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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.C.,

Defendant and Appellant.

B235346

(Los Angeles County
Super. Ct. No. CK80313)

APPEAL from orders of the Superior Court of Los Angeles County,
Donna Levin, Juvenile Court Referee. Affirmed.

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

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant
County Counsel, Navid Nakhjavani, Deputy County Counsel.

B.C. (father) appeals orders denying father custody of his son, C.C., and restricting father to monitored visitation. We conclude father's failure to participate in individual counseling supported the juvenile court's refusal to return C.C. to father's custody and that father's violation of the rules of monitored visitation, in addition to his failure to attend individual counseling, warranted denial of father's request for liberalized visitation. We therefore affirm the orders of the juvenile court.

FACTS AND PROCEDURAL BACKGROUND

1. *Summary of the case through father's first appeal.*

The family came to the attention of the Department of Children and Family Services (the Department) after an incident of domestic violence between mother and father in December of 2009. The juvenile court ordered mother to leave the family home and granted father custody of two-month-old C.C. On January 22, 2010, mother and father pleaded no contest to a dependency petition which alleged mother abused prescription medication while C.C. was in her care, and mother and father engaged in domestic violence in the presence of the child.

In March of 2010, the juvenile court returned C.C. to the home of mother and father with family preservation services. In late June of 2010, another incident of domestic violence occurred. On July 6, 2010, C.C. was detained as the result of an argument regarding his custody between mother and father at a courthouse in Riverside County. The juvenile court thereafter sustained a supplemental petition which alleged mother and father have a history of violent altercations in the child's presence and father has a history of illicit drug abuse and is a current abuser of opiates which renders father incapable of providing regular care and supervision. The juvenile court placed C.C. in foster care and granted mother and father family reunification services and monitored visitation.

Father appealed, claiming, among other things, the evidence did not support the allegations of the supplemental petition or the removal of C.C. from parental custody and the juvenile court abused its discretion in ordering monitored visitation for father. In B230272, we affirmed the orders of the juvenile court.

2. Subsequent proceedings.

A social report filed April 7, 2011, indicated mother and father engaged in an incident of domestic violence on January 1, 2011, in which mother strangled father and father punched mother in the eye. After the incident, mother and father enrolled in domestic violence programs and participated in conjoint counseling. Mother and father's divorce became final on January 28, 2011. Mother was receiving assistance with housing, visitation monitors, and job opportunities through her church. C.C. demonstrated attachment to both mother and father during visits. C.C. was placed in his third foster family on December 19, 2010. Mother and father were upset with the new placement because the foster parents preferred to make visitation arrangements through the social worker. Mother and father frequently complained the child was ill clothed, appeared underweight and had bruises.

Attached to the report was a substance abuse evaluation of father which indicated father has been prescribed hydrocodone for pain and he was under the care of Alan Ruttenberg, M.D., who had prescribed father Lexapro for depression and Klonopin for anxiety. The evaluation concluded it did not appear father was chemically dependent or that he abused substances.

A social report filed May 10, 2011, indicated mother and father had expressed multiple concerns regarding C.C.'s care in foster placement. However, investigation of these complaints had not resulted in any indication the foster parents were providing inadequate care. C.C.'s pediatrician had referred the child to the genetics clinic at Children's Hospital Los Angeles to be tested for Ehlers Danlos syndrome, a condition mother has, one of the symptoms of which is skin that bruises easily.

On May 10, 2011, the juvenile court granted mother and father permission to discontinue conjoint counseling on condition they were in individual counseling. Father was ordered to continue to drug test in lieu of participating in a drug program.

A report filed July 20, 2011, indicated mother's visits with C.C. had been liberalized and, commencing in July of 2011, were extended to eight-hour unmonitored visits. Father would shortly be attending his 26th session of domestic violence classes. Father began seeing Alan Ruttenberg, M.D., for anxiety and depression on February 2, 2011, and had been prescribed Lexapro and Klonopin.¹ On July 12, 2011, father told the social worker that Dr. Ruttenberg also was providing father individual counseling and father would obtain a progress report from Ruttenberg. The social worker advised father that individual counseling typically was provided by someone other than a psychiatrist and gave father a list of referrals.

On June 14, 2011, two social workers went to father's home in response to an allegation of neglect. The social workers knocked on the door for several minutes before father opened it. Only father and C.C. were present. When asked the whereabouts of the visitation monitor, father stated the monitor had gone to get a book and then made a phone call, allegedly to the monitor, and asked, "Did you find that book?" The monitor told the social workers she thought her responsibility was to ensure father was not under the influence during a visit. Father's subsequent visits were held at the Department office. After a visit on June 21, 2011, C.C. held on tightly to father because he did not want father to leave.

¹ Attached to the report was a memo from Dr. Ruttenberg dated May 31, 2011, which stated: "I have been treating [father] for anxiety and depression since 2/2/11. His medications have been effective and he is presently doing well. I will continue to see him on a regular basis."

The report indicated father had continued to post comments about the case on Facebook despite having been advised by the juvenile court not to do so.

A last-minute information form filed August 9, 2011, indicated mother's first overnight visit with C.C. on August 3, 2011, went "very well." The report stated: "Mother has been progressively getting more involved with [C.C.'s] life by attending his Genetics Appointment on 7/18/11 at Children's Hospital of LA and answering doctors' questions." The Department recommended C.C. be placed in mother's home with family maintenance services. The Department recommended that father continue to receive family reunification services and monitored visitation.

Attached to the report were six pages from father's Facebook account on which father had posted photographs of bruises father believed C.C. had suffered in foster care. Among the posted photographs were three pictures depicting the child's naked buttocks.

