Filed 10/4/16 In re Johnny G. CA2/3

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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| In re JOHNNY G., et al., Persons Coming Under the Juvenile Court Law. | B270042 |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>E.G.,<br><br>Defendant and Appellant. | (Los Angeles County Super. Ct. No. DK10725) |

APPEAL from an order of the Superior Court of Los Angeles County, Nichelle L. Blackwell and Harry A. Staley, Juvenile Court Referees. Reversed and remanded with directions.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Brian Mahler, Associate County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

E.G. (father)[1] appeals from the juvenile court's order at the six-month review hearing finding the Los Angeles County Department of Children and Family Services (Department) provided him reasonable reunification services as to his minor children, Johnny G. (Johnny), J.G., and Adrian G. (Adrian) (collectively referred to as the children). Father argues the Department's efforts to provide him reunification services and to facilitate visitation with his children were inadequate throughout a period of several months before the review hearing. Because the court's finding is not supported by substantial evidence, we reverse.

## FACTUAL AND PROCEDURAL BACKGROUND

At the time the Department initiated the underlying dependency proceedings, Johnny was 11 years old, J.G. was nine years old, and Adrian was six years old. Father and the children's mother, Salina P. (mother),[2] were homeless, and the children were living with their maternal grandmother in San Dimas.

In March 2015, the Department received a referral alleging mother had crashed a car in which J.G. and Adrian were passengers while mother was under the influence of alcohol and methamphetamine. As a result of the accident, J.G. suffered bruising around her abdomen and pelvis and Adrian sustained a contusion to the back of his head. Law enforcement found hypodermic needles and alcohol inside the car, within reaching distance of the children. Father was not involved in the accident, but he arrived at the scene and transported J.G. and Adrian to their maternal grandmother's home. Mother was taken into custody after the accident.

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[1] Although father sometimes uses a hyphenated surname, we refer to his last name by the initial "G."

[2] Mother is not a party to this appeal.

On April 8, 2015, the Department filed a Welfare and Institutions Code[3] section 300 petition on behalf of the children. The Department alleged mother placed the children at risk of serious physical harm when she operated a car in which the children were passengers while under the influence of alcohol and drugs, and while drug paraphernalia, including a hypodermic needle, were within the children's reach (§ 300, subd. (b)) (b-1 allegation). The Department also alleged mother was a current abuser of methamphetamine and alcohol (b-2 allegation), and that father had a history of abusing illicit drugs (b-3 allegation).

As of the April 8, 2015 detention hearing, mother was in custody on charges stemming from the accident. At the detention hearing, the juvenile court ordered the children detained from their parents' custody, and they were placed back in their maternal grandmother's home. The court also ordered the Department to provide mother and father a minimum of six hours per week of monitored visitation with the children. Father regularly visited the children on weekends following the detention hearing.

On June 22, 2015, the court conducted a jurisdiction and disposition hearing. Mother, who was still incarcerated, appeared at the hearing, but father did not. Mother did not contest the b-1 and b-2 allegations in the petition, which the court sustained. The court dismissed the b-3 allegation against father, but father's counsel informed the court that father would submit to the court's jurisdiction. The court then issued its disposition order, declaring the children dependents of the court and removing them from their parents' custody. The court ordered the Department to provide father and mother family reunification services, and for father to have unmonitored visits with the children. As part of his court-ordered case plan, the court directed father to participate in parenting classes and individual counseling. Father also was required to submit to eight random drug tests, and, in the event he failed any of the tests, to participate in a full drug rehabilitation program.

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

After the disposition hearing, father continued to visit the children every week. He often took the children to a park to play sports, and he would sometimes take them out to eat. The children reported that they enjoyed spending time with father.

For about two months after the disposition hearing, however, father failed to comply with the other requirements of his court-ordered case plan. He missed three random drug tests—on July 20, July 31, and August 6, 2015—and he did not enroll in parenting classes or individual counseling. Father also failed to remain in contact with the Department. From July 15 through July 27, 2015, the social worker assigned to the children's case tried contacting father five times at his last known phone number, but he either never answered the calls or the social worker would receive a message that the number was no longer in service. The social worker also contacted the children's paternal and maternal grandmothers to try to locate father. Although the maternal grandmother stated she would have father contact the Department when she next spoke to him, father never contacted the Department during this time period.

