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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B280437
(Los Angeles County
Super. Ct. No. CK91302)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CHRISTIAN M.,

Defendant and Appellant;

SEBASTIAN M.,

Respondent.

APPEAL from findings and order of the Superior Court of
Los Angeles County. Rudolph A. Diaz, Judge. Affirmed.

Lisa A. Raneri, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Marissa Coffey, under appointment by the Court of Appeal,
for Minor.

This is at least the fourth appeal filed by Christopher M. (father). In the instant case, father challenges the juvenile court's January 26, 2017, findings and order maintaining dependency jurisdiction (Welf. & Inst. Code, § 364, subd. (c))¹ over his son, Sebastian M. (Sebastian, born Dec. 2007). He contends that substantial evidence fails to support any need for ongoing dependency jurisdiction in this matter.

We agree with the juvenile court that continued jurisdiction is appropriate. Accordingly, we affirm.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Appeals

“[O]n January 4, 2012, the Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of Sebastian, based upon allegations of domestic violence against mother, stalking mother, striking mother’s male companion, and threatening to kill him. (*In re Sebastian M.* (Feb. 20, 2013, B240157 [nonpub. opn.], at p. 5 (*Sebastian I*.) The juvenile court sustained the allegations against father, removed Sebastian from father, placed Sebastian with mother with family maintenance services, and ordered father to participate in various family reunification services. (*Sebastian I, supra*, B240157 [nonpub. opn.], at pp. 14-15.) The juvenile court also ordered father to undergo an Evidence Code section 730 evaluation. (*Sebastian I, supra*, B240157, at p. 15.) Father was granted monitored visitation. (*Ibid.*)

“On July 27, 2012, DCFS filed a section 388 petition, asking the juvenile court to suspend father’s monitored visitation with Sebastian until he participated in the court-ordered services and was assessed not to pose an emotional threat to Sebastian. (*In re Sebastian M.* (Apr. 4, 2014, B246025) [nonpub. opn.], at p. 23 (*Sebastian II*.) The juvenile court later granted that petition and suspended father’s visits with Sebastian. (*Sebastian II, supra*, B246025 [nonpub. opn.], at p. 40.) It also issued a restraining order protecting mother and Sebastian. (*Ibid.*) Father appealed, and we affirmed the juvenile court’s orders, with a limited remand to modify the restraining order to expire three years (as opposed to five years) from the date of issuance. (*Id.* at p. 49.)” (*In re Sebastian M.* (Jul. 11, 2017, B276865) [nonpub. opn.], at pp. 2–3 (*Sebastian III*.)

Continued Section 364 Hearing

On October 3, 2013, the juvenile court held and then continued a section 364 hearing to November 22, 2013. Then, “[o]n November 22, 2013, the juvenile court found continued jurisdiction necessary, but found that returning Sebastian to mother would not create a substantial risk of harm to his well-being.” (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 4.)

Father’s Request for Visitation is Denied

“On April 24, 2015, the juvenile court denied father’s request for reinstatement of visitation with Sebastian.” (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 4.)

Status Review Report (May 21, 2015)

“For the section 364 hearing, DCFS reported that Sebastian remained placed with mother with family maintenance services. He was thriving in her care, and she had completed her entire case plan. Sebastian did not want to resume visitation with father.

“Father was in compliance with his case plan and wanted to reunite with his son.

“DCFS recommended that the juvenile court terminate dependency jurisdiction over Sebastian with a family law order, awarding mother sole legal and physical custody of the child and an order that father’s visitation with Sebastian remain suspended.” (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 4.)

Last Minute Information (June 25, 2015)

“Father’s therapist reported that he had reached an end to his therapy. She did not recommend resuming therapy because father continued to deny the allegations of the section 300 petition against him. Because it had been almost three years

since Sebastian had contact with father, she was uncertain whether she could recommend conjoint counseling to work towards reunification.” (*Sebastian III, supra*, B276865 [nonpub. opn.], at pp. 4–5.)

Letter from Father’s Therapist (July 1, 2015)

“Father’s therapist reported that father had shown a commitment to therapy. But, he disputed all of the allegations against him. He denied engaging in domestic violence with mother. He denied behaving disrespectfully in court. He denied interrogating Sebastian or waiting for mother in a ‘stalking manner.’” (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 5.)

