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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

HE. G., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B244175 (Los Angeles County Super. Ct. No.CK18621)

ORIGINAL PROCEEDINGS in mandate. Stephan Marpet, Juvenile Court Referee. Petition denied.

Law Office of Marlene Furth, Danielle Butler Vappie and Candice Roosjen for Petitioner.

John F. Krattli, Office of the County Counsel, James M. Owens, Assistant County Counsel, Jessica S. Mitchell, Senior Associate County Counsel for Real Party in Interest.

Petitioner He. G. (Father) challenges the juvenile court's September 2012 order terminating reunification services and setting a hearing to terminate parental rights under Welfare and Institutions Code section 366.26.[1] Father contends the Department of Children and Family Services (DCFS) did not provide reasonable services. We conclude the court's determination that reasonable services were provided, but that Father did not make significant progress in resolving the problems that led to the removal of his child or demonstrate the capacity to complete the objectives of his treatment plan, was supported by substantial evidence. Accordingly, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of DCFS on February 16, 2011, when 8-year old (H.) appeared at school with marks and bruises on his body, leading school officials to call law enforcement personnel.[2] H. informed officers that Father had become angry when H. failed to close the door to their home, threw him to the ground, choked him, and said he wanted H. to die.[3] H. also stated Father had

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[1] Unless otherwise indicated, statutory references are to the Welfare and Institutions Code.

[2] Father and H.'s mother, Valerie G. (Mother), had been involved with DCFS in 1995 and 2000 in proceedings involving two of Mother's three older daughters. The record reflects that allegations pertaining to one daughter were sustained in November 1995 under section 300, subdivisions (b) and (g), but contains no specifics concerning the jurisdictional findings. In March 2000, allegations that Father sexually abused another of Mother's daughters by inappropriately touching the girl were sustained. Father ultimately stipulated to "sexual misconduct" with two of Mother's daughters. Mother did not reunify with either girl. Allegations of sexual abuse against Father made in 2002 were found to be unsubstantiated or inconclusive. In 2003 and 2004, H.'s then adult half-sisters called DCFS because they were concerned Father might be physically or sexually abusing H. DCFS investigated and found no signs of abuse or neglect at that time.

[3] The family was living in a motor home at the time.

slammed him against a wooden bed frame a few days earlier.[4] H. was immediately detained and placed in foster care. A petition was filed raising allegations of physical abuse and failure to protect. Father was interviewed and denied hitting or abusing H.[5] At the detention hearing, the court ordered DCFS "to provide the parent[s] appropriate family reunification services based on the allegations raised in the petition."

In March 2011, H.'s foster mother reported that H. had been physically aggressive with his foster siblings and was acting out in sexual ways.[6] H. told his foster mother that Father had taught him "that was what men do, and that if he does not have sex or watch porn, then he is not a man." He also told her that Father had performed sexual acts with him. In April 2011, H. was re-interviewed by the caseworker and asked whether he had ever been touched in a "bad way." H. describing being sodomized twice by Father, when Mother was at work, and said Father threatened to kill him if H. said anything to Mother. H. also stated he had watched pornographic movies with Father "[a] lot[]." H. further stated that Father called Mother names, threw things at her, and beat her.[7]

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[4] Mother had not been present on either occasion, but H. said he had told Mother about one of the incidents, and she had done nothing and said nothing to Father. Although Mother is not a party to these proceedings, information about her actions is included to provide a more complete picture of proceedings below.

[5] Mother denied that H. had been physically abused by Father. Mother also stated that she did not believe Father had sexually abused her daughters, despite the court's finding in prior dependency proceedings.

[6] For example, H. had gone into the bedroom of his eight-year old foster sister and said he wanted to "make love" to her and to see her naked.

[7] The caseworker re-interviewed the parents. Father denied any sexual abuse and said that H. exaggerated and "switched up stories a lot" when he was caught misbehaving. Mother denied that H. had told her he was being physically or sexually abused by Father.

