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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B298073
(Los Angeles County
Super. Ct. No. 19CCJP01267)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

N.R.,

Defendant and
Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Patricia G. Bell, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Kimberly Roura, Senior Deputy County Counsel, for Plaintiff and Respondent.

N.R. (father) appeals from a dispositional order limiting the time and location of unmonitored visitation with his daughter, A.R., who was declared a dependent under the Welfare and Institutions Code section 300, subdivision (b).¹ Father also challenges the juvenile court's order that he participate in individual counseling. We find no abuse of discretion and affirm the court's order.

FACTS

The underlying dependency proceedings involve two children: A.R. (born 2015) and J.M. (born 2012).² Father only appeals the juvenile court's dispositional orders regarding his daughter, A.R.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Father is not J.M.'s biological father. J.M.'s biological father is not a party to the dependency proceedings.

Prior dependency case

In April 2016, Los Angeles County Department of Children and Family Services (Department) filed a petition under section 300, subdivision (b), after father drove the children in a vehicle while under the influence of alcohol and collided with two parked vehicles. The juvenile court sustained petition allegations about father's driving and alcohol abuse, as well as drug and alcohol abuse by A.M. (mother). The court ordered both parents to participate in parenting, individual and conjoint counseling, a substance abuse program, and weekly drug testing. Both parents complied with their case plans. However, father was "quiet and reserved" during therapy, and father's therapist noted that both the individual and conjoint counseling "appeared to be a little difficult" for him. On December 31, 2017, the court terminated jurisdiction, granted parents joint legal and joint physical custody of A.R., and granted sole physical custody of J.M. to mother.

Interim period

The parents and children all resided with paternal grandmother, who was the de facto primary caregiver for the children. The parents "came and went" from the home, knowing that paternal grandmother would take care of the children.

On February 2, 2018, and again on June 20, 2018, father was arrested for charges concerning prostitution and a probation violation. After the June 2018 arrest, father remained incarcerated, with an anticipated release date of April 2019. Paternal grandmother died in July 2018, but mother stayed in her apartment until she was forced to move in September 2018. In September 2018, mother was arrested for driving under the influence.

In October 2018, the Department received a referral regarding mother showing up intoxicated to pick up J.M. from school. The referral was closed as inconclusive.

Current dependency proceedings

The current dependency proceedings commenced in February 2019, when the Department received a referral detailing a car accident involving mother and the children. The accident occurred when mother's friend was driving mother and both children³ home from a party. Both children were unsecured in the vehicle; J.M. was sitting on the floor in the backseat, and A.R. was sitting on mother's lap. J.M. was taken to the hospital, where he stayed overnight and was given stitches. Mother appeared to be under the influence at the hospital and smelled of alcohol. Mother was "very belligerent" and became "hysterical."

³ Mother denies that A.R. was in the car when the accident happened, although J.M. and A.R. herself claim that she was.

On February 8, 2019, mother dropped off the children at paternal aunt's house, and asked her to watch them because she was concerned "the Department was going to take her children," and she "had nowhere to leave them."

In late February, the court granted a removal order and placed the children with paternal aunt. The Department's petition alleged that mother had a history of substance abuse, and had placed the minors in an endangering situation when the car accident occurred. At the detention hearing, the court found a *prima facie* case for detaining the children from mother and ordered a pre-release investigation (PRI) for father. The court ordered monitored visitation for both parents.

The Department's PRI report explained that father was currently incarcerated and expected to be released around March 22, 2019. Father had no definite plan of where he would reside once he was released. Paternal aunt stated that she was unable to have father reside with her. She was worried that if the children were released to father, he would allow mother to have unrestricted access to them. She stated that "father does not seem to understand the 'gravity of the situation.'" Also, paternal aunt was worried about father's ability to care for the children on his own, as he has never done so before. The Department recommended that the children not be released to father, because the Department had concerns regarding father's ability to care for the children upon his release, and he had no solid plan of where he would reside. On March 13, 2019, the court noted

in a minute order that the PRI report was negative, meaning custody of the children would not be given to father upon his release.

Father was released from custody on March 21, 2019. He reported that he had been staying with mother “on occasion and the rest of the time at other locations and does not have a permanent residence.”

