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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re NATHANIEL R., a Person
Coming Under the Juvenile
Court Law.

B291354
(Los Angeles County
Super. Ct. No. CK53704)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

WILLIAM R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Veronica S. McBeth, Judge. (Retired Judge
of the Los Angeles Sup. Ct. assigned by the Chief Justice
pursuant to art. VI, § 6 of the Cal. Const.). Affirmed.

Brian Bitker, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Stephen D. Watson,
Deputy County Counsel, for Plaintiff and Respondent.

This dependency appeal arises out of the juvenile court's custody determination at a status review hearing. Father William R. challenges the juvenile court's determination that it would be detrimental to return his son Nathaniel to his care and custody. We conclude substantial evidence supported the juvenile court's detriment finding and affirm the juvenile court's order placing Nathaniel outside of father's custody.

BACKGROUND

1. Jurisdiction Was Undisputed

On August 29, 2017, the Department of Children and Family Services (DCFS) filed a petition requesting the juvenile court assume jurisdiction over Nathaniel and four half-siblings.¹ Mother and father pled no contest to the following

¹ Mother has at least six children. Some reports refer to a seventh child with unknown whereabouts. Father William (referred to as father) is the father only of Nathaniel, and in the current appeal, father challenges only the order denying him custody of Nathaniel. We therefore summarize the facts relevant to Nathaniel and father. Mother had a lengthy history of referrals dating back to 2003, but these referrals did not include father or Nathaniel.

An allegation in the current case that mother and father created a detrimental environment by possessing

allegations: Mother had a history of substance abuse and currently abused marijuana rendering her incapable of caring for the children. Father abused marijuana rendering him incapable of caring for Nathaniel. Mother and father permitted a “filthy, unsanitary, unsafe, hazardous and endangering home environment for the children in that the home was infested with cockroaches including roaches crawling from the refrigerator and on the children’s bodies. Dirty clothes and other . . . objects were piled on the floor. . . . The child C[.] was a prior dependent of the Juvenile Court due to the mother establishing a filthy, unhealthy and unsanitary home environment for the child.”

After mother and father entered their no contest pleas, the juvenile court took jurisdiction over Nathaniel. The juvenile court found that there was a substantial danger to Nathaniel to remain in the care and custody of mother and father. In November 2017, the juvenile court ordered father to attend a drug and alcohol rehabilitation program as well as a 12-step program. The juvenile court also ordered father to participate in random drug testing, to attend a parenting class, and to attend individual counseling.

2. DCFS’s Reports

On August 24, 2017, officers searched mother and father’s home after observing numerous drug sales from the residence. The children were present during the drug sales. The search uncovered methamphetamine pipes, two scales, a few ounces of marijuana, and five baggies containing methamphetamine. The methamphetamine was located in a garage that was easily

methamphetamine and marijuana in the home within the reach of then three-year old Nathaniel was dismissed.

accessible to the children. Officers found the marijuana inside a bedroom.

Officers later determined that the controlled substances included 18 grams of methamphetamine and over 7 grams of marijuana. The scales contained methamphetamine residue. Mother's phone contained text messages suggesting that she participated in drug sales. Officers who conducted the search reported that mother and father's home was infested with roaches and the children were "dirty." A strong odor from spoiled food interfered with officers' ability to breathe inside the family home.

Shortly after officers searched the home, a social worker observed the home in an "unsanitary, unhealthy, and dangerous" condition. The social worker observed clutter everywhere, and the condition of the home prevented the children from using the bathroom. The children sometimes slept on the floor because the clutter prevented them from sleeping on their beds. Additionally, the children's grandfather was in the living room wearing only a diaper. His diaper was filled with urine and feces.²

Mother and father were arrested for possession of a controlled substance for sale and for child endangerment. Father had prior convictions for driving under the influence and for possession of a controlled substance. At the time mother and father were arrested on August 24, 2017, Nathaniel smelled of urine.

When interviewed by a social worker, mother admitted a history of drug use and current use of marijuana. Mother acknowledged that she smoked marijuana. Mother reported that

² A social worker contacted adult protective services.

father smoked marijuana and that he may have smoked methamphetamine at the same time. According to mother, when father smoked methamphetamine, he would not interact with the family. Mother stated that she stayed home all day and planned to clean the home.