As a result of the new information, DCFS filed an amended petition in April 2011, which included new allegations of sexual abuse and domestic violence. Due to the seriousness of the allegations and the parents' history, DCFS recommended no reunification services. Initially, H. stated he did not want to return home. Within a few months, he began to talk about loving and missing Mother and stated he wanted to live with her. In December 2011, after a second change in placement, H. stated that he wanted to return to his parents. He recanted the sexual abuse allegations, stating instead that Father had hit his "private part" with a belt buckle while disciplining him. H.'s therapist reported that H. had denied being sexually abused. H. was assessed by a multidisciplinary assessment team. Their report stated that H. displayed elements of various mental illnesses and also stated that he "lies . . . , fails to take responsibility for his actions, and blames others for troubles he creates on his own." The medical examination conducted by the team found no physical evidence of sexual abuse.

Due to the April 2011 amendment and several continuances, the adjudication and disposition did not take place until January 2012, nearly a year after the detention. Father and Mother contested jurisdiction, but before the matter was submitted to the court, the parties settled, agreeing to the truth of the following allegations: (1) Father "inappropriately physically disciplined [H.]," by "grabbing [him] by his shirt collar[,] choking [him] and throwing him against a wooden bed frame" and (2) Father maintained "inappropriate sexual boundaries" by "forcing [H.] to watch pornographic movies" and threatening to harm him if he told anyone. With respect to both allegations, the parties stipulated that Mother knew of the abuse and failed to protect H. The parties further stipulated that two of Mother's older daughters had been the subject of prior dependency proceedings due to

"sexual misconduct" by Father, and that Mother had failed to reunify with her daughters.[8]

The stipulated case plan required Father to participate in counseling with a licensed therapist to address case issues, sexual abuse counseling for perpetrators, and a 26-week domestic violence program. Mother was to participate in counseling with a licensed therapist, attend a sexual abuse awareness program, and participate in a domestic violence program for victims. The parties agreed to an Evidence Code section 730 (section 730) psychological evaluation of all three family members.

Father and Mother had begun some programs prior to the adjudication and disposition. Between May and August 2011, Father and Mother completed a parental education program. Mother had begun counseling sessions in June and July, but those sessions ended when her counselor left the program in which she was enrolled. Father attended a 12-week domestic violence program at the Union Rescue Mission, which had ended in December 2011.

In a report dated April 9, 2012, the caseworker reported that Father and Mother had provided letters indicating they were participating in individual therapy and that Mother was attending a domestic violence intervention program.[9] The report further stated that Father and Mother were visiting H. regularly, and that during the visits the three of them interacted appropriately and affectionately. H. stated he wanted to return home to his parents. The caseworker described the

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[8] The stipulated findings contained no reference to the allegations that Father sodomized H. or had engaged in domestic violence.

[9] Father's letter, from the domestic violence instructor for the Union Rescue Mission, stated Father was attending the Jerry Butler Mental Health Center at the Mission, but did not indicate the date, the frequency of the sessions, or the identity of the therapist conducting the treatment. The caseworker had been unable to reach the therapist to obtain any of this information.

parents as "fully compliant with the case plan," and recommended six more months of reunification and unmonitored visitation.

A few days prior to the caseworker's report, Dr. Stephen Ambrose completed the section 730 evaluation.[10] In interviews, H. told Dr. Ambrose that the sexual abuse he had previously described to the caseworker had in fact occurred, and that he recanted because Father told him to lie. H. expressed fear of Father and did not appear to be comfortable around him. Dr. Ambrose concluded that H.'s allegations of sexual abuse were credible because "[h]is affect in disclosing [the information] was fully consistent with the nature of [the] disclosure" and "disclosures of anal penetration are, for most, so embarrassing that they are rarely fabricated." H.'s report of sexual abuse was further supported by evidence that Father had been arrested for prostitution in his youth, indicating a "propensity for deviant sexual behavior," and by the proven allegations of sexual misconduct with the older half-sisters. Dr. Ambrose noted that Father continued to deny abuse of H.'s half-sisters, "employ[ing] the same far-fetched explanations, minimizations and justifications that he has in the past," "categorically denied" domestic violence, and described the allegations of the underlying petition as "a 'sack of lies.'" The evaluation described Father as "immature and self-centered," unable or unwilling to disclose personal information, and "[un]motivated for psychological change," and said he had not "meaningfully participated in treatment." Dr. Ambrose recommended discontinuing H's visitation with Father, termination of reunification services for both parents and adoption planning, unless Mother separated from Father.[11]

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[10] Father moved to augment the record to include the section 730 evaluation. The motion is granted.

