Filed 4/17/18 In re C.F. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re C.F., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B282899 (Super. Ct. No. PJ52374) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. C.F., Defendant and Appellant.	

C.F. appeals a juvenile court's probation condition that he attends counseling at a batterer's treatment program (Pen. Code, § 1203.097),[1] following the sustaining of a Welfare and Institutions Code section 602 petition finding that he committed battery on his girlfriend. (§ 243, subd. (e)(1).) We conclude,

[1] All statutory references are to the Penal Code unless otherwise stated.

among other things, that the court did not err by imposing a batterer's treatment condition. We affirm.

FACTS

On February 15, 2017, the People filed a Welfare and Institutions Code section 602 petition in the juvenile court alleging that C.F. committed battery (§ 243, subd. (e)(1)) on M.R., a person who had "a dating relationship" with him. In the petition the People requested that C.F. be declared a ward of the juvenile court.

At the hearing M.R. testified that she and C.F., 16 years of age, had a "dating" relationship for "about a year." In September 2016, M.R., who was seven months pregnant, had an argument with C.F. She was upset because he failed to agree to "buy things" for the baby after its birth.

C.F. became "angry." He repeatedly grabbed M.R.'s arm. M.R. told him to stop because "it hurt." He let her go and then pushed her repeatedly with the palm of his hand. The argument ended when C.F.'s parents came out and told them to "stop fighting." M.R. testified C.F. pushed her "pretty hard" and "it hurt." This ultimately resulted in "noticeable marks" and a "bruise" on her arm. The bruise was yellow and black in color and visible for a month.

After this incident, M.R. showed C.F. her arm. He started "crying" and apologized. M.R. did not report the incident to the police until two months later. She "felt bad" for C.F. Her mother urged her to contact law enforcement.

In prior incidents C.F. had pushed M.R. when she first became pregnant. He had also pushed her in a park when she was six months pregnant.

A.F., C.F.'s sister, testified that she had never seen C.F. "act aggressive or violent or hit [M.R.] at any time." In an incident in January 2016, she saw M.R. slap C.F. "in the face, and then [he] walked out of the room."

After the hearing, the juvenile court found the allegations in the petition were true. It said that the "[o]ffense is declared to be a . . . misdemeanor." The court found C.F. "is a person described by Section 602 of the Welfare and Institutions Code." It placed him "home on probation." The court ordered C.F. to receive counseling in "the batterer treatment program as described in section 1203.097, [for] not less than one year of treatment."

DISCUSSION

The Batterer's Treatment Condition

C.F. contends the batterer's treatment program required by section 1203.097 does not apply to juvenile dispositions. He contends the order imposing a treatment program condition must be reversed.

Our task ""is to determine the Legislature's intent so as to effectuate the law's purpose."" (*People v. Scott* (2014) 58 Cal.4th 1415, 1421.) ""We begin by examining the statute's words, giving them a plain and commonsense meaning."" (*Ibid.*)

Section 1203.097, subdivision (a)(6) provides, in relevant part, "If a *person* is *granted probation* for *a crime* in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include . . . [¶] [s]uccessful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year . . . ." (Italics added.) Family Code section 6211, subdivision (c) defines

"[d]omestic violence" to include "abuse perpetrated against any of the following persons: [¶] . . . A person with whom the respondent is having or has had a dating or engagement relationship."

C.F. contends this statute applies only to adult offenders because it refers to "a crime." He notes that "'[a]n order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.'" (*In re T.C.* (2009) 173 Cal.App.4th 837, 850.) The People claim that under section 1203.097, C.F. is a "person" who was granted "probation" after a sustained finding that he committed battery on his girlfriend. They contend he falls within the words of the statute and the statute applies to all juvenile cases.

But the parties' opposing positions rely exclusively on the statutory language. In addition to the words of the statute, we must also consider the statute's purpose. (*Westfall v. Swoap* (1976) 58 Cal.App.3d 109, 113, 116.) """[A] thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers."'" (*Id.*, at p. 116; see also *California Fed. Sav. & Loan Assn. v. Guerra* (1987) 479 U.S. 272, 284; *Church of the Holy Trinity v. United States* (1892) 143 U.S. 457, 459.) "Statutes should be given a construction consistent with the legislative purpose and that purpose should not be sacrificed to a literal interpretation." (*Silberman v. Swoap* (1975) 50 Cal.App.3d 568, 571.)

Section 1203.097, subdivision (c)(1) provides, "The goal of a batterer's program under this section shall be to stop domestic violence." Section 1203.097 is intended to apply to cases involving domestic victims who are subject to a "violent assault."

(*People v. Cates* (2009) 170 Cal.App.4th 545, 551.) The Legislature envisioned a broad scope for its application. It "does not apply only to defendants charged with specified offenses." (*Id.* at p. 550.)

