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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JADE S., a Person Coming Under the
Juvenile Court Law.

B240321
(Los Angeles County
Super. Ct. No. CK74786)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R. S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Donna Levin, Juvenile Court Referee. Affirmed.

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

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

R. S. appeals from the dispositional orders in the dependency proceedings concerning his daughter Jade S. We affirm.

Facts

Father and Jade came to the attention of DCFS on October 26, 2011, when Jade was three months old.

A day or two earlier, after Father and his girlfriend, Daniella W., had an argument, Daniella made Father leave the house that he and Jade shared with her and her son Alexander. On the 26th, while carrying Jade, he attempted to enter the house, only to discover that the locks had been changed. Daniella or a neighbor (the record is unclear) called police. Father was arrested on a domestic violence warrant, apparently stemming from a 2007 domestic violence conviction. At the time of his arrest, Father was Jade's sole caregiver, because her mother was incarcerated.

Jade was initially placed in foster care, but on November 10 was placed with her maternal grandmother.

A Welfare and Institutions Code section 300¹ petition was filed on October 31, 2011. The petition was sustained as amended, on March 6, 2012, under subdivision (b), on allegations concerning drug use and domestic violence.²

The sustained drug allegations were that Jade was endangered as a result of Father's history of marijuana use and current marijuana use, that Father had been under the influence while Jade was in his care, that he had convictions for the transportation and sale of marijuana, and that an older child of Father's, M.S., had received permanent placement services as a result of Father's substance abuse.

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

² Those were the sustained allegations as to Father. There were also allegations concerning Jade's mother, but she is not a party to this appeal.

The sustained domestic violence allegations were that Jade was endangered as a result of Father's history of domestic violence, that on or about October 25, 2011, he engaged in an altercation with Daniella in Jade's presence, and that on prior occasions he had hit Daniella in the presence of her son Alexander.

The court ordered Father to complete a 52 week domestic violence program approved by probation, and to complete a drug program with random weekly testing. Those are the challenged orders, and we review the rest of the facts with that in mind.

Between the date the petition was filed and the date the petition was sustained, DCFS reported that:

Father was a user of medical marijuana, and had a license for that use. He did not smoke the marijuana, but took it in the form of tea, or a brownie. He used the drug to relieve pain and headaches caused by the metal plates in his face, the result of a jail fight. He said that he used the drug only at night when the children were sleeping.

As Father knew, Jade's mother also had a history of drug use, specifically, use of crack cocaine. Father was caring for Jade because her mother had relapsed to cocaine use.

Daniella used marijuana medically, for pain caused by injuries inflicted by a former boyfriend. Daniella said that she and Father did not use drugs in front of the children.

Father's criminal history included convictions for domestic violence, transportation and sale of marijuana, and possession of a firearm by a felon.

In February, DCFS asked Father about recent arrests. After initially denying any recent arrests, Father admitted that he was arrested during this dependency, in November of 2011. According to Father, he was pulled over for a broken tail light. He was searched, and a "significant amount" of marijuana was found in his possession, because he had just come from the medical marijuana facility. According to Father, he was incarcerated for two or three days, then released when the district attorney rejected the case.

Father admitted to a history of domestic violence with his wife, from whom he had been separated for five years.

Father also had a history with DCFS: In 2007, the juvenile court found, in M.S.'s case, that Father had had a violent altercation with a female companion, in M.S.'s presence. During the altercation, Father held a gun to the woman's head and threw a caustic chemical at her, striking her leg. The petition in M.S.'s case included allegations about Father's drug use, including drug use in M.S.'s presence.

Daniella told DCFS that she knew of Father's domestic violence history, but both Father and Daniella said that there had been no violence in their relationship. However, DCFS reported on the December 2008 referral concerning Daniella's son, Alexander. The record includes Alexander's 2008 statement that, in his presence, Father and Daniella got into a fight in which Father hit Daniella and in which Alexander was accidentally hit by Father, when he tried to pull at Father to prevent Father from hitting Daniella. Alexander said that he sometimes feared Father. In 2008, Daniella confirmed Alexander's account of the fight and asked for services for domestic violence victims, saying that she had been abused by Father.

In 2010, apparently as a condition of probation, Father completed an anger management program and a 52 week domestic violence program with the Love and Respect Youth Foundation. He told DCFS that when the October 2011 argument with Daniella started, he used the techniques he learned from those classes, and left because he believed that the argument would escalate.

