Filed 1/19/17 In re D.D. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.D., a Person Coming Under the Juvenile Court Law.	B275352 (Los Angeles County Super. Ct. No. DK06603)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. I.N., Defendant and Appellant.	

Appeal from an order of the Superior Court of the County of Los Angeles, Benjamin R. Campos, Judge. Dismissed.

Law Office of Megan Turkat Schrin, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Stephan D. Watson, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

I.N. (mother), the mother of D.D., appeals from the juvenile court's order based on its finding at the six-month review hearing that she received reasonable reunification services from the Department of Children and Family Services (DCFS). According to mother, she was not provided sufficient visitation with D.D. and ambiguities in her case plan hindered her ability to comply with court-ordered services. DCFS contends, inter alia, that because the juvenile court offered mother an additional six months of reunification services, with more frequent visitation and a revised case plan designed to assist her in completing court-ordered services, the appeal is not justiciable, as there is no effective relief this court can provide mother.

We agree with DCFS that the juvenile court has already provided mother the relief to which she would be entitled on appeal. We therefore dismiss the appeal as nonjusticiable.

BACKGROUND

A. First Appeal[1]

D.D.'s family initially came to the attention of DCFS in July 2014 when a children's social worker (CSW) received a referral alleging emotional abuse and neglect of D.D. Based on the referral and a follow-up investigation, DCFS filed a petition pursuant to Welfare and Institutions Code section 300,[2] alleging, inter alia, that mother had physically abused D.D. and had failed to protect him from the risk of harm posed by her own abusive behavior and emotional problems and by the physical abuse of mother by, and the criminal history of, D.D.'s father (father).

A July 2014 detention report detailed the behavior and mental and emotional issues that gave rise to the petition, including the psychiatric hospitalization of mother for hallucinatory and violent behavior that resulted in the detention of D.D. by DCFS. At the July 30, 2014, detention hearing, the juvenile court found there was a substantial danger to the physical or emotional health of D.D., detained him in DCFS's care, and ordered DCFS to release him to any appropriate relative.

Following a September 2014 jurisdiction/disposition report and a follow-up report which detailed the parents' further behavioral issues, including another physical assault of mother

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[1] The facts and procedural history that gave rise to the first appeal are taken from our unpublished opinion in case number B267965.

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

by father, DCFS filed an amended petition in January 2015. Three additional reports in March, August, and September 2015 provided more information concerning the parents' continued problems complying with treatment and counseling programs and bonding with D.D.

At the September 29, 2015, jurisdiction/disposition hearing, the juvenile court sustained certain of the jurisdictional allegations against mother and father. The juvenile court then ruled on disposition, removing D.D. from his parents and ordering reunification services. Mother was ordered to participate in a domestic violence program, a parenting program for toddlers, marital health counseling, a psychological assessment or a psychiatric evaluation, and individual counseling. The parents were granted monitored visitation with D.D. twice a week for one hour at the DCFS Lakewood office.

Mother appealed the juvenile court's jurisdiction and disposition orders against her, arguing that they were not supported by substantial evidence. In June 2016, we dismissed mother's appeal from the jurisdiction order as nonjusticiable and affirmed the disposition order as supported by substantial evidence. The remittitur order issued on August 24, 2016.

B. Current Appeal

In a February 1, 2016, status review report, a CSW reported that D.D. remained placed in the home of his maternal grandmother.[3] D.D. appeared bonded with his grandmother and aunt who resided with him.

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[3] The grandmother's home was in the "Valley."

During the reporting period, the CSW met with both parents, provided them with court orders, referrals for programs, bus transportation, and a schedule for visitation. According to the CSW, both parents were in "partial compliance" with the juvenile court's disposition orders.