On August 14, 2015, father was arrested on an outstanding warrant for a charge of indecent exposure with a prior under Penal Code section 314. Father was incarcerated at the North County Correctional Facility, and he was expected to be released from custody in March 2016.

Between August 24 and November 9, 2015, the social worker assigned to the children's case sent four letters—one each month—to father at the North County Correctional Facility. Each letter set forth the details of father's court-ordered case plan and informed father that he had failed to demonstrate any compliance with the plan's requirements before he was incarcerated. Each letter directed father to contact his case manager or counselor at his correctional facility to inquire about whether he had access to any of the programs required by his case plan. Father also was provided the contact information for the social worker assigned to the children's case, and he was told that he and his case manager or counselor could contact the social worker for information about the children's case and his case plan. However, each letter stated that the Department did not accept collect calls. Until early January 2016, the Department made no effort to

contact directly the North County Correctional Facility to determine whether father had been assigned a case manager or counselor, or to ascertain what programs or classes were available for father to enroll in.

Although the children had visited father on a weekly basis prior to his arrest, they did not visit or speak to him while he was in custody. In November 2015, the children's paternal grandmother told the Department that the children had not visited or spoken to father because the family could not afford to accept collect calls or travel to father's correctional facility. The Department did not try to arrange for the children to contact father at the facility or to travel to the facility, and there is nothing in the record to suggest the Department ever inquired about whether visitation at the facility would have been feasible.

Around December 8, 2015, father sent the Department a letter explaining his custody status and efforts to comply with his case plan. Father wished to reunite with, and have custody of, the children, but he was happy that the children were being cared for by his in-laws. He noted that he was now in a school dormitory and had enrolled in parenting and anger-management classes, as well as other classes offered at the facility by the Five Keys Charter School (Five Keys), which offers various "life-skill" classes and programs at the North County Correctional Facility.[4] Father planned to have certificates for his courses by his expected release date in March 2016.

On December 21, 2015, the court initiated the six-month review hearing (§ 366.21, subdivision (e)). The hearing was continued to January 13, 2016 after father's counsel requested a contested hearing on the issue of whether the Department had made reasonable efforts to provide father with reunification services.

On December 23, 2015, the social worker assigned to the children's case responded to father's letter. The social worker again informed father about the

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[4] In September 2015, without the Department's assistance, father had requested a transfer to a dormitory in the North County Correctional Facility that offered counseling services and parenting classes.

requirements of his case plan, including that he would have to enroll in a substance abuse program because he had missed three drug tests before he was incarcerated. However, the social worker did not provide any information about what services were available to father in custody, including whether he had access to a substance abuse program. The social worker again directed father to contact his case manager or counselor to determine what services were available.

On January 4, 2016, the social worker called the North County Correctional facility to determine what services were available, but she could not reach anyone. On January 5, 2016, the social worker contacted someone at the North County Correctional Facility and was told that the facility does not have any case managers or counselors. However, she was able to contact Dr. Shanley Rhodes, who worked at Five Keys. Dr. Rhodes promised to try to get father enrolled in the Five Keys program.

On January 6, 2016, the day after the social worker first contacted his correctional facility, father was released from custody. He began visiting the children again the day after he was released.

On January 13, 2016, the court held a contested six-month review hearing. The social worker assigned to the children's case testified about her efforts in trying to contact father while he was incarcerated and determining what services were available at his correctional facility. After hearing argument from the parties, the court found, among other things, that returning the children to father's custody would create a substantial risk of detriment to their emotional and physical well-being; that the Department had provided father reasonable reunification services since the disposition hearing; and that father was in partial compliance with his case plan. The court also ordered the Department to provide father monitored, instead of unmonitored, visitation, as a result of his missed drug tests.

Father timely appealed from the court's six-month review hearing order.

On May 24, 2016, the court conducted a 12-month review hearing (§ 366.21, subd. (f)). Father contested the Department's efforts at providing reunification services between the six- and 12-month review hearings. The court found the Department

provided the parents reasonable reunification services and that the parents were not in compliance with their case plans. The court then terminated the parents' reunification services and set a selection and implementation hearing under section 366.26. Father does not challenge any of the court's orders from the 12-month review hearing.[5]

## DISCUSSION

### I. Applicable law and standard of review

A parent of a child three years of age or older is entitled to 12 months of family reunification services, unless the court finds by clear and convincing evidence that providing such services would not be appropriate under a number of exceptions, none of which the court found to apply in this case. (See § 361.5, subds. (a)(1), (b), & (e).) The 12-month period begins to run from the date at which the child has been removed from the parent's custody and the court has determined that the parent is entitled to court-ordered services—typically, the date of the disposition hearing. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1165 (*T.W.*); *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164 (*Robin V.*).)