In April 2019, paternal aunt again expressed concern about the children returning to the care of the parents. She indicated that neither parent had been consistent with their visitation, and that mother and father are “on and off with their relationship.” She felt that father was more interested in pursuing mother than caring for the children.

The Department’s April 2019 jurisdiction and disposition report recommended that the children not be released to father, since the Department had concerns that father was not properly equipped to care for the children. He had only recently been released from jail, had no stable residence, and no source of income. The Department was concerned that if the children were released to father he would allow mother to have unlimited access to them. The Department recommended monitored visitation for father.

A last minute information report stated that paternal aunt requested “to separate the parents visits because the parents are unstable and the kids are becoming a pawn between them.”

At the April 24, 2019 adjudication and disposition hearing, the court denied father’s request for a continuance

to subpoena paternal aunt. Father wanted to cross-examine paternal aunt about her refusal to allow father to reside with her. Father intended to argue that if paternal aunt would allow father to move in with her, then the children should be released to him. However, the court noted that if paternal aunt did not want father to live with her, there was nothing the court could do.

The Department's attorney argued that the parents have a "very volatile relationship." Paternal aunt told the social worker that "she believes the father will not abide by the court order and would allow mother to have unrestricted access to the kids." The parents were originally allowed to visit together, but it was "volatile between them" during the visits "and the kids have been sort of used as a pawn between them." This was the family's second time in dependency court. "So given the backdrop of their problems with substance abuse, the Department would like to see a few clean random tests and figure out where the father is staying before deciding on unmonitored visits."

Minor's counsel joined the Department's arguments. In response to argument from minor's counsel, the court granted father unmonitored visits, on the condition that the visits be in a public place, and that father notify the Department when and where the visits were to take place, so that a social worker could ensure that father was not allowing mother to attend the visits. Minor's counsel pointed out that father had said he resides with mother and neither parent had been consistent with their visits. Minor's

counsel argued that if the court were to grant unmonitored visitation, it should impose certain conditions. The court responded, “I definitely have conditions.” Specifically, the court ordered that father cannot be around mother. Minor’s counsel further requested that the visits be in a public setting, to which the court replied, “Yes. Certainly.” Further, minor’s counsel requested “unannounced . . . visits from the social worker and father to notify the social worker where the visits are occurring.” The court responded, “Well, okay. So we can have unannounced visits somewhere where the social worker could pop in and make sure that he’s by himself with the child.”

The court then clarified its orders: “Father . . . will have unmonitored visits with [A.R.] on the following conditions: He’s to notify the social worker where the visit will take place; it’s to be in a public place; mother is not to be present [¶] . . . [U]nmonitored visits are to be permitted. The worker is to be notified exactly when and where the visits will occur.” Father’s attorney asked, “[C]an it be a minimum of six hours?” The court responded, “Up to six hours per week unmonitored for [father].”

Finally, minor’s counsel asked if the court would be ordering father to participate in any programs, noting that a case plan had been submitted. Father’s counsel noted that father had completed all the programs from the prior dependency case. The court responded, “Well, so long as it’s current, I don’t care. If it’s done -- he’s ordered to do the parenting and the individual counseling.” The court advised

father's attorney to provide proof to the Department that father completed the prior classes. Father's counsel said that they have proof already. The court noted, "Well, apparently they want current classes." The court ordered "[p]arenting and individual counseling to address case issues."

On May 20, 2019, father filed a notice of appeal.

DISCUSSION

Father contends the juvenile court erred when it ordered that the visits take place in public, and that they not exceed six hours per week. Father also contends that the juvenile court erred in requiring him to participate in individual counseling. We find no abuse of discretion.

We review an order setting visitation terms for abuse of discretion. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699, fn. 6; but see *In re Mark L.* (2001) 94 Cal.App.4th 573, 581, fn. 5 [stating the reviewing court determines whether the order is supported by substantial evidence].)

