Filed 12/3/14 In re Mi. Y. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Mi.Y. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.F. et al., Defendants and Appellants.	B253934 (Los Angeles County Super. Ct. No. DK02234)

APPEAL from an order of the Superior Court of Los Angeles County, Annabelle G. Cortez, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant J. F.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant S.S.

Richard D. Weiss, Acting County Counsel, Dawyn Harrison, Assistant County Counsel, Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Two fathers, J.F. and S.S., appeal from a dispositional order placing their sons with K.Y. (mother), who is not a party to this appeal. J.F. argues the court abused its discretion in denying him overnight visits. S.S. contends the court abused its discretion in not issuing a joint placement order, and it failed to comply with the Indian Child Welfare Act (ICWA). We find no error and affirm.

FACTUAL AND PROCEDURAL SUMMARY

J.F. is the father of Mi.Y., who was born in 2013. S.S. is the father of M.S., who was born in 2001. Mother has two more children, N.Y. and Mo.Y., who are not subject to this appeal.

In 2013, the Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300,[1] alleging mother and J.F. physically abused M.S. and N.Y. by striking them with belts and cords. Mother agreed to participate in a family maintenance plan, and the court released the four children to her custody. In January 2014, the court sustained allegations of physical abuse by mother and J.F. in an amended petition DCFS had filed in the interim.

At the contested dispositional hearing, J.F. and S.S. each requested a home of parents order. Alternatively, J.F. asked for unmonitored overnight visits with Mi.Y. The court placed the children with mother, and ordered family maintenance services for mother and enhancement services for the fathers.[2] The court denied S.S.'s request, noting S.S. lived in Texas and had been a noncustodial parent. The court concluded it would be in the children's best interest not to change M.S.'s custodial arrangement since all the children were doing well in mother's custody. The court ordered S.S. to submit to

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[1] All statutory references are to the Welfare and Institutions Code.

[2] Family maintenance services are offered when children are not removed from parental custody. (*In re Calvin P.* (2009) 178 Cal.App.4th 958, 963.) Enhancement services are offered to a parent who does not have custody and are designed to enhance the child's relationship with that parent. (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1497, fn. 1.)

the court's jurisdiction and to complete age appropriate parenting classes. He was granted unmonitored visitation as arranged by the parents.

The court denied J.F.'s requests, citing the sustained allegations that he physically abused mother's two older children, his unresolved anger management issues, and Mi.Y.'s young age. The court noted that J.F. had enrolled in anger management, parenting and individual counseling classes several days before the hearing. He was ordered to have unmonitored daytime visits with Mi.Y., subject to liberalization if he continued to participate in court-ordered programs.

The fathers timely appealed.

DISCUSSION

I

"'The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.' [Citation.]" (*In re A.E.* (2008) 168 Cal.App.4th 1, 4.) We review the record in the light most favorable to the court's order to see whether it is supported by substantial evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

A. J.F.

Although the notice of appeal states J.F.'s intent to challenge the sustaining of the petition and the removal of Mi.Y. from his custody, on appeal he challenges only the denial of overnight visitation. We deem the other issues abandoned. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 [issues not raised in opening brief are deemed forfeited or abandoned].)

In defining a parent's right to visitation, the court must balance the interests of the parent and child and exercise discretion to 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.)

J.F. argues that because allegations of physical abuse were sustained against both him and mother, it was "irrational" for the court to leave Mi.Y. in mother's care, but to deny J.F. overnight visitation. He argues further that he and mother had a "mutually abusive relationship," and that there is no evidence his behavior was more egregious than hers. He also claims that he, like mother, had begun parenting classes, and it was unfair to treat him differently just because Mi.Y. was his first child.

J.F. would like us to view the record in a light most favorable to him. That we cannot do. Properly viewed, the record supports the conclusion that he was differently situated than mother. Mother had been the custodial parent of all four children, who at the time of the hearing ranged in years from an infant to a pre-teen. On the other hand, there is no evidence J.F. had the parenting skills necessary to care for newborn Mi.Y. during overnight visits. The child's young age was a proper consideration.

J.F. dated mother for several months in 2013, but she claimed to have broken off the relationship before Mi.Y. was born because J.F. was abusive to her and her children. The two older children confirmed J.F. verbally abused mother and physically abused them without mother's permission during his visits to mother's house. Mother attempted to protect them from him, which incited further arguments. J.F. punched a hole in the bathroom wall, and had to be escorted from the hospital for arguing with mother after Mi.Y.'s birth. Mother entered into a voluntary family maintenance plan with DCFS, and DCFS reported the children were safe in her care after she broke off her relationship with J.F. While J.F. claimed to be a victim of mother's domestic violence and to have disciplined the children at her request, we are not in a position to resolve conflicts in the evidence in his favor.

At the time of the dispositional hearing, mother already had completed eight of ten parenting classes while J.F. had just enrolled in such classes and in anger management. The court provided for liberalization of his visits if he continued to participate in those programs. We find no abuse of discretion under the circumstances.

B. S.S.

S.S. argues the court should have placed M.S. in the home of both parents because S.S. was a non-offending parent who wanted to maintain a relationship with his son and to avoid the placement of M.S. in foster care should the child be removed from mother's custody during the pendency of the case.

A child may be removed from his parent's custody upon a finding of substantial risk of harm. (*In re T.V.* (2013) 217 Cal.App.4th 126, 135; § 361, subd. (c)(1).) When the court orders removal under section 361, it must place the child with a noncustodial parent who requests custody, unless such a placement would be detrimental to the child's well-being. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 700; § 361.2, subd. (a).) If a parent is allowed to retain custody of the child under social worker supervision, the court may order family maintenance services. (*In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1285, fn. 11; § 362, subd. (c).) The court has broad powers to make any other reasonable order it deems necessary and proper. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 224; § 362, subd. (d).)

S.S. acknowledges his son has not been removed from mother's custody, and all reports indicate mother is compliant with the case plan. His concern that M.S. would end up in foster care without a joint placement order is entirely speculative as the statutory scheme gives a non-custodial parent the right to claim custody before a child is placed in foster care. (§ 361.2, subd. (a).) Nothing in the dispositional order prevents S.S. from continuing his relationship with M.S. On the contrary, the order contemplates that M.S.'s summer visits with S.S. would continue. S.S. argues that had he been brought into the case through a family maintenance plan, he would be a more effective parent to M.S. The case plan requires S.S. to complete age-appropriate parenting classes. It is unclear what other services he believes are necessary.

None of S.S.'s concerns indicate the court abused its discretion in denying his request for joint placement of M.S. in both Texas and California.

II

S.S. also argues the court violated the notice requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.). Mother claimed Blackfoot Indian ancestry through her deceased father, but she also inconsistently claimed she did not have any such ancestry. During the jurisdictional hearing, the court urged DCFS to follow up on the ICWA issue as to mother, but the record does not indicate that any action was taken before the dispositional hearing.

ICWA requires that notice be sent to an Indian tribe with which a dependent child may be affiliated, but only "when child welfare authorities seek permanent foster care or termination of parental rights; it does not require notice *anytime* a child of possible or actual Native American descent is involved in a dependency proceeding." (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 14.) S.S. has not shown ICWA was violated since there has been no proceeding to remove the children from mother's custody. (*Id*. at p. 16.)

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.