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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ZION B., a Person Coming Under
the Juvenile Court Law.

B264212
(Los Angeles County
Super. Ct. No. DK10110)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Steff R. Padilla, Juvenile Court Referee. Reversed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel for Plaintiff and Respondent.

K.W. (Mother) appeals from a juvenile court order maintaining jurisdiction over her son Zion B. (Baby), now age 2, in order to provide Baby's father, C.B. (Father),¹ with services. Mother argues it was an abuse of discretion for the court to maintain jurisdiction and we should reverse and remand with instructions to the juvenile court to terminate jurisdiction through a family court order. We reverse.

BACKGROUND

In January 2015, Mother had a restraining order against Father for a past incident of domestic violence. Father had nonetheless been requesting to see Baby, then age 1, but Mother denied Father's requests. On January 6, 2015, Father violated Mother's restraining order, apparently in an attempt to see Baby. According to the account Mother gave to law enforcement, Father entered Mother's residence, "busted into" her upstairs bedroom, and began to choke her while Baby was present. Mother says she fought back and Father released her. Mother reported Father then picked up Baby and ran with him to another room, hitting Baby's head on a television during his flight. Father shut the door to the room he fled to, but Mother forced it open and retrieved Baby. As Mother soothed Baby, Father, by Mother's account, then picked up a knife from the floor, grabbed Mother by her hair, and tried cutting Mother's hair. Mother says she pushed Father, broke free from his grasp, ran downstairs, and waited for law enforcement, who had been alerted to the situation. As law enforcement was arresting Father, paramedics checked Baby for injuries, but found none. Mother told law enforcement Baby was "crying" and "screaming hysterically" during the incident.

After this incident, the Los Angeles Department of Children and Family Services (DCFS) filed a dependency petition on January 22, 2015. It alleged under Welfare and Institutions Code section 300, subdivisions (a) and (b) that Father's abuse of Mother endangered Baby.² At the detention hearing on January 22, 2015, the court designated Mother as a non-offending parent and detained Baby from only Father. The court also

¹ Father is not a party to the appeal.

² Undesignated statutory references are the Welfare and Institutions Code.

granted Father DCFS-monitored visits. At the combined jurisdiction and disposition hearing on April 13, 2015, the court asserted jurisdiction under subdivision (a), risk of serious harm, but not under subdivision (b), failure to protect. The court maintained Mother's non-offending status and did not order her to participate in any services. Due to Father's incarceration, Mother's restraining order against him, and Mother's status as a non-offending parent, Mother's counsel requested the court terminate its jurisdiction with a family court order. DCFS countered that Father had requested mental health services and, at the time, counsel believed those services "would help solve the case properly" because "[o]therwise, we're going to repeat . . . this same pattern over and over again." The court agreed with DCFS and even further commented that Father had "mental health issues beyond domestic violence." Consequently, the court maintained jurisdiction and ordered drug testing and domestic violence, mental health, and individual counseling for Father. Mother appealed.

DISCUSSION

On appeal, Mother argues the juvenile court abused its discretion in maintaining jurisdiction because Mother is a non-offending custodial parent, who does not require services and is able to adequately protect Baby without the supervision of DCFS as required by the juvenile court. Since the disposition hearing, DCFS has changed its position and informed this court it has no objection to us granting Mother's requested relief. We reverse.

Mother argues we should review the dispositional order for an abuse of discretion. A line of cases supports her contention. (See, e.g., *In re Robert L.* (1998) 68 Cal.App.4th 789, 794 [abuse of discretion standard applied for terminating jurisdiction when minor reached 18]; *In re Shannon M.* (2013) 221 Cal.App.4th 282, 289 [same]; *In re J.S.* (2011) 196 Cal.App.4th 1069, 1082 [abuse of discretion for terminating jurisdiction when "there was nothing before the court indicating that the relatively heavy hand of the juvenile court law was needed to secure needed services"]; *In re Joshua S.* (2003) 106 Cal.App.4th 1341, 1353 [abuse of discretion standard applied for terminating jurisdiction without a "best interest" analysis].) A different line of cases, however, applies the

substantial evidence test. (See, e.g., *In re Noe F.* (2013) 213 Cal.App.4th 358, 367 [substantial evidence used for reviewing dispositional order removing child]; *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146 [“The standard for review of a dispositional order on appeal is the substantial evidence test”]; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1433 [substantial evidence used for reviewing dispositional orders].) Some courts have applied a blended standard. (See, e.g., *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 [in discussing the substantial evidence standard, court also invoked abuse of discretion language].) One court has acknowledged that “evaluating the factual basis for an exercise of discretion” in any event “is similar to analyzing the sufficiency of the evidence for the ruling.” (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067 [also explaining that substantial evidence is applied to judgments whereas other rulings are ordinarily reviewed for abuse of discretion]; see also *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196 [dispositional orders are “judgment[s]”].) Under either standard, we find the order was improper.

