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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re A.P. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. A.P., Defendant and Appellant.	C061121 (Super. Ct. Nos. JD226813, JD226814, JD226815, JD226816)

Aug. P. (appellant), the presumed father of four minors, C.P. (17 years old), A.P. (11 years old), Au.P. (13 years old), and L.P. (16 years old), appeals from the order of the juvenile court terminating his reunification services. (Welf. & Inst. Code, § 366.21, subds. (f) & (g).)[1] Appellant appeals the

[1] Hereafter, undesignated statutory references are to the Welfare and Institutions Code.

termination of his services at the 12-month review hearing. Appellant raises several issues in support of his claim. Concluding his claim has no merit, we affirm.

FACTS AND PROCEEDINGS

In January 2008, petitions were filed by the Sacramento County Department of Health and Human Services (the department) concerning the four minors, C.P., A.P., Au.P., and L.P. after C.P., the eldest, ran away from home and presented with bruises and "marks on her buttocks" at the University of California Davis Medical Center. The petitions alleged that the mother had a history of physically abusing C.P., both parents failed to protect the minors, and the minors were substantially at risk of suffering serious physical harm.

C.P. was taken into protective custody on January 2, 2008, after she ran away from home and refused to return. Later that same day, the remaining three children were removed from the family home when C.P. revealed that she and her siblings had been sexually abused by appellant.

C.P.'s siblings denied being physically or sexually abused by appellant or their mother. Appellant and the mother also denied that appellant had sexually abused any of the children; they both accused C.P. of lying. The juvenile court nevertheless ordered the children detained. The court further ordered the department to provide the parents with reunification services and allowed them weekly supervised visits with the three younger children, though the parents were precluded from visiting with C.P.

The department later issued its jurisdiction/disposition report, wherein the department recommended C.P. be placed with her paternal great aunt and the younger children be returned home. Then, on January 31, 2008, the department filed amended petitions for each of the children. The amended petitions, which superseded the original petitions, included an allegation that appellant had sexually abused C.P. A contested jurisdiction/disposition hearing was then set in February 2008.

Prior to the jurisdiction/disposition hearing, however, the department filed an addendum to its report and changed its recommendation to recommend that none of the children be returned to the parents' home. This change was based on the allegations of sexual abuse, the mother's failure to acknowledge the sexual abuse, the mother's inappropriate behavior with the children during supervised visits (she was "coaching" them on their testimony), and a finding that, with C.P. out of the house, abuse may be redirected to one of the other children.

At the disposition/jurisdiction hearing, no witnesses testified and the matter was submitted on the reports and argument of counsel. At the conclusion of the hearing, the juvenile court adopted the findings and recommendations of the department. Accordingly, the children were not returned to their parents but the family's services were continued.

In April 2008, the department issued a progress report. The report included findings that appellant completed a court-approved parenting education class, scoring a 94 percent on the exit exam. The report also indicated that appellant was not

eligible for participation in the sex offender treatment group as referred to by the department because he was not a registered sex offender. The department thus recommended appellant receive individual counseling at a center which specialized in treating sex offenders.

Consistent with the court's order, appellant also was regularly tested for drugs, and with only two exceptions, the test results were negative.[2] Appellant's visits with the three younger children were consistent and, according to the supervisor, appellant behaved appropriately during the visits. C.P., with whom appellant was not allowed contact, asked to call appellant on his birthday and expressed interest in visiting with both her parents. The possibility of C.P. visiting with appellant was being assessed by the department.

The six-month review hearing was then held in August 2008. At the hearing, the juvenile court advised the parents as follows: "The question here is the fact that the parents deny the allegations continually, and therefore it does not appear that they are benefitting from services. So it's difficult not only to say that return would be appropriate, but whether or not continued services is going to be appropriate."

Despite its stated concern, the juvenile court adopted the findings and recommendations of the department, finding that appellant's progress in "alleviating or mitigating the causes

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[2] Two tests came back positive for marijuana.

necessitating placement has been fair." The children were ordered to remain in confidential placement outside the family home, and the court continued services for the entire family. The 12-month review hearing was set for February 3, 2009.

Prior to the 12-month review hearing, appellant attended 13 individual counseling sessions, wherein "all three treatment goals [were met] successfully though he continue[d] to deny the sexual abuse." His counselor opined that appellant would benefit from continued therapy but found it unlikely that appellant would ever admit to sexually abusing C.P.

In addition, appellant attended 13 group counseling sessions for sex offenders. The group facilitator indicated that appellant had met the treatment goals but continued denying the sexual abuse. He, too, believed appellant would benefit from further, individual counseling.

Despite the recommendation from both of appellant's counselors that appellant would benefit from additional counseling, the department recommended terminating appellant's services because he continued to deny he abused C.P. The department did not, however, recommend terminating appellant's visitation with the younger children.

At the 12-month review hearing, the juvenile court adopted the department's recommendations, terminating appellant's services but continuing mother's. The court found that appellant had "failed to demonstrate benefit from service participation," because he, unlike mother, continued to deny the sexual abuse of C.P. The court thus concluded it was not likely

the children ever would be returned to appellant's custody.[3] Appellant appeals this order.

DISCUSSION

Appellant raises the following issues on appeal: (1) the juvenile court abused its discretion when it terminated his services and not mother's; (2) he was denied his right to substantive due process when the court terminated his services without setting a section 366.26 hearing; (3) the court failed to exercise its discretion in terminating his services; (4) the court abused its discretion in terminating his services at the 12-month review hearing; and (5) the court's finding that reasonable services were provided is not supported by substantial evidence. We address each of appellant's claims in turn.

I.

Appellant claims the juvenile court erred by terminating his reunification services at the 12-month review hearing while continuing services for the minors' mother. He is incorrect.