When the juvenile court orders reunification services, the child welfare agency must tailor those services to the needs of the family and design them to alleviate the circumstances that gave rise to the child becoming a dependent of the court. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1451 (*Taylor J.*).) The child welfare agency "must make a good faith effort to develop and implement a family reunification plan. [Citation.] '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . . ' [Citation.]" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 (*Amanda H.*); see *In re K.C.* (2012) 212 Cal.App.4th 323,

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[5] On our own motion, we take judicial notice of the juvenile court's April 1, April 8, and May 24, 2016 minute orders.

329-330.) The agency must also find and maintain contact with service providers and keep the parent informed of whether his or her progress is consistent and compliant with the court-ordered case plan. (*Taylor J., supra,* 223 Cal.App.4th at p. 1452.) The agency must attempt to provide reasonable reunification services even if it is difficult to do so or the prospects of reunification are low at the time the court orders the services. (*Id*. at p. 1451; see *In re Alvin R.* (2003) 108 Cal.App.4th 962, 973 ["[*s*]*ome* effort must be made to overcome obstacles to the provision of reunification services"].) The agency's efforts to provide reunification services do not have to be perfect, but they must be reasonable given the circumstances of the case. (*In re T.G.* (2010) 188 Cal.App.4th 687, 697 (*T.G.*); see *Taylor J., supra,* 223 Cal.App.4th at p. 1451.)

An incarcerated parent is entitled to reasonable reunification services unless the juvenile court finds that ordering services would be detrimental to the child. (§ 361.5, subd. (e)(1); *T.G., supra,* 188 Cal.App.4th at p. 696.) Visitation is a critical component of a visitation plan, and it remains critical even when a parent is incarcerated. (*Id.* at pp. 696-697.) "To promote reunification, visitation must be as frequent as possible, consistent with the well-being of the child." (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426 (*Tracy J.*).)

We review the trial court's reasonable services findings for substantial evidence. (*Amanda H., supra,* 166 Cal.App.4th at p. 1346; *T.G., supra,* 188 Cal.App.4th at pp. 696-697.) " 'The remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing.' [Citation.]" (*Taylor J., supra,* 223 Cal.App.4th at p. 1453.)

## II. The Department failed to provide father reasonable reunification services.

Father contends the court's finding that the Department provided him reasonable reunification services before the six-month review hearing is not supported by substantial evidence. We agree.

Father does not dispute that he failed to take significant steps to comply with his court-ordered case plan in the first two months following the disposition hearing. He

failed to maintain any contact with the Department, including not responding to several attempts to contact him by the social worker assigned to the children's case. Father also missed three random drug tests. Father did, however, show commitment to reuniting with his children. He continued to regularly visit them while he was out of custody, and, once he was incarcerated, he took the initiative to enroll in parenting and anger-management classes without the Department's assistance. Nevertheless, father should have been far more diligent in his efforts to comply with his case plan before he was incarcerated. That does not mean, however, that the Department was absolved of its responsibility to try to provide father reasonable reunification services. A child welfare agency must attempt to provide reasonable services even when the parent's efforts to comply with his or her case plan are lacking. (See *Taylor J.*, *supra*, 223 Cal.App.4th at pp. 1451-1453.)

Here, the Department failed to meet its burden during the period leading up to the six-month review hearing. Specifically, the Department failed to take adequate steps to ensure father could receive reasonable services during the more than four months he was incarcerated. (See *T.G.*, *supra*, 188 Cal.App.4th at p. 696 [an incarcerated parent is entitled to reasonable services, regardless of the likelihood of success].) For example, the Department made no effort to contact father's correctional facility to determine what services were available until a week before the six-month review hearing, or for more than four months after father was incarcerated. The only steps the social worker assigned to the children's case took to help father obtain services were to send him four letters explaining the details of his case plan and directing him to find a case manager or counselor who could help him gain access to necessary services.

