Filed 11/1/12 In re D.T. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.T. et al., Persons Coming Under the Juvenile Court Law.	B236925
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Carlos T., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK80579)

APPEAL from an order of the Superior Court of Los Angeles County, Margaret Henry, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Jacklyn K. Louie, Deputy County Counsel for Plaintiff and Respondent.

Carlos T. (father) appeals from the dispositional order denying him custody of his daughters J.T. and F.T. The juvenile court found that placing the two girls with him would be detrimental. Father contends this finding is not supported by substantial evidence. We do not agree.

FACTUAL AND PROCEDURAL SUMMARY

In May 2011, the Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300[1] on behalf of D.T. (born in 1996), her sisters J.T. (born in 1998) and F.T. (born in 2000), and their younger half-siblings E.H. and A.H. The petition alleged domestic violence and physical abuse by Patricia S. (mother) and A.H., Sr., who is the father of E.H. and A.H. A.H., Sr., was alleged to have abused alcohol and to have had a history of substance abuse. The petition also alleged that father, whose whereabouts were then unknown, had failed to provide the necessities of life for D.T., J.T., and F.T.

D.T. was hospitalized because of her stated intent to kill herself or to kill A.H., Sr., and his wife J.P., who lived in mother's household with their four children. D.T. was detained from mother and released to a group home. The other children were detained from their respective fathers and returned to mother's custody.

In June 2011, father contacted DCFS after D.T. located him on Facebook. He explained he lived in Alabama and had tried to arrange for child support there, but mother had not allowed the children to undergo the required DNA testing. He stated he had sent Christmas presents and had wired money to the children over the years. At two separate adjudication hearings in July 2011, the court partially sustained the section 300 petition as to mother and A.H., Sr., but dismissed the allegations as to father, making him a nonoffending parent.

At the July 2011 disposition hearing as to mother and A.H., Sr., D.T. was ordered suitably placed; the other children were placed with mother. Mother and A.H., Sr., were

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

granted reunification services, and A.H., Sr., was allowed to have monitored visits with the children at the DCFS office. Father's counsel advised that father did not want to displace J.T. and F.T. from their placement with mother. But he wanted D.T. to be placed with him because she was in immediate need of a home.

A contested disposition hearing as to father was held in August 2011. Father testified by telephone. He confirmed that he wanted D.T. to be placed with him. He was aware that she had mental health issues. According to DCFS's investigator, father was increasingly willing to find the necessary services for D.T. Father explained that he and mother divorced when D.T. was about four years old, and mother moved to California with the children. Father had been to California twice. He had not seen D.T. since she was six years old, and their telephone conversations had been monitored by mother. Since her removal from mother's custody, D.T. had kept in constant contact with father and wanted to be placed with him.

The disposition hearing as to father was trailed over two days to give mother an opportunity to appear, but she did not. The children remaining in mother's custody were detained after a social worker discovered A.H., Sr., in the home. On August 31, 2011, DCFS filed a supplemental petition on their behalf. The court ordered DCFS to explore placing J.T. and F.T. with father in Alabama. DCFS reported that, while father was willing to have the girls live with him, J.T. did not want to, and F.T., who was selectively mute, refused to speak to father during a monitored telephone call. Father's contested disposition hearing was continued several times, and the matter was transferred twice after A.H., Sr., and mother challenged the hearing officers to whom the case was transferred.

A disposition hearing was finally held in October 2011. The court ordered D.T. on a 29-day visit with father in Alabama, and ordered an expedited Interstate Compact for the Placement of Children (ICPC), giving DCFS discretion to leave D.T. with father if the ICPC was approved early. The court sustained the supplemental petition and continued disposition as to J.T. and F.T. The court noted that D.T.'s visit would be "enough for [father] to handle at the moment." The court doubted that father could

handle three children who did not know him, especially since one of them suffered from severe mental health problems and another was selectively mute. But it allowed father unmonitored telephone calls and visits in Los Angeles.