In re Alanna A. (2005) 135 Cal.App.4th 555, 566, held that a juvenile court has discretion to provide services to a nonreunifying party when it continues reunification efforts with the other parent. Nonetheless, "at each review hearing, the court must evaluate the efforts or progress toward reunification made by each parent individually . . . [and] reunification often

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[3] This order applies only to the three younger children, not to C.P.

involves one, but not both, parents." (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 60.) Thus, the court in *Alanna A.* recognized it is not an abuse of discretion to deny further services to one parent while continuing services for the other when evidence supports the "assumption that offering services would be an unwise use of governmental resources" or that reunification efforts would be futile. (*Alanna A., supra,* at p. 566.)

Appellant attempts to distinguish himself from the father in *Alanna A.* by arguing that court's analysis was dependent, at least in part, on the father being a "biological father" and not a presumed father. We are not persuaded.

In *Alanna A., supra,* 135 Cal.App.4th 555, the appellate court noted that "the provision of reunification services to a biological father is discretionary," but services *must* be provided to a presumed father. (*Id.* at p. 564.) From this, defendant extrapolates that a court must also have greater discretion to terminate services provided to a biological father, but not services provided to a presumed father. Defendant's argument finds no support in the law or reason.

Here, the juvenile court refused to offer additional reunification services to appellant because despite 12 months of services, appellant continued to deny he sexually abused his daughter. Under the circumstances, we find no abuse of the court's discretion in terminating his services and continuing services to mother.

II.

Defendant further contends the juvenile court "denied [him] his right to substantive due process because there was no rational basis for the court to terminate his reunification services when the court did not immediately proceed to a section 366.26 hearing." We disagree.

"Substantive due process prohibits governmental interference with a person's fundamental right to life, liberty or property by unreasonable or arbitrary legislation. [Citations.] The main purpose of limiting the period of reunification in a dependency proceeding is to afford the child stability and permanency where reunification is unlikely within the statutory time limits. [Citations.]

"[W]hen reunification efforts continue for one parent after the 12-month review hearing, a court has the discretion to offer services to the nonreunifying parent, and in many cases may choose to do so. However, there is a secondary rationale for limiting services to the nonreunifying parent. The Legislature has recognized that in some circumstances, it may be fruitless to provide reunification services. [Citations.] In such a case, the general rule favoring reunification services is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citations.]" (*In re Alanna A.*, *supra*, 135 Cal.App.4th at pp. 565-566.)

Here, appellant was offered reunification services for 12 months. During that time, appellant participated in counseling, visited the three younger children, and successfully

completed a parenting class. However, appellant continued to deny he sexually abused his daughter. Thus, the trial court concluded appellant was not making progress toward remedying the problems that led to the children's removal and further reunification efforts would be futile.

"Under these circumstances, the termination of reunification services to one parent is rationally related to the legitimate government interest in focusing government resources on the parent who has [taken responsibility for the problems that led to the minors' removal, made significant progress in resolving those problems,] and demonstrated the capacity and ability both to complete the treatment plan and provide for the [minors'] needs. [Citation.]" (*In re Alanna A.*, *supra*, 135 Cal.App.4th at p. 566.)

III.

Appellant also contends that the juvenile court failed to exercise its discretion in terminating his services. Appellant claims "the court stated that it had to terminate services because the court found [appellant] did not meet the grounds for continuing services under section 366.21 (g)(1)." Appellant's rendition of the court's statement is inaccurate. What the court actually said was, "It's another thing to continue to deny and that's what this father has done. And so it cannot be said that there's [] a substantial probability that this child can be returned to his care. It does not meet the criteria under .21(g) and so I am going to terminate services as requested.

. . . According to the statute he has not met the requirements under .21(g) for continued services."

The court never stated that it "had" to terminate services. In fact, the transcript of the hearing reflects the juvenile court's careful consideration of each factor found in section 366.21, subdivision (g), as it related to appellant and his circumstances. After consideration of each factor, the court, in an act of discretion, determined that appellant had not made sufficient progress in remedying those problems that led to the removal of the children. Accordingly, the court terminated services. We find no error.

IV.

Implicit in appellant's briefing is another claim that the juvenile court abused its discretion in terminating services. Appellant argues that, until they were removed, the minors had lived with him for their entire lives. He notes that, since their removal, appellant consistently visited the three younger children, all of whom wanted to return home to both parents. In support of his argument that services should have continued, appellant relies on the fact that he participated in all of the counseling that was offered to him and counselors both opined that he had benefitted from the counseling.

But, in reciting his accomplishments, which may be laudable, appellant minimizes his continuing denial of his abusive conduct toward C.P. and his failure to accept his role in the children's removal. (See, e.g., *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142 [failing to admit the abuse that

led to removal is evidence the parent has not benefitted from services, even though they participated].) Whether we may have reached a different result under the circumstances, we cannot say the juvenile court's decision was arbitrary or capricious.

V.

Appellant further contends "the record does not contain substantial evidence to support the court's reasonable services finding." We disagree.

When the sufficiency of the evidence to support a finding or order is challenged on appeal the reviewing court must determine if there is any substantial evidence--that is, evidence that is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the judgment and that issues of fact and credibility are questions for the trier of fact. (*Jason L.*, at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Here, appellant was provided with 12 months of reunification services; he participated in the services. Those services included group counseling, individual counseling, and a parenting class. Appellant also was provided with supervised visitation with the younger children and the department was assessing whether to allow appellant and C.P. to begin their own

supervised visitation. Although the services did not produce the result appellant or the juvenile court wanted, the services provided were more than reasonable.

DISPOSITION

The order is affirmed.

CANTIL-SAKAUYE, J.

We concur:

SCOTLAND, P. J.

SIMS, J.