Filed 9/11/17 In re Z.F. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Z.F., a Person Coming Under the Juvenile Court Law.	B277603 (Los Angeles County Super. Ct. No. DK16062)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.F. et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County, Akemi Arakaki, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant E.F.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant Jessica P.-F.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

E.F., the presumed father of five-year-old Z.F., concedes substantial evidence supported the juvenile court's finding he sexually abused his daughter on numerous occasions and its order declaring her a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (d) (sexual abuse).[1] Nonetheless, E.F. appeals the juvenile court's June 14, 2016 order removing Z.F. from his care and custody and releasing her to her mother, Jessica P.-F., and its June 20, 2016 order terminating dependency jurisdiction with an order granting sole legal and physical custody to Jessica. E.F. also challenges that portion of the court's June 20, 2016 order that granted him monitored visitation with Z.F. once each week in a therapeutic setting "as long as the individual therapist for the minor is comfortable with the visits." We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

E.F. and Jessica were married in 2010 and separated in 2012 shortly after Z.F. was born. They were in the process of divorcing when dependency proceedings were initiated. Z.F. lived with Jessica and visited E.F. every other weekend.

In early March 2016 the Los Angeles County Department of Children and Family Services (Department) received a referral reporting E.F.'s sexual abuse of Z.F. On March 15, 2016 the

---

1 Statutory references are to this code.

Department filed a section 300 petition alleging E.F. had sexually abused Z.F. on numerous occasions by touching, fondling and digitally penetrating the child's vagina and buttocks with his fingers. The detention report filed with the petition summarized interviews by social workers with Z.F., Jessica, and Z.F.'s maternal grandmother, as well as a police report regarding the allegations of sexual abuse. Z.F.'s repeated descriptions of her father's conduct—she told her mother he had placed his hand on her vagina and moved his fingers "like a piano"—were essentially consistent. A report from the Santa Monica Rape Treatment Center, which had conducted a forensic examination of Z.F., noted redness, irritation and some abrasions but stated, "Normal exam: can neither confirm nor negate sexual abuse."

At the detention hearing on March 15 and 16, 2016 the court released Z.F. to Jessica under the Department's supervision and made emergency detention findings with respect to E.F., limiting him to monitored visitation in a therapeutic setting one time per week. At E.F.'s request the court scheduled a contested jurisdiction hearing for May 26, 2016.

For the Department's jurisdiction/disposition report, the dependency investigator did not reinterview Z.F. because her statements had been consistent when interviewed by the children's social worker and law enforcement and the investigator did not want to contribute to her trauma by requiring her to revisit her father's abusive conduct. Jessica and the maternal grandmother provided statements that were consistent with their prior statements regarding Z.F.'s descriptions of E.F.'s behavior. The investigator was unable to interview E.F., who said he needed to consult with his attorney before he would consent to discuss the allegations of sexual

abuse. (Ultimately, no criminal charges were filed against E.F.) The Department's report recommended the juvenile court sustain the petition, provide E.F. with enhancement services, limit him to monitored visitation with Z.F. and provide family maintenance services to Jessica.

E.F. testified at the jurisdiction hearing on May 26, 2016. He denied inappropriately touching Z.F. and said he believed Jessica was responsible for prompting Z.F.'s allegations of sexual abuse as a tactic in their dissolution proceedings. He acknowledged having a conviction for perjury (for providing fake identification to the Department of Motor Vehicles) and a history of abusing alcohol.

After hearing argument on June 14, 2016, the court sustained the allegations in the petition under section 300, subdivisions (b) and (d). Explaining its view of the case, the court stated, "I understand there is always this problem, unease when we worry that a family law case is bleeding over into our court. But after review of all the reports, it does appear that the child has been consistent throughout, and I do believe quite credible through the information that's been provided. There are oftentimes we get forensic exams that can neither confirm [n]or deny any abuse. And based on the information that is—that she provided and lack of physical injury or aftermath, I think consistent as well."