Another Request for Visitation is Denied

“On December 24, 2015, father filed another section 388 petition, again asking the juvenile court to modify its December 2012 order suspending his visitation with Sebastian. On January 4, 2016, the juvenile court summarily denied that petition.” (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 5.)
Status Review Report (Mar. 7, 2016); Father’s Section 388 Petition

“On March 7, 2016, DCFS reported for the section 364 hearing that Sebastian remained placed with mother with family maintenance services. Sebastian continued to thrive in her care. He had not had any visits with father because father’s visitation with Sebastian had remained suspended. He did not want to resume visitation with father.

“DCFS reiterated its recommendation that the juvenile court terminate dependency jurisdiction over Sebastian with a family law order, awarding mother sole legal and physical custody of Sebastian and an order that father’s visitation remain suspended.

“On the same date, father filed another section 388 petition, again asking that the juvenile court reinstate his visitation with Sebastian. The petition was supported by the same evidence previously submitted. On March 10, 2016, the juvenile court summarily denied father’s latest section 388 petition.” (*Sebastian III, supra*, B276865 [nonpub. opn.], at pp. 5-6.)

Section 364 Hearing (June 8, 2016)

“In its status review report for the continued section 364 hearing, DCFS echoed its prior comments regarding Sebastian and mother. Sebastian still had not had any visitation with father, whose visits remained suspended. In April 2016, Sebastian stated that he did not want to visit father because he was ‘trouble.’

“DCFS recommended that the juvenile court reinstate the restraining order, which had expired in February 2016, and terminate dependency jurisdiction over Sebastian with a family law order, awarding mother sole legal and physical custody of Sebastian and an order that father’s visitation remain suspended.

“At the section 364 hearing, the juvenile court denied the request to terminate dependency jurisdiction. In so ruling, the juvenile court found that the July 1, 2015, letter from father’s therapist was the basis for ‘keeping th[e] case open.’ Moreover, father had ignored the juvenile court’s findings regarding the allegations in the section 300 petition. And, father was a threat to mother and Sebastian ‘that resulted in the therapist recommending that the visitations be suspended.’ The juvenile court stated that ‘with this court’s lack of involvement in this case, [it had] serious concerns about what’s going to happen to

possibly mother but also the impact that it will have on the child.’ Thus, it found a ‘sufficient showing and necessity to keep [the] case open,’ noting ‘a significant risk if the court were to terminate this case and not provide mother the opportunity for the protections that the court case can give her.’” (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 6.)

Mother’s Request for a Restraining Order

On June 29, 2016, the juvenile court issued a restraining order. (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 7.)
Juvenile Court’s Order Maintaining Jurisdiction and Restraining Order are Affirmed

On July 11, 2017, we affirmed the juvenile court’s June 8, 2016, findings and order maintaining dependency jurisdiction. We also affirmed the issuance of a restraining order in favor of mother and against father. (*Sebastian III, supra*, B276865 [nonpub. opn.], at p. 2.)

Delivered Service Log

Meanwhile, between June 2016 and January 2017, father continued to behave in a repugnant manner. In July 2016, he called the DCFS social worker a liar, and he accused the juvenile court of lying. In fact, according to father, he was the only one who had not lied. Everything that had been alleged against him was false; had he done anything wrong, he would have admitted it. Father claimed that DCFS ruined Sebastian’s life.

Later, during a meeting with DCFS representatives and father, father falsely accused DCFS of recording him. He also said that Sebastian was being raised as a “mental midget.” He made many derogatory and demeaning remarks about mother.

Father then stated that he wanted to relinquish his parental rights “so that he [could] get on with his vacation etc.” He accused DCFS of “legal kidnapping.”

In July 2016, after eight years of holding himself out as Sebastian’s father, he then asked for a DNA/paternity test.

January 26, 2017, Continued Jurisdiction Hearing

On December 1, 2016, the section 364 hearing was set for contest by mother and Sebastian.

On January 26, 2017, the juvenile court held a hearing on DCFS’s recommendation to terminate jurisdiction. Mother and Sebastian requested that the juvenile court maintain jurisdiction. Counsel argued that “the only reason that . . . father . . . stopped his harassment of the mother, et cetera, is because of court supervision.” Counsel continued, “I think it’s obvious that, if court supervision is withdrawn, the father will revert to his patterns of behavior that are very dangerous to both mother and the child.”

Notably, in the middle of making her record, father interrupted counsel and sarcastically said, “Don’t stop.”

Father’s counsel asserted that father was not a threat. And, even if he were a threat in the past, the circumstances had changed “because for the last six months nothing has occurred. There’s been no claims by the mother or by the child that he’s attempted to harass them or harm them in any way. He has no interest in doing so, and I think nothing has been produced today . . . to suggest the father has done anything threatening or dangerous to the child or Mother. All I hear is the Father has an attitude that is contrary to [DCFS], and he’s a pain in the behind [¶] It’s kind of ironic because, if the Court terminates

jurisdiction, then he won't be available to complain about anything. I think it's time."

