Filed 4/12/18 In re Genesis H. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re GENESIS H., a Person Coming Under the Juvenile Court Law.	B284489
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RAUL H., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK22019)

APPEAL from an order of the Superior Court of Los Angeles County, Nichelle L. Blackwell, Juvenile Court Referee. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Raul H., father of 13-year-old Genesis H., appeals from the juvenile court's jurisdiction findings and disposition order declaring Genesis a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b),[1] removing her from Raul, and terminating jurisdiction with a custody and visitation order (commonly referred to as an "exit order") awarding sole physical and legal custody of Genesis to her mother, Mildred H.[2] Raul contends substantial evidence did not support the juvenile court's finding that his violent altercations with Mildred put Genesis at a substantial risk of serious physical harm. He also contends substantial evidence did not support removal. Finally, he contends the juvenile court abused its discretion by including in its exit order a requirement that Raul's visits with Genesis must be monitored by a person approved by Mildred or by a professional monitor at Raul's expense. We affirm.

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[1] Statutory references are to the Welfare and Institutions Code.

[2] Pursuant to section 362.4, when the juvenile court terminates jurisdiction over a dependent child the court may issue additional orders determining custody or visitation of the child. These orders become a part of any existing family law proceeding. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 202.)

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition and the Detention Hearing*

In February 2017 the Los Angeles County Department of Children and Family Services received a report that Mildred, who was 31 weeks pregnant by her boyfriend, Walter Garrido, was in the hospital for fetal demise caused by physical abuse by Raul, her husband of 26 years. The caller stated that Mildred recently separated from Raul and had a restraining order against him, but that on February 1, 2017 he went into her home, found her with Garrido, and assaulted her by kicking her in the leg and stomach. Genesis, who lived with her mother, was at school during the incident, and later that day Raul picked her up from the school and took her to the police station with instructions to tell the police Garrido had molested her.[3] The caller stated Mildred went to the hospital the next day and learned the incident caused the death of her fetus.

After investigating, the Department filed a petition alleging the extensive history of violent altercations between Mildred and Raul, including the February 1, 2017 incident, put Genesis at substantial risk of serious physical harm within the meaning of section 300, subdivision (b)(1). The Department's detention report included a police department investigative report of the February 1, 2017 incident and a subsequent arrest report for

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[3] Genesis's statements to police about sexual abuse generated a separate report to the Department. According to that report, Genesis disclosed that her mother's boyfriend had touched her breasts on two occasions, that she told her mother about it, but that her mother ignored it. When the Department investigated this report, Genesis admitted her father coached her in fabricating these statements.

Raul on a charge of spousal abuse. The police reports contained statements by Mildred, Garrido, and hospital staff consistent with the initial report the Department received.[4] Garrido also recalled that, during Raul's assault on Mildred, Raul stated he was going to kill her.

According to the police reports, Raul admitted arriving at Mildred's house on February 1 and observing a car in the driveway he assumed belonged to her boyfriend, but Raul denied he entered the home, found Mildred and Garrido in the bedroom, or kicked Mildred. Raul stated that, "if he would have been inside, he doesn't know what he would have been capable of" and that, "if he would have had an opportunity to confront [Garrido]," he "would have possibly . . . hurt him badly with all the rage he had inside." Raul told detectives that, when he discovered Mildred was with another man, his anger level, on a scale from 1 to 10, was 7.

The detention report included other statements from interviews with Mildred, Raul, and Genesis. Mildred stated that she separated from Raul because of domestic violence, that he would rape her, and that she and Raul would either send Genesis to her room or wait until she was at school before they had arguments. Raul, who had a 2002 misdemeanor conviction for spousal abuse, denied all allegations against him regarding the

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[4] Hospital staff reported Mildred arrived on February 2, 2017 in pain, cramping, and unable to feel "the baby move." The nursing staff observed bruising on Mildred's abdomen, and initial tests confirmed the possibility of blunt force trauma to the fetus. An ultrasound confirmed "there was no heart beat for the baby." After an induced delivery that night, "Mildred stayed with the remains in her room until approximately 0800 hrs, when they were removed to the morgue."

February 1, 2017 incident and denied having verbal or physical fights with Mildred in the presence of Genesis. Genesis denied witnessing any domestic violence incidents between her parents and said her father would send her to her room whenever he and her mother argued. Genesis also denied her father hit her, but stated he would tell her mother to hit her, although her mother never did. Genesis stated that Raul instructed her to tell the police Garrido was "touching" her, that Raul's mother went to the police station with Raul and Genesis to make this report, but that no such sexual abuse ever occurred.

At the detention hearing the juvenile court found the Department had made a prima facie case for detaining Genesis and showing she was a person described by section 300, subdivision (b). The court detained Genesis from Raul, released her to Mildred, and ordered twice-weekly, monitored visits for Raul.

