Filed 3/15/11 S.O. v. Superior Court CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

S.O., Petitioner, v. THE SUPERIOR COURT OF DEL NORTE COUNTY, Respondent; DEL NORTE COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Real Party in Interest.	A130801 (Del Norte County Super. Ct. No. JVSQ 10-6144)

S.O. (father) seeks writ review of an order terminating reunification services and allowing a plan hearing for his now three-year-old dependent son, T.O. (Cal. Rules of Court, rule 8.452; Welf. & Inst. Code, § 366.26.)[1] We issued an order to show cause and deem the response of real party in interest the Del Norte County Department of Health and Human Services (HHS) the return. Father challenges the court's findings of reasonable services and plan compliance. We affirm the order.

[1] All further section references are to the Welfare and Institutions Code unless otherwise indicated.

BACKGROUND

Pre-Petition History

T.O. was born in December 2007. The mother and father were 17 years old and unmarried. Father became a presumed father in these proceedings, having been named on T.O.'s birth certificate. The record does not show any legitimate employment or stable residence for either parent during a three-year relationship marked by domestic violence, drug use and sales, criminality, and living with friends or relatives, on the streets, or incarcerated. They left T.O. in the care of relatives, including the maternal grandmother, and would disappear for long periods of time.

Two pre-petition incidents involving T.O. appear from the record. In April 2008, when T.O. was four months old, the child welfare agency in Humboldt County received a report of general neglect after police, highway patrol and county drug task force members serving a warrant at a Eureka apartment found the parents and three adults—all users of methamphetamine—amid assorted illegal drugs and paraphernalia for use and sales. All five were arrested for drug-related offenses, and the parents were taken to juvenile hall. One arrestee, age 65, said he rented the apartment, slept in the front room, and let out the bedrooms to others (whose names he could not recall). Another arrestee was father's stepsister, who said she came over to watch T.O. for the parents.

In an incident of December 2009, when T.O. was nearly two years old, Del Norte County sheriff's deputies responded to a mobile home in Klamath on a report of domestic violence. The maternal grandmother (called A.J. or A.B.) and stepgrandfather (T.B.) had been drinking. He physically attacked her, first with a bedroom door knocked off its hinges the previous week, and the attack apparently ended through the intervention of two men, perhaps neighbors, after unsuccessful efforts by the victim's two daughters—including the mother, whom T.B. choked. T.B. was arrested for domestic violence and violating a restraining order requiring him to stay away from the grandmother. His 10-year-old son had fled the home earlier that day, in fear of his father, but T.O. was present. The matter was referred to HHS, which photographed bruises on T.O.'s upper arm.

That December incident had followed by six weeks another domestic violence call to the same home. T.O. and the mother were evidently not there that time, but the son had seen the struggle and called 9-1-1. Both adults had been drinking, and T.B. was arrested then, too, for domestic violence and violating the stay-away order.

Petition

The petition in this case was triggered by a further incident with the grandmother. She and T.B. had the child with them when they were arrested in Crescent City on March 26, 2010,[2] for shoplifting (burglary), after reportedly staying the night in a hotel. They could not give the whereabouts of either parent or any relative who might take T.O. The child, then two years and three months old, was removed to foster care, and action on a petition filed March 30 was complicated by initial inability to contact the parents and then protracted efforts to determine whether either parent's Native American ancestry qualified T.O. under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.).

As of the detention on April 2, father had been mailed notice, and his counsel had gotten a phone call from him, but father did not appear, reportedly due to transportation problems. As of a jurisdictional hearing of April 6, where the court entered general denials for both parents, father still did not appear. He had left the social worker a current phone number but failed to respond to phone messages left for him by counsel. There was still no word from the mother.

A jurisdictional report of April 28 by social worker Diedra Ward reported no success in contacting either parent but that T.O. was doing well in foster care and enjoyed visits from his grandmother. The grandmother reported that the mother left T.O. with her "a lot while his mom and dad . . . go off and do their drugs and stuff," and confirmed her own violent relationship with the stepgrandfather, T.B. T.B. reported from jail that the parents left T.O. with the grandmother and him "a lot, most all of the time," and confirmed the parents' drug use. The report noted interest in placement by a paternal

---

[2] All further dates are in 2010 unless specified otherwise.

grandmother and stepgrandfather, but concern over their own history of domestic violence and Humboldt County child welfare referrals.

A long-continued jurisdictional hearing was continued once more upon news that the mother was interested in attending but had "transportation issues," but neither parent attended the ultimate hearing on May 21. Neither counsel had heard from their clients. HHS had heard from the mother that she would not be attending the day's hearing, and father's counsel believed that his client was incarcerated. All parties submitted, and the court found all allegations to be true.