The juvenile court then stated: "[W]e're basically at the same posture we were three years ago Father is unbending, Father continues to deny everything that was sustained in the petition. And as a result of that attitude—and that's the gist of what [counsel for Sebastian] was reviewing He feels the same way he did three or four years ago, and nothing has changed; so he will continue to do what he can do once all these protections are lifted."

The juvenile court noted that father had not followed the juvenile court's orders because he told his therapist that "nothing happened."

The juvenile court again found that continued jurisdiction was necessary "because conditions continue to exist which justify the court taking jurisdiction pursuant to section 300."

The next section 364 hearing was scheduled for July 27, 2017.

Appeal

Father's timely appeal ensued.

DISCUSSION

As he did in *Sebastian III*, father argues that substantial evidence fails to support the juvenile court's finding under section 364, subdivision (c), that continued jurisdiction remained necessary.

"After the juvenile court finds a child is a person described in section 300, it must 'hear evidence on the question of the proper disposition to be made of the child.' (§ 358, subd. (a).) In appropriate circumstances, the court may declare the child a dependent, and 'without removing the child from his or her home,

order family maintenance services to ameliorate the conditions that made the child subject to the court's jurisdiction.' [Citation.] Once a child has been declared a dependent, the juvenile court must review the status of the child every six months. [Citations.] 'The applicable standards at the six-month review hearing differ depending on the child's placement.' [Citation.] Section 364 provides the standard when 'a child under the supervision of the juvenile court . . . is not removed from the physical custody of his or her parent or guardian.' [Citations.]

"At the section 364 review hearing, 'the court is not concerned with reunification, but in determining "whether the dependency should be terminated or whether further supervision is necessary." [Citations.]' [Citations.] The juvenile court makes this determination 'based on the totality of the evidence before it.' [Citation.] Part of the evidence the juvenile court must consider is the supplemental report of the social worker [citation], who must 'make a recommendation regarding the necessity of continued supervision' [citation]." (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1154–1155, fns. omitted.)

While section 364, subdivision (c), establishes a statutory presumption in favor of terminating jurisdiction and returning the child to the parents' care without court supervision, the statute also makes clear that the parent, guardian, or child may offer evidence on that question. (*In re Aurora P.*, *supra*, 241 Cal.App.4th at p. 1155.) Even if DCFS recommends termination of dependency jurisdiction, the juvenile court is not bound by that recommendation and may retain jurisdiction "if there is a preponderance of evidence that the conditions are such to justify that retention." (*Ibid.*; see also *In re D.B.* (2015) 239 Cal.App.4th

1073, 1086 [social service agency’s recommendation is not controlling].)

“In short, under section 364[, subdivision] (c), the juvenile court must terminate dependency jurisdiction unless either the parent, the guardian, the child, or the social services agency establishes by a preponderance of the evidence that the conditions justifying assumption of jurisdiction exist or will exist if supervision is withdrawn.” (*In re Aurora P.*, *supra*, 241 Cal.App.4th at pp. 1155–1156.)

The appellate record continues to support the juvenile court’s finding that ongoing jurisdiction is appropriate. As the juvenile court has repeatedly determined, “father steadfastly refuses to take responsibility for his actions that led to dependency intervention in the first place.” (*Sebastian III*, *supra*, B276865 [nonpub. opn.], at p. 9.) His “aggressive behavior even continued at the [June 8, 2016,] section 364 hearing.” (*Sebastian III*, *supra*, B276865 [nonpub. opn.], at p. 9.) His argument notwithstanding, father’s aggressive and bullying behavior continued after the June 8, 2016, hearing. He repeatedly denied any misconduct that led to dependency jurisdiction in 2012, accusing everyone of lying. He continues to demean mother. He even interrupted counsel and offered a sarcastic comment during oral argument. Thus, the juvenile court had ample reason to remain concerned at the January 26, 2017, hearing and order that jurisdiction continue.

Father again asserts that, pursuant to *In re D.B., supra*, 239 Cal.App.4th 1073 and because we upheld the issuance of a restraining order, continued dependency jurisdiction is unnecessary. For the reasons set forth in *Sebastian III*, we are not convinced. (*Sebastian III, supra*, B276865 [nonpub. opn.], at pp. 9–10.)

DISPOSITION

The juvenile court's findings and order are affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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