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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.P., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.P.,

Defendant and Appellant.

B298623

(Los Angeles County
Super. Ct. No. 19CCJP02721A)

APPEAL from an order of the Superior Court of
Los Angeles County, Sabrina A. Helton, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal,
for Defendant and Appellant T.P.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Sally Son, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant T.P. (Father) lost custody of his now-adult daughter in 2007 after the juvenile court found true allegations he had sexually abused the child. At the time Father admitted the abuse. When he was subsequently charged in criminal court with multiple accounts of child sexual abuse arising from the same events, he again admitted guilt pursuant to a plea agreement. Father served two years in prison, and was placed on five years of probation.

Father remarried and had another daughter, A.P., who came to the attention of the Los Angeles Department of Child and Family Services (Department) in April 2019 when Father and the child's mother (not a party to this appeal) brought A.P. to the hospital with a fever and seizures. Hospital staff were concerned because the child appeared small and malnourished.

During the Department's investigation, Father denied the prior abuse. He maintained his ex-wife coerced their daughter into making the allegations.

At the jurisdiction/disposition hearing in June 2019, the court took jurisdiction over the child. Although Father initially agreed to proceed directly to disposition that day, he subsequently requested a continuance to gather more evidence to contest the Department's recommendation that A.P. be removed from his care. The court ultimately denied the request, conducted the disposition hearing, and removed A.P. from Father's custody and control.

Father appeals, arguing the court abused its discretion in denying his request.

We conclude Father received ample notice that the court intended to proceed directly to disposition at the June 2019 hearing, and Father failed to establish good cause warranting a continuance. Accordingly, we find no abuse of discretion and affirm.

FACTS AND PROCEDURAL BACKGROUND

In 2006, the juvenile court found Father had sexually abused his daughter, who is now an adult. In February 2007, the court terminated jurisdiction and awarded sole custody to the mother. Father was also criminally convicted of continuous sexual abuse of a child in 2015 for the same events. According to Father, he served two years in prison and was placed on five years of formal probation. Father was also required to register as a sex offender.

In April 2019, the Department received a referral from Providence Saint Joseph Medical Center about Father's 14-month-old daughter, A.P. According to the report, Father and Mother brought A.P. to the Emergency Room for fever and seizures. The child was reportedly small and appeared malnourished.

When the Department interviewed Father, he disclosed he had been convicted of a felony but denied he ever sexually abused his older daughter. Father claimed his ex-wife, whom he called a "bitch," convinced their daughter to report he had sexually abused her. The social worker who interviewed Father also observed Father changing A.P.'s diaper, and noticed Father spreading the infant's legs and blowing on her vaginal area, causing her to urinate. Father laughed and then placed a clean diaper on the child. At a home visit the following month, Father denied blowing on A.P.'s vaginal area and stated he was only

making a “ ‘shhhh’ ” sound to encourage the infant to urinate. Father claimed this was a cultural practice, became extremely angry, and began cursing.

Mother reported she married Father in 2011 and did not believe he had sexually abused his older daughter. Mother stated the older daughter was jealous of Father and his ex-wife. Mother reported she completely trusted Father with A.P. and that he cared for A.P. while she worked. Father’s probation officer reported Father maintained he did not sexually abuse his older daughter.

On April 26, 2019, the court granted the Department’s request to remove A.P. from Father. Father refused to leave the home at the time of removal, so Mother chose to reside with A.P. at a paternal aunt’s home. On May 2, 2019, the court detained A.P. from Father and released her to the home of Mother.

The Department filed its jurisdiction/disposition report on May 30, 2019. The Department served Father with the report that day and served him with a notice of hearing on the petition that stated: “[a] Jurisdiction/Disposition Hearing will be held” at 8:30 am June 13, 2019. The report recommended the court order no family reunification services for Father based on his anger toward the Department, failure to take responsibility, denial of past abuse, and failure to reunify with his now-adult daughter.

On June 11, 2019, the Department filed a last minute information informing the court of its change in recommendation. The Department now requested that the court order individual counseling and parenting classes for Father.

At the jurisdiction/disposition hearing, the court found proper notice had been given, and admitted exhibits introduced by Father documenting his enrollment in a parenting class,

completion of court-ordered sex offender treatment, and participation in individual psychotherapy. The letter from Father's therapist included results from three risk assessment tools for sexual offenders, all of which scored Father as low risk.

