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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re K.B., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

AARON B.,

Defendant and Appellant.

B283391

(Los Angeles County
Super. Ct. No. DK16880)

APPEAL from an order of the Superior Court of
Los Angeles County, Karin Borzakian, Juvenile Court Referee.
Affirmed.

John P. McCurley, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Gina Zaragoza, under appointment by the Court of Appeal,
for Respondent T.A.

INTRODUCTION

Aaron B. (father) appeals from an order of the juvenile court terminating jurisdiction over his five-year-old daughter, K.B., and reinstating a prior family court order giving K.B.'s mother, T.A. (mother), sole legal and physical custody of K.B. and denying father visitation with the child. Based on father's refusal to participate in any court-ordered services and failure to visit K.B. for more than four months before the court terminated jurisdiction, we find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL SUMMARY

Before coming to the attention of the Department of Children and Family Services (Department), mother, father, and K.B. were involved in a family court proceeding. On January 24, 2014, the court in that case entered a judgment which included an order awarding mother full legal and physical custody of K.B. and denying father any visitation with the child.¹

In May 2016, the Department received a report that mother and father had fought in front of K.B. and her then 12-year-old brother, K.M.² Mother and father started arguing in the garage while mother was loading the children into her car.³ Father grabbed mother by her hair and pulled her out of the car. Mother then struck father on the head and the arm with two metal objects.

¹ We previously granted mother's request for judicial notice of the January 24, 2014 judgment issued in the family court case.

² K.M.'s father is Anthony M., who is not a party to this appeal.

³ It appears father was staying at the same home as mother and K.B. when the fight occurred.

The Department filed a dependency petition on behalf of K.B. and K.M., alleging mother and father had engaged in domestic violence in front of the children. The petition further alleged mother and father have a history of engaging in domestic violence in front of the children and both parents have prior domestic violence convictions.⁴ (Welf. & Inst. Code,⁵ § 300, subds. (a), (b); a1 and b1 allegations.)

On May 24, 2016, the court held an arraignment hearing on the petition, at which it found father is K.B.'s presumed father. The court ordered K.M. released to mother's custody and K.B. released to mother's and father's custody, and it directed the Department to "facilitate a written visitation schedule between [mother and father]."

On May 31, 2016, the court issued a temporary restraining order precluding father from contacting mother and K.M., except for "brief and peaceful contact" necessary to facilitate visitation and service of legal papers. On June 21, 2016, the court reissued the restraining order, which remained in effect until September 9, 2016.

The Department visited the family several times between June and August 2016. The children appeared clean, healthy, and happy living with mother. Father was visiting with K.B. every weekend and, according to mother, father's visits "were

⁴ The Department also included an allegation that father is a registered controlled substance offender, which the court later dismissed.

⁵ All undesignated statutory references are to the Welfare and Institutions Code.

going beautifully and . . . [there] were no co-parenting [concerns.]”

On September 9, 2016, the court held a jurisdiction and disposition hearing. Mother and father did not appear at the hearing, but they were represented by counsel. The court sustained the petition’s a1 and b1 allegations and declared K.M. and K.B. dependents of the court. The court ordered K.B. to remain placed in mother’s home, with father to have unmonitored visits every other weekend. The court also ordered both parents to participate in family maintenance services. Specifically, mother and father were ordered to complete a 52-week domestic violence program, and father was ordered to submit to random or on-demand drug testing.

Following the jurisdiction and disposition hearing, father stopped contacting the Department. He also stopped visiting with K.B. around late January 2017. Mother reported that, up until that time, father had missed only two visits. The Department reported that, as of March 2017, it had made numerous unsuccessful attempts to contact father at his last known phone number and address.

On March 8, 2017, the court held a six-month review hearing. The court found neither mother nor father had participated in their court-ordered services. The court modified mother’s case plan to allow her to address her issues with domestic violence through individual counseling in lieu of completing a 52-week program. Because he had not recently visited K.B., the court ordered father to provide mother 72-hours notice before he intended to pick up K.B. for his next visit.

In April 2017, mother started to participate in individual counseling and parenting education classes, and the children

were continuing to thrive in her care. In the middle of May 2017, mother reported that father had moved to Las Vegas, Nevada, and that he had not visited K.B. since late January 2017. Father also had yet to contact the Department or participate in any court-ordered services. The Department reported that father's "level of risk is very high due to [his] refusal or non-engagement in case plan services." The Department recommended that the court terminate jurisdiction over K.M. and K.B.

