

Filed 7/11/17 In re Sebastian M. CA2/2

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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.

B276865
(Los Angeles County
Super. Ct. No. CK91302)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent;

SEBASTIAN M., a Minor, etc.,

Respondent,

v.

CHRISTOPHER M.,

Defendant and Appellant.

APPEAL from findings and orders 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.

Mary C. Wickham, County Counsel and Jacklyn K. Louie,
Principal Deputy County Counsel, for Plaintiff and Respondent.

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

Christopher M. (father) appeals from the juvenile court's June 8, 2016, 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. Father also challenges the juvenile court's June 29, 2016, order granting E.J. (mother) and Sebastian a restraining order against him.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Appeals

As set forth in our prior opinion, on January 4, 2012, the Department of Children and Family Services (DCFS) filed a

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

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.)

Father's Section 388 Petition and the Continued Section 364 Hearing

On October 3, 2013, father filed a section 388 petition, asking the juvenile court to modify its December 11, 2012, order suspending father's visitation with Sebastian. On the same date, the juvenile court held and then continued a section 364 hearing

to November 22, 2013, and held father's section 388 petition in abeyance for further consideration.

On 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. It also denied father's section 388 petition, finding that he had not demonstrated a change of circumstances.

Father's Request for Visitation is Denied

On April 24, 2015, the juvenile court denied father's request for reinstatement of visitation with Sebastian.

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.

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.

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."

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.

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.

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."

Father exited the courtroom while the matter remained in session, but he was served with the restraining order.

Mother's Request for a Restraining Order

On June 29, 2016, the matter came on calendar for an order to show cause regarding mother's request for a permanent restraining order against father. The juvenile court found father's threat to mother and Sebastian real and issued a restraining order.

Appeal

Father's timely appeal ensued.

DISCUSSION

I. Continued Jurisdiction (§ 364, subd. (c).)

Father argues that substantial evidence fails to support the juvenile court's findings 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, fn. 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 here supports the juvenile court's finding that ongoing jurisdiction is appropriate. As the juvenile court determined, father steadfastly refuses to take responsibility for his actions that led to dependency intervention in the first place. According to his therapist, he disputes the section 300 allegations against him, he denies engaging in domestic violence, he denies behaving disrespectfully in court, he denies interrogating Sebastian, and he denies waiting for mother in a "stalking manner." Significantly, the juvenile court noted that this was the "only case" that it had that had to remain open for so long. And, based upon the evidence, the juvenile court had "serious concerns" about what would happen to mother and the impact that that would have on Sebastian.

Father's aggressive behavior even continued at the section 364 hearing. He attempted to walk out of the courtroom before the new restraining order could be served on him. He interrupted the juvenile court when it was making the requisite findings. Under these circumstances, we find no error in the juvenile court's findings.

In urging us to reverse, father relies heavily upon *In re D.B.*, *supra*, 239 Cal.App.4th 1073. But *In re D.B.* is factually distinguishable. In that case, the conditions that led to the juvenile court assuming jurisdiction no longer existed at the time of the section 364 hearing. (*In re D.B.*, *supra*, at p. 1085.) Here, as mother and Sebastian argued, and as the juvenile court expressly found, the conditions that led to dependency jurisdiction in 2012 still existed in 2016, namely father's aggressive behavior and his refusal to address it.

The fact that we also find that the juvenile court properly issued a restraining order against father does not render

dependency jurisdiction unnecessary. While a restraining order “could” enable the juvenile court to terminate jurisdiction (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 270), father offers no legal authority in support of the proposition that a restraining order necessitates the termination of jurisdiction. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

II. Restraining Order

Father argues that the juvenile court abused its discretion in issuing a new restraining order against him absent substantial evidence that warranted such an order.

Section 213.5, subdivision (a), permits a juvenile court to issue a restraining order against a parent before the termination of dependency jurisdiction. If the juvenile court issues a restraining order after notice and a hearing, it may rely on the entire juvenile court file; an affidavit is not necessarily required. (§ 213.5, subd. (d).) For the same reasons we noted in *Sebastian II*, the juvenile court did not err in issuing another protective restraining order. (*Sebastian II, supra*, B246025 [nonpub. opn.], at pp. 47–48.)

On June 8, 2016, mother requested that a restraining order be issued against father based upon her continued fear of father, father’s threats to kill her, his assault on her, his physical altercations with others, his lack of progress in the court-ordered case plan, and his ongoing denial of his violent behaviors. In its June 8, 2016, report, DCFS recommended that the juvenile court issue a restraining order to protect mother and Sebastian from father.

Their requests were well-founded. While father claims that the allegations against him are based upon “remote events,” he ignores the evidence that he continues to deny his violent

behavior and to refuse to accept responsibility. Such evidence supports the juvenile court's issuance of the restraining order.

The cases cited by father are readily distinguishable. In *In re C.Q.* (2013) 219 Cal.App.4th 355, the father did not object to a restraining order to stay away from the mother; the children wanted visitation with their father and were not afraid of him; and there were no reports of any inappropriate conduct after the incident that led to dependency jurisdiction. (*Id.* at p. 364.) In contrast, father here continues to challenge any sort of protective order; Sebastian has indicated that he does not want to visit with father; and father's inappropriate behavior has continued throughout this case. (*In re Sebastian II*, *supra*, B246025 [nonpub. opn.], at pp. 12–13;

Similarly, in *In re N.L.* (2015) 236 Cal.App.4th 1460, 1468–1469, the mother had not engaged in any dangerous conduct in the child's presence and the child's visitation with the mother had gone well. At the risk of sounding repetitive, father had engaged in inappropriate conduct in Sebastian's presence and Sebastian did not want to visit with father; in fact, father's behavior had been so inappropriate that the juvenile court suspended visitation.

DISPOSITION

The juvenile court's findings and orders are affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT