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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.T., A Person Coming
Under Juvenile Court Law.

B267948

(Los Angeles County
Super. Ct. No. DK10410)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KEVIN T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Emma Castro, Judge. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica Paulson-Duffy, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Kevin T. (father) and Z.B. (mother) are the parents of a six-year-old girl, M.T. Based on mother's illicit drug abuse and mental health issues, the juvenile court asserted jurisdiction over M.T. and her half-brother L.L. under Welfare and Institutions Code section 300, subdivision (b).¹ Although the jurisdictional allegation against father based on his history of illicit drug abuse and drug-related criminal activity was dismissed, the court denied his request for unsupervised visitation and ordered family reunification services—including random drug testing, individual counseling, drug counseling, and parenting classes. Father challenges these dispositional orders on appeal, arguing no substantial evidence supports the conclusion that he required reunification services. We find sufficient evidence to support the orders and conclude the court did not abuse its discretion. Accordingly, we affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

On March 18, 2015, the Los Angeles County Department of Children and Family Services (DCFS) filed a section 300 petition on behalf of M.T. (born May 2010) and her half-brother, L.L. (born December 2013). The petition alleged that mother's illicit drug abuse and mental health issues rendered her unable to care for the children and therefore placed them at serious risk of harm. The initiation of these proceedings followed a report to the child protection hotline on February 13, 2015, indicating mother had absconded with L.L. from a residential drug addiction treatment facility. M.T. remained in the care of her maternal

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

grandparents at their home in Long Beach, where she had been residing for the past two years.

On March 6, 2015, a DCFS social worker interviewed the maternal grandmother, who stated she was unaware of mother and L.L.'s whereabouts. According to the maternal grandmother, mother suffered from bipolar disorder and long-standing substance abuse issues, including a recent addiction to heroin. In 2012, the family moved from Illinois to California, and mother enrolled in an inpatient substance abuse treatment program. The maternal grandparents assumed all aspects of M.T.'s care at that time. Mother relapsed in 2013 while pregnant with L.L. and reenrolled in a treatment program. The maternal grandmother recently had received a call from mother and believed she was with L.L. and her new boyfriend, Doug S., on their way to Pennsylvania. She identified Kevin T. as M.T.'s father and noted that his last known address was in Illinois. She stated father had been arrested and served time for selling narcotics, disorderly conduct, and theft. She reportedly was granted a protective order against father because he stole from her family when they lived in Illinois. She stated that father speaks with M.T. once a month via Skype.

On March 18, 2015, the juvenile court detained M.T. in the care of her maternal grandparents. The court issued a protective custody warrant for L.L. and an arrest warrant for mother. The court ordered DCFS to exercise its best efforts to locate L.L. and take him into protective custody. In response to a courtesy request from DCFS, a social worker in Pennsylvania located mother and L.L., who were staying with Doug S. at his parents' home. Mother agreed to submit to a drug test. She tested positive for opiates and marijuana, and admitted she had

recently snorted heroin. The social worker returned to the home with law enforcement and detained L.L. DCFS dispatched a social worker who took L.L. into protective custody and placed him in a foster home in California.

On April 20, 2015, a DCFS social worker interviewed father, who resided in Illinois, by telephone. Father stated he was aware that mother used “hard drugs” and admitted they started using heroin together three to four years before. Father stated that while he and mother did not use heroin around M.T., they both had been under the influence in her presence. Father stated he currently was on parole following an arrest in February 2014 for possession of a controlled substance. He also acknowledged that his criminal history included possession of cannabis, possession of drug paraphernalia, and damage to government property. Father reported he had been sober since his February 2014 arrest. He had participated in an inpatient treatment program starting in early 2013, maintained his sobriety until January 2014 when he relapsed, and got sober while incarcerated following his February 2014 arrest. Father denied any history of mental health problems, but stated that he went to a mental hospital a couple of times for reasons related to his drug abuse. Father requested custody of M.T. He acknowledged he was not prepared to take care of M.T. when mother and her family relocated to California in 2012, but asserted that he was now working and sober.

On April 14, 2015, the maternal grandmother was re-interviewed, and reported father had regular contact with M.T. via Skype over the previous two months. She stated that father appeared to be doing “okay, like he is not on drugs.” She also indicated that mother planned to return to California and enroll

in a substance abuse treatment program. She continued to update DCFS regarding mother's return home and treatment.

DCFS filed a first amended petition alleging father had a history of illicit drug abuse and drug-related criminal activity, which rendered him incapable of caring for M.T. and placed her at serious risk of harm. Father appeared at the detention hearing on May 7, 2015. The juvenile court ordered monitored visitation for father including daily Skype calls with M.T. The court continued the jurisdictional hearing. DCFS filed a second amended petition including an allegation against Casey L., the presumed father of L.L. On June 26, 2015, DCFS reported that mother remained enrolled and was demonstrating progress in her treatment program.

The juvenile court held a jurisdictional hearing on September 21, 2015. Father's counsel requested that the court dismiss the allegation against him on the ground that DCFS failed to provide any evidence that his past drug use places M.T. at risk of harm. The court continued the matter and held a combined adjudication and disposition hearing the following day. The court sustained the second amended section 300 petition with respect to mother pursuant to a settlement agreement, and dismissed the jurisdictional allegations against father and Casey. The court concluded that although father had an unresolved history of illicit drug abuse and drug-related criminal activity, the court could not "make the nexus" between his illicit drug abuse and harm or substantial risk of harm to M.T. as he did not have custody of the child.

Turning to disposition, the court denied father's request for unmonitored visits with M.T. based on its finding that he has an unresolved and untreated illicit drug abuse problem dating back

many years. The court ordered monitored visitation via Skype a minimum of three times per week and whenever father travelled to California. The court, upon father's compliance with the case plan, granted DCFS discretion to liberalize visitation. The court ordered family reunification services for all three parents. Father was ordered to participate in a substance abuse treatment program, including random drug testing, individual counseling, drug counseling, and parenting classes. The court overruled the objection of father's counsel to the case plan, again citing concerns about his longstanding history of illicit drug abuse.

Father filed a timely appeal contesting the court's dispositional orders.

DISCUSSION

Section 362, subdivision (a) provides that “[i]f a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child” Section 362, subdivision (d) further provides: “The juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.”

Under section 362, “[t]he 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 Daniel B.* (2014) 231 Cal.App.4th 663, 673.) The juvenile court is not limited to the sustained allegations in a dependency petition when it determines what dispositional orders would be in the best interests of the child. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1008 [dispositional order requiring drug and alcohol testing upheld even though juvenile court dismissed allegation that father’s alcohol problems negatively affected his ability to care for child].) “In fact, there need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order. [Citation.]” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311; see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [“A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established”]; *In re A.E.* (2008) 168 Cal.App.4th 1, 5 [recognizing juvenile court’s discretion to order nonoffending custodial parent to participate in counseling].)

However, “the juvenile court’s discretion in fashioning reunification orders is not unfettered. Its orders must be ‘reasonable’ and ‘designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.’” (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229, quoting § 362, subd. (d).) Accordingly, there must be substantial evidence to support the court’s conclusion that the dispositional orders are reasonably necessary to eliminate the conditions that led to dependency. (See *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180 [reversing order requiring nonoffending mother to attend parenting classes, finding no evidence from which court could reasonably infer mother lacked parenting ability]; see also

In re Sergio C. (1999) 70 Cal.App.4th 957, 960 [dispositional order requiring father to submit to random drug tests reversed where only evidence of his drug use was “unsworn and unconfirmed allegation” of drug-addicted mother]; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 172 [reversing substance abuse component of reunification plan where only evidence to support existence of substance abuse problem was vague assertion regarding mother’s unusual behavior].)

Here, we find substantial evidence in the record to support the juvenile court’s dispositional orders. Father admitted that he and mother started using heroin together three to four years before his interview in April 2015. M.T., who was born in May 2010, would have been one or two years old at that time. Father also admitted that while he and mother did not use heroin around M.T., they both had been under the influence in her presence. Father stated he was admitted to a mental hospital on more than one occasion for reasons related to his drug abuse. He acknowledged that he had a history of relapsing, stating he participated in an inpatient treatment program in early 2013 but relapsed in January 2014, one month before his most recent drug-related arrest. He also admitted a criminal history involving several drug-related offenses. The maternal grandmother stated she was granted a protective order against father because he was stealing from her family.

Based on this evidence, the juvenile court found that father had a longstanding and unresolved history of illicit drug abuse and drug-related criminal activity. However, the court dismissed the jurisdictional allegation against him because it found no nexus between father’s illicit drug abuse and harm or substantial risk of harm to M.T. as he did not have custody over the child.

(See *In re Drake M.* (2012) 211 Cal.App.4th 754, 763 [jurisdiction under § 300, subd. (b) requires showing of harm or substantial risk of harm as a result of parent's inability to provide regular care for child due to substance abuse or failure to adequately supervise or protect child].)

Substantial evidence regarding father's history of illicit drug abuse and related criminal activity nonetheless justified the court's concern for M.T.'s well-being and safety. The court thus had a reasonable basis to conclude that allowing unmonitored visitation would not be in M.T.'s best interests until father could demonstrate his sobriety through drug testing. The court also reasonably determined it was in M.T.'s best interests that father participate in services to address his history of illicit drug abuse and support his parenting abilities as he began the process of reconnecting with his daughter. Given the wide latitude granted to courts in fashioning reunification orders, we cannot say the court abused its discretion by ordering monitored visits or requiring father to participate in a substance abuse treatment program.

DISPOSITION

The dispositional orders are affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.