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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re V.N., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.O.N.,

Defendant and Appellant.

B279832

(Los Angeles County
Super. Ct. No. CK00637)

APPEAL from an order of the Superior Court of Los
Angeles County, Teresa Sullivan, Judge. Affirmed.

Catherin C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Father V.O.N. appeals from the order declaring his two sons dependent children. He argues that the juvenile court deprived him of due process by denying his request to call his older son as a witness at the jurisdictional hearing. We find no abuse of discretion and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Eight-year-old V.N. and five-year-old F.N. have been the subject of several dependency petitions, with sustained allegations based on mother's mental health problems and substance abuse, domestic violence between the parents, and father's substance abuse and criminal history. The children were declared dependents and placed in foster care, then returned to their parents' home and dependency jurisdiction terminated in February 2016.

In April 2016, mother was hospitalized while intoxicated and with cocaine in her system. The children were again detained and a new Welfare and Institutions Code section 300¹ petition was filed. The court sustained allegations that the children were at risk of harm from mother's substance abuse and father's failure to protect them from that abuse, and from mother's mental and emotional problems and failure to take

¹ All undesignated statutory references are to this code.

medication as prescribed. On September 20, 2016, the court declared the children dependents, found they would be at risk if returned to mother's care, and ordered them placed with father.

On October 2, 2016, the Department of Children and Family Services (DCFS) received a referral alleging that father had physically assaulted his live-in girlfriend S.G. in the early hours of Sunday, October 1. According to the police report, father had become angry with S.G. He choked her and punched her in the mouth, resulting in red marks on her neck and cuts inside her lower lip. He also pulled the nail off her right hand middle finger and prevented her from leaving the home. The children were in the home at the time of the attack. When they entered the room, father stopped the assault. S.G. believed the children heard the whole incident because afterward they went to her and asked if she was okay when they saw her bleeding from the mouth.

After receiving the report, DCFS children's social worker (CSW) Hicks, went to the home and talked to father. He denied any incident over the weekend, and said the last time he had seen his girlfriend was "last week." He said he and his girlfriend had been having problems because of the DCFS case, but denied any domestic violence. He said his girlfriend's name was Michelle C.

CSW Hicks then interviewed the two boys and father's granddaughter, who also lived with father. The granddaughter was not home at the time of the incident. The boys denied hearing any yelling or screaming or seeing their father angry during the weekend. All three children said they had last seen father's girlfriend the previous week and she did not live in their

home. The boys stated they were not afraid of their father and liked living in his home.

CSW Hicks talked with her supervisor and they agreed it would be best to interview the children in a neutral setting. Ms. Hicks went to the children's school. She spoke with V.N.² in private. He stated he "forgot what he did this weekend." He said his father does not fight anyone or get upset, he has never seen his mother or father hit each other, and he has never seen his father drink alcohol or do drugs. He said Michelle was his father's girlfriend, and that he did not know of any other girlfriend his father might have. According to the social worker, before she could finish asking a question, the child would answer it, or he would immediately deny seeing anything. He told her "everything is fine at the home and that he likes the home he is in now." Ms. Hicks' interview with the granddaughter followed the same pattern; the girl denied seeing her grandfather drink, take drugs, yell, or fight and answered "no" before the social worker had a chance to finish her questions.

The following day, father left a voicemail message for CSW Hicks, threatening to file a complaint to the board of supervisors against her and her supervisor, and stating she had better not approach his kids without his consent or knowledge.

On October 24, CSW Miller telephoned father to schedule home visits, explaining she needed to see the children in their home environment. Father responded that he would have a third party present because he did not trust the social workers. "I met with another worker who stopped by my home unannounced and I told her I did not want her speaking with my children and she turned around and went to their school to speak with them. Now

² The younger boy, F.N., was not of school age.

my children are traumatized and no longer wish to attend that school. Now I have to look for somewhere to live and a new school for my children.”

On November 3, 2016, DCFS filed a subsequent petition pursuant to section 342, based on the allegations of domestic violence between father and S.G. which placed the children at risk of serious harm. The children were detained and placed with father’s former girlfriend, Michelle C.

