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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

A.Q., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B295934 (Los Angeles County Super. Ct. No. 17CCJP02532A)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.456.) Rudolph A. Diaz, Judge. Petition denied.

Winchester Law Group and Susan M. Winchester for Petitioner.

No appearance for Respondent.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel for Real Party in Interest.

Children's Law Center of California - CLCLA 1, Elizabeth Genatowski and Caroline Caldwell for Minor.

A.Q. (father), father of child A.Q., petitions for extraordinary relief pursuant to California Rules of Court, rule 8.452. He seeks review of an order setting a permanent plan hearing under Welfare and Institutions Code section 366.26.[1] Father claims the juvenile court erred in concluding that the Los Angeles County Department of Children and Family Services (DCFS) provided reasonable reunification services to him, that he had failed to complete his case plan, and that return of A.Q. to his custody posed a substantial risk to the child.[2] We deny the petition.

FACTS AND PROCEDURAL HISTORY

A.Q. was born with a positive toxicology test for amphetamines. His mother had a similarly positive test, and was

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

[2] Father also asserts that it was unnecessary to include a "drug abuse component" in his case plan. The time to challenge his case plan was after the July 9, 2018 dispositional order in which it was adopted. Father's current challenge is untimely and will not be considered. (§ 395, subd. (a)(1); *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.)

known to have used methamphetamines during the pregnancy. In fact, the mother's history of unresolved drug abuse had, in part, resulted in the removal of her three older children. A.Q. was detained on a hospital hold and DCFS later placed him with foster parents. DCFS soon filed a section 300 petition that alleged the mother's drug use rendered her incapable of providing A.Q. with adequate care, and that father knew or reasonably should have known of mother's drug use but failed to protect A.Q.

Both father and the mother appeared at a subsequent detention hearing, were appointed counsel, and provided mailing addresses. The juvenile court found a substantial danger to A.Q.'s well-being was stated, requiring continued detention. It ordered that reunification services commence, including weekly monitored visits for father, later increased to two visits per week.[3]

After numerous continuances, a jurisdictional hearing went forward on May 31, 2018. DCFS had trouble getting in contact with father during the interim period because he was not answering his telephone and was not responding to messages, save for calling to cancel a March 2018 meeting that was set to discuss visitation and a case plan. Two weeks before the jurisdictional hearing, however, father provided DCFS with a new telephone number and permitted DCFS to inspect an apartment he claimed to have rented and intended to outfit for A.Q. Father also had a rudimentary plan for securing child care should A.Q. be placed with him. After some delay, father had further begun visiting with A.Q., successfully, though he was

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[3] Mother would eventually be denied reunification services. She did not challenge that decision and dropped out of sight. She is not discussed further in this opinion.

often late or altogether skipped visits, usually stating he had to work late. Accordingly, a later visitation schedule was agreed upon.

Based on that information, the juvenile court sustained the section 300 petition. A dispositional hearing followed on July 9, 2018, in which DCFS was directed to provide reunification services to father, including low-cost referrals for parenting classes and transportation assistance. Father was ordered to participate in parenting classes, all medical appointments and services for A.Q., and on-demand drug testing with a full rehabilitation program should he miss or test "dirty." Father was required to keep DCFS advised of his contact information.

After the jurisdictional hearing and disposition, father's interactions with DCFS and A.Q.'s foster parents deteriorated. Visits with A.Q. remained sporadic, which father blamed on DCFS's failure to assist him or the foster parents' "sabotage." However, a series of text messages between father, DCFS and the foster parents—submitted to the juvenile court by DCFS—indicated numerous of efforts to facilitate visits that father failed to confirm or outright missed. It was only after the juvenile court ordered visits with the maternal grandparents as monitors that visitation reportedly improved.

No later than two days after the dispositional hearing, DCFS mailed and emailed referrals to parenting and other case appropriate programs, including low- or no-cost options, to father at his address of record.[4] However, the mailed copies were

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[4] The two sets of referrals provided to father by DCFS were identified by title but were not themselves provided to the juvenile court. DCFS submitted copies of the referenced documents with a motion asking this court to take judicial notice

returned as undeliverable. Though DCFS attempted to contact father regarding his enrolling in parenting classes, father did not initially respond to DCFS's inquiries. Father would not even answer when DCFS tried to deliver a bus pass to facilitate transportation as ordered by the juvenile court. When DCFS did manage to contact father, father was notified that he had failed to regularly attend on-demand drug testing, requiring him to begin a drug rehabilitation program in addition to parenting. Father was handed another set of referrals that included low- or no-cost options.

By the time of the six-month review hearing, father had enrolled in parenting classes, but failed to attend, despite DCFS's obtaining at least three months' worth of bus passes for him and then paying for a cost-based program father chose because it was close to his residence. Nor had father drug tested regularly or participated in a rehabilitation program that was required due to his missing tests, despite DCFS's instructing him on how to enroll and securing funding for him to attend a program near his home. Father's visits with A.Q. remained sporadic, initially due to the parties' inability to agree on a routine location for visits but primarily due to father's failure to confirm or attend. Father was also arrested periodically, including for drug possession, and began a longer-term incarceration in November 2018. Father missed some of A.Q.'s noticed medical appointments, as well. Father had not maintained his regular contact information or responded to DCFS's efforts to reach him. Not even the maternal

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of them. The request is granted as to Exhibits 1 and 2 to the motion.

grandparents, who assisted father with visits and served as monitors, had contact information for him.