The CSW described an incident that occurred during a scheduled visit with D.D. at which father became "very angry and confrontational" with D.D.'s aunt, who was picking D.D. up to transport him home. When father refused to comply with the CSW's request to step outside, security had to intervene and escort father from the DCFS office. It was the second time father had to be escorted out of a DCFS office. The incident was of "great concern to DCFS" because father had a history of domestic violence that included physical assault. Moreover, the incident occurred despite father's participation in a domestic violence program.

The CSW also advised that mother had not yet provided the CSW with the psychological assessment or the psychiatric evaluation ordered by the juvenile court at the September 29, 2015, disposition hearing. Mother had completed domestic violence classes on October 21, 2015, but the CSW noted that mother still resided with father who had physically abused her. And, on the date of the incident during the visitation at the DCFS office, mother defended father and saw nothing wrong with his behavior. Mother's reaction and comments caused the CSW to be concerned about future domestic violence.

In addition, the CSW noted that mother's individual counseling was with an unlicensed therapist under the supervision of a clinical psychologist. That therapist confirmed that she could not perform a psychiatric evaluation. The CSW

thus told mother to obtain the required evaluation and referred mother to the Exodus Foundation for that purpose.

Concerning visitation with D.D., the CSW reported that mother and father had monitored visits with D.D. once a week for two hours at the DCFS office in Lakewood. The maternal grandmother explained that the two-hour, one-way trip from her home in the Valley to Lakewood was "very difficult" on D.D., who had acid reflux that was aggravated by sitting in the car for long periods of time, causing him "discomfort." When the CSW asked the parents if they would meet the grandmother half-way at the Pasadena office, the parents insisted that the visits take place in Lakewood. During the visits, D.D. took "some time to separate from the caregiver," but eventually engaged with his parents. The parents brought snacks and toys to the visits and appeared to enjoy playing with him.

The CSW recommended that the case be continued to allow for an additional six months of family reunification services. She also recommended that the visitation order be modified to allow for visits to alternate weekly between the Pasadena and Lakewood offices.

In a March 3, 2016, interim review report, the CSW reported that the visitation schedule every week at the Lakewood office continued to be difficult on D.D. due to the lengthy travel time and his acid reflux condition. The CSW therefore renewed the request for a change in the visitation order so that visits could alternate on a weekly basis between the Pasadena and Lakewood offices.

At the April 22, 2016, six-month review hearing, the juvenile court admitted, inter alia, the February 1, 2016, status review report and the March 3, 2016, interim review report

offered by DCFS, as well as a four-page assessment from Exodus Foundation offered by mother dated April 5, 2016. The assessment concluded that mother had "no signs or symptoms of depression, heightened anxiety, mania, or psychosis." The assessment also "[h]ighly recommended [that mother] continue in therapy for stress management and coping skills," but that "[n]o [m]edications [were] warranted [at that] time."

Mother called the CSW to testify at the hearing. When asked if mother had complied with her case plan, the CSW explained that mother had completed her parenting classes and domestic violence program, but that mother had only just provided the Exodus Foundation mental health assessment that the CSW had not yet evaluated. The CSW also acknowledged that mother had not been able to visit D.D. as much as mother wanted and attributed some of the visitation issues to D.D.'s health. Explaining that D.D. had acid reflux which hampered more frequent visitation and noting that D.D. cried for the first 20 minutes of his weekly visits, the CSW concluded, "That's just kind of what it has been."

The CSW next described the visitation incident during which father engaged in a heated argument with D.D.'s caregiver, refused the CSW's instruction to "step outside," and was ultimately escorted out of the DCFS office by security. According to the CSW, notwithstanding that mother had completed a domestic violence program that counseled her to "be in a relationship that is healthy and not [in one] with an abuser," mother continued to reside with father.

When asked about mother's mental health assessment from Exodus Foundation, the CSW stated that, although it contained a diagnosis, it did not provide any other information upon which to

assess mother's mental health. Moreover, the CSW confirmed that a letter mother submitted from an unlicensed therapist recommending termination of psychotherapy was from 2014, prior to the September 2015 disposition order in this case.

