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

In re PATRICE P., a Person Coming
Under the Juvenile Court Law.

B283482

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK87089)

Plaintiff and Respondent,

v.

FRANK P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Emma Castro, Referee. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Kim Nemoy, Principal Deputy County Counsel for Plaintiff and Respondent.

In this dependency appeal, Frank P. (father) challenges the juvenile court's findings, made at the six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹, that father was provided reasonable reunification services and was not entitled to a continuance of the hearing. We find no error, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. First Petition

On September 5, 2014, the Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition on behalf of Patrice P., born in November 2002.² As subsequently amended, the petition alleged that Patrice was subject to juvenile court jurisdiction pursuant to section 300, subdivisions (a), (b), and (g) because D.T. (mother) subjected Patrice to inappropriate physical discipline and was unable and unwilling to care for her, and because father had a lengthy criminal history and was currently serving a 32-month sentence for firearm possession. On April 16, 2015, the court sustained two counts of the petition and ordered Patrice placed in foster care.

On June 2, 2015, a children's social worker (CSW) met with father at Men's Central Jail. Father said he did not know when he would be released, but said he would like Patrice to be placed with his sister, Rubyie P.

On August 6, 2015, after a contested disposition hearing, the court ordered Patrice placed with mother under DCFS

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

² Patrice's half-brothers, X.T., R.M., and S.M., have different fathers and are not subjects of this appeal.

supervision, and granted father “enhancement services.”³ Specifically, the court ordered father to participate in domestic violence and parenting classes, and granted him monitored visitation with Patrice after his release from custody.

Father appealed the jurisdiction and disposition orders. We reversed the portion of the disposition order removing Patrice from father’s custody; in all other regards, we affirmed.

B. Second Petition

In March 2016, Patrice ran away from mother’s home. Subsequently, mother and Patrice had a physical altercation, and mother said she wanted to “giv[e] up her rights” to Patrice. DCFS detained Patrice and placed her in foster care. An amended petition was filed April 12, 2016, alleging that mother was unable and unwilling to provide care and supervision for Patrice, and Patrice did not wish to return to mother’s home.

Father was transported from jail to the April 12, 2016 detention hearing. The court ordered DCFS to provide the parents with reunification services and granted father monitored visitation. The court ordered DCFS to assess relatives, including

³ “Enhancement services” are “‘child welfare services offered to the parent not retaining custody, designed to enhance the child’s relationship with that parent.’ (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1497, fn. 1; see *In re A.C.* (2008) 169 Cal.App.4th 636, 642, fn. 5 [“enhancement” services are “not designed to reunify the child with that parent, but instead to enhance the child’s relationship with that parent by requiring that parent to address the issues that brought the child before the court”].) An order for enhancement services is subject to the court’s discretion.” (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 212–213.)

the paternal aunt and two paternal cousins, for potential placement.

On May 3, 2016, the CSW interviewed father at Men's Central Jail. Father told the CSW that he expected to be released by June 20, 2016. He wanted his sister (paternal aunt Rubyie P.) to care for Patrice during his incarceration, and said he would care for Patrice after his release. The CSW spoke to Rubyie, who said she was interested in caring for Patrice. Because Rubyie was living in Nevada, the CSW recommended that the court order a home study through Nevada social services; it further recommended that father be granted reunification services.

On June 20, 2016, the court sustained paragraph b-2 of the amended petition and ordered an assessment of Rubyie P.'s home. Subsequently, on July 13, 2016, the court ordered father to participate in individual counseling and granted him monitored visitation.⁴ No reunification services were ordered for mother, who had waived her right to such services.

C. Six-Month Review Period

(1) Attempts to place Patrice with paternal relatives

In July 2016, DCFS made a request to the Nevada authorities to evaluate the home of paternal aunt Rubyie for possible placement. On September 9, 2016, the Nevada Department of Family Services advised that Rubyie had neither

⁴ It appears the court ordered monitored visitation for father because he had represented that he expected to be out of custody by about June 20, 2016. In fact, father remained in custody until his August 2016 trial, when he was convicted and sentenced to 10 years in state prison.

enrolled in the required classes nor returned the forms needed to complete background checks. Thus, the department could not complete a home study and recommended that placement with Rubyie be denied.