The jurisdictional portion of the hearing proceeded by way of oral argument. The court sustained an amended version of the Department's petition, finding true the allegations that A.P. was at risk due to Father's prior sexual abuse of his now-adult daughter. In rendering its decision, the court was most troubled by the fact Father previously admitted to sexually abusing his now-adult daughter in the prior juvenile dependency and criminal proceedings, but now denied any wrongdoing in the instant proceedings. This denial, the court stated, "is something that is deeply disturbing to me, and I believe this child who is also a female is placed at risk, and the court should take jurisdiction of this baby." The court also expressed its concern about the incident in which Father blew on A.P.'s vaginal area while changing her diaper.

The court then asked the parties, "[a]re we ready to proceed to disposition?" All parties, including Father's counsel, replied, "[y]es." The court asked if there were any objections to the same evidence from the adjudication being used in the disposition, and all parties replied in the negative. The court then asked whether any parties wished to present additional evidence for disposition, to which all parties replied, "[n]o."

Finally, the court asked the parties if they intended to argue on the recommended case plan. Father wanted it explained to the court that blowing on the child's vaginal area was not for sexual gratification but was a "cultural thing where he was encouraging the child to urinate." The court stated even

if it were to exclude that from the hearing, the court's ruling would not change.

The Department then stated that additional sexual abuse classes were "probably warranted" given Father's recantation and denial of past wrongdoing. Father's attorney replied his client wanted to set the disposition for a contested hearing. The court stated, "[w]e'll set it for contest," after which the Department's attorney objected to a continuance. When asked by the court what his reason was for setting the hearing for contest, Father's counsel stated he wanted to contest the recommendations of the department, and to provide more evidence as to whether A.P. can be returned to his care. The Department argued there no basis for the continuance because the disposition hearing was set for that day, so Father should have been prepared with the necessary evidence to proceed. Father's counsel replied the hearing was not set for contested disposition, and the Department disagreed, stating it was "set for contested hearing." The Department's counsel also told the court the following day would be his last in that courtroom so he would like to finish the hearing. Father reiterated his position that he had a right to contest the Department's recommendation that the court remove A.P. from his care.

The court stated the hearing "is considered to be a contested disposition when we show up for adjudication at least under my understanding." Father's counsel stated: "I guess my understanding is a little bit different. I would say that unless it's set for contest, then it's not a contest." The court then asked Father for an offer of proof on what additional evidence he intended to submit. Father's counsel told the court he wanted to get "more appropriate letters" from Father's sexual abuse

counselor as to whether it would be safe for A.P. to return to Father's home. The court stated none of that evidence would change the case plan. Mother's counsel then stated there would be a basis to set the matter for a contested disposition if the case plan was going to include sexual abuse counseling, but that there would be no good cause to continue if the Department chose not to add that recommendation. The Department stated it was not recommending sexual abuse counseling, it merely intended to point out that court could consider it on its own. The court indicated it would be proposing the recommended services from the case plan: individual counseling and parenting classes, not additional sexual abuse classes.

The court denied Father's request for a continuance and proceeded to disposition. Father argued he had completed sexual abuse counseling, and highlighted the letter from his therapist stating he was at a low risk of reoffending. On this basis, he argued A.P. should be returned home because he did not present a risk to the child. The court disagreed and declared A.P. a dependent of the court. The court specifically stated on the record that "the simple fact of Father's denial of what was previously admitted is evidence for me, clear and convincing evidence, that there is a substantial risk of detriment to the child at this time." The court placed A.P. in Mother's home under the Department's supervision and found the child could not safely be placed with Father. The court ordered individual counseling and parenting classes for Father and monitored visits with A.P.

Father timely appealed.

DISCUSSION

The purpose of a jurisdictional hearing is to determine whether a preponderance of the evidence supports the Department's allegations that a child has suffered, or there is a substantial risk the child will suffer, serious harm as a result of the conduct or negligence of a parent or guardian. (Welf. & Inst. Code, §§ 300, 355, subd. (a).) If the court takes jurisdiction over the child, the parties then proceed to disposition. The purpose of the dispositional hearing is for the court to determine whether the child should be declared a dependent and, if so, whether the child should be left within the parent's custody and control. (Welf. & Inst. Code, §§ 358, 361, 361.5.) At the dispositional hearing, the court also decides if and where the child should be placed, who may receive reunification services, what services are appropriate, and the circumstances surrounding visitation. (Welf. & Inst. Code, §§ 361, 361.5; see also Cal. Juvenile Dependency Practice (Cont.Ed.Bar 2019) Nature of Dispositional Hearing, § 5.1.)