A contested disposition hearing as to J.T. and F.T. took place in November 2011. DCFS reported that D.T. was adjusting well to living with father in Alabama and recommended that her visit there be extended. Everyone except father agreed that J.T. and F.T. were differently situated from D.T. in that they had not developed a relationship with him, did not want to live with him, and wished to remain in California. The court ordered that J.T. and F.T. visit father as soon as school was over to see whether "a bond can be formed." It removed custody of J.T. and F.T. from mother, found by clear and convincing evidence that placement with father would be detrimental, and ordered the children suitably placed.

In October and November 2011, father filed two notices of appeal, listing various orders issued between July and November 2011.[2]

DISCUSSION

Father's opening brief makes clear that he appeals only the court's finding, made at the November 4, 2011 disposition hearing, that placing J.T. and F.T. with him would be detrimental.

Section 361.2, subdivision (a) provides that when a child is removed, "the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that

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[2] In December 2011, the court granted father's section 388 petition, ordering that D.T. be placed with father. The court ordered DCFS to set up a visit for J.T. and F.T. with father over winter break, but father could not pay their transportation costs. At the January 2012 status report hearing, the children's counsel represented that J.T. and F.T. were communicating with and wanted to visit father.

placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." The juvenile court must find by clear and convincing evidence that it would be detrimental to the child to give custody to the noncustodial parent. (*In re M.C.* (2011) 195 Cal.App.4th 197, 224.) We review the court's finding for substantial evidence and do not disturb it '"unless it exceeds the bounds of reason."' (*In re E.B.* (2010) 184 Cal.App.4th 568, 574–575.)

Father relies on *In re M.C.*, *supra*, 195 Cal.App.4th 197, where the court stated that "the detriment must relate to the child's safety, or similar concerns . . . ." (*Id*. at p. 224.) Father goes a step further, equating detriment with a risk to the child's safety. He argues there is no evidence that he poses a safety risk to J.T. or F.T., especially since the court allowed him to have unmonitored visits with them in Los Angeles and ordered DCFS to facilitate the girls' visit to Alabama.

This is not a fair reading of section 361.2, subdivision (a). The statute gives the court "broad discretion to evaluate not only the child's physical safety but also his or her emotional well-being. In an appropriate case, all that might be required is a finding such a placement would impair the emotional security of the child." (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1490.) Thus, the detriment need not be related to any concern about the noncustodial parent. (See *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 [denying placement where splitting siblings would be detrimental to their emotional well-being].) Nor is father's position supported by *In re M.C.*, *supra*, 195 Cal.App.4th 197, 224 where the court held that a finding of detriment could not be based solely on "[t]he fact that a child's reunification with another presumed parent may become more difficult . . . ." (*Ibid*.)

Here, the court's finding of detriment was not based solely on a concern that the girls' relocation to Alabama would impede their reunification with mother. The main concern was that, unlike their older sister D.T., J.T., and F.T. did not remember father well and had not established contact with him. J.T., who was thirteen years old, had made it clear that she did not want to live with father. Her preference was a relevant factor. (*In re Luke M.*, *supra*, 107 Cal.App.4th at p. 1426.) F.T. was selectively mute.

She would not talk to the social worker or respond to father when he called on the phone, even though she apparently talked to her siblings. F.T.'s special needs and her refusal to speak to father were a cause of additional concern.

While father handled D.T.'s visit commendably, substantial evidence supported the court's finding of detriment as to J.T. and F.T. at the November 4, 2011 hearing. J.T. and F.T. had no relationship with father. J.T. did not want to live with him, and F.T. refused to speak to him. It was not unreasonable for the court to be cautious about placing these children in his custody at a time when he was establishing a bond with D.T., a clearly troubled child. Moreover, since D.T.'s trial visit was successful, the court's order that J.T. and F.T. also visit father was not inconsistent with the prospect of gradually placing all three children in his custody.

DISPOSITION

The November 4, 2011 order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.