The Legislature may enact Penal Code provisions that it intends to apply in both adult and juvenile criminal cases. (See, e.g., *In re Jovan B.* (1993) 6 Cal.4th 801, 816-817.) Or it may envision a Penal Code provision to apply to adult cases which a juvenile court may elect to apply in appropriate juvenile cases. Here, consistent with section 1203.097's purpose and the juvenile court's authority, a juvenile court may elect to order batterer's treatment in appropriate cases where it is beneficial for the ward's rehabilitation.

The purpose of section 1203.097 is to both rehabilitate the batterer and protect the victims. This broad remedial statute does not specify an age limit for batterers subject to counseling. Domestic violence is not committed exclusively by adults or by persons of only one age group. Batterers' programs may vary in content based on the age of the program's participants. Consequently, the Legislature authorized probation departments to consider the batterer's age "in determining which batterer's program would be appropriate." (§ 1203.097, subd. (b)(1).) Applying the statute to some younger juveniles might be questionable in some cases. But for adults and minors approaching adulthood, these programs may be beneficial.

Applying this statute to the facts of the present case furthers the underlying goal of section 1203.097. C.F. fathered a child. At the time of the disposition, he was an older minor who intended to enlist in the U.S. military. This probation condition has a rehabilitative purpose. The March 30, 2017, probation

officer's report noted that C.F., then 17 years of age, needs "redirection," and would benefit from "domestic violence counseling." C.F. claims the statute applies to adults. But C.F. is now over 18 years of age. Given his age, C.F. is in many ways in a similar position to an adult batterer convicted in a criminal court who is subject to a batterer's treatment requirement under section 1203.097.

Under Welfare and Institutions Code section 730, the juvenile court has "broad" authority to "make dispositional orders and impose conditions . . . ." (*In re Ronny P.* (2004) 117 Cal.App.4th 1204, 1207.) Juvenile courts often consult the Penal Code "for guidance in construing procedural statutes appearing in the Welfare and Institutions Code." (*In re T.C.*, *supra*, 173 Cal.App.4th at p. 850.) The juvenile court may "make any and all reasonable orders for the conduct of the ward" for his or her "reformation and rehabilitation." (*Ronny P.*, at p. 1207.) This includes, for example, the authority to require the ward to participate in a sex offender treatment program (*In re Robert M.* (2013) 215 Cal.App.4th 1178, 1184), or to participate "'in a program of professional counseling as arranged and directed by the probation officer . . . .'" (*Ibid.*)

"[E]very juvenile probation condition must be made to fit the circumstances and the minor." (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.) It must be related to the sustained finding regarding the minor's unlawful conduct. (*Ibid.*) Here this condition is for the purpose of rehabilitating a ward who needs counseling to help him to learn how to stop the aggressive tendencies that caused his violent conduct. The condition is directly related to his domestic battering conduct. The juvenile court may rely on the probation department's recommendation

for counseling "to promote and nurture" the ward's "rehabilitation." (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1243.) The Welfare and Institutions Code envisions counseling as a method for the rehabilitation of juveniles. (*In re C.Z. (*2013) 221 Cal.App.4th 1497, 1508; *In re Robert M.*, *supra*, 215 Cal.App.4th at p. 1184.) Batterer's treatment is a counseling program.

C.F. notes the juvenile court said domestic violence counseling is "mandatory under [section 1203.097]." He claims this shows the court did not realize it had discretion as to whether to impose this counseling condition for a minor. But this was a comment the court made during oral argument before it made the formal order imposing the probation conditions. "It is settled law that the remarks made by a trial judge during a trial or argument . . . cannot be used to impeach a formal decision, order or judgment later made or entered." (*Birch v. Mahaney* (1955) 137 Cal.App.2d 584, 588.) But even had C.F. shown this remark was part of the reasoning for the court's ultimate decision, the result would not change.

"A fundamental principle of appellate review is that a judgment correct in law will not be reversed merely because given for the wrong reason; we review the trial court's judgment, not its reasoning." (*Mayer v. C.W. Driver* (2002) 98 Cal.App.4th 48, 64; *Estate of Beard* (1999) 71 Cal.App.4th 753, 777.)

Moreover, if the court would have imposed the same order had it not made the allegedly mistaken interpretation of the law, no purpose would be served by ordering a remand. (*People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896.) This is such a case.

Here C.F.'s conduct was serious. The probation report reflects that his "dangerous behavior cannot go unchecked. This

minor is *in need of domestic violence classes . . . .*" (Italics added.) The court followed the probation report recommendations. In the juvenile court C.F. made no objection to this condition and no showing why such counseling would be inappropriate. On appeal, he also made no sufficient showing to demonstrate why this condition would not be for his benefit. The juvenile court felt progress in his domestic violence counseling was so important that it said, "[W]e will monitor that progress." It also set an August 11th appearance date for a "progress report." The counseling condition was imposed in May 2017, and C.F. turned 18 years old during a significant part of the one-year treatment program.[2]

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

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[2] C.F.'s motion to file a supplemental opening brief is denied as untimely. This denial is without prejudice to C.F. raising the claim that his counsel provided ineffective assistance in objecting to the restraining order. This claim should initially be raised in the trial court. (*People v Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Morton Rochman, Judge

Superior Court County of Los Angeles

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