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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.R., a Person Coming Under the Juvenile Court Law.	B207622
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.R., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK58926)

APPEAL from orders of the Los Angeles County Superior Court, Jacqueline Lewis, Juvenile Court Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Kristin J. Andreasen, Associate County Counsel, for Plaintiff and Respondent.

R.R. appeals from orders of the juvenile dependency court which have resulted in the termination of his parental rights. We affirm the dependency court's orders.

FACTS

R.R. and M.L. are the parents of A.R., who was born in March 2005, and came to the attention of the Department of Children and Family Services (DCFS) one month later in April 2005, when it received a referral that M.L. was abusing drugs and taking A.R. along with her when she went to "crack houses."[1]

On April 13, 2005, a case social worker (CSW) went to R.R.'s home, where R.R. stated that M.L. was in a bedroom with A.R., "coming down off of crack." R.R. also said that he had restraining order against M.L. The CSW then spoke with M.L., who denied using drugs. The CSW then requested police assistance, and officers responded to R.R.'s home. Officers confirmed that R.R. had a restraining order against M.L., but could not run a complete criminal history check from the field. The officers told M.L. that she had to leave the home. The CSW verified that A.R. did not have any visible health problems, and asked R.R. to care for A.R. while the matter was investigated.

On April 16, 2005, police responded to a disturbance call at R.R.'s home. While at the scene, an officer handed A.R. over to M.L., and M.L. left R.R.'s home with the couple's infant. M.L. went to her sister's home, dropped off A.R., and disappeared. The next day (April 17, 2005), R.R. took custody of A.R., and they returned to his home. On April 19, 2005, M.L. showed up at R.R.'s home and started another disturbance. Police again responded to R.R.'s home, and, once again, officers handed A.R. over to M.L., who then promptly disappeared. Over the next days, the CSW could not make contact with M.L.

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[1] M.L. and another man have another child, A.F. who was born in 1990. Neither M.L. nor A.F. nor her father are involved in the current appeal, and we do not address the facts surrounding their circumstances.

On April 28, 2005, DCFS filed a petition on A.R.'s behalf. (Welf. & Inst. Code, § 300.)[2] The petition alleged that M.L. was then "at large" with A.R., and that M.L. and R.R. had a history of domestic violence and drug abuse, which rendered them incapable of providing A.R. with care and supervision. The dependency court detained the children. On July 7, 2005, the court sustained the petition as amended and entered a disposition case plan. The case plan included orders directing R.R. to attend a DCFS-approved program of drug rehabilitation with random testing, domestic violence counseling, and parent education.

In December 2005, DCFS reported that R.R. had received a list of counseling and parenting programs, and community resources in August 2005, but had "failed to enroll in any programs." DCFS further reported that R.R. had "failed to drug test," and that he had "failed to make himself available for assistance [in] enrolling in any program." All attempts to contact R.R. had been unsuccessful, and R.R. had not provided DCFS with any updated address or phone information. In January 2006, DCFS reported that R.R. had contacted the agency in December 2005, and had provided a new address on Manhattan Place in Los Angeles, and that he had enrolled for counseling at New Hope Services, but that he had been "excused" from attending any sessions for "a few weeks" because he was "in surgery for an inguinial hernia."

On January 6, 2006, the dependency court ordered DCFS to continue providing reunification services to M.L. and R.R.

In May 2006, DCFS reported that a CSW had provided R.R. with referrals for parenting and counseling programs in August 2005, but he had shown "[n]o compliance" with either element of his case plan, and had failed to keep in contact DCFS during the most recent reporting period. The report showed the following history with regard to R.R.'s compliance with the drug testing element of his case plan: R.R. was a "No Show" on November 15, 2005; December 14, 2005; December 30, 2005; January 6, 2006;

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

January 30, 2006; February 1, 2006; February 17, 2006; March 3, 2006; March 20, 2006; April 5, 2006; April 20, 2006; May 4, 2006; and May 17, 2006.