The Department contends the social worker's letters satisfied the Department's responsibility to provide reasonable services because each letter sent to father "reiterated father's program and drug testing responsibilities, instructed him to inquire with a case manager and/or counselor about programs offered at the facility, and requested that he contact her as soon as possible." We are not persuaded. The Department needed to do more than simply reiterate the conditions of father's case plan

and direct him to find someone who could help him enroll in appropriate classes and counseling programs. It was the Department's responsibility to find appropriate service providers, especially when the Department was aware that father was in custody and knew where father was being housed. (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 71 (*Christopher D.*).) The Department, not father, was responsible for determining whether father's correctional facility offered services that would comply with father's case plan. (*Taylor J., supra*, 223 Cal.App.4th at p. 1452.) The social worker could not shift that responsibility to father by directing him to find a case manager or counselor that could help him comply with his case plan. Although the social worker eventually contacted father's correctional facility to inquire about services, that effort was unreasonable because she waited until the eleventh hour, or one week before the six-month review hearing, to do so.

The Department relies on *Robin V.* to support its argument that father's failure to communicate with the Department before and throughout most of his incarceration absolved the Department of doing anything more than sending father a series of letters while in custody. In *Robin V.*, the Court of Appeal reversed the juvenile court's order terminating the father's services and finding the child welfare agency provided the father reasonable services. (*Robin V., supra*, 33 Cal.App.4th at pp. 1164-1167.) The father in *Robin V.* was incarcerated at the time the dependency petition was filed, and he remained in custody for almost the entire period before the 12-month review hearing. (*Id.* at pp. 1161, 1163.) During that period, the father attended a substance-abuse program in prison, maintained contact with the child welfare agency, and notified the agency that other services were not available in prison. (*Id.* at p. 1162.) In the last eight months of the father's incarceration, the social worker met with the father once to sign an amended case plan, sent him two letters asking him what services he was involved in, and never tried to call him. (*Id*. at p. 1163.) The social worker did not respond to the father's messages, and she never looked into the possibility of facilitating visits with the child. (*Ibid*.) When the father asked for "pamphlets" on parenting, she did not

respond, because she did not have pamphlets and believed the prison would not allow her to send books. (*Ibid*.)

*Robin V.* does not support the Department's position. The fact that the father in *Robin V.* was more proactive in maintaining contact with the child welfare agency than father in this case does not mean that the Department did not need to fulfill its responsibility to determine whether father's correctional facility offered services that would comply with his case plan. (See *Christopher D.*, *supra*, 210 Cal.App.4th at p. 71 [the child welfare agency has "responsibility to provide reunification services to incarcerated parent under § 361.5, untethered to parent's actions or statements"].) Indeed, had the Department been more proactive in its own efforts to provide services to father, it likely would have discovered that father had been trying to comply with his case plan by seeking to enroll in services offered at the facility as early as September 2015, well before the six-month review hearing.

The Department also did not take adequate steps to maintain contact between father and the children while father was in custody. As of late August, the social worker was aware that the children were not visiting father while he was in custody. In early November, the children's paternal grandmother told the social worker that the children had neither spoken to, nor seen, father since he was incarcerated because the family could not afford to receive calls from, or travel to, father's correctional facility. Despite being aware of the family's circumstances, the social worker never made any effort to initiate contact between father and the children while father was in custody. For example, the social worker never looked into whether the Department could assist the family in receiving calls from father or traveling to the North County Correctional Facility to visit father. There is also nothing in the record to suggest she inquired into whether the facility could accommodate visitation between father and the children. Where, as here, visitation is part of the court-ordered case plan, the child welfare agency must take steps to facilitate visitation, even when the parent is incarcerated. (See *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1478 [child welfare agency must provide

reasonable services, especially visitation, to incarcerated parents].) The Department failed to do that here.

## DISPOSITION

The juvenile court's order at the six-month review hearing finding that the Department provided father with reasonable reunification services is reversed. The matter is remanded with directions to the court to enter a new order finding that, as of the six-month review hearing, the Department did not provide father with reasonable reunification services. On remand, the court shall require the Department to provide father with additional reunification services that are appropriate and in the best interests of the children. The court shall vacate any orders issued after January 13, 2016 that are inconsistent with this opinion, including the scheduling of the section 366.26 hearing.

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

LAVIN, J.

WE CONCUR:

EDMON, P. J.

STRATTON, J. *

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