The court proceeded immediately to disposition with the consent of all counsel. As in its jurisdiction/disposition report, the Department recommended a home-of-parent (mother) order with family maintenance services for Jessica and enhancement services for E.F. The Department also asked the court to order E.F.'s visits with Z.F. be monitored in a therapeutic setting and

that E.F. and Z.F. participate in conjoint counseling when the therapist deemed it appropriate. Z.F.'s counsel observed that the child was safely placed with a nonoffending parent and asked the court to terminate the dependency case with a family law order granting Jessica sole legal custody. She "submit[ted] the matter to the court with respect to legal custody and monitored visits for the father."

Jessica's counsel agreed the dependency case should be closed, noting Jessica was capable of providing Z.F. with whatever services she required, and requested the family law order provide Jessica with sole physical and legal custody. E.F.'s counsel then stated, "We would not object to closing the matter, but we would request joint legal so that the father still has some say." Counsel for the Department objected on behalf of her client to closing the case.

The court declared Z.F. a dependent of the court pursuant to section 300, subdivisions (b) and (d), and removed the child from E.F.'s physical custody "pursuant to WIC 361(c)." Noting there was a nonoffending mother who has been cooperative with the Department throughout the proceedings and E.F. was not opposed to the court closing the case, the court ordered the case closed upon receipt of a juvenile custody order granting the mother sole legal and physical custody. The court initially stated E.F. would have monitored visits in a therapeutic setting one time per week. When counsel for Jessica inquired if the court was leaving it up to the discretion of the therapist whether or not visitation was appropriate, the court stated, "I am going to indicate one time per week in a therapeutic setting as long as the individual therapist is comfortable with the visit." The court

then asked E.F.'s counsel, "Are you comfortable with that?" Counsel responded, "Yes, your honor."

The juvenile custody order filed June 20, 2016 closely tracked the language of the court's order at the June 16, 2016 hearing. Jessica was awarded sole legal and sole physical custody of Z.F. E.F. was to have "[m]onitored visitation in a therapeutic setting only to occur one (1) time per week as long as the individual therapist for the minor is comfortable with the visits. Visits shall continue to be monitored until Father, [E.F.], has made substantial progress in a sex abuse program for offenders, parenting class, and individual counseling to address case issues."

CONTENTIONS

E.F. contends the evidence, although sufficient to support the juvenile court's jurisdiction findings, did not establish by clear and convincing evidence the need to remove Z.F. from his physical custody. He also argues that termination of dependency jurisdiction was premature, depriving him of services that would permit him to reform and, ultimately, reunify with Z.F. Finally, E.F. contends the court erred in conditioning his visitation on the therapist's approval.

DISCUSSION

1. *Substantial Evidence Supports the Disposition Order Removing E.F.'s Custodial Rights*

As this court explained in *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346, 353-354, in making its disposition orders the juvenile court has broad discretion under sections 361, subdivision (a)(1), and 362, subdivision (a), to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court's supervision.

Although those provisions, not section 361, subdivision (c), cited here by the juvenile court, apply in this case because Z.F. was living with Jessica at all relevant times,[2] the disposition order displacing E.F.'s limited custodial rights (visitation every other weekend) had to be based on clear and convincing evidence of the need for the order to protect Z.F. from severe neglect or physical harm. (*In re Anthony Q.*, at p. 354, fn. 11; *In re Dakota J.* (2015) 242 Cal.App.4th 619, 630-631.) E.F.'s argument the Department failed to carry this burden of proof lacks merit.[3]

---

[2] Section 361, subdivision (c), applies only when the issue is whether to remove a dependent child from the physical custody of a parent with whom the child was residing at the time the dependency petition was initiated. (*In re Anthony Q.*, *supra*, 5 Cal.App.5th at p. 347.)