"We will not disturb the order unless the trial court made an arbitrary, capricious, or patently absurd determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)" (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

The juvenile court may make "any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child." (§ 362, subd. (a).) In

addition, the juvenile court “may direct any reasonable orders to the parents . . . of the child . . . as the court deems necessary and proper to carry out this section.” (§ 362, subd. (d).) “The program in which a parent . . . is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (*Ibid.*) But the court “is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the [child].” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) The court acts within its discretion when its orders are reasonably tailored to advance a child’s best interests. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 187.)

“[T]he court must define the rights of the parties to visitation. The definition of such a right necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and length of visitation. The court may, of course, impose any other conditions or requirements to further define the right to visitation in light of the particular circumstances of the case before it.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

Visitation

Father argues the juvenile court abused its discretion by requiring his visitation to take place in a public setting and limiting his weekly visitation to six hours. The record evidence shows that the court's restrictions on father's visits were not an abuse of discretion.

The record is replete with evidence regarding paternal aunt's and the Department's concerns about father's ability to adequately care for A.R. While monitoring the parents' earlier joint visitation, paternal aunt described the parents as being "unstable and the kids are becoming a pawn between them." Further, paternal aunt was worried that "father does not seem to understand the 'gravity of the situation.'" Also, paternal aunt expressed doubt as to father's ability to care for A.R. on his own, as he has never done so before, given that paternal grandmother previously cared for the children. Paternal aunt felt as though father was more interested in pursuing mother than caring for the children. The Department also determined that father was not properly equipped to care for the children, as he had only recently been released from jail, had no stable residence, and no source of income. In addition, the Department was concerned that if A.R. was released to father he would allow mother to have unlimited access to her.

Father argues that the underlying purpose of the visitation conditions—i.e., to ensure that mother is not

present during father's visits—is not advanced by requiring that the visits occur in public, and not exceed six hours a week. Father's argument ignores the fact that the court imposed the conditions as a less-restrictive alternative to monitored visitation, which both minor's counsel and Department's counsel were requesting. On the facts previously outlined, given father's lack of parenting experience and concerns about mother's presence during visits, an order placing limits on the amount of time the children were in father's care and requiring monitored visitation for father were within the juvenile court's reasonable discretion. During the hearing, the juvenile court clarified that the primary purpose of such conditions was to facilitate the social worker's ability to make unannounced check-ins. Imposing conditions that limit the time and place of father's visitation were reasonably designed to ensure father would be accessible to the social worker so that father would not provide mother with unauthorized access to the children. The imposition of limiting conditions upon a parents' visitation is clearly within the juvenile court's broad discretion, and it is not our role to second-guess the rationale of such an order.⁴

⁴ The Department also argues that since father did not object to the order that his visits take place in public, he has forfeited this issue on appeal. In light of our conclusion that the court's order does not constitute an abuse of discretion, we decline to reach the question of forfeiture.

Individual Counseling

Father argues the juvenile court abused its discretion by requiring him to attend individual counseling. He argues that he previously completed individual counseling as part of the reunification plan ordered in the prior dependency case. Further, he has not engaged in any conduct since then that placed A.R. in danger. Rather, father argues that it was solely mother's conduct that initiated the instant dependency proceedings, and thus the juvenile court had no basis to require him to participate in individual counseling.

Father relies on *In re Jasmin C.* (2003) 106 Cal.App.4th 177, where the court of appeal reversed a juvenile court order requiring a nonoffending parent to attend a parenting class because there was no substantial evidence that either the parent or the minor child would derive any benefit from the class. (*Id.* at pp. 181–182.) Our case is distinguishable because the Department has set forth a litany of reasons why both father and A.R. would benefit from father's participation in individual counseling, despite the fact that father is a nonoffending parent. We agree with the Department that individual counseling will assist father in overcoming the many obstacles to family reunification. Specifically, individual counseling will assist with father's reentry into society following his incarceration, dealing with the loss of paternal grandmother, losing of custody of his children, mother's struggles with sobriety, and father's

strained relationship with mother. These ongoing issues, all of which have arisen since the completion of the prior dependency case, may understandably interfere with father's ability to make choices that are in the children's best interests. Therefore, the juvenile court was well within its discretion to require father to attend individual counseling.

DISPOSITION

The court's dispositional order is affirmed.

MOOR, J.

We concur:

RUBIN P. J.

KIM, J.