The juvenile court questioned the CSW about the visitation issues, asking if it was "possible to facilitate some arrangement to increase the frequency of visits." The CSW responded that, because she was required to monitor the visits, she could not facilitate more frequent visits. When the juvenile court reminded the CSW that the legal requirement was "frequent and continuous contact with the child in an effort to make good faith attempts to reunify," the CSW agreed that visits for one to two hours once a week were "less than optimal."

After hearing the arguments of counsel, the juvenile court stated that mother's case plan "[left] something to be desired." The juvenile court observed that there was "a disconnect between what the parents are doing and what [DCFS] expects, so the court is quite concerned about that, and . . . may have to rewrite the case plan in order to make it understandable." For example, the court found that mother's assessment from the Exodus Foundation was "a drive-by evaluation" entitled to little, if any, weight, but recognized that the assessment was the result of "a built in ambiguity" in mother's case plan regarding what type of evaluation and treatment would comply with the case plan. In addition, the juvenile court indicated that mother's counseling should not be with "an intern under the supervision of a therapist" and instead clarified that mother must participate in conjoint counseling with a licensed therapist.

As to visitation, the juvenile court "found it most unimpressive that the social worker would not focus on the

requirement . . . [to] ensure frequent and continuous contact for the parents regardless of the difficulty. [T]his court did not select the placement. . . . The code is clear that the court has to . . . make reasonable efforts to ensure reunification, if possible."

Addressing D.D.'s acid reflux condition and its effect on visitation, the juvenile court suggested that "some medical training or some instruction on how to deal with acid reflux would be appropriate." But, according to the juvenile court, the "stress of travel back and forth" was not "a legally justifiable reason not to have visits on a more frequent basis." The juvenile court therefore ordered counsel for the parties to meet and confer in an effort to agree on "some adjustments" to the visitation schedule that would facilitate "more frequent visitation" and thereafter to make a progress report to the court.

The juvenile court concluded the review hearing by finding by "a preponderance of the evidence that the department has provided reasonable services. It would be detrimental to the child's health and physical safety to return the child at this time, and continued suitable placement is necessary and appropriate. [¶] I'd like to meet with counsel so that I could actually get input and tweak a case plan that they can meet, that has expectations that are both realistic and achievable, and so that I can in an intelligent way judge their performance. And I'm also going to order [DCFS] at least now to start on a plan to increase the visitation." In addition, the juvenile court found that the likely date by which DCFS would finalize a permanent plan to return D.D. to his parents or place him for adoption was October 21, 2016, and therefore set the matter for a 12-month review hearing on that date.

DISCUSSION

On appeal, mother asks this court to reverse the juvenile court's finding at the six-month review hearing that she had received reasonable reunification services. DCFS contends, inter alia, that mother's appeal should be dismissed as nonjusticiable. According to DCFS, even if this court were to reverse the juvenile court's finding that mother received reasonable services during the six-month period following disposition, mother would not be entitled to relief beyond what the juvenile court already ordered, namely, continuing reunification services. We agree and dismiss the appeal accordingly.

I. Legal Principles

A. Dependency Proceedings

At the heart of mother's appeal is her right to reasonable reunification services and DCFS's corresponding duty to facilitate the provision of such services. To properly analyze that right and duty, they must be viewed in the context of the overall scheme of dependency proceedings.

The court in *In re Daniel G.* (1994) 25 Cal.App.4th 1205 (*Daniel G.*), described the stages in dependency proceedings, including the role of the reunification stage. "Promptly after a child is removed from a parent, a jurisdiction hearing is held to determine if there were adequate grounds for removal. If so, a disposition hearing is held to determine whether the child should be returned to the parents or must be removed pending further review. If the child is removed from the parent's custody, the court, in most cases, must make orders regarding reunification services. (§ 361.5, subd. (a).) This begins the reunification stage.

