Filed 10/22/18 In re K.C. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.C., A Person Coming Under the Juvenile Court Law.	B288668
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.C., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 17CCJP02831B)

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Tracey M. Blount, Senior Deputy County Counsel, for Plaintiff and Respondent.

* * * * * * * * * *

Nonoffending father, C.C., appeals the juvenile court's finding that placement of his daughter, K.C., with father would be detrimental to her safety and well-being. Father did not request custody of K.C., but contends that he may be prejudiced by the court's detriment finding in the event that he seeks custody of K.C. in the future. Finding substantial evidence supports the juvenile court's order, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 2, 2018, then 12-year-old K.C. and her half sister K.H. were detained from mother L.B. because of mother's physical abuse. K.C. and K.H. told the Los Angeles County Department of Children and Family Services (Department) investigator that mother often hit them, would not allow them out of the house other than to attend school, and that she appeared to suffer from mental health problems as she was paranoid and often "spoke gibberish to herself." The girls were placed with maternal great-grandmother, S.B.

Father made his first appearance at the February 21, 2018 arraignment hearing, where he was found to be K.C.'s presumed father. The Department was ordered to assess father for placement of K.C. Father was ordered to receive monitored visitation.

The Department's jurisdiction/disposition report stated mother and father had an October 2008 referral for emotional abuse, based on a domestic violence incident between mother and father, where father struck mother in the head with a brick. Mother required treatment at UCLA's emergency room. She reported that the children were inside during the incident, and did not witness father striking her. The children confirmed they did not see mother and father fight, and said they felt safe with

mother. Mother had ended her relationship with father more than a year before the incident, due to domestic violence issues. She obtained a domestic violence restraining order against father to protect her and the children. The Department closed the referral as unfounded.

Father has an extensive criminal history, spanning 1998 until 2014, with arrests for obstructing or resisting a police officer (Pen. Code, § 148), supervising prostitution (§ 653.23, subd. (a)(1)), and vandalism (§ 594, subd. (a)(1)). He also has a July 2002 conviction for battery of a noncohabitant former spouse (§ 243, subd. (e)), and convictions in May 2005 and November 2014 for inflicting corporal injury on a spouse or cohabitant (§ 273.5, subd. (a)). He violated probation in the 2005 case several times, including once for violating a court order to prevent domestic violence, and for committing another act of domestic violence. Each domestic violence conviction resulted in increasing penalties; he received 12 days of jail time with his 2002 conviction, 30 days for the 2005 conviction (with additional time added for his probation violations), and 60 days for his 2014 conviction.

As of February 21, 2018, father had not made himself available to be interviewed by the Department. In a brief telephone conversation with a Department investigator, father reported that mother would not allow him to see K.C. after he and mother ended their relationship, and that he wanted K.C. to remain placed with maternal great-grandmother.

Mother told the Department investigator that her relationship with father was "very abusive; very violent," and that father "raped her on several occasions." Mother never followed up with law enforcement because she was "fearful of his

retaliation." Mother reported that one incident of domestic violence "occurred while the children were present and mother had [K.H.] call the police." Mother ended her relationship with father when K.C. was two years old. Mother believed that K.C. would benefit from therapy because she could "not understand[] her father's absence . . . ."

K.C. reported that she had no contact with her father while growing up.

The Department interviewed father by phone on February 23, 2018. Father worked as a supervisor for a janitorial service. He has an 18-year-old son, Chase, with a different mother, G.B. He admitted to a domestic violence incident with Chase's mother in 2002, where he received probation and completed a 52-week domestic violence program. According to father, he "held" and "shook" G.B. after she called his mother a "bitch" while he was at G.B.'s house to visit with his son.

Father met mother in 2001, and they lived together from 2005 until 2008. Regarding his 2005 domestic violence conviction, father did not "remember what happened." He completed another 52-week domestic violence program.

Regarding the 2014 domestic violence conviction, father reported that his live-in girlfriend called him at work and told him that "a lady from up the street came . . . to [their] house and busted some windows out." He admitted he was having an affair with the woman. When he arrived home, the "lady" came back and he "removed her from the property." He "kind of slung her and . . . got arrested." Father reported that he completed 52-weeks of anger management classes in connection with that conviction.

Father reported that he sporadically visited with K.C. He used to visit her at school, but his name and contact information were removed from the emergency contact list. He last saw her eight months before the interview.

Father told the investigator that he was "not too keen on [his] past." However, he claimed he was a "changed individual." He had started working with children to "give them a better outlook on life so they don't make the same mistakes" he made. He teaches "softball, basketball, and football." Father wanted K.C. to stay with maternal great-grandmother, but he wanted to keep his parental rights.

K.C. told the Department that she would like to build a relationship with father.