The CSW spoke to the paternal grandmother about the possibility of placing Patrice in her home. The paternal grandmother said she could not have Patrice live with her, but would like regular visits. Patrice began weekly visits with paternal grandmother sometime in 2016.

During a July 2016 visit with Patrice, the CSW asked whether Patrice would like to write to her father in jail. Patrice said she would, and the CSW provided her with father's mailing address. The CSW also gave Patrice her aunt's telephone number in Nevada and encouraged Patrice to maintain ties with her family.

(2) Father's conviction and transfer to state prison

Father was incarcerated at Men's Central Jail for most of 2016. He did not avail himself of the parenting education or counseling services available to him there.

On November 17, 2016, while still in custody, father was sentenced to a 10-year prison term pursuant to Penal Code section 236.1 (human trafficking), and on December 5, 2016, father was transferred to Wasco State prison in central California.

The CSW spoke with father's prison counselor shortly after his transfer to Wasco. She was told that currently no services were available to father because he was housed at a short-stay facility, but that services might be available once father was moved into more permanent housing in about three months. Father did not currently have telephone access. With regard to

visits, the CSW was told that “Father would need to send the visiting form for the visitor to fill it out and send it back to the Father for processing. Once the visitor is cleared then visits can take place.” There is no evidence in the record that father ever sent the required forms to Patrice, her caregiver, or the CSW.

D. Six-Month Review Hearing

A six-month review hearing pursuant to section 366.21, subdivision (e), was scheduled for January 11, 2017. Father appeared and contested DCFS’s recommendation to terminate his reunification services, and the court continued the matter to March for a contested hearing. On March 14, 2017, the hearing was continued to May 8 to allow father to be present.

Father again was not present on May 8, and his attorney requested a further continuance. The court denied the request for a continuance, explaining as follows: “The matter has been continued more than one time for [father’s] appearance. Waivers were sent to him. He has not executed a waiver of his appearance. However, the court notes that it is not in the best interests of this child to continue delaying”

At the conclusion of the hearing, the court found by clear and convincing evidence that DCFS had made reasonable efforts to enable Patrice’s safe return home, and that father’s progress had been “slow and unsatisfactory.” The court further noted that father recently had been convicted of a violation of Penal Code section 236.1, subdivision (c) (human trafficking), and he was serving a 10-year state prison sentence. Nonetheless, the court continued father’s reunification services until the 12-month hearing, to be held on June 12, 2017.

Father timely appealed from the May 8, 2017 order.

DISCUSSION

Father contends that the juvenile court erred by (1) refusing his request for a continuance of the six-month review hearing, and (2) finding that DCFS provided father reasonable reunification services. As we now discuss, neither contention has merit.

I.

The Trial Court Did Not Abuse Its Discretion by Denying Father’s Request for a Continuance of the May 8, 2017 Hearing

Father contends the juvenile court abused its discretion by denying his request to continue the May 8, 2017 hearing. We do not agree.

“ ‘Continuances are discouraged in dependency cases.’ (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 604.)” (*In re F.A.* (2015) 241 Cal.App.4th 107, 117.) Nonetheless, upon request of counsel for the minor or petitioner, the court may continue a hearing pursuant to section 352, subdivision (a), which provides: “Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, *provided that no continuance shall be granted that is contrary to the interest of the minor.* In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the

motion for the continuance.” (Italics added.) We review the court’s rulings on continuance requests for an abuse of discretion. (*In re F.A.*, *supra*, 241 Cal.App.4th at p. 117; *In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481.)

Father has not demonstrated that the trial court abused its discretion by denying his request for a continuance of the six-month review hearing. As father concedes, he did not have a statutory right to be present at the hearing. (Pen. Code, § 2625, subds. (b)–(d) [prisoner has right to be present at dependency hearing where “the proceeding seeks to terminate the parental rights of any prisoner, or . . . to adjudicate the child of a prisoner a dependent child of the court.”].) The court had already granted one continuance to allow father to be present, and more than a year had passed since DCFS had filed the amended petition. Moreover, granting a continuance would have further delayed a permanent placement for Patrice, who by the May 8 hearing had been in the foster care system for nearly three years. The record thus amply supported the trial court’s finding that a continuance was not in Patrice’s best interests.