The findings as to both parents were failure to protect or support. For the mother, who is not a party to this writ review, the findings of substantial risk of serious harm from failure to protect (§ 300, subd. (b)) can be stated simply. She left T.O. with the maternal grandmother, who had a history of domestic violence and a restraining order against T.B., and could not provide adequate care, and that T.O. had to be taken into protective custody when she was arrested with T.B., leaving no provision for the child's care. For father, the finding was that his whereabouts and ability to provide adequate care and supervision were unknown.

The findings for the mother on failure to support (§ 300, subd. (g)) were, similarly, that she left T.O. with the grandmother, who could not provide adequate care, resulting in the child being taken into protective custody. Substantively identical further findings for each parent were that their whereabouts were unknown, that their ability to parent had not been assessed by HHS, and that HHS had been unsuccessful in efforts to locate them in the county systems and local tribes.

The parents were both absent again for the next hearing, on May 28, which was to consider transferring the case to Humboldt County. The case was retained in Del Norte County. Mother's current residence had not been confirmed, and the social worker had not had any contact with her.

Disposition came on June 18. The mother appeared personally for the first time, and father was confirmed to be jailed in Humboldt County. The court found that the ICWA did not apply, declared dependency, and ordered reunification services, also

reminding all that services could be terminated after six months (§ 361.5, subd. (a)(1)(B) [six months from disposition for a child under age three when initially detained]). A case plan issued for all parties. It was modified as to father by a letter of June 8 sent by Ward to father at the jail, updating him on the case and explaining that, given his incarceration, he was being mailed assignments to complete and return from workbooks on substance abuse ("Keep It Simple") and parenting ("Powerful Parenting"). The case plan required that his answers be *well thought out*, and Ward stressed this in her letter to him, writing: "I will review the assignments and if they appear well thought out then I will mail you the next assignments. If[,] however, there does not appear to be much thought put into the responses, I will mail it back and ask you to rethink your answers. Since substance abuse has been identified as a problem for you and every parent could use help developing stronger parenting skills[,] and due to your incarceration, [HHS] is limited as to how to help you work on these issues. According to your institution, there are no twelve-step meetings for you to attend, so these workbooks will have to do for now. These assignments are a means to help you improve yourself and to show the court that you are willing to make positive changes in order to be involved in you son's life."

The disposition report noted that father faced charges and a court hearing. It seemed he would not be released "anytime soon," but HHS would be using the workbook assignments and remain in contact with him. Father had been arrested on April 28 and faced two counts each of making threats (Pen. Code, § 422), exhibiting a firearm (*id.*, § 417, subd. (a)(2)), and possessing a controlled substance (Health & Saf. Code, § 11364, subd. (a)), single counts for firearm assault (Pen. Code, § 245, subd. (a)(2)), carrying a loaded firearm (*id.*, § 12025, subd. (b)(2)), and disorderly conduct (*id.*, § 647, subd. (h)), and two firearm-use enhancements (*id.*, § 12022.5, subd. (a)). The mother had begun visiting T.O., had visited five times, and expressed interest in reunifying. Since an April onset of visits with others, the maternal grandmother and aunt (the mother's sister) had each visited more than 40 times.

An order of August 27 authorized visits between T.O. and father at the jail, noting that he had three months left to serve and would then go to Teen Challenge. A similar

order issued for the mother after she was arrested in Del Norte County for robbery and battery and transferred to Humboldt County on an outstanding warrant. The arrest came when she and two other women stole an electric saw from the front of a house and, when the owner demanded it back, told the others to keep walking and slugged him in the face.

Six-Month Review and Rulings

The six-month review took place on December 23. A review report filed on December 1 showed father sentenced on the new charges to probation with jail terms and a four-year prison term (execution evidently suspended). His expected release was now sometime in January 2011, and Proposition 36 probation conditions would require his compliance with a program. He planned to move in with a "clean and sober" girlfriend and have no more contact with the mother. He had a job lined up at a transmission shop and was accepted for Teen Challenge, a Christian-based, year-long residential treatment facility. The mother was already out of custody, subject also to Proposition 36 program compliance, and had resumed visits. (Her further case efforts are omitted as not pertinent to the issues here.) The maternal grandmother was helping the mother, but placement in her home was problematic for the same reasons as before. The paternal grandparents were no longer being considered for placement.

