C.A v. the Superior Court of San Diego County

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PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Michael Imhoff, Commissioner. Petition denied. Stay denied.

C.A. seeks review of juvenile court orders setting a hearing under Welfare and Institutions Code[1] section 366.26. He contends there is no substantial evidence to support the juvenile court's finding that reasonable services were offered or provided to him. We deny the petition.

FACTUAL AND PROCEDUAL BACKGROUND

C.A. and U.M.[2] are the married parents of three daughters, Cynthia A., Jacqueline A. and Jocelyn A., now ages eight, five and four years, respectively (collectively, the children). C.A. is also the alleged father of Y.A., now age 16 years, who joined the family from Mexico. This proceeding concerns only the children.

On September 1, 2010, police were called to the family home after C.A. and his brother-in-law had a violent confrontation in the children's presence. Y.A. was hit in the head with a bottle and required medical treatment. U.M. reported a history of domestic violence. Cynthia said the fight started when U.M. saw C.A. kissing Y.A. U.M. said she discovered C.A. and Y.A. having sexual relations in her bed and described other incidents in which she saw C.A. inappropriately touch Y.A.

Y.A.'s forensic examination was abnormal. She had extensive tears and venereal warts. C.A. and Y.A. denied any sexual activity. Y.A. reported she was sexually assaulted in July 2010 by U.M.'s cousin. Hospital staff said they tried to examine Y.A. in July but she did not cooperate. They suspected Y.A. was brought to the United States for prostitution. She did not know her birth date and appeared younger than her stated age of 15 years. Her pubic area had been shaved. Y.A. could not read or

write. Hospital staff suspected she was developmentally delayed.

C.A. was arrested on September 2 and charged with three counts of lewd and lascivious acts. On September 9 the authorities dismissed the charges and deported C.A. to Mexico. In February 2011 the results of DNA testing were made available. DNA on sperm taken from Y.A. matched C.A.'s DNA.

The San Diego Health and Human Services Agency (Agency) filed dependency petitions on behalf of the children and Y.A. (§ 300, subds. (b), (j).) The social worker alleged that in addition to domestic violence and sexual abuse, the family home was filthy, unsanitary and infested with cockroaches. The children had poor hygiene, dirty clothes, lice and severe tooth decay.

The jurisdictional and dispositional hearing in the children's cases was held on October 29. The juvenile court sustained the petitions and removed the children from parental custody, placed them with a relative, approved U.M.'s family reunification case plan and ordered the Agency to prepare a case plan for C.A. within two weeks.

The social worker spoke to C.A. on November 15 and told him his case plan included a sexual abuse program for perpetrators, an outpatient substance abuse program, including a 12-step program, and parenting classes. C.A.'s written case plan included a domestic violence program, a sexual abuse program for perpetrators, a parenting education program and an outpatient substance abuse program. C.A. was also required to drug test, obtain a sponsor and participate in at least two 12-step meetings a week. The social worker mailed the case plan to C.A. on November 23, after he telephoned her and provided his new address. The juvenile court approved the case plan on November 29. Another social worker submitted a referral for services to the Mexican social services agency, Desarollo Integral de la Familia (DIF), on December 30.

With the exception of taking one drug test, C.A. did not participate in services. On March 1 the social worker told him the Agency would recommend termination of services at the six-month review hearing. On March 8 C.A. faxed letters to the social worker from DIF confirming his enrollment in 12-step meetings, therapy, a parenting class and a men's support group.

Later that day C.A. was arrested when he tried to cross the international border with Y.A. He was charged with transporting a minor with the intent to engage in criminal sexual activity. If convicted, C.A. would be incarcerated for a minimum of 10 years.

On June 7 the juvenile court ordered the Agency to provide a prison parenting packet to C.A. After resolving the issue with prison officials, who would not allow C.A. to receive a portion of the packet, the social worker mailed the packet to C.A. on July 8. As of July 26, C.A. had not completed the parenting packet.

The six-month review hearing, originally scheduled for April 28, 2011, was held on July 26. The Agency's reports were admitted in evidence. The social worker testified when C.A. was incarcerated in federal prison, she contacted prison staff and asked about available services. They informed her there were no services available for C.A. at the prison. The social worker said C.A. had telephone contact with his children from October 29, 2010 to March 8, 2011. The children refused to visit him. On July 14 the social worker received a letter and drawings for the children from C.A.

The juvenile court found that although services were not perfect, they were reasonable under the circumstances, terminated reunification services and set a section 366.26 hearing.

C.A. petitions for review of the juvenile court's orders under California Rules of Court, rule 8.452, and requests a stay of the section 366.26 hearing pending this court's decision. This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

A

The Parties' Contentions

C.A. contends the juvenile court erred when it found that reasonable services were provided to him. He argues the Agency's two-month delay in submitting a referral to DIF prevented him from participating in family reunification services. He further argues the Agency did not implement the juvenile court's order for supervised visitation with the children.

The Agency acknowledges it did not send a written referral to DIF as quickly as it should have. The Agency argues the lack of reunification services was caused by C.A.'s delays in enrolling in services and his subsequent incarceration. With respect to visitation, the Agency contends it would have been contrary to the children's welfare to force them to visit C.A. in prison.