If counsel for any of the parties requests a continuance, the juvenile court may grant the request "only upon a showing of good cause" and only if continuing the hearing would not be contrary to the minor's interest. (Welf. & Inst. Code, § 352, subd. (a)(1)–(2).) "Although continuances are discouraged in dependency cases' [citation], the juvenile court has authority to grant brief, *necessary* continuances that are not inconsistent with the child's best interests." (*In re Abbigail A.* (2016) 1 Cal.5th 83, 95, italics added.) "We review the juvenile court's decision to deny a continuance for abuse of discretion. [Citation.] 'Discretion is abused when a decision is arbitrary, capricious or

patently absurd and results in a manifest miscarriage of justice.’” (*In re D.Y.* (2018) 26 Cal.App.5th 1044, 1056.)

Father contends the court abused its discretion in denying his request for a continuance because it deprived him of the opportunity to obtain and present evidence at the disposition hearing. Additionally, Father appears to be suggesting he was not on notice that the court would proceed to disposition at the June 13, 2019 hearing because, at conclusion of the May 2, 2019 hearing, the court said it was scheduling the “adjudication[,] which is the trial of this matter” for June 13, 2019. Father entirely ignores the remarks the court made immediately after setting the date, in which it stated: “Mother and Father are both ordered back on that date. If you don’t return at that time on that date, I can proceed without you. I can find the statements in the petition to be true. *I can place your child out of your care and custody, and I can make orders regarding services with which you would need to comply with in order for your child to be returned to you.*” (Italics added.)

This statement clearly put Father on notice that the court would proceed directly to disposition at the June 2019 hearing. As discussed above, in the jurisdictional phase of the hearing, the court decides only whether the allegations in the Department’s petition are true. It is only at the dispositional phase that the court proceeds to determine whether to remove the child from the parent’s custody and then determine what services must be provided to the parent. The court’s explanation to the parents in open court that it would make these dispositional decisions at the June 13, 2019 hearing eviscerates any claim that Father was unaware the court would proceed to disposition.

Additionally, as noted above, the record clearly demonstrates Father was timely served with notice from the Department that clearly stated the court would hold a “jurisdiction/disposition hearing” on June 13, 2019.

Father also alleges there could be no “legitimate argument” that the matter was set for a contested hearing on June 13, 2019 because the court stated at the beginning of the June 13, 2019 hearing: “[w]e are here for adjudication in this matter.” Yet, as discussed above, the court made clear to all parties at the May 2, 2019 hearing that disposition would take place at the June 2019 hearing. And, Father received timely notice from the Department. We are therefore unconvinced the court’s statement at the beginning of the June hearing that the parties were there for “adjudication” led him to believe the dispositional phase of the hearing would not take place that day.

Father also fails to show good cause for a continuance. He failed to demonstrate below, and does not explain on appeal, why he did not obtain the additional evidence he claims he needed to contest the Department’s recommendations in time for the June 13, 2019 hearing. He contends he needed more time to gather additional evidence from his therapist as to whether he would pose a substantial risk of harm to A.P. if she were placed with him. Yet, when the court asked the parties whether they were ready to proceed to disposition, Father’s counsel stated, “[y]es.”

When the Department suggested additional sexual abuse classes might be in order, Father requested a continuance to contest this recommendation. As Mother’s counsel conceded, and we agree, the Department’s sudden recommendation for additional services would constitute good cause to continue the disposition since Father could not reasonably be expected to

contest a spontaneous recommendation offered without any notice. Once it was made clear, however, that the Department was not making an official recommendation for the classes, and the court would not order them, this basis for good cause disappeared. At that point, Father was essentially in the same position he was when he told the court he was ready to proceed to disposition because no new recommendations or services would be introduced or ordered by the court other than those of which Father was already aware.

Father has not explained why he insisted on a continuance once it was clear the court would only consider those recommendations it had already made in advance of the hearing date. Father's counsel brought evidence to argue his position in both the jurisdictional and dispositional phases of the hearing; when the court asked the parties whether they intended to use the same evidence from the adjudication in the disposition, Father's counsel responded in the affirmative and made no attempt to offer any additional evidence.

Further, if we were to conclude the court erred by denying a continuance, the error would be harmless. The court already considered Father's exhibits, which contained information from his therapist that he scored in the low risk category on a number of assessment instruments. Despite this evidence, the court made clear that Father's denial of the sexual abuse he inflicted on his now-adult daughter was in and of itself clear and convincing evidence that he posed a substantial risk of harm to A.P. Absent any offer of proof that Father was going to present evidence directly addressing his recantation of guilt, we do not find it reasonably likely the court would have returned A.P. to Father's care at a continued disposition hearing.

The trial court's order is affirmed.

DISPOSITION

The order is affirmed.

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STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.