[3] The Department argues E.F. forfeited this issue by failing to object to the juvenile court's disposition order. Although the Department is correct that an appellate court ordinarily will not consider challenges based on procedural defects or erroneous rulings where an objection could have been but was not made in the juvenile court (see *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [forfeiture doctrine applies in dependency proceedings]), the contention a judgment is not supported by substantial evidence is an exception to the rule. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1560; see *People v. Butler* (2003) 31 Cal.4th 1119, 1126 & fn. 4 [citing *In re Brian P.* (2002) 99 Cal.App.4th 616, 623 for the principle that a challenge to the sufficiency of the evidence to support a finding of adoptability may be made on appeal although no objection was made in the trial court].) A parent in a contested dependency proceeding "is not required to object to the agency's failure to carry its burden of proof." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 464.)

We review E.F.'s challenge to the disposition order for substantial evidence. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216 & fn. 4.) The clear and convincing standard applicable in the juvenile court "is for the edification and guidance of the trial court and [is] not a standard for appellate review." (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.) "[O]n appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.'" (*Id.* at p. 881; accord, *In re F.S.* (2016) 243 Cal.App.4th 799, 812.)

As E.F. concedes, evidence presented at the jurisdiction hearing supported the finding he had sexually abused Z.F. by touching, fondling and digitally penetrating the child's vagina and buttocks. To be sure, the report from the Santa Monica Rape Treatment Center was equivocal, neither confirming nor refuting Z.F.'s allegations. But that lack of additional corroboration does not diminish the force of Z.F.'s repeated and consistent descriptions of E.F.'s abuse. In addition, E.F. testified at the hearing, and the court was able to judge the credibility of his denials of inappropriate touching. Moreover, as of the time of the jurisdiction/disposition hearing E.F. had not participated in any programs to address the issue of sexual abuse. E.F.'s lack of insight was properly considered by the court as increasing the risk he would repeat his abusive conduct if allowed unsupervised contact with his daughter. (See *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 996; *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["[o]ne cannot correct a problem one fails to

acknowledge"]; see also *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 ["denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision"].)

Viewed in the light most favorable to the juvenile court's findings, the evidence at the disposition hearing fully supported the court's conclusion there would be a substantial danger to Z.F.'s physical well-being if E.F.'s custody rights were not restricted.

2. *The Court Did Not Abuse Its Discretion in Terminating Dependency Jurisdiction*

As discussed, E.F.'s counsel specifically advised the court E.F. did not object to terminating dependency but requested the juvenile custody order provide E.F. with joint legal custody of Z.F. "so that the father still has some say." On appeal, however, E.F. does not challenge the court's decision to grant sole legal custody to Jessica, insisting instead only that the court erred in prematurely terminating its jurisdiction. Because E.F. consented to termination, that issue has been forfeited. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.)

In any event, E.F.'s argument that the court's decision improperly deprived him of the opportunity to participate in services that might have led to some form of rapprochement with Z.F. lacks merit. As Jessica notes in her respondent's brief,[4] because Z.F. remained placed with her custodial parent, E.F. was

---

[4] The Department, which opposed termination of dependency jurisdiction at the disposition hearing, did not take a position on this issue on appeal.

not entitled to reunification services. (§ 16507, subd. (b) ["[f]amily reunification services shall only be provided when a child has been placed in out-of-home care, or is in the care of a previously noncustodial parent under the supervision of the juvenile court"]; see *In re A.L.* (2010) 188 Cal.App.4th 138, 145 [no reunification services are called for when a child is not removed from her custodial parent]; see generally *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303 [when child remains in home of parent, proper form of child welfare services is family maintenance services, not family reunification services].)

E.F. was also not entitled to what are now often referred to as "enhancement services"—"child welfare services offered to the parent not retaining custody, designed to enhance the child's relationship with that parent." (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1497, fn. 1; see *In re A.C.* (2008) 169 Cal.App.4th 636, 642, fn. 5 ["'enhancement' services are 'not designed to reunify the child with that parent, but instead to enhance the child's relationship with that parent by requiring that parent to address the issues that brought the child before the court'"].)