At a contested review hearing on August 9, 2011, social workers Michelle Nakamura and Alen Khudaverdyan testified. Khudaverdyan agreed father was addressing the issue of domestic violence. However, father was not addressing the relationship issues that brought the case to the attention of the Department.

Father testified he began receiving individual counseling from Dr. Ruttenberg in the first week of February of 2011. Father sees Ruttenberg once a month for approximately 25 minutes. They talk about father's anger, frustration, depression and anxiety. In domestic violence counseling, father has learned breathing techniques and other tools to remain calm. Regarding his Facebook account, father understood he was not to post names, addresses or contact information of persons involved in the case and he had refrained from doing that.

C.C.'s counsel noted father was not compliant with the individual counseling component of the case plan, father had violated court orders and had posted inappropriate pictures of C.C. Therefore, she hesitated to recommend unmonitored

visits but suggested the visits be conducted in “some kind of a controlled environment” short of monitored visitation.

The juvenile court ordered C.C. returned to mother and ordered father to continue to have monitored visitation. The juvenile court noted father seemed to lack insight about how to keep a child safe based on his conduct in posting pictures of the child’s face and naked buttocks on Facebook. The juvenile court found it “shocking that you have so little insight . . . that you would think . . . that’s appropriate,” noting predators “troll” the internet looking for such pictures. The juvenile court indicated it would not liberalize father’s visits unless father participated in individual counseling. The juvenile court indicated it wanted “to see a report from a therapist, not somebody that you see 25 minutes once a month. . . . [Y]ou need to go and really do individual therapy.” The juvenile court also expressed concern regarding father’s prescription medication, stating: “I also want to know what effect these very strong drugs that you’re prescribed have on caring for a small child.” Finally, the juvenile court indicated father had not followed the existing order for visitation, referring to the visit of June 14, 2011.

DISCUSSION

1. *Father’s failure to participate in individual counseling supported the juvenile court’s refusal to return C.C. to father’s custody.*

Father contends he was fully compliant with the case plan, he had made substantive progress and there was no evidence that return of C.C. to father’s care would create a substantial risk of detriment to the child’s physical or emotional well-being. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789; *In re Heather P.* (1988) 203 Cal.App.3d 1214, 1218, overruled on other grounds in *In re Richard S.* (1991) 54 Cal.3d 857, 864.) Father claims he had completed approximately half the domestic violence program, he was drug testing consistently, there had been no instances of domestic violence since January of 2011, and father regularly attended individual counseling with Dr. Ruttenberg. Father concludes that, because father

was in full compliance with the case plan and C.C. was not shown to be at risk of actual detriment in father's care, the juvenile court was required to return C.C. to father. (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 505.)

The record does not support father's claim he was attending individual counseling as required by the case plan. After the incident of domestic violence on January 1, 2011, mother and father commenced conjoint counseling. On May 10, 2011, the juvenile court terminated the requirement that mother and father participate in conjoint counseling on condition they participate in individual counseling. Father did not commence individual counseling. Rather, he claimed his psychiatrist, Dr. Ruttenberg, also was his therapist and that he attended therapy once a month for 25 minutes. However, Ruttenberg's memo of May 31, 2011, indicated only that Ruttenberg treated father for anxiety and depression commencing in February of 2011, and that medication prescribed for those conditions had been effective. Although father told the social worker he would provide a progress letter from Ruttenberg regarding his counseling, he failed to do so.

Father's testimony at the contested review hearing did not establish that father was participating in individual counseling. Father testified he began seeing Ruttenberg for individual counseling in February of 2011. However, in February of 2011, father was attending conjoint counseling and was not required to attend individual counseling. Thus, there was no occasion for Ruttenberg to provide individual counseling prior to May of 2011. Moreover, as the juvenile court noted, individual counseling requires more intensive participation than 25 minutes per month and Ruttenberg's memo of May 31, 2011, made no reference to individual counseling.

In sum, the record amply supports the juvenile court's finding father failed to participate regularly in the case plan by failing to attend individual counseling. The failure of the parent to participate regularly and make substantive progress in

court-ordered treatment programs is prima facie evidence that return of the child to the parent would be detrimental. (Welf. & Inst. Code, § 366.21, subds. (e).)

Father argues it was the Department's burden, not father's, to produce a report from Ruttenberg. However, the Department obtained the memo of May 31, 2011, from Ruttenberg. Thus, the Department complied with its obligation to seek case information from Ruttenberg.

Father also contends the juvenile court never ordered father to attend individual counseling with any specific frequency or duration. Thus, it was unfair to establish *post facto* a minimum level of participation. However, given that father did not attend individual counseling at all, there was no post facto imposition of minimum counseling requirements.

Because the juvenile court's order is supported by father's failure to participate in individual counseling, we need not address father's further claims the juvenile court unnecessarily was concerned with the medication father had been prescribed or the risk presented by father's conduct in posting pictures of C.C.'s bruises on Facebook.

2. *No abuse of discretion in the order for monitored visitation pending receipt of a report from a therapist.*

Father contends the juvenile court erred when, in the absence of evidence of risk to C.C., it continued the requirement that father's visitation be monitored.

The law to be applied is well settled. "Courts have long held that in matters concerning child custody and visitation trial courts are vested with broad discretion. On appeal the exercise of that discretion will not be reversed unless the record clearly shows it was abused." (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953.)

Here, father violated the rules of monitored visitation by having C.C. in his home without a monitor present. Given father's violation of the rules of monitored visitation and father's refusal to participate in individual counseling, it was well within the juvenile court's discretion to refuse to liberalize father's visitation until father participated in individual counseling.

DISPOSITION

The orders of the juvenile court are affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.