R.R. did not appear for a contested 12-month review hearing (§ 366.21, subd. (f)) on August 14, 2006. M.L. appeared, testified on her own behalf, and submitted exhibits showing her progress in drug and parenting programs. At the conclusion of the hearing, the dependency court terminated R.R.'s reunification services, but ordered DCFS to continue providing reunification services to M.L. The court's orders from August 14, 2006, include this finding: "The Court finds that reasonable services have been provided . . . ."

Neither M.L. nor R.R. appeared for the review hearing on December 13, 2006. In the parents' absence, the dependency court terminated M.L.'s reunification services, and ordered DCFS to initiate an adoptive home study for A.R.'s caretaker. The court set the cause for a permanent plan hearing (§ 366.26) in April 2007 and directed the clerk of the court to mail notice to both parents advising them of their right to file a writ petition.

On December 19, 2006, the clerk of the dependency court mailed the following documents to counsel for M.L. and counsel for R.R.: a copy the court's minute order from December 13, 2006; a " 'Notice of Intent to File Writ Petition . . . , Rule 39.1B,' (JV-820) and 'Petition for Extraordinary Writ' (JV-825);" and an " 'Advisement of Rights (366.26 W.I.C.)' Form # CK023." The clerk of the court also mailed copies of the same documents directly to M.L., but not to R.R.

On April 12, 2007, the dependency court continued the permanent plan hearing because DCFS had not yet completed the adoption home study. On September 12, 2007, DCFS approved the adoption home study. On September 13, 2007, the permanent plan hearing was continued.

On October 24, 2007, R.R. filed a pro se section 388 petition in which he alleged that he had "not received adequate notices of any . . . past hearings," and had "a right to participate in [his] child's life." R.R. requested that any and all of the dependency court's "orders of adoption be quashed." On November 28, 2007, the court set R.R.'s section 388 petition for a contested hearing, to be conducted in conjunction with the

permanent plan hearing on January 10, 2008. R.R. was present in court at the hearing on November 28, 2007, and was directly ordered to return to the court on January 10, 2008.

R.R. did not appear for the hearing on January 10, 2008, and the dependency court continued the matter to February 6 and later to April 7, 2008. R.R. did not appear on April 7, 2008, but the court was unavailable, and the matter was continued to May 1, 2008. On April 9, 2008, DCFS mailed notice of the hearing set for May 1, 2008, to R.R.'s court-appointed counsel and to R.R. directly at an address on West 142nd Street in Hawthorne (R.R.'s prior address).

R.R. did not appear for the hearing on May 1, 2008. M.L. and A.R.'s caretaker testified, and the matter was argued to the dependency court and taken under submission. On May 2, 2008, the court issued orders denying R.R.'s section 388 petition and terminating R.R.'s parental rights over A.R.

DISCUSSION

I. R.R.'s Appeal Is Neither Barred Nor Waived

The fundamental thrust of R.R.'s arguments on appeal rest on his contention that the dependency court's orders terminating his parental rights over A.R. must be reversed because the court's predicate orders terminating his reunification services were infected with error. As a preliminary matter, however, R.R. recognizes that claims involving the termination of reunification services are ordinarily barred unless a parent has previously filed a petition for extraordinary writ (see *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1506-1507), and acknowledges that he did not file such a writ proceeding, but argues that his case presents an exception to the usual rule. R.R. contends he may raise issues concerning the termination of his reunification services because the dependency court did not advise him of his right to file a petition for extraordinary writ at the time it set the permanent plan hearing in December 2006. In response, DCFS argues that the writ advisement requirements are not applicable in R.R.'s case because he had a right to appeal the order terminating his reunification services but failed to do so. Although we find DCFS's arguments compelling, we ultimately conclude that a decision based on a review of the merits is the better course in R.R.'s current case.

R.R.'s case presents a slightly different procedural context than we normally see in our court. The dependency court terminated R.R.'s reunification services at a hearing on August 14, 2006, but did not set a permanent plan hearing at that time, as is commonly the situation, because further reunification services were ordered for M.L. Because the court did not set a permanent plan hearing at the time of its orders on August 14, 2006, the court was not required at that time to advise R.R. (or M.L.) of the right to file a writ petition. (See § 366.26, subd. (l)(3)(A) [the court shall advise a parent of his or her right to file a writ petition when the court orders a permanent plan hearing]; see also Cal. Rules of Court, rule 5.695(f)(18) [accord].) The dependency court set the permanent plan hearing on December 13, 2006, at the time it terminated M.L.'s reunification services. At the same time, the clerk of the dependency court mailed an advisement of the right to file a writ petition to M.L., but not to R.R.