V.N. and F.N. were interviewed at the DCFS office on November 10, 2016 by supervising CSW Laza. She interviewed them together so they would feel more comfortable, and she took time to develop rapport with the children. She asked V.N. who lived with him and his brother before he was detained. The boy said dad and “Star,” and explained that her name is actually S.G. and she is father’s girlfriend. Asked about the incident between his father and Star, he recalled it being early in the morning, when it is still dark. Star was screaming and crying. At first he said he did not know what happened because his father told him to stay in the bed. Then he said he saw his father and Star “going back and forth into the rooms.” His father was the only one who was yelling and saying “bad words.” He explained that they were mad at each other and it looked like Star was hurt because her nose or her ear was bleeding. He said he “wasn’t ‘scared,’” and that his younger brother “wasn’t scared either.”

Asked how he felt during this incident, V.N. said he was a little bit scared and “I was asking, ‘what’s going on guys?’” The social worker asked the boys how their father behaves when he is angry. V.N. said, “he hollers a little and says bad words. F.N. said he gets mad when he gets put in the corner. Asked if anything else happens, V.N. said father spansks them with his

hand or a belt on their butts. The younger boy added, “or our hands.”

According to the report, CSW Laza played with the children for a while until V.N. “spontaneously stated, ‘do you want to hear about the bad times?’” He then stated, “[M]y mom . . . it was a suuuuuper long long long long time ago, they had a problem.” They “had a fight and an argument. That’s the day he (father) kicked her out of the house. He was saying bad words to my mom. Worstest part of my whole life.” According to the boy, “they had a serious fight and my dad was socking her in the face and her nose was bleeding.” He felt “real real sad” watching that. V.N. said he had to “tell everything” because he and his brother had talked and they wanted to go to foster care because they are better off in a foster home. He explained that he and his brother had been in 10 foster homes, and then corrected that to 13 foster homes. He did not want to go back home because his father hollers and is mean to them and says bad words. F.N. also said he did not want to go back home to his father.

Two days later, DCFS was asked to move the children from Michelle C.’s home because father had begun harassing her and threatened to make her lose her job if she did not comply with his requests for access to his children. She was afraid for her safety. The children were detained and then placed in foster care.

At the November 16 jurisdictional hearing, father asked to call V.N. as a witness. The boy’s counsel objected, asserting that the boys had experienced a lot of trauma in recent months, had been moved back and forth from father’s home, were fearful, and only felt safe enough to tell the truth about what had happened in their home once they were away from father.

Father's counsel insisted it was necessary to question the child because he had made contradictory statements about whether he had seen anything. The court found that the detriment and trauma outweighed any probative value and that the testimony was not necessary, and denied the request.

The hearing proceeded with testimony from father, Michelle C., and the police officer who took the report from S.G. The children were again adjudicated dependents. At the disposition hearing, the court found a danger to the children if they were released to father as well as mother, and placed them in the custody of DCFS. Father appeals from the adjudication order. Mother is not a party to this appeal.

DISCUSSION

Father claims he was deprived of his due process right to present a defense when the court denied his request to call his seven-year-old son V.N. as a witness at the jurisdictional hearing. A parent in a dependency proceeding has a due process right to confront and cross-examine witnesses. (*In re Amber S.* (1993) 15 Cal.App.4th 1260, 1264.) But this is not an absolute right; “where the issues to be resolved would not be materially affected by the child’s testimony, and where it is shown that the child would be psychologically damaged by being required to testify,” the juvenile court judge has discretion to exclude such testimony. (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1089.) That is what was found in this case.

When father asked to call V.N. as a witness, the boy’s attorney objected, asserting, “As the court knows, my clients have been through a lot of trauma, especially in the past couple of months, going back to their father and then being detained in

court. My clients are fearful. And as the court can tell by the report, they only felt safe enough to tell the truth of what was really happening in their home once they were safe and away from father.”