B. *The Jurisdiction and Disposition Hearing*

For the May 1, 2017 jurisdiction and disposition hearing the Department filed a jurisdiction and disposition report with additional interview statements from Genesis and Mildred. Genesis reiterated that, although her parents had verbal arguments "all the time," she never saw them fight. Whenever they raised their voices with one another, she would go to her room, and they would keep arguing. She stated she suspected her father hit her mother, however, "because he would raise his voice, and that is usually a sign of someone trying to hit." Genesis also stated that, when Raul and his mother took her to the police department to make a false report of sexual abuse against Garrido, Raul's mother "knew what had happened" and

told Genesis to say Garrido "was touching me and that it happened once at Christmas at the house."

Mildred discussed the incident underlying Raul's 2002 conviction for spousal abuse. On that occasion, Raul punched her in the face and arm. Afterward, when she and Raul were at a mall, a security officer noticed he was following her and she was crying, and the officer asked her if she wanted him to call the police. She answered yes, and the police arrested Raul. Mildred said that in the following years she did not "feel comfortable engaging in sexual activity with him anymore," but did so to avoid argument. "He did not rape me per se," she stated, "but I did not want to and he knew it because I told him."

Mildred also stated that in September 2016, after about 10 "of these sexual abuse encounters," she obtained a restraining order against Raul, and he complied with it until the February 1, 2017 incident. On that day Raul arrived at her house unannounced and entered her bedroom, where she and Garrido were in the bed. Mildred got up when she heard someone approaching the room, but did not make it to the door before Raul opened it. Raul then said, "Por esto fue [it was because of this]," and immediately became aggressive with her, striking her in the leg and stomach. Garrido struggled with Raul until Raul went outside. A short time later Raul tried to re-enter the house, but Mildred had barricaded herself inside and called the police, and Raul was not able to reach her. "I never expected anything of this magnitude from him," Mildred said.

Mildred stated that, when the police arrived, they offered her an ambulance ride to the hospital, but she declined because

she had to pick up Genesis from school.[5] She went to the hospital the next morning and learned the trauma of Raul's kick to her stomach "tore [her] son's placenta" and the heart stopped beating. Mildred again denied she and Raul were ever physically violent with one another in Genesis's presence, "not even once." She also stated that Raul "was a great father to Genesis, always respectful." Mildred said she did not believe Raul was capable of hurting Genesis.

At the jurisdiction hearing the juvenile court sustained the petition, finding true the allegation that Mildred and Raul's history of violent altercations put Genesis at substantial risk of serious physical harm within the meaning of section 300, subdivision (b)(1), and finding Mildred was non-offending.[6] The court cited, among other evidence, Raul's physical violence against Mildred on February 1, 2017, the resulting death of the fetus, and Raul's rage over Mildred's "moving on to another person," including his admission his anger level was 7 on a scale of 1 to 10.

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[5] Unbeknownst to Mildred, Raul picked Genesis up from school early and took her to the police station to file the false report against Garrido. After Mildred went to the school and learned Genesis had left with Raul, Mildred went to the police station to report this as a violation of her restraining order. She found Raul and Genesis at the police station, making the false report against Garrido.

[6] The juvenile court dismissed an allegation that, within the meaning of section 300, subdivision (a), Genesis suffered or was at substantial risk of suffering serious physical harm inflicted nonaccidentally.

At disposition the juvenile court removed Genesis from Raul and placed her with Mildred, pursuant to sections 361, subdivision (a), and 362, subdivision (a). The court terminated jurisdiction and entered an exit order awarding Mildred sole physical and legal custody of Genesis and providing Raul with monitored visits. The exit order required the monitor for Raul's visits to be either someone Mildred approved or a professional at Raul's expense, but in no case Raul's mother. The court also rejected Raul's request to have his sister serve as the monitor for his visits with Genesis. In rejecting the request, the court stated, "No, . . . [Raul] must deal with and address these issues because this was a very horrific incident, so I'm ordering a professional monitor." Raul timely appealed.

DISCUSSION

Raul contends substantial evidence did not support the juvenile court's jurisdiction findings or its removal order. He also contends the juvenile court's exit order was an abuse of discretion in several respects. We find no merit in his contentions.

A. *Substantial Evidence Supports the Juvenile Court's Jurisdiction Findings and Disposition Order*

1. *Applicable Law and Standard of Review*

Section 300, subdivision (b)(1), authorizes the dependency court to assert jurisdiction where, among other circumstances, "'there is a substantial risk' the child will suffer serious physical harm as a result of the failure or inability of his or her parent to adequately supervise or protect the child." (*In re Rebecca C.*

(2014) 228 Cal.App.4th 720, 724; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 (*Kadence P.*).) "Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child currently needs the court's protection. [Citation.] A parent's "'[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue.'" (*Kadence P.*, at pp. 1383-1384.)

"After the juvenile court has assumed jurisdiction, the court is required to hear evidence on the question of the proper disposition to be made of the child." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345-346.) In making its disposition orders the court has broad discretion under sections 361, subdivision (a), and 362, subdivision (a), "to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court's supervision." (*In re Anthony Q.*, at p. 346.) In particular, orders "removing the child from the custody of a nonresident custodial parent and determining where that child shall live while under the jurisdiction of the court[ ] are proper so long as the evidentiary record supports the court's findings that the orders are reasonable and necessary for the protection of the child." (*Id.* at p. 350.) "Disposition orders displacing the custodial rights of a parent must be based on clear and convincing evidence of the need for the order to protect the child from severe neglect or physical harm." (*Id.* at p. 354, fn. 11; accord, *In re Isayah C.* (2004) 118 Cal.App.4th 684, 696.)

"'In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.'" (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

2. *Substantial Evidence Supported the Juvenile Court's Finding That Raul's Violence Against Mildred Put Genesis at Substantial Risk of Serious Physical Harm*

"'[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.' [Citation.] Children can be 'put in a position of physical danger from [spousal] violence' because, 'for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg.'" (*In re E.B.* (2010) 184 Cal.App.4th 568, 576; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1453-1454 ["ongoing domestic violence in the household where children are living, standing alone, 'is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it'"]; *In re T.V.* (2013) 217 Cal.App.4th 126, 135 [even though the child was not "physically harmed, the cycle of violence between the parents constituted a failure to protect her 'from the substantial risk of encountering

the violence and suffering serious physical harm or illness from it'"].)

Substantial evidence supported the juvenile court's finding that Raul's violence against Mildred created a substantial risk of serious physical harm to Genesis. There was evidence Raul had a lengthy history of domestic violence against Mildred in the home in which Genesis lived, culminating in the February 1, 2017 assault that put Mildred in the hospital and caused the death of her fetus. Raul argues his violence against Mildred created no risk of harm to Genesis because it always occurred outside her presence. But even when a child has not yet been present during an incident of domestic violence, her "parents' history of domestic violence evidences an ongoing pattern that, while not yet causing harm to [her], present[s] a very real risk to [her] physical and emotional health." (*In re John M.* (2013) 217 Cal.App.4th 410, 419; see *id.* at p. 418 [evidence of domestic violence supported jurisdiction under section 300, subdivision (b), even where the child "was not present when father beat mother"].)

Moreover, the evidence supported a reasonable inference Raul was no longer capable of "restraining" himself from engaging in domestic violence in Genesis's presence. Raul admitted his discovery on February 1, 2017 that Mildred had left him for Garrido enraged him to the point he did not "know what he [was] capable of." And Mildred, describing the February 1 attack, stated she did not expect conduct of such "magnitude" from Raul. The record also supports a reasonable inference Raul kicked Mildred in the stomach despite being aware she was

approximately six months pregnant,[7] demonstrating, at a minimum, his extreme disregard for the possibility of seriously injuring other victims.

3. *Substantial Evidence Supported the Removal Order*

Raul appears to argue that, even if substantial evidence supported the juvenile court's jurisdiction finding, it did not support the removal order under a clear and convincing evidence standard. Raul misapprehends the standard of review. "The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial." (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 578; see *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451 ["'on appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong"'"].)

The substantial evidence supporting the juvenile court's jurisdiction finding—including the 15-year history of domestic violence, the brutality of the February 1 incident, its fatal consequences, and Raul's admitted lack of self-control—also supported the court's finding that removing Genesis from Raul's custody was reasonable and necessary to protect her. (See *In re*

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[7] Raul told police he first learned Mildred was pregnant when he saw her on February 1 at the police station, where she appeared to him to be "trying to conceal the fact that she was pregnant by wearing multiple layers of clothing." Based on her appearance, he estimated she was five to six months pregnant.

J.S. (2014) 228 Cal.App.4th 1483, 1492 ["'[t]he jurisdictional findings are prima facie evidence the minor cannot safely remain in the home'"]; *In re E.B.*, *supra*, 184 Cal.App.4th at 578 [evidence of domestic violence supporting jurisdiction also supported removal].)

And in addition to the risk of physical harm that supported jurisdiction under section 300, subdivision (b), Raul's repeated physical violence against Mildred presented a risk of emotional harm to Genesis that supported removal. (See *In re J.S.*, *supra*, 228 Cal.App.4th at p. 1494 [parents' ongoing domestic violence presented a "danger to the children's emotional well-being, if not their physical well-being," that supported removal].) Raul's willingness to embroil Genesis in the conflict between him and Mildred, demonstrated by instructing Genesis to make a false police report of sexual abuse against Garrido, only heightened that risk of emotional harm. (See *In re A.J.* (2011) 197 Cal.App.4th 1095, 1104 [evidence the mother made a false police report against the father supported a finding the child was at substantial risk of suffering severe emotional harm].)

