lack of recent efforts do not evidence a fitness for reunification services.

This case in unlike *In re G.L.*, upon which Father relies. In that case, the finding that the mother spoke "warmly" to her son was only one of several factors the juvenile court cited when finding that reunification would be in his best interest. (*In re G.L.*, *supra*, 222 Cal.App.4th at pp. 1165-1166.) Unlike that case, the court here did not find several additional factors that weighed in support of reunification. Instead, it found the

opposite. *In re G.L.* does not support Father's claim that the court below abused its discretion when it found that reunification services would not be in V.S.'s best interest. There was no abuse of discretion here.

DISPOSITION

We deny the petition for writ of mandate.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

Lisa A. Raneri, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Leroy Smith, County Counsel, Joseph J. Randazzo, Assistant County Counsel, for Real Party in Interest.