The report recounted that father never maintained contact with HHS to have visits before his April arrest, and had not requested visits anytime since. Nevertheless, starting with the mid-July order for in-custody visits, HHS immediately began the process of arranging for them. Visits every two weeks were arranged to start on September 30. An HHS worker drove T.O. to Eureka on that date but, after waiting half an hour, was told that father was out of the facility on a work crew. On the next date, October 14, a call that morning revealed that father was once more out on a work crew. Father did not see T.O. until the next date, October 28. "This visit was awkward, with both [father and son] not knowing how to interact with each other." The next two dates, both in November, did not work—the first due to a furlough at HHS and the second due to the Thanksgiving holiday. The next scheduled visit was set for December 9, although the report expressed

concern that these visits might be more detrimental to T.O than positive. HHS had been corresponding with father, in writing, since his arrest and incarceration.

Father had asked Ward what he might do to possibly get his son back "once he gets out." Ward explained to him the court timelines and emphasized that he most likely would not be given additional time. However, she "advised him to attend daily 12-step meetings, enroll in a parenting class, and participate in an anger management class." Father said he thought he could do that "once he is released from custody."

On the workbooks, father had worked only on the substance abuse book, "Keep It Simple," and incompletely at that. He had done nothing at all in the parenting book and "failed to demonstrate any parenting skills" on his visit with T.O. He acknowledged some responsibility for the current situation, but minimized the effects of "his addiction to drugs and the domestic violence he experienced" while with the mother.

That state of affairs was updated in hearing testimony on December 23 from Ward and the mother. Father was again not present, and there was no clear explanation why. He had had his second visit with T.O., on December 9, and then was released to Teen Challenge, apparently earlier than expected. His counsel knew that father had been re-arrested three days later, but did not know if he was still in custody. The mother testified that she knew, too, learned of his arrest on a warrant but later saw him putting up Christmas lights outside the Teen Challenge facility. Thus no one knew why father was not present, or exactly what his current situation was, but he had received notice of the hearing before his release.

Ward elaborated on the visits. Authorities at the facility had been rigid about schedules and allowed the visits only on Thursdays at a certain time, which is why the work-crew conflicts kept the visits from starting until late October. Ward supervised the visits and, having met with father twice, described the first visit as very uncomfortable for T.O. Normally babbling, animated and outgoing, he was shy and uncomfortable, did not go to father, looked down if father spoke to him, and stood between Ward's legs, and "glommed onto" her, holding her hand. Father did not know how to interact with a three-year-old, act playfully, or initiate conversation on T.O.'s level. There did not seem to be

any sort of relationship between them, and even if father now were to go to Teen Challenge, he could not be considered as a placement for T.O. until he developed a relationship, demonstrated that he was working sincerely and staying clean, and had recommendations that the placement was good for both father and son.

Ward had been told, upon first telephoning the jail, that there were no services available there. Whether this was misinformation or a new program started in the ensuing months, she and father did learn, from a supervisor at the first visit, that there were "12-step meetings" available, and she encouraged father to take advantage of them. Meanwhile, while phone calls to father were unavailable, she corresponded with him and started sending him workbook assignments. He would send her back an assignment every three to four weeks. She would look it over, write back notes, and send him a new assignment. He only did assignments in the substance-abuse book, and his answers were "very brief, oftentimes . . . one word answers, sometimes an arrow drawn from his name to a word in the question. Sometimes they were three and four word sentences. They weren't well thought out. And I did ask him about--probably in [September--] I wrote back asking him to dig a little deeper, think a little bit longer, and try to answer with more in depth answers." She also encouraged him at visits to do the workbooks and begin the parenting one. He did absolutely nothing in the parenting workbook. Ward did not know whether he ever participated in a jail program, but a counselor she spoke with at the jail did not report father having any drug related problems.

Father never sent T.O. a card or gift while in jail. Ward conceded on cross-examination that she did not know whether this was a dereliction of choice or lack of funds. She also did not know whether his work-crew assignments involved vocational skills. She did not know the extent of his formal education, but thought that he had not finished high school. She had read a letter—"not a nice" one—he sent to the mother from jail that articulated his anger. Ward's report also stated that, while father had recently shown an ability to control his anger, he had been in trouble numerous times earlier during his incarceration, once for destruction of jail property.

The court followed HHS's recommendation to terminate services for both parents, rejecting father's counsel's appeal for a chance to comply while out of custody. The court remarked: "[T]here wasn't much asked of him. [It was] suggested to him he attend 12-step meetings. He was asked to complete self-study through workbooks having to do with substance abuse and parenting. He absolutely didn't do anything with the parenting despite repeated requests by the social worker to do so both in writing and orally. [¶] And he made at best a lethargic attempt doing the substance abuse workbooks —the one word answers or two or three word answers. So it appears maybe he tried a little bit. But I can't say I find by clear and convincing evidence he participated regularly and made substantive progress. [Counsel] I think raised some issues about maybe he did well in working on the substance abuse workbook. But I don't find that is positive evidence he did what we told him to do."