Father reported that he and mother lived together for five years. Father admitted that the methamphetamine in the garage belonged to him. Father acknowledged using marijuana daily and reported that mother also smoked marijuana daily. Father indicated that the condition of the home was “fine” and he was “working on cleaning it up.” Father reported that having narcotics in a home with young children was “[d]umb.” When asked if the home was “safe” for a child, father responded affirmatively.

Nathaniel’s half-siblings reported that roaches infested the house and would crawl on the children who slept on the floor. The children also reported that no one cleaned the house. One of Nathaniel’s half-siblings reported that father did not care for Nathaniel because father “spent most of his time in the garage.” A social worker reported that the kitchen floor in the family home had buckets, tools, and other construction material creating hazards for the children.

3. Father’s Conduct During the Reunification Period

As noted, father’s November 2017 case plan included several programs. In September 2017, prior to the case plan, DCFS provided father with referrals for individual counseling, parenting, drug counseling, and drug rehabilitation programs. At the same time, a social worker asked father about his needs and father responded, “‘I need counseling, I made bad decisions in my life but I’m willing to change.’”

In March 2018, father completed an outpatient drug and alcohol program. Father's counselor at the drug and alcohol program described father as showing "a high level of responsibility in coming to terms with the issue of alcohol/drug use and abuse." Father completed a parenting class in January 2018. From August 2017 through January 2018, father consistently tested negative for controlled substances. Father also enrolled in a 12-step program.

Father initially had monitored visits but progressed to unmonitored visits in April 2018.

In May 2018, father reported that he was on a wait list for individual therapy.

4. Status Review Hearing

On July 11, 2018, the juvenile court held a status review hearing. Father requested that Nathaniel be returned to his custody. Father presented a letter dated July 9, 2018 indicating that he had enrolled in individual therapy. No witness testified. Father's counsel argued that father was "in full compliance" with the case plan and indicated that father had enrolled in individual counseling. Counsel emphasized that father remained sober throughout the reunification period and completed a drug program. The children's counsel argued that therapy was important to address the case issues.

The juvenile court ultimately rejected father's request for the return of Nathaniel to his custody. The court emphasized that father had made substantial progress during the reunification period. But father had not "finished" the case plan because he just enrolled in individual counseling. The court indicated that individual counseling was "essential." The court permitted father overnight visits.

Father timely appealed.

DISCUSSION

Although the juvenile court recognized that father made substantial progress during the reunification plan, it was undisputed that father had just enrolled in individual therapy. The juvenile court concluded that individual therapy was an “essential” part of father’s case plan and that returning Nathaniel to father’s care would be detrimental to Nathaniel. As we shall explain, substantial evidence supported the juvenile court’s conclusion. (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424 [appellate court reviews detriment finding for substantial evidence].)

Welfare and Institutions Code³ section 366.21, which governs status review hearings, provides in pertinent part: “At the review hearing . . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.” (§ 366.21, subd. (e)(1).) “[T]he purpose of the reunification plan is ‘to overcome the problem that led to removal in the first place,’ ” and a parent’s

³ All statutory citations are to the Welfare and Institutions Code.

progress is relevant in assessing whether it would be detrimental to return a child to the parent's custody. (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1483.)

To the extent father argues that he substantially complied with the portions of the case plan addressing his substance abuse, we agree. As father emphasizes, he consistently tested negative for controlled substances and completed a drug program. The juvenile court recognized this progress and permitted him overnight visits. However, the fact that father made substantial progress in addressing his substance abuse does not undermine the conclusion that father failed to make progress in individual counseling, an essential part of father's case plan.

In challenging the detriment finding, father ignores the sustained allegations that he created a "filthy, unsanitary, unsafe, hazardous and endangering home environment for the children." The extreme clutter prevented entry into the bathroom. Cockroaches crawled throughout the house, including on the children. Nathaniel smelled of urine when he was removed from father's custody. Father's description of the condition of the house as "fine" and "safe" indicated a lack of insight into the need to provide an appropriate home for his young child. No subsequent evidence showed that father had gained insight into this condition, which had led to Nathaniel's removal from father's care. Father's acknowledgment (in September 2017) that he needed counseling, further supported the juvenile court's order. In short, the juvenile court's custody order was supported by substantial evidence.

DISPOSITION

The order is affirmed.

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BENDIX, J.

We concur:

CHANEY, Acting P. J.

WEINGART, J.*

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