[11] With respect to Mother, Dr. Ambrose stated that because she "continues to avoid facing the reality that four [sic] of her children have reported being sexually abused by
(Fn. continued on next page.)

At the hearing on April 9, 2012, designated a 12-month review hearing (§ 366.21, subd. (f)), counsel for DCFS indicated that DCFS was prepared to stand by its recommendation to continue services for another six months, until the 18-month review date (see § 366.22), but no longer recommended unmonitored visitation. Counsel for Father requested a contest to determine whether reasonable services had been provided, which was set for June 5. Counsel for DCFS warned that DCFS's recommendation was likely to change by that date due to the opinions expressed by Dr. Ambrose in the section 730 evaluation.[12]

In a June 2012 report, the caseworker stated that he had informed Father on April 9 that the domestic violence class at the Union Rescue Mission was not DCFS-approved, and had given him referrals for approved domestic violence and sexual abuse programs. On April 18, Father enrolled in a program for sexual offenders at Kheper Life Enrichment Institute. Mother had reported on April 9 that she had completed phase one of a program for victims of domestic violence, but was having difficulty locating a sexual abuse awareness program. On April 17, after receiving a packet of referrals from the caseworker, she reported she had enrolled in an appropriate program. The June report stated that based on Dr. Ambrose's evaluation, DCFS was changing its recommendation to termination of reunification services.

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her husband" and "chose[] her husband over her adult daughters," it was "difficult to have confidence that she would . . . be able to put her son's needs over her own."

[12] Counsel for Mother asked that referrals be provided to the parents immediately if DCFS was recommending additional services based on Dr. Ambrose's report. Counsel for DCFS stated that the caseworker had been unable to confirm a valid address, a necessary part of identifying available providers. Father and Mother clarified that they continued to be homeless and were using the address of the Union Rescue Mission.

Father's sexual offender therapist, Erica Byrd, testified on the first day of the contested review hearing.[13] She stated that besides individual therapy, which occurred every other week, Father was enrolled in a sexual offender/awareness program and had attended 10 classes. In the classes and in therapy, they discussed boundaries and how to prevent offending. Father had told Byrd that there was a misunderstanding with regard to the allegations H. had made. Father indicated he had not done anything inappropriate with his son. He had not discussed domestic violence.[14] Byrd testified she had not received any reports or the section 730 evaluation from the caseworker.

In August 2012, the caseworker reported that Father was enrolled in sexual abuse counseling for perpetrators, but his counselor said he had made "little progress since he ha[d] not disclosed much information during session[s]." Father had begun individual counseling, but attended only three sessions and "ha[d] made no progress in therapy." In sum, though he had cooperated by enrolling in the court-ordered programs, Father had not made progress in "gaining awareness into his family problems and dynamics," had not disclosed significant information to his sexual abuse counselor or individual therapist, and "continue[d] to demonstrate his denial of any abuse and neglect despite the statements provided by his son, and [Dr. Ambrose]."[15] The report concluded: "Although each parent [has] enrolled

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[13] On June 5, the parents asked for a continuance, and the court continued the matter to July 25. The hearing took place over multiple days in July, August, and September.

[14] Father was also enrolled in a separate domestic violence program and had attended one session.