Because R.R. did not receive an advisement of his right to file a writ petition at the time the permanent plan hearing was set in December 2006, we find he should be allowed to challenge the termination of reunification services on appeal. We are satisfied that the absence of an advisement to R.R. regarding his right to file a writ petition is sufficient reason to preserve his right to challenge the dependency court's orders terminating his reunification services. (*In re Cathina W.* (1998) 68 Cal.App.4th 716, 721, 726.)

To avoid this result, DCFS argues R.R. should have taken a direct appeal from the dependency court's orders dated August 14, 2006, terminating his reunification services. We disagree. Although it is true that Division One of the Fourth District Court of Appeal entertained a parent's direct appeal from an order terminating reunification services in *In re Alanna A.* (2005) 135 Cal.App.4th 555 (*Alanna A.*), such a challenge is ordinarily required to be made by a petition for extraordinary writ at the time the court sets a date for a permanent plan hearing. (Cal. Rules of Court, rule 8.452.) In *Alanna A.*, the court of appeal agreed to address a parent's appeal under unique circumstances: first, no permanent plan hearing had been set; and second, the parties themselves urged the court to address the appeal in order to reach a legal issue of first impression — whether the dependency court had the authority to terminate one parent's reunification services at a

12-month review hearing, while continuing services for the other parent. (*Alanna A.*, at p. 562.)

We are satisfied that R.R. was not *required* by *Alanna A.* to file a direct appeal in order to challenge the dependency court's orders terminating his reunification services, that he retained the right to make such a challenge by way of a writ petition, and that he has been excused from filing such a writ petition by the absence of an advisement of his right to file such a writ. In sum, we believe we should address R.R.'s claims of error on appeal on their merits, lest those claims be lost in a void.

II. The Finding That Reasonable Reunification Services Were Provided Must Be Upheld Because It Is Supported by Substantial Evidence

R.R. contends the dependency court's finding that DCFS provided reasonable reunification services is not supported by substantial evidence. We disagree.

A dependency court's finding that reasonable services were provided is reviewed under the substantial evidence standard of review. (See, e.g., *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) Under this test, we must view the evidence in the light most favorable to the dependency court's decision, and indulge all legitimate and reasonable inference to uphold the court's finding. (*Ibid.*)

R.R. contends the evidence is not sufficient to support the dependency court's finding because DCFS's reports to the court "failed to include any information regarding his health and whether there [were] any lingering problems associated with his [hernia] surgery which would have prevented him from fully complying with the case plan." We reject R.R.'s argument because it is no more than a veiled request that we reweigh the evidence, and reach a different conclusion than was reached by the dependency court. This is not the role of an appellate court. The dependency court's findings must be affirmed because there is substantial evidence that DCFS referred R.R. to counseling and parent education programs, arranged drug testing, and attempted to maintain contact with a patently recalcitrant R.R. No more is required to sustain the dependency court's finding that reasonable services were provided. (*Mark N. v. Superior Court*, *supra*, 60 Cal.App.4th at p. 1011.) And, in any event, DCFS's reports included information

which showed that R.R. underwent hernia surgery sometime around December 2005. DCFS did not need to explain how such a surgery prevented R.R. from fulfilling any aspect of his case plan over the next eight months, until the termination of his reunification services in August 2006.

III. The Dependency Court Did Not Abuse Its Discretion by Terminating R.R.'s Reunification Services

R.R. contends the dependency court abused its discretion by terminating family reunification services at the 12-month date, rather than extending such services. We do not agree.

Under the abuse of discretion standard of review, an appellate court is precluded from substituting its conclusions about the circumstances of the case in place of the trial court's conclusions about the circumstances of the case. On the contrary, a reviewing court's power is limited to determining whether the trial court rendered a decision which exceeded the bounds of reason. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479.)