At the March 2, 2018 adjudication hearing, the court sustained the petition as to mother, and found that father was nonoffending. Father's counsel represented that father was not seeking custody of K.C. given her "strong connection" with maternal great-grandmother. Counsel asked that the court abstain from making a detriment finding, representing that father was interested in having visits with K.C., and might consider "a 388 down the line." The court acknowledged that father was not presently seeking custody, but found "at this time [there exists] clear and convincing evidence . . . it would be detrimental to place the child in his custody . . . based on the domestic violence that has occurred over a number of years with a number of different women." The court ordered monitored visitation with discretion to liberalize, once father's participation in past court-ordered domestic violence and anger management classes had been confirmed by the Department.

Father timely appealed.

DISCUSSION

Father contends substantial evidence does not support the juvenile court's detriment finding. Welfare and Institutions Code section 361.2 provides that when a noncustodial parent "desires to assume custody of the child," the juvenile court "shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)[1] A finding of detriment must be made by clear and convincing evidence. (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1829.) We review the trial court's order under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see also *In re E.B.* (2010) 184 Cal.App.4th 568, 578.) "In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most

---

[1] We acknowledge that Welfare and Institutions Code section 361.2, subdivision (a) applies to a parent who "desires . . . custody," and father did not seek custody at the adjudication hearing. However, father does not contend that the court was without power to make the detriment finding, so any claim of error on this basis is not before us. (*Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125 [discussing forfeiture].) We therefore assume, without deciding, the court had authority to make the finding.

favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916.)

Father contends there is no nexus between his past incidents of domestic violence, and any present detriment to K.C., reasoning that the last incident occurred years before the court's detriment finding. He also contends there is no evidence that any children were present during his past incidents of domestic violence.

In determining whether a child may be safely maintained in a parent's custody, the court may consider the parent's past conduct and current circumstances. (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 917.) Here, there was ample evidence supporting the juvenile court's detriment finding. Over a 12-year period, father repeatedly committed acts of domestic violence, against different women, notwithstanding his completion of domestic violence programs. He suffered three convictions, and violated his probation with even further acts of domestic violence. Moreover, there was evidence that children were present during at least one domestic violence incident with mother, where mother had K.H. call the police, and that father's son, Chase, was likely present when father "shook" Chase's mother in 2002. Based on father's significant domestic violence history, the juvenile court could reasonably conclude that placement with father would be detrimental to K.C.'s "safety, protection, or physical or emotional well-being . . . ." (Welf. & Inst. Code, § 361.2, subd. (a); see also *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576 [discussing harm of domestic violence].)

Moreover, father has not demonstrated that he was prejudiced by the court's order. He did not seek custody of K.C.,

and any claim of future prejudice, in the event that he seeks custody of K.C., is speculative. (*In re A.C.* (2008) 166 Cal.App.4th 146, 157.)

DISPOSITION

The order is affirmed.

GRIMES, J.

I CONCUR:

DUNNING, J.*

---

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

In re K.C. / DCFS v. C.C. - B288668

RUBIN, J. – CONCURRING.

I agree with the majority that the trial court's ruling should be affirmed but for a different reason.

The majority concludes substantial evidence supports the finding that father should not be given custody of K.C. considering father's extensive history of domestic violence involving several women. I agree that evidence would be sufficient to deny father custody *if in fact father had asked for custody* under Welfare and Institutions Code section 361.2 (section 361.2). But he did not.

Section 361.2, subdivision (a) states, in part:

"When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, *who desires to assume custody* of the child. *If that parent requests custody*, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (Italics added.)

The operative language is that which I have italicized. The statute does not come into play unless there is a parent not residing with the child who requests custody. (See *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 351.)

That situation is nowhere to be found in this case. Father expressly said he did not want custody. From the appellate brief

filed by the Department of Children and Family Services: "Counsel for father asked that the court make no detriment findings as to father because he was not custodial, non-offending and was not seeking placement of [K.C.]. Counsel for father said father understands the children's strong connections with [maternal great-grandmother]." As the majority confirms, "Father wanted K.C. to stay with maternal great-grandmother but he wanted to keep his parental rights." (Slip Opn. at p. 5.)

With that record the Department and the juvenile court's task was simplified. Father did not ask for custody, the court was not required to make detriment findings as to him, and the court was left to decide with whom (other than the parents) K.C. should have been placed. (The court had already determined that mother would not be given custody at that time.)

Remarkably, neither father nor the Department point this out in their briefs on appeal. Father does not assert as error the trial court's decision to proceed under section 361.2. He only contends that it would not have been detrimental to place K.C. with him. On that point I disagree, assuming the issue of detriment was before the court, which it was not.

Because the court was removing K.C. from mother's custody, the court had to apply Welfare and Institutions Code section 361, subdivision (c) which provides in part: "A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians *with whom the child resides at the time the petition was initiated*, unless the juvenile court finds clear and convincing evidence" of any of the circumstances described in this section. (Italics added.)

But no detriment finding was required as to father as he did not request custody. Had he made that argument on appeal,

reversal would have been required. But he made no such argument and the point, therefore, is waived.

RUBIN, Acting P. J.