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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.D. et al., Persons
Coming Under the Juvenile
Court Law.

2d Juv. No. B288597
(Super. Ct. Nos. 17JV00245,
1461205-A)
(Santa Barbara County)

SANTA BARBARA COUNTY
CHILD WELFARE SERVICES,

Plaintiff and Respondent,

v.

J.D.,

Defendant and Appellant.

J.D. (Father) appeals an order of the juvenile court denying his Welfare and Institutions Code section 388 petition to change jurisdictional and dispositional orders involving his children, J.D.

and J.A., persons coming under the juvenile court law.¹ (§ 300, subds. (a), (b)(1) & (g).) We conclude, among other things, that the court did not abuse its discretion by ruling Father did not meet his burden to show a change furthering the children's best interests. We affirm.

FACTS

On May 23, 2017, the Santa Barbara County Child Welfare Services (CWS) filed a juvenile dependency petition. (§ 300, subds. (a), (b)(1) & (g).) It alleged Father was arrested for "the physical abuse of his son, [J.D.]," repeatedly striking him with a belt and causing injury to the child. It said Father had "a pattern of criminal behavior spanning from March 2000" to the present time. Father was unable "to provide regular care for the child" due to his "ongoing substance abuse and criminal activity." Father's two children, J.D. and J.A., were placed "in a confidential foster home."

In a detention report, CWS said Father hit J.D. with a belt, leaving a bruise on the child's leg. J.D. said Father struck him with a belt, and CWS said the "bruise was documented." At a detention hearing, the juvenile court found that the children fell within section 300 and that placing them in the home of their Father or mother would be contrary to the children's welfare.

In a jurisdiction report, CWS noted that J.D. said Father "usually hits [him] with a belt whenever [Father] gets upset, [they] usually don't get along." J.D. said on the day Father was arrested, Father also "punched him in the head." J.D. said he did not want to see Father. In an amended juvenile dependency petition, CWS said J.D. suffered a headache "lasting more than

¹All statutory references are to the Welfare and Institutions Code.

two days” because Father inflicted at least two blows to the child’s head.

At a jurisdiction/disposition hearing, the juvenile court found the allegations of the petition to be true. It declared the children dependents of the juvenile court and found “out-of -home placement is necessary.” It ordered family reunification services be provided to Father and mother. The court required Father to complete a case plan.

In a January 2018 status review report, CWS said that a “home care provider” reported that “during weekly supervised telephone calls,” Father “yelled and screamed” at J.D., stating, “[Y]ou [J.D.] need to tell them (CWS) that you lied about me hitting you.” J.D. told a CWS worker that he “thought his dad would be mad at him because it was his actions that led to his father being arrested and the children being detained.”

Father’s case plan required him to obtain therapy for anger management. The therapist told CWS that Father felt he did not have any issues that needed to be addressed and did not need therapy. An “out of home care provider” informed CWS that J.D.’s behavior and school performance had “deteriorated since visits with his father began in late September and early October.” She believed Father had been “coercing” the children to protect Father.

On November 20, 2017, J.D. told CWS that his statements about Father abusing him were not true. The injury to his leg was not from a belt. He said it was caused “by his bike when he was trying to do some tricks.”

In its assessment, CWS said there is a “recent concern that . . . father may *have coerced* [J.D.] *to recant his initial statement*

at the time of removal regarding the physical abuse [J.D.] reported his father inflicting.” (Italics added.)

Father filed a section 388 petition (JV-180 form). He claimed the juvenile court should terminate its jurisdiction because J.D. recanted his allegations. The court denied the petition. It found Father’s showing on the section 388 petition was insufficient to authorize an evidentiary hearing.

DISCUSSION

Denying the Section 388 Petition

Father contends the juvenile court abused its discretion by denying his section 388 petition without holding a full evidentiary hearing. He claims he met his burden to show new evidence and a change furthering the best interests of his children. We disagree.

