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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re F.R. et al., Persons Coming Under
the Juvenile Court Law.

B262468
(Los Angeles County
Super. Ct. No. DK08343)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Matthew J. Hardy, under appointment for the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

C.R. (Father) appeals from the juvenile court's dispositional order declaring F.R., age 17 (Older Brother), and E.R., age 16 (Younger Brother) (collectively Brothers), dependents of the court. Father contends (1) the court erred in detaining Brothers from him as a noncustodial parent and (2) this error was prejudicial because it interfered with him asserting his noncustodial parental rights and may disadvantage him in this matter and future matters. We disagree and affirm.

BACKGROUND

On November 13, 2014, a domestic violence dispute erupted at L.B.'s (Mother) home between Brothers and Father. Older Brother and Father both sustained injuries. Based on this violence, the Los Angeles County Department of Children and Family Services (DCFS) subsequently detained Brothers and temporarily placed them in a group home. DCFS filed a dependency petition in the superior court on November 18, 2014. The typed petition incorrectly listed both Mother's and Father's addresses. Mother's and Father's addresses were typed as slightly different from each other's, however. Mother's and Father's addresses were crossed out and rewritten by hand; Father's address was corrected but Mother's remained slightly incorrect. Father's handwritten address was also written as different from Mother's. Although the addresses were initially incorrect, the attached DCFS report correctly stated Father did not live with Mother or Brothers.

At the detention hearing on November 18, 2014, the court released Brothers to Mother, but found "continuance in the home is contrary to [Brothers'] welfare." It further specified that "minors are detained from Father." That same day, the court issued a temporary restraining order (TRO) against Father for Mother and Brothers, but allowed Father twice weekly monitored visits for three hours with a DCFS-approved monitor.

At the jurisdictional and dispositional hearing on February 26, 2015, the court stated Mother "shall retain physical custody of these boys. But they're placed under the supervision of the Department of Children and Family Services so that she can receive family maintenance services, and [Father] can receive enhancement services." The court further stated Father was "to have monitored visitation." The minute order reflected the oral proceedings. Neither the trial transcript nor the minute order reflect the court

removing Brothers from Father's custody. Father did not argue at any point the court's removing custody would be improper. Father appealed.

DISCUSSION

On appeal, Father contends the court erred in detaining Brothers from him during the November 18, 2014 hearing because, as a noncustodial parent, it was not possible for the court to detain Brothers from him. He further argues this erroneous ruling prevented him from exercising his noncustodial parental rights and may be prejudicial in the future. We disagree and affirm.

Under the Welfare and Institutions Code, noncustodial parents retain certain rights during dependency proceedings.¹ For example, the superior court cannot detain and remove custody from a noncustodial parent because “[t]here can be no removal of custody from a parent who does not have custody in the first place.” (*R.S. v. Superior Court* (2007) 154 Cal.App.4th 1262, 1270.) In addition, the noncustodial parent also has limited custodial rights when the child is removed from the custodial parent. (§ 361.2.)

Father is correct that both logic and the law dictate that a court cannot remove custody from a noncustodial parent by detaining a child. (*R.S. v. Superior Court, supra*, 154 Cal.App.4th at p. 1270.) The order detaining Brothers from Father, however, was temporary and likely the product of justifiable but later-resolved confusion about whether Father was a custodial parent. The dependency petition initially incorrectly listed both Mother's and Father's addresses, but the addresses were similar enough that one could reasonably assume the differences were merely typographical errors and Father and Mother lived together. (The petition listed Mother's apartment and Father's apartment as separately numbered complexes on the same street.) Further, DCFS reported the domestic violence dispute occurred at Mother's home, where Father was present and in “the bedroom” at points. DCFS also reported Father had awakened around 6:30 a.m. the day of the violence and attempted to wake up Older Brother. The night of the dispute, Mother told DCFS both she and Father would appear at DCFS's offices. Although a

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

more careful reading of the DCFS report shows Father was actually a visitor in Mother's home, a skim reading could leave the reader with the impression Father lived in Mother's home. Considering the court issued a TRO against Father to protect Mother and Brothers the same day of the hearing and likely thought Father lived in Mother's home, it is understandable why the court detained Brothers from Father as an initial, temporary matter.

By the time of the jurisdiction and disposition hearing, the court was aware Father did not reside in Mother's home and was a noncustodial parent. With this knowledge, the court did not remove custody from Father at the hearing and ordered that "[a]ll prior orders not in conflict [with this order] shall remain in full force and effect." The initial detention order was in conflict with the dispositional order and was therefore superseded by it. The court's order for enhancement services rather than reunification services for Father confirms the court treated Father as a noncustodial parent. (*In re A.L.* (2010) 188 Cal.App.4th 138, 142–144 & fn. 2 [describing how reunification services are meant for custodial parents and enhancement services are meant for noncustodial parents].)

Father argues the initial detention order prevented him from asserting his noncustodial parental rights. He does not assert it interfered with any of his other rights. The rights Father asserts were infringed under section 361.2, however, apply when custody is removed from a custodial parent. The court released Brothers to Mother as the custodial parent at the detention hearing and ordered them to remain with her at the jurisdiction and disposition hearing. Because the court never removed custody from Mother, Father was never able to assert these rights and therefore has not suffered harm by not being able to assert them.

Father also argues the detention order may prejudice him in this proceeding and future proceedings. Father was not and will not be prejudiced in these proceedings by the initial detention order because Father's noncustodial rights were not implicated prior to the dispositional hearing and the court is now aware of and responsive to Father's noncustodial status; Father does not appeal any other finding or order. (See Cal. Const., art. VI, § 13; *In re Abram L.* (2013) 219 Cal.App.4th 452, 463 [stating that an error is

prejudicial when “““it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error”””].) As to future matters, the court’s temporary detention order will not be prejudicial as it is now superseded by a dispositional order, which does not contain a custody removal order based on findings removal was necessary for the Brothers’ welfare. (§ 319, subd. (b).)

DISPOSITION

The dispositional order is affirmed.

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LUI, J.

We concur:

CHANNEY, Acting P. J.

JOHNSON, J.