During the reunification stage, the court must review the case at least once every six months to determine whether the child may be returned to the parents and whether reasonable reunification services have been afforded the family. (§§ 366.21, subds. (e), (f), (g)(1); 366.22, subd. (a).) Normally, if the child cannot safely be returned to the parents after 18 months from the detention (3 review periods), the court must terminate reunification efforts and set the matter for hearing to determine a permanent placement plan for the child. This leads to the final stage, implementation of a permanent plan which may include termination of parental rights and adoption of the child. (§ 366.26.)" (*Id.* at p. 1210.)

Here, the proceedings are at the reunification stage, and mother asks this court to review the juvenile court's finding made in the midst of those ongoing proceedings.

B. Justiciability

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. (E.g., *Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1205-1206 [97 Cal.Rptr.3d 171] (*Costa Serena*).) [The doctrine] in general terms requires an appeal to concern a present, concrete, and genuine dispute as to which the court can grant effective relief . . . . [¶] "'A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition. . . . [A]s a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a

question or proposition. . . . ’” [Citation.] An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status. “‘“‘It is this court’s duty “‘to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions. . . .’”’”’” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1490.)

Thus, where this court cannot grant effective relief to the parties on appeal, the appeal must be dismissed. (*Id.* at p.1490)

II. Analysis

In this case, the juvenile court found that mother had received reasonable reunification services and ordered that mother continue to receive reunification services for an additional six months. Indeed, the juvenile court did so after thoughtfully reviewing mother’s progress, noting that mother had not fully complied with the requirements of her case plan. For example, the juvenile court noted mother had completed her domestic violence program, but there still remained serious concerns given that mother continued to reside with and defend the actions of father, who still exhibited angry and confrontational behavior. Similarly, the juvenile court found mother’s mental health assessment to be lacking and her counseling with an unlicensed intern therapist to be inadequate. The juvenile court also voiced serious concerns that DCFS had not facilitated more frequent visits with D.D. In light of these issues, the juvenile court made adjustments to mother’s case plan and specifically ordered the parties’ attorneys to meet and confer on adjustments to the visitation schedule that would ensure more frequent visitation by

the parents. The juvenile court also scheduled a meeting with counsel to revise the case plan in a manner that would facilitate mother's compliance with its services requirements.

In sum, the juvenile court has already provided mother with the relief she seeks here, i.e., continued reunification services. Moreover, mother has received all the relief to which she would be entitled were she to prevail on her claim in this appeal, i.e., continued reunification services. That is, even if we were to agree with mother that there was insufficient evidence to support the juvenile court's finding that she received reasonable reunification services at the six-month review stage of reunification, there would be no further effective relief available to mother beyond that already given to her by the juvenile court. (*In re JP* (2014) 229 Cal.App.4th 108, 121-122 ["Generally, the remedy for not offering or providing reasonable reunification services to a parent is an extension of reunification services to the next review hearing"].) We must therefore dismiss the appeal as nonjusticiable.[4] (*In re I.A., supra*, 201 Cal.App.4th at p. 1490.)

Although she recognizes that she has already received the continued reunification services she asks for on this appeal, mother nonetheless contends her appeal presents a justiciable controversy by claiming she would be entitled to an extension of the time limit for reunification services if we were to find in her favor. Specifically, mother contends that she is entitled to—and we are authorized to order—an extension of the reunification period beyond the generally applicable 18-month limitation for such services if we find she did not receive reasonable services at

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[4] Because we conclude this matter is not justiciable, we do not reach the alternative argument by DCFS that this appeal should be dismissed because mother is not an aggrieved party.

the six-month review stage. In support of this claim, she relies on *Daniel G.*, *supra,* 25 Cal.App.4th 1205 and *In re Alvin R.* (2003) 108 Cal.App.4th 962 (*Alvin R.*). Neither case, however, supports mother's position, and both are factually distinguishable from mother's case.