B. *The Juvenile Court's Exit Order Was Not an Abuse of Discretion*

"Under section 362.4, '[w]hen the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and . . . an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.'" (*In re J.T.* (2014) 228 Cal.App.4th 953, 959; accord, *In re Chantal S.* (1996) 13 Cal.4th 196, 203.) Such an exit

order may also include conditions on custody or visitation. (*In re Chantal S.*, at pp. 203-204.) In fashioning an exit order, "it is the best interests of the child, in the context of the peculiar facts of the case before the court, which are paramount." (*In re John W.* (1996) 41 Cal.App.4th 961, 965; see *In re Chantal S.*, at p. 206 ["the juvenile court, which has been intimately involved in the protection of the child, is best situated to make [exit order] determinations based on the best interests of the child"].) We review an order under section 362.4 for abuse of discretion. (*In re M.R.* (2017) 7 Cal.App.5th 886, 902; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

Especially in light of the risk of emotional harm to Genesis presented by Raul's demonstrated willingness to entangle her in his and Mildred's troubled relationship, the juvenile court acted within its discretion in ordering monitored visitation with Genesis. Raul does not contend otherwise. Nor does he challenge the exit order's prohibition on his mother serving as a monitor. He does contend the juvenile court abused its discretion in three other respects, but none of those contentions has merit.

First, Raul argues the court erred by requiring him to pay for a professional monitor because that cost "could impede" his visitation. But this is speculation. Nothing in the record shows what the cost would be or what Raul could afford. And requiring a parent to pay for the services of the person facilitating visitation is a permissible term of an exit order. (See *Chantal S.*, *supra*, 13 Cal.4th at p. 202 [juvenile court had authority to require the child's therapist facilitate the father's visits and to make the father "'financially responsible for these visits'"].)

Second, Raul contends the juvenile court erred in denying his request to allow his sister to monitor his visits with Genesis.

He suggests the court's stated reason for denying that request—that Raul needed a professional monitor to help him "deal with and address these issues because this was a very horrific incident"—"mischaracterized the monitor's role." He argues a monitor's purpose is not to provide therapy, but to protect the child. Even if Raul were correct on this point, the record discloses an amply sufficient reason for the court to have denied Raul's request: The court had no information concerning the suitability of Raul's sister to serve as a monitor. Indeed, the court appears to have had no information about her at all. Without such information, permitting her to monitor Raul's visits would have been inconsistent with the legislatively declared purpose of dependency proceedings to help "ensure the safety, protection, and physical and emotional well-being of" Genesis.[8] (§ 300.2.)

Finally, Raul argues the juvenile court erred in granting Mildred authority to approve the monitor. He contends this was an impermissible delegation of the juvenile court's authority. But although a juvenile court may not delegate to a third party "the

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[8] In his reply brief, Raul suggests the juvenile court could have continued the proceeding for the Department to evaluate his sister's suitability as a monitor. But Raul did not ask the juvenile court for such a continuance, even though he knew in advance of the hearing the Department and counsel for Genesis were recommending the exit order that the court adopted. Therefore, Raul forfeited this argument. (See *In re A.B.* (2014) 225 Cal.App.4th 1358, 1366 ["[b]ecause mother's counsel never requested a continuance . . . , we consider the argument forfeited"]; *In re S.B.* (2005) 130 Cal.App.4th 1148, 1158 ["'[a]s a general rule, a party is precluded from urging on appeal any point not raised in the trial court'"].)

decision whether visitation will occur," it may delegate to a third party "'the responsibility for managing the details of visits, including their time, place and manner.'" (*In re Korbin Z.* (2016) 3 Cal.App.5th 511, 516; see *In re Chantal S.*, *supra*, 13 Cal.4th at p. 213 [juvenile court may delegate responsibility to manage details of visitation, but not "'absolute' discretion to determine whether visitation should occur"]; cf. *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123 ["[s]everal appellate courts have overturned visitation orders that delegate discretion to determine whether visitation will occur, as opposed to simply the management of the details"].) Because the juvenile court did not delegate to Mildred the authority to determine whether visitation would occur, only authority to approve a non-professional monitor, the court did not impermissibly delegate its authority.[9]

DISPOSITION

The juvenile court's jurisdiction findings, disposition order, and exit order are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J. ZELON, J.

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[9] Generally, a "visitation order must give some indication of how often visitation should occur." (*In re E.T.* (2013) 217 Cal.App.4th 426, 439.) Although the visitation order here appears not to give any such indication, Raul has not challenged the order on that ground. (See *In re A.C.* (2017) 13 Cal.App.5th 661, 672 [an appellant forfeits an issue not raised].)