On June 7, 2017, the court conducted a second review hearing. The court found the conditions justifying dependency jurisdiction no longer applied and would likely not exist if the court were to terminate jurisdiction. Before terminating jurisdiction, the court stated it was concerned with father's behavior throughout the children's dependency proceedings:

"I do have major concerns with [father] There's been violent domestic violence between mother and [father]. [Father] has had a history of domestic violence convictions. . . . [Father] has not visited [K.B.] since, I believe, [early] January 2017. And I don't know where he is. It appears he may be in Las Vegas, but I'm not certain [¶] [Father] has had no contact with the Department. He is an offending parent under the WIC 300 petition that was filed in this case in May 2016. K.B. is four years old."

The court then terminated jurisdiction. Instead of issuing a new family law order under section 362.4, the court reinstated the order included in the January 24, 2014 judgment issued in the family court case, which gave mother sole legal and physical custody of K.B. and denied father visitation with the child.

Father filed a timely appeal from the June 7, 2017 order terminating jurisdiction.

DISCUSSION

1. Standard of Review

A juvenile court has broad discretion to make custody and visitation orders tailored to the child's best interests when it terminates jurisdiction in a dependency case. (§ 362.4; see also *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4.) In deciding whether to continue visitation when issuing an order terminating jurisdiction, the court must consider the best interests of the child under the totality of the circumstances. (*In re John W.* (1996) 41 Cal.App.4th 961, 972–973.) Thus, a court may deny a parent visitation when terminating jurisdiction if it determines that continuing visitation would not be in the child's best interests. (See *In re J.N.* (2006) 138 Cal.App.4th 450, 459 (*J.N.*).)

We review custody and visitation orders issued when the court terminates jurisdiction for abuse of discretion. (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1456.) Accordingly, we will not disturb an order determining a parent's custody and visitation rights unless it constitutes an “ ‘arbitrary, capricious, or patently absurd determination [citations.]” ’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) In other words, if we can draw two or more reasonable inferences from the facts, we have no authority to substitute our discretion for that of the juvenile court. (*J.N.*, *supra*, 138 Cal.App.4th at p. 459.)

As noted, in terminating jurisdiction in this case, the court stated it was doing so without issuing a family law order under section 362.4, which allows a juvenile court to issue “an order determining custody of, or visitation with, the child” at the time

it terminates dependency jurisdiction. (See § 362.4, subd. (a).) Instead, the court reinstated the order included in the January 24, 2014 judgment issued in the family court case. Both parties agree, however, that the court's decision to reinstate the prior family court order should be reviewed under the same abuse of discretion standard that applies to orders issued under section 362.4, subdivision (a), because, like such orders, the prior family court order determined the parents' rights to custody of, and visitation with, K.B. We agree that the court's decision to reinstate the prior family law order effectively determined mother's and father's custody and visitation rights with respect to K.B. We therefore review that decision for abuse of discretion.

2. The juvenile court did not abuse its discretion by denying father visitation with K.B.

Father contends the court abused its discretion and violated his due process rights by terminating jurisdiction and reinstating the January 24, 2014 family court order that denied him visitation with K.B. Specifically, father argues the court abused its discretion because, when the court reinstated the prior family court order, there had been no "substantial change of circumstance" during K.B.'s dependency proceedings that would justify denying him visitation with the child. We disagree.

Ample evidence supports the court's decision to reinstate the prior family court order denying father visitation. As he concedes in his opening brief, father never made any effort to comply with his court-ordered case plan following the September 2016 jurisdiction and disposition hearing. The court ordered father to participate in a 52-week domestic violence program to address his issues with violence that led to K.B. becoming a dependent of the court and to submit to random or on-demand

drug testing. Father never enrolled in a domestic violence program, and he completely fell out of contact with the Department and the court following the jurisdiction and disposition hearing. Based on father's failure to participate in any court-ordered services, the Department assessed father as a "very high risk" to K.B.'s safety. In addition, by the time of the June 2017 hearing at which the court terminated jurisdiction, father had not visited K.B. for more than four months.

In light of the allegations that father engaged in domestic violence in front of K.B., father's failure to participate in any rehabilitative services addressing his issues with violence, and his failure to visit K.B. during the final four months of her dependency proceedings, the court's decision to deny father visitation is consistent with K.B.'s best interests. The court, therefore, did not abuse its discretion when it terminated jurisdiction and reinstated the January 24, 2014 family court order.

DISPOSITION

The order is affirmed.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.