In *Daniel G., supra*, 25 Cal.App.4th 1205, the court held that a juvenile court has discretion to extend reunification services beyond the 18-month limitation period, thereby reversing the juvenile court's conclusion that it lacked such discretionary authority, even after finding that reasonable services had not been provided and that the services that were provided had been a "disgrace." (*Id.* at p. 1213.) Notably, the juvenile court in *Daniel G.* had come to its erroneous conclusion at the 18-month hearing, when, due to statutory time limits on reunification services, it felt it could not order additional services and was instead "constrained" to terminate reunification efforts. (*Id.* at p. 1209.) Here, the juvenile court ordered that mother should continue to receive reunification services at the six-month review hearing, which was well before mother faced any time limit on the receipt of such services. We do not read *Daniel G.* for the proposition that mother might also have been entitled to receive an extension of the overall time period for her receipt of such services at this stage of the proceedings. Common sense counsels that the appropriate time to seek and obtain an extension of time is when the actual extension is needed—not at the six-month review stage when reunification services have been ordered continued.[5]

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[5] We note that, if mother were later to seek an extension of the time limit for receiving reunification services, the finding at the six-month review stage that she received reasonable services

Alvin R., supra, 108 Cal.App.4th 962 is likewise unhelpful. In *Alvin R.*, the court cited *Daniel G., supra,* 25 Cal.App.4th 1205 for the proposition that "[t]he 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." (*Alvin R., supra,* 108 Cal.App.4th at p. 975.) That proposition may be true, but, for the reasons we have just discussed, it is inapplicable here. Indeed, *Alvin R.*'s passing reference to *Daniel G.* was for the purpose of noting available remedies upon a finding that reasonable services were not provided. *Alvin R.* is entirely silent as to *when* in the juvenile court proceedings such remedies might appropriately be had.

We recognize that, unlike in *Daniel G.*, *supra,* 25 Cal.App.4th 1205, the appeal in *Alvin R., supra,* 108 Cal.App.4th 962 arose from a parent's challenge to the juvenile court's finding that reasonable services had been provided at the six-month review stage. But, notably, the court in *Alvin R.* did not order an extension of reunification services beyond the applicable time limit. Rather, the court ordered the matter remanded to the juvenile court for a finding that reasonable services were not

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does not necessarily bar her from obtaining such relief. In *Daniel G.*, *supra,* 25 Cal.App.4th 1205, the juvenile court found that DCFS "had made reasonable reunification efforts in the first six months after . . . placement" (*id.* at p. 1209), and yet the Court of Appeal held the juvenile court had discretionary authority to extend services at the 18-month stage upon finding reasonable services had not been provided at that stage.

provided and an order for the DCFS to provide such services.[6] (*Id*. at p. 975.)

We accordingly do not read *Alvin R., supra,* 108 Cal.App.4th 962 as holding that an extension of the time limit for providing reunification services can be made at the six-month review period when the juvenile court has ordered the continuation of services. To the extent *Alvin R.* can be viewed as creating an entitlement to such relief, we find that it is limited to the unique facts of that case, which are not present here. In *Alvin R.*, the court observed that, other than getting the son into individual therapy (which DCFS had stymied), the "[*f*]a*ther had done all that was required of him under the plan*." (*Id*. at p. 973, italics added.) Here, mother continues to reside with and defend father, despite serious domestic violence concerns. She also provided the juvenile court with a mental health assessment which the court found unreliable. And, at the time of the six-month review hearing, she had received inadequate individual counseling from an unlicensed therapist.

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[6] We note the court in *Alvin R., supra,* 108 Cal.App.4th 962 reached the issue of whether reasonable services had been provided at the six-month review stage, even though the juvenile court had also ordered the continuation of reunification services. It is clear, however, the *Alvin R.* court was not presented with—and thus did not decide—whether those circumstances presented a justiciable case or controversy.

DISPOSITION

The appeal from the juvenile court's order based on its finding that mother was provided reasonable services is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIN, J.*

We concur:

TURNER, P. J.

KRIEGLER, J.

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