There was no abuse of discretion in R.R.'s case. R.R. did not respond to DCFS's counseling referral; he did not respond to DCFS's parent education referral; he responded to DCFS's scheduled drug testing in the following fashion: R.R. was a "No Show" on November 15, 2005; December 14, 2005; December 30, 2005; January 6, 2006; January 30, 2006; February 1, 2006; February 17, 2006; March 3, 2006; March 20, 2006; April 5, 2006; April 20, 2006; May 4, 2006; and May 17, 2006.

This record supports but one conclusion: the dependency court did not exceed the bounds of reason by determining that no further reunification services were warranted.

IV. The Dependency Court Did Not Err by Terminating Parental Rights

R.R. contends the dependency court could not terminate his parental rights unless reasonable efforts were made to reunify him with A.R. We agree with R.R.'s abstract legal argument, but find it rings hollow when applied to the facts of his case.

R.R.'s argument essentially overlays his previous argument that the dependency court wrongly terminated his reunification services because DCFS failed to provide sufficient services. For the reasons explained above in directly addressing R.R.'s claims

regarding the termination of reunification services, we reject R.R.'s overlaying argument in the context of termination of parental rights.

We reject R.R.'s contention that the dependency court's orders terminating his reunification services is not supported by a "proper finding" because the court did not expressly state on the record that it had applied the "clear and convincing" standard in addressing whether DCFS had provided reasonable services. Because the dependency court is presumed to follow the law, mere silence — i.e., a failure to state expressly on the record the standard governing the burden of proof — does not demonstrate that the court committed error by applying the wrong standard. (*Armando D. v. Superior Court* (1999) 71 Cal.App.4th 1011, 1025; see also Evid. Code, § 664.)

V. The Notice Defect Is Harmless

R.R. contends the orders terminating his parental rights must be vacated because he did not receive proper notice of the hearing on May 1, 2008, at which those orders were made. DCFS concedes that notice was mailed to R.R. at an incorrect address, but argues the error was harmless. We agree with DCFS.

A harmless error analysis may be applied on review of a claim of improper notice of a termination hearing. (*In re Angela C.* (2002) 99 Cal.App.4th 389, 394-395.) In R.R.'s current case, we see no possibility that the result of the termination hearing would have been different had he been given proper notice, and had he, in fact, attended the hearing. R.R.'s assertion on appeal is that he may have been able to prevail on his section 388 petition. We disagree because R.R. has not cited us to any evidence in the record which has any tendency in reason to cause us to believe that such a result was possible, and he has not explained to us on appeal what evidence he could have presented at the hearing.

As it is, the record shows that A.R. has been placed with her caretaker since April 2005, when A.R. was less than two months old. In the four years that have followed, R.R. has visited A.R. only sporadically at best and has acted more like a "friend" than a parent during the visits which he has attended. He failed to drug test and to make any meaningful attempt to comply with the counseling and education

components of his case plan. At one point during the proceedings in the dependency court, he questioned whether he was A.R.'s biological father. We are at a loss to see what type of evidence R.R. could have presented at the termination hearing, which would have made any difference in the outcome of that hearing. On appeal, R.R. does not suggest what evidence he might have introduced. In that regard, we note that R.R. did not bother to appear on January 10, 2008, when the permanent plan hearing was originally scheduled, that he did not appear on April 7, 2008, the continued date for the hearing, and that he makes no claim that there was a notice defect for those hearings.

VI. The Proceedings in the Dependency Court Were Not Fundamentally Unfair

R.R. contends the dependency court's orders must be reversed on constitutional grounds because the proceedings in the dependency court were "fundamentally unfair." R.R.'s argument essentially incorporates his previous claims of error, and we view his constitutional argument to be akin to a claim that "cumulative" error deprived him of a fair proceeding. Because we have found no meaningful errors, we reject R.R.'s catch-all constitutional argument. The record shows that R.R. was given ample opportunities to be heard, and to show his fitness as a parent, and that he failed to do so, through no fault of the dependency system.

DISPOSITION

The juvenile dependency court's orders are affirmed.

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BIGELOW, J.

We concur:

RUBIN, ACTING P. J. O'NEILL, J*

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