In December, DCFS wrote that "Father presents to be a volatile and aggressive person who continues to engage in violent altercations while jeopardizing the safety of his child." Concerning his treatment, DCFS wrote, "his participation may have been somewhat helpful in that he left the home when a heated argument developed. But DCFS is not convinced that father's tendency toward violence is fully resolved. In fact, he is still on probation. While DCFS acknowledges father's efforts to become more

responsible, it is DCFS's assessment that the child Jade would be put at unnecessary risk of harm if she was released to father at this time."

During this dependency, Father participated in parenting, counseling, and anger management at the Love and Respect Foundation. DCFS received contradictory reports from the program.

On December 10, 2011, Deborah Bell-Holt, a counselor at the program, reported that Father had completed 10 classes and was in compliance with the program. On January 5, 2012, a different counselor, Nathan Holt, told DCFS that Father was not making progress. Nathan Holt said that he had advised Father that he should not live with Daniella while they tried to resolve their individual issues, but that Father continued to do so. Father and Daniella continued to argue, and she continued to bar him from the home, then allow him to return.

After receiving this report from Nathan Holt, DCFS received a phone call from Deborah Bell-Holt, contradicting Nathan Holt's report.³ DCFS lost confidence in the program and gave Father other referrals.

Father continued at the Love and Respect program, and on February 27, 2012, provided DCFS with letters showing completion of anger management and parenting programs and participation in domestic violence and substance abuse counseling.

Father drug tested during the dependency, apparently voluntarily at first, and later in response to the court's order that he could have unmonitored visits with Jade after he tested clean.

On February 2, Father tested positive for cocaine. He told DCFS that the test was the result of his exposure to second hand smoke. He had had an argument with Daniella, and had nowhere to go except to the home of a friend, where the environment consisted of drug use and drug trafficking.

³ In the trial court, during oral argument on the section 300 petition, counsel for DCFS represented that Nathan Holt was not a licensed counselor, and that Deborah Bell-Holt told DCFS that she was going to fire Nathan Holt (her husband) and that Nathan Holt would no longer be teaching domestic violence classes.

On February 9, he tested positive for marijuana use, at a level which the court deemed high. On February 16, he tested negative, a change which both Father and DCFS found anomalous. DCFS deemed it "suspicious." Father argued that it meant that the earlier positive tests were the result of lab error.

Father apparently lived with Daniella during the dependency, but on February 27, he told DCFS that he had moved out of that home (as a result of his positive cocaine test) and into the home of a friend and her children. That friend had an extensive history with DCFS, with allegations of physical abuse and general neglect.

Discussion

At the dispositional hearing, the juvenile court must order services which are designed to aid the parent in overcoming the problems which led to loss of custody. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006; *In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) "The court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion. [Citation.]" (*In re Christopher H.*, *supra*, 50 Cal.App.4th at p. 1006.)

1. The drug program

Father argues that the evidence did not support a finding that he had a substance abuse problem serious enough to require a full treatment program. He cites the evidence that he had a license for medical marijuana, used the drug for pain, and used it only when Jade was sleeping; the evidence that the district attorney rejected a filing after his most recent arrest; the evidence of his substance abuse counseling and his clean drug test; and his explanation for his positive test for cocaine.

All that evidence is in the record, but so is evidence of a recent positive test for high levels of marijuana and a recent positive test for cocaine. The court was under no obligation to accept Father's explanation for the cocaine, and even if the court did accept

that explanation, it indicates that Father had not adopted a drug-free life style, but that when he needed a place to stay, he had nowhere to go except to friends who used and sold drugs. This is especially troubling given his criminal history for transportation and sale of marijuana. We see no abuse of discretion in the drug program order.

2. The domestic violence program

Father makes similar arguments about the domestic violence program. He cites the evidence that violence was not part of the October 2011 incident, but that during the incident he used the skills he had learned and walked away from the argument. He also relies on the evidence that he had completed a domestic violence program.

It is true that the incident of October 2011 was not violent.⁴ It is also true that Father completed a drug program and a domestic violence program. However, he had a long history of domestic violence, treated only through a program which the court had good reason to suspect, in that the program gave contradictory reports to DCFS, and in that Father's counselor was on the verge of being fired. We thus see no abuse of discretion in the order that Father complete a new program.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.

⁴ DCFS thus errs when it asserts, in its brief, that the dependency petition was filed after Father engaged in domestic violence against Daniella. DCFS also asserts that Jade's mother had reported domestic violence with Father. At the cited page, the record (if it indeed refers to Jade's mother, and not Daniella, also referred to as "mother") reports only verbal abuse.