Filed 9/27/02 In re A.G. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.G., a Person Coming Under the Juvenile Court Law.	H024177 (Santa Clara County Super. Ct. No. JD13330)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. JEFFREY G., Defendant and Appellant.	

A.G.'s father (Father) appeals from the juvenile court's order terminating his visitation with A.G. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Family and Children's Services (the department) filed a petition seeking to have A.G. adjudged a dependent child of the court due to her mother's substance abuse. (Welf. & Inst. Code, § 300, subd. (b).)[1] A.G. was placed in protective custody on January 10, 2002. The department later amended the petition to allege that Father was incarcerated in Avenal State Prison and could not provide support, care, or supervision for the child. (§ 300, subd. (g).) Father was serving a four-year prison

[1] Further statutory references are to the Welfare and Institutions Code.

sentence and he was not expected to be released until December 23, 2003. Eighteen-month-old A.G. was temporarily placed with her mother's relatives.

A jurisdictional/dispositional hearing was held on February 21, 2002. The department recommended that A.G. stay with her maternal relatives, that her mother (not Father) receive reunification services, and that visitation with Father be terminated. Both parents attended the hearing. Father did not object to the denial of reunification services but he did challenge the department's recommendation that visitation be terminated as to him. A.G.'s mother supported Father's request. The department argued against visitation, pointing out that A.G. was only 18 months old, that she had not seen her father for the last 10 months, that the surroundings at the prison would be unfamiliar to her, and that visitation meant being in the car "for a good six hours going to visits with father." A.G.'s counsel also opposed the request citing the child's age and the distance to the prison. The court adopted the department's recommendation, stating: "[A]t this time I am going to adopt the recommendation from the Department and terminate the visits and find that it is detrimental. I just feel like having a child of this age travel such a long distance to see somebody that she hasn't seen in over ten months is detrimental to her well being at this time."

Father has timely appealed. A.G. joins the department's opposition. A.G.'s mother is not a party to this appeal.

DISCUSSION

Father does not challenge the juvenile court's refusal to order reunification services for him. He contends only that the juvenile court abused its discretion in terminating his visitation with A.G. The juvenile court's order is directly appealable. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150; § 395.)

A reunification plan for a child under the age of three is limited to six months after the date the child entered foster care (§ 361.5, subd. (a)(2)). Services may be extended up to a maximum of 18 months in some cases. (§ 361.5, subd. (a)(3).) Since Father is not

scheduled to be released from prison until December 2003, he will still be incarcerated when these time limits expire. The length of Father's sentence, among other things, was the reason the juvenile court found for denying reunification services to him. (§ 361.5, subd. (e)(1).)

When a parent is denied reunification services, the determination of whether to permit visitation lies in the juvenile court's discretion. (§ 361.5, subd. (f).) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) The abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court. (See *In re Jasmine D*. (2000) 78 Cal.App.4th 1339, 1351.)

Father argues that there was insufficient evidence to support a finding that visits with him would be detrimental to A.G. In the cases upon which Father relies the visitation decision turned upon provisions of dependency law that *require* a visitation order absent a showing of detriment to the child. In this case, the determination is controlled by section 361.5, subdivision (f), which provides that when the court does not order reunification services, "[t]he court *may* continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child." (Italics added.) Thus, where the parent is not receiving reunification services, a visitation order is not required in the absence of evidence of detriment.

The distinction makes logical sense. Visitation is an essential part of a reunification plan. "In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] (1)(A) Subject to subparagraph (B), for visitation

between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).) Visitation is no less crucial for an incarcerated parent receiving reunification services. (§ 361.5, subd. (e)(1); *In re Brittany S*. (1993) 17 Cal.App.4th 1399; *In re Jonathan M*. (1997) 53 Cal.App.4th 1234, 1237; *In re Dylan T*. (1998) 65 Cal.App.4th 765.) Therefore, when reunification services are being provided, it is error to deny visitation with the parent to whom the services apply unless there is sufficient evidence that visitation would be detrimental to the child. (*In re Jonathan M*., *supra*, 53 Cal.App.4th 1234 [arbitrary geographical limit of 50 miles insufficient]; *In re Dylan T*., *supra*, 65 Cal.App.4th 765 [denial of visitation improperly based upon minor's age alone]; *In re Brittany S*., *supra*, 17 Cal.App.4th 1399 [denial of visitation improper where mother incarcerated only 40 miles distant].)

On the other hand, visitation is not integral to the overall plan when the parent is not participating in the reunification efforts. This reality is reflected in the permissive language of section 361.5, subdivision (f). Moreover, we agree with the department that even if the court was required to order visitation in the absence of a finding of detriment, the facts upon which the juvenile court relied are sufficient to establish that visitation would be detrimental to A.G.

The juvenile court based its decision upon the distance to the prison, the child's young age, and the lack of any existing bond between A.G. and Father. Although the parties dispute the precise distance and driving time to Avenal State Prison, there is no dispute that the prison is at least several hours drive from San Jose. That would, of course, involve several hours drive back home after the visit was over. A.G. was only 18 months old when she was taken into protective custody. The juvenile court determined that such a lengthy drive, undertaken for a visit in an environment that was indisputably unfamiliar to her, would be detrimental to the well being of this very young child. In addition, at the time of the February 21, 2001 hearing A.G. had not seen Father for 10

months. Given her young age and the paucity of the contact she had had with her father, it was reasonable to presume that there was no existing bond between A.G. and Father that a lack of visitation would disrupt or erode.

Father is concerned that without the opportunity to have regular visits with his daughter, he will not be able to avoid termination of his parental rights as permitted by section 366.26, subdivision (c)(1)(A) if A.G.'s mother fails in her reunification efforts.[2] Father does not specify how that subdivision could be of assistance to him in light of his incarceration. Even if section 366.26, subdivision (c)(1)(A) might serve Father under the circumstances, we find that potential to be speculative at best.

In sum, Father has not established that the juvenile court abused its discretion by terminating A.G.'s visitation with him.

DISPOSITION

The order of the juvenile court terminating visitation between Father and A.G. is affirmed.

---

[2] Section 366.26, subdivision (c)(1) reads in pertinent part: "If the court determines, . . . that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. . . . A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, . . . or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

Premo, Acting P.J.

WE CONCUR:

Wunderlich, J.

Rushing, J.