The court found that reasonable services had been offered or provided to aid in overcoming the problems that lead to initial removal, and that HHS complied with the case plan in making reasonable efforts. The court found that the extent of progress for each parent was insufficient, that there was clear and convincing evidence that each had failed to participate regularly in a court ordered treatment plan, and that it was in T.O.'s best interest to set a plan hearing under section 266.26 (see fn. 1, *ante*). The court did not immediately set a plan hearing since it still had to hear a further request to transfer the case to Humboldt County.

DISCUSSION

Father's briefing consists of just two pages appended to a form petition. It lacks headings to specify issues, but we, like HHS, discern that he claims a lack of clear and convincing evidence for findings (1) that reasonable services were offered and (2) that he failed to make substantive progress. He contends that he should have been given "more time" to "succeed in his case plan." We reject both arguments, bearing in mind that our appellate review of any finding made by clear and convincing evidence is simply to test whether substantial evidence supports it. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750.)

A. *Reasonable Services*

The court had to find that HHS offered father reasonable services, *reasonable* being defined as services designed to aid the parent in overcoming the problems that led to the initial removal and continued custody of the child. (§ 366.21, subd. (e), par. 8.) A case plan must be appropriate and tailored to the individual parent. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) We view the evidence in a light most favorable to the finding, ensure that substantial evidence supports it and, when two or more inferences can reasonably be deduced from the facts, find support for any such resolution. (*Ibid.*)

The record should show that HHS " 'identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parent[] during the course of the service plan, and made *reasonable* efforts to assist the parent[] in areas where compliance proved difficult.' " (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011.) "The appellate court 'construe[s] all reasonable inferences in favor of the juvenile court's findings regarding the adequacy of reunification plans and the reasonableness of [the social services department's] efforts.' [Citation.]" (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.)

The plan in this case identified drug abuse, parenting skills, violence, the need to work with HHS, and his relationship with T.O. as areas where he needed improvement and help. This long but vital list was made doubly difficult to address when he first could not be found and then made just one call to HHS in the first month, before getting himself arrested on a slew of new charges. Nevertheless, HHS worked with the jail to set up visits and the workbook assignments, also urging father to avail himself of meetings at the facility as they became known or available. The social worker kept up correspondence with him, provided him with self-addressed envelopes for his assignments, gave him feedback on the work, visited him with the child, and urged him repeatedly to do the assignments and use the jail resources. The result, for no evident fault of HHS, was that he did deficient work in just the substance abuse assignments, ignored parenting assignments altogether, and never communicated with the child except in person for the two documented visits. Then, when finally released to Teen Challenge

for residential drug treatment, father again got arrested within days and never contacted HHS or his own counsel to tell them what was going on, whether he was in or out of custody, or why he ultimately never went to the review hearing.

Father's petition tries to lay fault at the feet of the social worker, stressing that she did not know his exact education level, whether he actually attended any jail meetings, or whether he had funds to communicate with or send gifts to T.O. This is futile sniping. It ignores that father never communicated any such things to HHS or his counsel, and never attended the hearing to explain for himself, nor communicated to say why he could not be there. There was also no evident problem with his ability to write or communicate. The social worker communicated with him, orally and in writing; and she had read a letter he sent to the mother. The fault was father's, not HHS's.

The finding of adequate services is amply supported.

B. *Failure to Participate/Substantive Progress*

The circumstances also fully support the findings that father made insufficient progress and failed to participate regularly in a court-ordered treatment plan. The latter finding authorized the services termination (§ 366.21, subd. (e), 1st & 3d pars.), and the record shows that he made only marginal efforts on the workbook assignments—in the court's words, "at best a lethargic attempt"—and none at all on parenting. It is unclear whether father means to argue that there was a substantial probability of return if given another six months of services (*ibid*.; § 361.5, subd. (a)(3)), but the position is untenable. Even considering the "special circumstances" of an incarcerated parent (§ 361.5, subd. (a)(3)), this parent did almost nothing beyond two visits, to maintain contact with T.O., and nothing at all before or after he was jailed. We can only speculate that father would remain free of further incarceration, much less be ready to assume care of his son within another six months. (§ 366.21, subd. (g)(1)(A)-(C).)

DISPOSITION

The petition is denied on the merits. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 894 [barring later challenge by appeal]; § 366.26, subd. (*l*)(1).) Our decision is immediately final as to this court.

_____
Lambden, J.

We concur:

_____
Kline, P.J.

_____
Haerle, J.