An order for enhancement services is subject to the discretion of the juvenile court. (See § 362, subd. (d) ["juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section"]; *In re A.L.*, *supra*, 188 Cal.App.4th at p. 145.) Whatever latitude the court may have had under section 362, subdivision (d), to direct some type of services for E.F., the court also had discretion to terminate its jurisdiction

given Z.F.'s safe placement with Jessica, as it could have done under section 361.2 if Jessica had been a noncustodial parent when dependency proceedings were initiated.[5] (See § 361, subd. (a)(1) [limitations on parental rights "may not exceed those necessary to protect the child"]; *In re Ethan C.* (2012) 54 Cal.4th 610, 625 ["[e]ven after a dependency finding has been made, the statutory scheme is designed . . . to return full custody and control to the parents or guardians if, and as soon as, the circumstances warrant"]; see also *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 21 [placement under § 362 should be "treated in the same manner" as a § 361.2 placement]; cf. § 364, subd. (c) [absent evidence that the conditions still exist that would justify initial assumption of jurisdiction under § 300 or that those conditions are likely to exist if supervision is withdrawn, "[t]he court shall terminate its jurisdiction"].)

The determination it was proper to terminate jurisdiction was not arbitrary or capricious and did not constitute an abuse of the juvenile court's broad discretion. (See generally *In re Stephanie M.* (1994) 7 Cal.4th 295, 318 [under abuse of discretion standard, order must be affirmed unless juvenile court has """exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination"""].)

---

[5] Section 361.2, subdivision (b)(1), provides, if the court places a child with a parent with whom the child was not residing at the time of the events that brought the child within the provisions of section 300, the court may order that the formerly noncustodial parent become legal and physical custodian of the child and terminate its jurisdiction.

3. *The Court Did Not Improperly Delegate Judicial Authority Concerning Visitation to the Child's Therapist*

After a colloquy with Jessica's counsel regarding the nature of E.F.'s monitored visitation, the court stated its order would provide "one time per week in a therapeutic setting as long as the individual therapist is comfortable with the visit." The court then asked E.F.'s counsel if he was "comfortable" with the order. Counsel responded, "yes." By thus agreeing to the court's formulation of the visitation order, E.F. has forfeited his argument the court improperly delegated judicial authority concerning visitation to the child's therapist.[6]

Once again, however, even if the issue has not been forfeited, E.F.'s argument lacks merit. Certainly, the power to decide whether any visitation occurs between a parent and child "belongs to the court alone." (*In re S.H.* (2003) 111 Cal.App.4th 310, 317; accord, *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009.) However, in *In re Chantal S.* (1996) 13 Cal.4th 196, 213-214, while distinguishing an order that gave a therapist absolute discretion to determine whether visitation should occur, the Supreme Court held it was proper for the juvenile court to vest discretion in a parent's therapist to determine when the parent had made "satisfactory progress" so that visitation could

---

[6] In his reply brief E.F. contends his counsel only agreed to the date for the next proceeding when the juvenile custody order would be presented, not the substance of the visitation order. Appellate counsel misreads the reporter's transcript: Trial counsel for E.F. both agreed to the date, responding, "That's fine," when asked if June 20 "was okay," and answered "Yes, your honor," after the court inquired if he was comfortable with the form of the visitation order.

begin. (Accord, *In re S.H.*, at p. 319 ["the Department and mental health professionals working with it and the dependent child may determine when visitation should first occur"]; see *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374-1376 [juvenile court may delegate to a county social worker the responsibility to manage details of visitation such as the time, place and manner of the visits, but may not delegate absolute discretion to determine whether any visitation occurs].) That is precisely what occurred here. The juvenile court recognized E.F.'s right to visitation and specified its frequency and location (once each week in a therapeutic setting), and provided it would begin when Z.F.'s therapist believed it was appropriate (in the court's language, when the individual therapist was "comfortable with the visit"). There was no improper delegation of judicial authority to the therapist.

DISPOSITION

The juvenile court's orders are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.