[15] The caseworker reported that Mother had completed a program for victims of domestic violence and continued to attend group sessions. Mother was also enrolled in individual therapy, and according to the therapist, she was "progressing well" and the therapist had "no concerns." However, the caseworker believed Mother's efforts were "minimal" because she "continue[d] to disbelieve that [Father] sexually abus[ed] [H.],"
(Fn. continued on next page.)

into their respective programs, neither parent [has] made any significant change internally that would address their family issues and sexual abuse allegations against [Father]. No parent has demonstrated a change in thought awareness, a desire to change or mitigate the risk to their son by fully cooperating and engaging in therapeutic services." DCFS continued to recommend termination of reunification services.

In August 2012, Tony Thompson, the caseworker since October 2011, testified at the continued review hearing. He stated he had gone over the necessary services with the parents when he first met with them, sometime after assuming responsibility for the case. Between January and March, he did not have an address for the parents, which made locating appropriate service providers difficult. In February 2012, Thompson learned that the Union Rescue Mission, where Father had participated in a domestic violence program, did not have a licensed therapist and on April 9, provided Father with new referrals for domestic violence counseling. Thompson admitted that when preparing the April 2012 report, he did not know the identity of Father's individual therapist and therefore did not know if he was licensed and had not sent the therapist or the agency providing the counseling any of the case reports.

In September 2012, Father's individual therapist, Josh Cohen, testified he had had three sessions with Father, in April and June. Cohen also testified that he had only recently received copies of reports prepared for the case.

On the final day of the review hearing, September 19, 2012, counsel for DCFS and H.'s counsel urged the court to terminate reunification services due to the parents' lack of progress. Counsel for Father contended that DCFS had not

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had demonstrated only "trivial amounts of awareness and insight into her family dynamics and issues" and "continue[d] to show a strong bond with her husband."

provided reasonable services, basing this contention on the caseworker's failure to inform Father during the period between January and April 2012 that the domestic violence program he had completed was inadequate, the misleading nature of the April 2012 report which indicated Father was in full compliance with his case plan, and the caseworker's failure to provide reports to Father's therapists in a timely fashion.

The court found that DCFS had provided reasonable services but that the parents had not made substantial progress and, accordingly, terminated reunification services. The court found that Father had not complied with the case plan. With respect to Father's alleged confusion about which programs DCFS approved, the court pointed out that Father had received and signed a copy of the reunification plan. In addition, he had been given referrals at the detention hearing in February 2011, when the court ordered pre-disposition services to be provided. The court pointed out that there had been no testimony from Father indicating confusion "about what he reasonably believed [he was required] to do or not do." The court set a section 366.26 hearing to consider termination of parental rights.[16] Father filed a notice of intention to file a writ petition.

DISCUSSION

Because family preservation is the first priority when dependency proceedings are commenced, juvenile courts must in most cases order DCFS to provide services to the parents to enable them to demonstrate fitness and regain custody of their child. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.) "DCFS must make a good faith effort to develop and implement a family reunification

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[16] The hearing set for January 16, 2013 was stayed by order of this court dated November 5, 2012.

plan" by "'identif[ying] the problems leading to the loss of custody, offer[ing] services designed to remedy those problems, maintain[ing] reasonable contact with the parents during the course of the service plan, and ma[king] reasonable efforts to assist the parents in areas where compliance proved difficult . . . .'" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345, quoting *In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The effort must be made "in spite of the difficulties of doing so or the prospects of success." (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) Where the minor is over the age of three, the juvenile court is statutorily prohibited from setting a hearing to terminate parental rights at the 12-month review stage unless it finds that reasonable services have been provided the child's parents or guardians. (§ 366.21, subd. (g)(1); see *Amanda H. v. Superior Court, supra*, at p. 1345 ["Typically, when a child [over the age of three] is removed from a parent, the child and parent are entitled to 12 months of child welfare services to facilitate family reunification. These services may be extended to a maximum of 18 months. [Citation.] If, at the 12-month hearing, DCFS does not prove, by clear and convincing evidence, that it has provided reasonable services to the parent, family reunification services must be extended to the end of the 18-month period. [Citations.]"].)