The six-month review hearing went forward on February 7, 2019, 14 months after A.Q.'s detention. The juvenile court noted that despite continuous efforts by DCFS to remain in touch with father and to assist him with visits and compliance with his case plan, father had only minimally participated in his case plan and failed to complete any element. Father's most significant effort at reunification was to visit with A.Q., but even that was inconsistent, and father did not take the opportunity to be a parent to A.Q. or demonstrate an ability to safely care for him. Accordingly, the court concluded that return of A.Q. to father would pose a substantial risk, and that despite reasonable efforts by DCFS it was unlikely father would reunify with A.Q. by the time an 18-month review occurred. The court therefore terminated reunification services and set a hearing to select a permanent plan under section 366.26. This timely petition followed. It is opposed by DCFS and A.Q.

DISCUSSION

Father begins with a contention that the juvenile court erred in concluding DCFS provided reasonable reunification services. Particularly, father complains that DCFS did not provide him with low- to no-cost referrals to programs, financial assistance or transportation assistance, did not maintain regular contact with him, and did not do enough to help him obtain services once he was incarcerated. Father forgets that we review the juvenile court's reasonable services finding for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) That is, the appellate court will not

reweigh the evidence or exercise independent judgment but will view the record in the light most favorable to the juvenile court's order, drawing all reasonable inferences in favor of the ruling. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545; *In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) Moreover, in assessing the adequacy of reunification services, the standard is not perfection but whether the services were reasonable in the circumstances. (*In re Misako R., supra*, at p. 547.)

Viewed in accordance with those principles, we conclude the juvenile court's reasonable services finding is supported. The record shows that no more than two days after the dispositional order was filed, and again two weeks later, DCFS mailed, emailed or personally delivered program referrals to father, which included low-cost and no-cost options. Father could have selected from such low-cost programs to commence compliance with his case plan if he needed to. However, father often cited his work schedule for his failure to attend programs, or even to visit with A.Q., implying that he was receiving income and could enroll in any of the referenced programs that suited him. Once DCFS was alerted that father needed assistance with transportation funds, it arranged for monthly bus passes that father had only to pick up from DCFS. But, father often failed to respond to DCFS's notifications regarding available assistance, and fails now to identify any point at which he was unable to attend a parenting or drug rehabilitation class due to lack of information or transportation. In fact, the record shows that father largely failed to maintain any stable contact information, did not respond to messages left by DCFS with friends or at available telephone numbers or mailing addresses, and at times

became whereabouts unknown. Nevertheless, DCFS continued to try to contact father.

When father finally communicated to DCFS that he had chosen cost-based programs he wished to attend because they were located near his residence, DCFS paid for those programs in order to facilitate father's attendance. Still, except for a single intake interview, father made no attempt to follow through and was eventually discharged for non-attendance from both his parenting and drug-rehabilitation programs. While it is true that toward the end of the reunification period father was incarcerated, and there is no evidence that DCFS tracked him down in jail and arranged for the Sheriff's Department to assist him with his case plan, that alone is not enough to ascribe a failure to perform to DCFS. The fact is that father had months prior to his detention to commence good faith compliance with his case plan but did not. He cannot capitalize on his last-minute incarceration to undermine all of the efforts DCFS made before then to cajole him into fulfilling his case plan.

The record further shows that DCFS undertook repeated efforts to coordinate monitored visits with A.Q. that were agreeable to father. While father made a greater effort at visiting than at any other aspect of his case plan, the evidence is that father still canceled or disregarded numerous visitation times, failing to alert DCFS to the change and often leaving A.Q. waiting. Father further skipped some noticed medical appointments for A.Q., despite the terms of his case plan. In short, the record reflects substantial evidence supporting the juvenile court's conclusion that DCFS provided reasonable services to father. He simply failed to take advantage of what was offered.

Father further challenges the idea that he failed to make substantive progress in his case plan, asserting that DCFS is "to blame." The record is to the contrary. Father failed to come even close to completing his case plan. He was elusive throughout the case, and visited with A.Q. sporadically, often failing to show at confirmed visits. Once father's case plan was officially ordered at the dispositional hearing, father was provided with referrals and transportation assistance and, ultimately, DCFS-funded, conveniently located programs that father selected, yet he did not attend. Father largely failed to submit to drug testing as required, pointing to his prohibitively busy work schedule, which was also a basis for his asserted inability to regularly visit. There was little, if any, evidence to suggest that father had made progress toward establishing a safe and stable environment in which to reunify with A.Q., let alone actually established one. The juvenile court's conclusion was thus supported.

Finally, father asserts it was error for the juvenile court to find that a substantial risk of detriment to A.Q. remained should he be released to father's care. Again, that finding is reviewed for substantial evidence. (*Angela S. v. Superior Court, supra*, 36 Cal.App.4th at p. 763.) The record contains ample evidence to support the juvenile court's conclusion. To begin, father's failure to participate regularly and make substantive progress in his case plan was prime facie evidence that a substantial risk to A.Q. remained. (§ 366.21, subd. (e)(1).) And that failure was in the extreme. Father made minimal effort even to enroll in required programs, despite DCFS's efforts and in disregard of the pathway the juvenile court had laid out for him to become a suitable parent. Father could not be relied upon to visit with A.Q. at the times and places set for such reunions. He did not provide DCFS

with steady contact information to suggest, let alone prove, that he had a safe and stable place in which to receive A.Q. Contrary to father's contention, the juvenile court was compelled to reach the conclusion it did. Its order was proper.

DISPOSITION

For the foregoing reasons, the petition for extraordinary relief is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT