Filed 6/13/12 In re R.B. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re R.B., A Person Coming Under the Juvenile Court Law.	B236031 (Los Angeles County Super. Ct. No. CK82848)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. KIMBERLY B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Tim Saito, Judge. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Kimberly B. (Mother) appeals an order made at a review hearing conducted under Welfare and Institutions Code section 364, contending the juvenile court abused its discretion in ordering jurisdiction over her son R. to continue.[1] Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second time this dependency matter has been before us. R.B. (R.), the child of appellant Mother and Gregory S. (Father), was born in 2007. In 2010, he came to the attention of DCFS when he was returned from an overnight visit with Father with multiple bruises and scratches. Father denied any abuse and reported that the boy had accidentally fallen down porch steps when being supervised by Father's live-in girlfriend. In September 2010, the court found jurisdiction appropriate. The court concluded that Father had intentionally caused the injuries based, in part, on Father's "prior unresolved history of violence and anger management issues" and on "prior physical injuries sustained by the child, while in the immediate custody and control of [Father]." The reunification plan required Father to undergo individual counseling to address case issues, including anger management, and to participate in a parenting class. Mother had been instructed to participate in counseling by the family court, and was not required to complete a reunification program.

In 2010, Father appealed, contending the evidence did not support the jurisdictional finding. Father further contended that having placed R. with Mother, where he was safe, the court should have terminated dependency jurisdiction and

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

returned the matter to family court.[2] In a February 22, 2012 opinion, we affirmed the court's orders.

In reports filed in March and May 2011, while the prior appeal was pending, the caseworker reported that the director of the program where Father was participating in parenting and anger management classes -- who was also apparently acting as Father's therapist or counselor -- reported that Father was making progress, but still had "a lot of unresolved anger and resentment." The caseworker had observed Father become "hostile" and "belligerent" when he was unable to persuade the DCFS monitor to allow visits with R. to take place in a park.[3] She had also observed Father shouting at Mother during the exchange of R. for a monitored visitation. During this period, R. was also undergoing counseling after displaying physically aggressive behavior, including pushing, hitting, kicking, screaming and throwing objects at home, school and in the community. In the meantime, Mother completed the counseling assigned to her by the family court. In its reports, DCFS recommended termination of jurisdiction, which would also have terminated the services being provided for Father. By that time, Father had changed his position with respect to the termination of jurisdiction and asked for a contested hearing to oppose DCFS's recommendation.

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[2] The couple had a long and contentious history in family court, where Father had initiated suit to establish paternity. In those proceedings, Father had repeatedly claimed that Mother was not allowing court-ordered visitation to occur, while Mother questioned whether the boy would be safe in Father's care. In 2008, a court-appointed evaluator had concluded that Father did not pose a risk to R. despite his "poor impulse control, impaired judgment, . . . little respect for the courts and police," and "difficulty controlling his anger." Father had been given regular overnight visitation. When the dependency petition was filed, the parties were preparing for trial and a conciliation court conference.

[3] Father was permitted monitored visitation twice a week and although he missed a number of scheduled visits, it appears from the record that he attended the majority of them.

In June 2011, instructed by the court to interview Father's counselor, the caseworker reported that the counselor believed Father "was attempting to do the right thing by wanting to be in his son's life and taking responsibility as a father," "was an active participa[nt]" in therapy, "had the ability to express his feelings," and had successfully completed a recent therapeutic assignment. The counselor stated in a letter that he had seen a "positive change" in Father, that Father's determination was "inspiring, because he wants to be a father for his child," and that Father was "ready for all the challenges that parenthood has to offer." The counselor recommended that Father be allowed unmonitored visitation with R.[4] DCFS continued to recommend termination of jurisdiction and issuance of a family law or exit order restricting Father to monitored visits only.[5]

Father testified at the contested hearing, which took place in June and July 2011. He continued to maintain that the injuries to R. had been the result of an accidental fall. He acknowledged having had an anger management problem in the past, but testified he was learning not to let little things agitate him and to choose his battles. Mother testified that Father continued to call her names and threaten her, sometimes in the presence of R. In her perception, R. became overly aggressive or overly clingy after visits with Father. After hearing the evidence, the

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[4] After receipt of these reports, DCFS asserted for the first time that the person from whom Father received anger management therapy did not have the appropriate credentials to be an approved provider because he did not have a master's degree or a therapist's license. Father subsequently presented evidence that the program in which he was participating had been recommended to him by the caseworker. The court did not instruct Father to attend a different program or work with a different counselor.

[5] When the juvenile court terminates jurisdiction over a case in which a family law order impacting custody of the minor has been entered, it may issue an order "determining the custody of, or visitation with, the child." Such orders become part of the family law file and "continue until modified or terminated by a subsequent order of the superior court." (§ 362.4.) These orders are sometimes referred to as "'family law'" or "'exit'" orders. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 202; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

court retained jurisdiction despite the objections of counsel for DCFS, who was joined by counsel for Mother in recommending termination of jurisdiction and a family law or exit order permitting Father monitored visitation only. The court found that the parents continued to display a great deal of animosity toward each other which could be expected to have a negative impact on R., and that R., although primarily bonded with Mother, had a relationship with Father and would likely desire a stronger relationship with Father as he grew older. Accordingly, the court continued services for three months to "give the child an opportunity to have conjoint or play therapy with the Father . . . " and to "get the best possible feedback" to determine whether monitored visitation was necessary. The court continued jurisdiction and ordered immediate conjoint therapy for Father and R.