At the 12-month review hearing, the court must also consider whether to continue reunification for an additional six months. If reasonable services have been provided, the court may continue the reunification period "only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time . . . ." (§ 366.21, subd. (g)(1).) "[I]n order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following":

[¶] "(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1).) A trial court's findings at a review hearing are reviewed for substantial evidence. (*Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th at pp. 1345-1346; *In re Kristin W*. (1990) 222 Cal.App.3d 234, 251.)

Father contends DCFS did not provide reasonable services. Specifically, he contends he was misled by the statement of the caseworker in the April 2012 report that both parents were "fully compliant with the case plan," made at a time when neither he nor Mother was enrolled in a sexual abuse program and when the caseworker knew the domestic violence program at the Union Rescue Mission in which Father had participated was not DCFS approved. Father further contends that any deficiencies in his compliance were the fault of the caseworker for failing to provide referrals prior to April 2012 and failing to maintain closer contact with the service providers or provide them with case information, including copies of reports.

The record does not support Father's allegations that the caseworker misled him or that he was prejudiced by the caseworker's misstatement or his failure to provide referrals prior to April 2012.[17] The April 2012 report did erroneously state that Father and Mother were "fully compliant." However, as the court pointed out

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[17] The record establishes that Father and Mother were provided some referrals and services in 2011, after the detention hearing. They completed a parenting class and Mother began counseling.

when making its final ruling, there was no testimony from Father or other evidence to suggest that the contents of the April 2012 report led him to believe he had enrolled in all the programs required by the case plan, which he had signed in January.

More importantly, the court's ruling was based primarily on Father's conduct between April and September 2012, and Father's noncompliance after April was not the result of any misleading information from DCFS. Immediately after the April 9 hearing, the caseworker informed Father that he needed to enroll in a different domestic violence program and gave Father referrals for approved domestic violence programs. In addition, he gave Father referrals for sexual offender counseling which enabled Father to enroll in an approved program a few days later. The court's final ruling was made five months after Father enrolled in the relevant programs. By that time, the court had the benefit of Dr. Ambrose's assessment that after years of denial of abusive behavior, Father was resistant to psychological change and unlikely to make satisfactory progress. The court also had heard testimony from Father's therapists, and received DCFS's June and August reports. The evidence indicated Father had stopped attending individual therapy and had attended only one approved domestic violence class.[18]

Moreover, the court had before it evidence that Father was not making significant progress in sexual offender therapy because he was not honest with his

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[18] Father's reliance on *Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th 1340, is misplaced. There, the court found that DCFS had not provided reasonable services because the caseworker "incorrectly informed mother that she had enrolled in all the court-ordered programs and then, at the 12-month mark [when the court terminated services], told her that she actually was not enrolled in all of the required programs. (*Id*. at p. 1347.) Here, Father was fully aware, as of April 2012, of the programs in which he was required to participate, and the court did not terminate services until September, well after Father had been given an opportunity to avail himself of services and had done so only marginally.

therapist concerning the abuse he had inflicted on H. Instead, he denied abusing H. in any fashion despite having stipulated to jurisdictional findings that he had physically abused H. and forced him to watch pornography. On this evidence, the court could reasonably find that Father was not making "significant progress in resolving problems that led to [H.'s] removal from the home" and had not "demonstrated the capacity and ability both to complete the objectives of his or her treatment plan." (§ 366.21, subd. (g)(1)(C); see *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142 [court cannot base decision at review hearing on parent's attendance at programs and "completion of the technical requirements of the reunification plan," but must consider "progress the parent has made towards eliminating the conditions leading to the children's placement out of home"].)

Father attempts to blame his lack of progress on the caseworker's failure to provide reports to his therapists until July. Although the caseworker should have maintained contact with service providers and provided case information in a more timely fashion, his failure to do so did not excuse Father's failure to provide honest information to the therapists or his decision to drop out of individual therapy and the domestic violence program. Based on Father's non-attendance, lack of honesty, long history of abusive behavior, and resistance to change, the court could reasonably believe that there was no likelihood of significant progress or of H. safely returning to the parents' home if additional services were provided for a few more months.

DISPOSITION

The petition is denied. The stay of the permanency review hearing under section 366.26 is lifted.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.