V.N.’s counsel argued the testimony was not necessary because V.N.’s statements in the social workers’ reports were already admissible under section 355, subdivision (c) (1)(B). That section provides for the admissibility of hearsay contained in a social study to support a jurisdictional finding where “The hearsay declarant is a minor under 12 years of age who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under 12 years of age shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.” Father made no showing that at the time V.N. made the statements contained in the social workers’ reports he had been subjected to fraud, deceit, or undue influence by DCFS or anyone else with an adverse interest to father. V.N.’s hearsay statements were admissible to support the jurisdictional finding. (§ 355, subd. (c)(1)(B).)

Father argued that there were contradictions in V.N.’s statements in the social workers’ reports, making live testimony necessary so the court could evaluate the child’s credibility. In the detention report, V.N. told the social worker he had not witnessed anything the previous weekend; when he was interviewed at his school, he said he had not seen anything; but then in the jurisdictional report his statements changed.

The child’s attorney responded: “I maintain my objection that the court can make a finding of detriment to put my client further through this trauma. When he finally was actually able

to make a statement for the first time without, you know, being coerced, whether father was there or not, clearly by the information that [V.N.] has given in the report, he's been holding a lot of things back for a very long time in order to protect father. And he now realized it was time to tell the truth and make sure him and his little brother are safe." DCFS joined in that argument: "[I]t's significant that [V.N.] didn't tell the story that he now tells in the jurisdiction report until he was out of father's custody for some time."

The court denied father's request, finding "the detriment and trauma would outweigh any probative value and the testimony is not necessary." We find no abuse of discretion in this decision.

The record shows the change in V.N.'s statements referred to by father. The social worker reported that during her October 3 interviews with the children, they seemed "hesitant in answering questions." This was just a few days after the incident with S.G., but the children denied hearing any yelling or screaming or seeing their father angry. They also denied seeing father's girlfriend during the weekend.³ Two days later, the social worker interviewed V.N. and the granddaughter at their school, a more neutral setting. In those interviews, the children seemed "quick to answer" before the social worker even had a chance to finish the question. V.N. "immediately denied seeing anything" and told her "everything is fine at home." A different

³ It appears from the record that father had two girlfriends, S.G., the victim in the police report giving rise to the section 342 petition, and Michelle C. When the children refer to father's girlfriend, it seems they are referring to Michelle, not to S.G., whom they also knew as Star.

social worker reported that when she visited the home on October 26, both boys stated they felt safe in the home, and V.N. said “he is happy when his dad is happy” and “sad when his father is sad.” The social worker observed that the children did not really want to engage with her.

The children were removed from father’s home and placed with Michelle C. on November 3, and it was in the interview that followed, on November 10, that V.N. acknowledged knowing S.G., described the violent incident between father and her, admitted being afraid of father, and described violence between his mother and father. His description of the incident with S.G. was consistent with her statement to the police following the incident.

The court had before it V.N.’s contradictory statements, that he had not seen the violent incident, and that he had witnessed it. The latter statement was corroborated by the victim, S.G., in the report she gave to police and in the photographs taken at that time. This provided ample support for the findings that father’s violent altercations against his female companion endangered the children’s health and safety and places them at risk of physical harm and damage.

It appears, as the children’s attorney argued, that V.N. was only able to be forthcoming in describing the incident, his father’s behavior, and his fears, after he and his brother were removed from father’s home for a period of time. The risk of detriment to V.N. from requiring him to testify finds support in father’s own complaint to the social worker after V.N. and the granddaughter were interviewed at school. Father said his son and granddaughter were so traumatized by the social worker interviewing them at school that they no longer wanted to attend that school. The fact that V.N. was subsequently able to testify

in chambers at the disposition hearing several months later has no bearing on the court's finding of a risk of detriment at the jurisdictional hearing, when V.N. had only been out of father's house for a short time.

We find no abuse of discretion in the trial court's conclusion not to allow V.N. to be called as a witness, but we also find no prejudice. V.N.'s statements were corroborated by the police report and the photographs of S.G.'s injuries, and the court found father's testimony was not credible and that he was purposefully evasive in his answers.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.