Section 388 provides the parent a procedure to change or modify prior juvenile court orders based on new evidence. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) But “[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child.” (*Ibid.*) A prima facie case for an evidentiary hearing is not shown where the petition’s allegations “would fail to sustain a favorable decision even if they were found to be true at a hearing.” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) “In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case.” (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258.)

Father notes that J.D. recanted the abuse allegations against him. In his section 388 petition, Father said the juvenile

court should “[s]et aside the jurisdictional and dispositional orders and terminate jurisdiction” based on this recantation.

The juvenile court found Father’s “showing” on his section 388 petition was “insufficient to allow a hearing.” Question No. 9 on the request to change court order form asks, “Why would the requested order or action be better for the child or youth?” Father’s only response was, “The children would be returned home to the care of their father as a family unit.”

The juvenile court could reasonably find this limited response on the best interests of the children issue was insufficient to support a change of its prior orders. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157; *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 529.) Father presented no facts to show how his conduct had changed, what he had learned in therapy or from his case plan requirements.

Moreover, there is evidence from which the juvenile court could reasonably infer the change Father sought would not be in his children’s best interests. Father relies on the recantation to show he did not abuse his son. But in a July 2017 phone call to CWS, Father admitted that he had previously hit J.D. In discussing discipline he had imposed, he said, “[Y]eah, *I was whipping his ass.*” (Italics added.) J.D. had a bruise on his leg. The bruise was three inches long, linear, and consistent with “a belt mark.” In a January 2018 status review report, CWS said there is “a concern that the father may have *coerced* [J.D.] *to recant his initial statement*” about the “physical abuse [J.D.] reported his father inflicting.” (Italics added.) It noted J.D. was “parroting” a phrase Father had repeatedly made to CWS. It referred to the “weekly” phone calls where Father “yelled and screamed” at J.D. demanding that he change his report to CWS.

The juvenile court could reasonably find Father failed to make a sufficient showing to challenge CWS's claim that the recantation was coerced.

CWS also contends the child abuse issue is not confined to the facts of the latest incident or the recent recantation. It notes Father admitted to police that he had struck J.D. with the belt in a prior incident seven months earlier. Mother told CWS, "I heard that he had spanked [J.D.] before with a belt."

The juvenile court sustained the petition, which included findings that Father's criminal history shows "a pattern of substance abuse and violent crimes such as resisting arrest and fighting." Other findings were that Father did not have the ability "to provide regular care for the [children]." Father failed to make any showing regarding these issues.

In a January 2018 addendum report, CWS notified the juvenile court that Father was recently arrested for violating a probation condition by being "under the influence of alcohol." It said, "This is the second arrest in a period of two years for [Father] that involved both alcohol and his temper."

CWS noted a recurring problem regarding Father's ability to control his anger and obtain therapy. In its January status report, it said, Father has "*not addressed any anger management/coping skills* in counseling, stating that he does not need any help with this." (Italics added.) It said, "[T]he issues necessitating the children's removal from the father's care *have not been fully addressed* and therefore, return at this time is not recommended." (Italics added.) It said Father needed counseling.

In a February 2018 addendum report, CWS noted that it had referred Father to "therapy services." But Father's therapist

reported that she “felt threatened by [Father]” and he had engaged in “‘unacceptable behavior.” Because of this, the Behavioral Wellness therapy program “was having difficulty referring [Father] to a provider.”

CWS referred Father to the CARE ACCESS line to obtain another therapist and provided him the number to call. But Father refused to call or obtain further therapy. He said that he was going to “wait for the trial.” CWS said Father has “a negative attitude about services, such as counseling and parenting classes that he has been referred to.” It said his anger “places the children at risk of further abuse” because he has not learned methods to “deal with conflict in a productive way.” The juvenile court could reasonably infer Father was in denial about his need to change his conduct and his need for therapy. These were factors contrary to the best interests of the children.

DISPOSITION

The order is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Jacques Alexander Love, under appointment by the Court
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