B

Legal Standards

Family reunification services play a critical role in dependency proceedings. (§ 361.5; In re Alanna A. (2005) 135 Cal.App.4th 555, 563; In re Joshua M. (1998) 66 Cal.App.4th 458; see 42 U.S.C. § 629a(a)(7).) If reasonable services are not offered or provided to the parent, the court is required to continue the case for the period of time permitted by statute. (See § 366.21, subds. (e) & (g)(1).)

Reunification services should be tailored to the particular needs of the family. (David B. v. Superior Court (2004) 123 Cal.App.4th 768, 793, citing In re Alvin R. (2003) 108 Cal.App.4th 962, 972.) To

support a finding reasonable services were offered or provided, "the 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 . . . ." (In re Riva M. (1991) 235 Cal.App.3d 403, 414.)

"Visitation between a dependent child and his or her parents is an essential component of a reunification plan, even if actual physical custody is not the outcome of the proceedings." (In re Mark L. (2001) 94 Cal.App.4th 573, 580; In re J.N. (2006) 138 Cal.App.4th 450, 458.) To promote reunification, visitation must be as frequent as possible, consistent with the well-being of the child. (§ 362.1, subd. (a)(1)(A); In re Alvin R., supra, 108 Cal.App.4th at p. 972.)

"The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (In re Misako R. (1991) 2 Cal.App.4th 538, 547.) The "adequacy of reunification plans and the reasonableness of the [Agency's] efforts are judged according to the circumstances of each case." (Robin V. v. Superior Court (1995) 33 Cal.App.4th 1158, 1164.)

We review the evidence most favorably to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court's ruling. (In re Misako R., supra, 2 Cal.App.4th at p. 545.)

C

Substantial Evidence Supports the Finding that the Agency Offered or Provided Reasonable Services to the Family

In finding that reasonable services were offered or provided to C.A., the juvenile court noted that the Agency admitted it delayed referring the matter to DIF for services. However, C.A.'s deportation complicated implementing the case plan and his subsequent incarceration in federal custody made it difficult for the social worker to mobilize services for him. With respect to visitation, the juvenile court found that C.A. maintained regular and consistent telephone contact with the children for the first five months of the review period. While incarcerated, C.A. did not request visitation and the Agency did not try to facilitate any visits. The juvenile court found that the children had been traumatized by the events leading to their dependencies and it was not in their best interests to visit C.A. in prison.

Our review of the record shows the Agency's delay in sending a referral to DIF was not as protracted as C.A. claims. On October 29, the juvenile court ordered the Agency to develop a case plan for C.A. within two weeks. The social worker discussed the provisions of the case plan with C.A. on November 15, and submitted the case plan to the juvenile court on November 17. The juvenile court approved the case plan on November 29, 2010. The Agency referred the plan to DIF for

implementation on December 30, a delay of approximately one month.

Although we are concerned by the Agency's delay in implementing services, C.A.'s argument he was denied reasonable services would have been more persuasive had he participated in services that were immediately available to him and enrolled in DIF-sponsored services without delay. The record shows C.A. did not enroll in services until March 8, a delay of more than two months. The social worker informed him in mid-November he was required to attend 12-step meetings at least twice a week and obtain a sponsor. C.A. could have implemented this aspect of his case plan without DIF's assistance. Even in view of the Agency's inexplicable delay in referring the case plan to DIF, C.A. could have participated in 12-step meetings from mid-November 2010, and DIF-sponsored services from early January 2011, to late July 2011, a period of more than six months, had he not been arrested on federal sexual trafficking charges. (See, In re Christopher A. (1991) 226 Cal.App.3d 1154, 1162 [a fundamental first step toward fulfilling a family reunification plan is to obey the law and stay out of prison].) Although the services provided to C.A. were less than ideal, they were reasonable under the circumstances. (In re Misako R., supra, 2 Cal.App.4th at p. 547.)

With respect to visitation, the record shows the juvenile court authorized supervised visitation between C.A. and the children and ordered the social worker to select the location and supervisor of their visits. There is no indication in the record to show the social worker took steps to facilitate visitation other than asking the children each month if they wanted to visit C.A. They did not want to do so.[3] However, C.A. was able to maintain regular contact with the children through telephone calls and letters. The record does not indicate he asked the Agency to arrange in-person visitation with the children during the dependency proceedings. In view of the totality of the circumstances, including C.A.'s sexual molestation of the children's alleged sibling and incarceration on federal sexual trafficking charges, and the children's wishes, there is substantial evidence to support the juvenile court's finding that visitation services were reasonable under the circumstances.

DISPOSITION

The petition is denied. The request for a stay is denied.

WE CONCUR: NARES, Acting P. J. HALLER, J.

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

2. U.M. does not challenge the order terminating her family reunification services and setting a section 366.26 hearing. She did not participate in services.

3. The social worker should have filed a section 388 petition to modify the prior court order if she believed visitation would be detrimental to the children in view of their wishes and emotional fragility.