““““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.”””” (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095–1096, quoting *In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) On the other hand, under a substantial evidence test, an order “will be upheld if it is supported by substantial evidence” that is “reasonable in nature, credible, and of solid value,” “even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

While we may not and do not question the court’s in-person credibility determinations and factual determinations that led to it maintaining jurisdiction and providing Father with services, we may and do question the sufficiency of the record presented to us supporting the basis for the order. The record does not contain evidence showing continuing jurisdiction was necessary. What the evidence does show is that Baby is residing with Mother, a non-offending parent whose behavior and parenting capabilities never were and are not in question. The only threat to Baby was and is

Father, but the court has now limited Father's contact to DCFS-monitored visits such that, with or without a restraining order in place, Father may not visit Baby outside of his DCFS visits. Under these orders, Baby is in danger of being harmed by Father only if Father inappropriately behaves while under the supervision of DCFS. The court's ordered counseling, however, is designed to ameliorate the risk of Father's potential bad behavior during these visits.

"In the early stages of a case, when services are being provided to the dependent child's parents, there is a statutory presumption in favor of terminating jurisdiction and returning the children to the parents' care without court supervision." (*In re Shannon M.*, *supra*, 221 Cal.App.4th at p. 290.) In fact, a juvenile court may terminate jurisdiction even when it determines a parent continues to need services to correct the behavior that initially led to dependency jurisdiction. (*In re Chantal S.* (1996) 13 Cal.4th 196, 202–205.) That is, "there are situations in which a juvenile court may reasonably determine that continued supervision of the minor as a dependent child is not necessary for the child's protection, and at the same time conclude that conditions on visitation are necessary to minimize, if not eliminate, the danger that visits might subject the minor to the same risk of physical abuse or emotional harm that previously led to the dependency adjudication." (*Id.* at p. 204.) Under a contrary rule, "the juvenile court would be required to force" children and their non-offending parents "to remain indefinitely in the juvenile court dependency system." (*Ibid.*) Subjecting children and non-offending parents to unnecessary continued supervision in order to maintain services for an offending parent is especially unsatisfactory because "[d]ependency proceedings are designed not . . . 'for the reproof and improvement of erring parents,' but to protect children." (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 113.) Baby's case was still "[i]n the early stages" at the disposition hearing, and thus there was a "statutory presumption in favor of terminating jurisdiction" at that time. This was so even though the court determined Father was still in need of services to remedy Father's domestic violence issues that initially led the family to juvenile court.

When terminating jurisdiction in the face of a parent continuing to require services that ultimately will benefit the parent-child relationship, the juvenile court may issue the orders it finds necessary to protect the child, including counseling, to be enforced by a family court. (§ 362.4 [permitting a juvenile court to issue visitation and custody orders to be enforced by a family court upon terminating jurisdiction]; *In re Chantal S.*, *supra*, 13 Cal.4th at p. 204 [““section 362.4[, by] authorizing the court to make custody and visitation orders[,] implicitly authorizes the court to make collateral orders, such as counseling orders, that are reasonably related to the custody and visitation orders””]; see also § 362, subd. (d) [authorizing courts to order counseling for a parent when it is “designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300”].) Here, the court could have provided the services it determined Father needed as a condition to Father’s visitation and terminated jurisdiction by passing the matter to the family court. The juvenile court thus abused its discretion by maintaining jurisdiction over Baby to provide Father with services when those services could have been provided as part of a termination order passing the matter to family court and there was no evidence suggesting Mother otherwise needed supervision in caring for or protecting Baby.

DISPOSITION

The dispositional order maintaining jurisdiction over Zion B. is reversed.

NOT TO BE PUBLISHED.

LUI, J.

We Concur:

CHANNEY, Acting P. J.

JOHNSON, J.