II.

Substantial Evidence Supported the Trial Court’s Finding That DCFS Provided Father Reasonable Services

Father contends the trial court erred in finding that DCFS provided him reasonable services. We disagree.

“The adequacy of a reunification plan and of the department’s efforts are judged according to the circumstances of each case. [Citation.] With respect to the plan itself, ‘[e]ach reunification plan must be appropriate to the particular individual and based on the unique facts of that individual.

[Citations.]’ [Citation.] ‘The effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success. [Citation.]’ [Citation.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362 (*Ronell A.*)).

With respect to incarcerated parents, section 361.5, subdivision (e)(1) sets forth the requirements for reasonable reunification services. It states: “[T]he court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. . . . Services may include, but shall not be limited to, all of the following: [¶] (A) Maintaining contact between parent and child through collect telephone calls. [¶] (B) Transportation services, when appropriate. [¶] (C) Visitation services, when appropriate. [¶] (D)(i) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child. [¶] (ii) An incarcerated or detained parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification service plan if actual access to these services is provided.”

“In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] ‘If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.’ [Citation.]” (*Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1361–1362.)

In the present case, father was incarcerated during all or nearly all of the reunification period, and he now is serving a 10-

year state prison sentence. Prior to his trial, father was housed at Men's Central Jail; there is no evidence in our record (and father identifies none) that father sought or was permitted visits or phone calls there. Subsequently, during the five months immediately prior to the May 8 hearing, father was housed in a short-stay facility where he was not permitted telephone calls, and there is no evidence that father completed the forms the prison required to allow him to have visitors. Accordingly, through no fault of DCFS's, DCFS was unable to facilitate phone calls or visits between father and Patrice. (See *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1013 [parent's inability to access services in prison "was not [DCFS]'s fault. [Citation.] The prisons are run by the Department of Corrections, not by [DCFS]."].)

Although DCFS could not facilitate phone calls or visits between Patrice and father, DCFS did take steps to maintain the relationship between Patrice and her father's family. During the six-month review period, DCFS requested that the Nevada Department of Family Services evaluate paternal aunt Rubyie for placement, facilitated weekly visits between Patrice and her paternal grandmother, and encouraged Patrice to maintain telephone contact with her aunt Rubyie. DCFS also encouraged Patrice and her father to maintain contact by letter. In view of father's incarceration, the trial court's conclusion that DCFS's efforts were "reasonable" was supported by substantial evidence.

In any event, even had the trial court erred in finding the services provided reasonable—which is not our holding—any error would not be prejudicial. Section 361.5, subdivision (e)(1) states that reunification services for an incarcerated parent are subject to "the applicable time limitations imposed in subdivision

(a)—i.e., for “a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent” (*id.*, subd. (a)(3)(A)). In this case, by May 2017, Patrice had been out of parental custody for more than a year, and father had recently been sentenced to a new 10-year prison term. By any measure, therefore, father would not be released until well past the 18-month reunification period. Accordingly, even had the court made the finding father seeks and granted father additional reunification services, he still could not have reunified with Patrice. (See *Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1365–1366 [any error in finding reunification services reasonable was not prejudicial: “When a child cannot be returned to the parent within the statutory time frame, the court is required to establish a permanent plan for the child and refer the case for a section 366.26 hearing. Mother was sentenced to *six years* in prison and would not be released until *1999*, well past the eighteen-month period. *Stated otherwise, a different reunification plan would not have made a difference in the outcome.*”], third italics added.)

In short, reunification in the present case failed not because of any inaction by DCFS, but because father was incarcerated throughout the reunification period and well beyond it. His incarceration “was due to his felonious conduct, which was not an external factor over which he had no control.” (*V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 530.) The trial court did not err in so concluding.

DISPOSITION

The May 8, 2017 order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.