Mother appealed the court's ruling. DCFS filed a statement of non-opposition. Father did not file a brief.[6]

DISCUSSION

Section 364 governs situations such as the present one, in which "an order is made placing a child under the supervision of the juvenile court pursuant to Section 300 and . . . the child is not removed from the physical custody of his or her parent or guardian." (§ 364, subd. (a).) As we stated in the prior opinion, after finding that grounds exist to support assertion of jurisdiction but that detention from the custodial parent is not required, a juvenile court has discretion under section 364 to provide reunification services to either or both parents -- or it may "bypass the provision of services and terminate jurisdiction." (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 650-651; see also *In re Pedro Z.* (2010) 190

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[6] When no respondent's brief is filed, we "examine the record on the basis of appellant's brief and . . . reverse only if prejudicial error is found. [Citations.]" (*Votaw Precision Tool Co. v. Air Canada* (1976) 60 Cal.App.3d 52, 55.)

Cal.App.4th 12, 20.) The court has "broad discretion" to determine which of these options would "serve the child's best interests" (*In re Gabriel L.*, *supra*, at p. 652), and must consider "the totality of the child's circumstances" before making decisions affecting the child under section 364. (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095.)

Where, as here, the court chooses to continue jurisdiction after making the decision to leave the minor with a custodial parent, the court is required to hold hearings every six months to determine "whether continued supervision is necessary." (§ 364, subds. (a), (c).) The primary issue at such hearings is similar to the issue at the review hearings which follow detention of a child from his or her parents: "The court shall terminate its jurisdiction unless the social worker or [the agency] establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn."[7] (§ 364, subd. (c).) However, "[u]nlike the situation in which the child is removed from the home and court-ordered services are statutorily limited to 18 months [citation], nothing in the statutes or rules limits the time period for court supervision and services when the child remains in the home [citations]. . . . [T]he state may continue to provide supportive services and supervision to parents until the dependent minors reach their majority." (*In re Joel T.* (1999) 70 Cal.App.4th 263, 267-268, fn. omitted.)

We review the court's determination that the conditions justifying assumption of jurisdiction still exist for substantial evidence. (*In re N.S.* (2002) 97 Cal.App.4th 167, 172.) We review the court's decision to continue to provide

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[7] The social worker is required to prepare and file a report prior to such hearings "describing the services offered to the family and the progress made by the family in eliminating the conditions or factors requiring court supervision." (§ 364, subd. (b).)

reunification services to one or both parents for abuse of discretion, whether appeal is from the original dispositional order or an order following a review hearing. (*In re Gabriel L.*, *supra*, 172 Cal.App.4th at p. 652.)

Here, the evidence established that Father was striving to comply with the reunification plan by becoming a less angry person and a better parent. His counselor reported substantial progress and recommended resumption of regular visitation. However, the caseworker's report and Mother's testimony indicated that Father's problems with anger management had not been completely resolved. After hearing the evidence, the court retained jurisdiction, giving Father additional time to address the issues that led to the assertion of jurisdiction and providing conjoint counseling to facilitate a relationship between Father and R. The court concluded this would serve the best interests of R., who deserved the support of two fully involved parents not engaged in active hostility toward each other.

Mother cites *In re Alexandria M.*, *supra*, 156 Cal.App.4th 1088, to support her argument that the court abused its discretion. In that case, jurisdiction had been based on the physical abuse of the children by the mother's boyfriend. The court placed the children with their father. After a period of reunification which included counseling for the mother to gain insight into her selection of abusive partners, DCFS and the parents agreed that jurisdiction should be terminated with an exit order leaving physical custody with the father, but allowing the mother regular and increasing unmonitored visitation. The court, however, continued jurisdiction for several months, made orders relating to child support, and held evidentiary hearings to determine "whether there might be protective issues . . . which . . . had not been shown by the Agency." (*Id*. at p. 1097.) The appellate court concluded the juvenile court had abused its discretion by arbitrarily rejecting the "settlement agreement[] terminating dependency jurisdiction" and subjecting

the parties to further litigation in the juvenile court when "there was no showing of continued risk to the children." (*Ibid*.)

The situation here is not analogous. As discussed in our prior opinion, the court's assertion of jurisdiction was based on the injuries inflicted on R. by Father and Father's history of violence and anger management issues. (See *In re Joshua G*. (2005) 129 Cal.App.4th 189, 202 ["[T]he court has jurisdiction over the children if the actions of either parent bring the child within one of the statutory definitions in section 300."].) Mother's own testimony supported that the problems supporting assertion of jurisdiction had not been resolved. DCFS also presented evidence supporting the assertion that R. would be at risk if the court permitted Father to have unmonitored visitation with him. Mother's contention that the conditions justifying continuing juvenile court jurisdiction no longer existed because R. was being "safely maintained" in Mother's home is identical to the argument made and rejected in Father's appeal. As we stated in our prior opinion: "Although the juvenile court is permitted to terminate jurisdiction once the child is safely in the home of a nonoffending parent and an order is in place restricting the visitation rights of the offending parent, the statutory scheme allows the court to continue jurisdiction as long as continued monitoring and/or provision of services appears beneficial to the child and the family." It is true that termination of jurisdiction and relegation of any remaining issues to the family court is preferable when both parents have addressed their problems and all that remains is a custody dispute between adequate parents. (See *In re Alexandria M*., *supra*, 156 Cal.App.4th at p. 1096; *In re John W*. (1996) 41 Cal.App.4th 961, 975.) Here, however, the issues leading to jurisdiction had not been fully resolved and if the court had terminated jurisdiction, the parents' battle would no doubt have continued unabated in family court -- but with less support for their or R.'s emotional welfare. The court's conclusion that supervision for an additional

period would be in R.'s best interests was not arbitrary or unsupported and did not represent an abuse of discretion.

DISPOSITION

The order is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.