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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.H., Jr., et al., Persons Coming
Under the Juvenile Court Law.

B267067
(Los Angeles County
Super. Ct. No. DK11892)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.H., Sr., et. al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Annabelle Cortez, Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant I.R.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant D.H., Sr.

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

Mother I.R. (Mother) and Father D.H., Sr. (Father) challenge the juvenile court's order continuing jurisdiction over their sons D.H., Jr. (Junior) and D.H. for 90 days. The court continued jurisdiction to enable the Department of Children and Family Services (DCFS) to monitor the children's transition from Father's home to Mother's home after DCFS expressed concerns about Mother's live-in boyfriend and difficulties in getting Mother to make herself and the children available for interviews. We consider whether the juvenile court abused its discretion by deciding to continue rather than terminate jurisdiction when placing the children with Mother, who was the non-offending and non-custodial parent.

BACKGROUND

Mother and Father have joint legal custody of Junior (born 2005) and D.H. (born 2008). At the time DCFS filed the dependency petition in this matter, Mother was living in Las Vegas with her boyfriend, Brian B. (Brian). Father lived in Los Angeles and had physical custody of the children pursuant to an existing family law order, which also granted visitation rights to Mother.

A. Father Strikes Junior and DCFS Files a Dependency Petition

On April 1, 2015, a health assistant at Junior's school contacted DCFS and reported Junior had a bloody and bruised nose, which Junior said was the result of an incident the previous day when Father hit him. As recounted by Junior, Father and his girlfriend Kendra were driving Junior and his brother home from the store, Junior overheard what he thought was Father and Kendra talking negatively about his biological mother, Junior told Father to stop talking about Mother, and Father then turned toward Junior in the backseat and hit him on his nose. Junior told a social worker that he thought Father was aiming to hit him on the left shoulder, but Junior moved at the time Father hit him, which caused the blow to land on his nose. Junior told the social worker he was not afraid of Father and wanted to return home with him.

Personnel at Junior's school reported the incident to law enforcement. When a Los Angeles County Sheriff's Deputy interviewed Father, he admitted hitting Junior. Father also said, however, that he meant to hit Junior on the shoulder but accidentally hit his nose. The Sheriff's Deputy interviewing Father believed it was an isolated incident and Father likely did not mean to hurt Junior, but he arrested Father nonetheless because Father admitted to hitting the child and his nose was bleeding. Father was thereafter charged with misdemeanor cruelty to a child (Pen. Code § 273, subd. (a)), and the criminal court issued a protective order requiring Father to stay away from Junior.

DCFS filed a petition alleging Junior and his brother D.H. were dependent children under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j) on June 23, 2015.¹ As ultimately amended by the juvenile court, the petition alleged, among other things, that "[Father] physically abused [Junior] by striking the child's face with the father's hand, inflicting a bloody nose to the child."

In a report prepared for the detention hearing, DCFS expressed concern with releasing the children to Mother because Mother had previous involvement with Clark County Child Protective Services (CPS) in Las Vegas. The assigned social worker was also concerned that Mother was unwilling to provide DCFS with her current address when asked (although DCFS had her telephone number). At the detention hearing, however, the court ordered both children released to Mother, with family maintenance services for both parents. The court also ordered Mother not to leave the children alone with her live-in boyfriend Brian.

B. Jurisdiction and Disposition

After the detention hearing and release of the children to Mother, DCFS prepared a jurisdiction and disposition report. The report described the parents' contacts with CPS in

¹ Undesignated statutory references that follow are to the Welfare and Institutions Code.

Las Vegas in greater detail, and it also summarized developments concerning Junior and D.H. after the initial detention hearing.

The jurisdiction and disposition report highlighted two prior CPS contacts involving the family. First, in 2006,² Father reported that Mother hit his legs with a baseball bat, threw a trophy at him, and cut his arm and back. Second, and of greater relevance to this appeal, CPS records described an incident in 2013 when Brian was involved in a shooting while Junior and D.H. were present. According to the account Junior gave to CPS personnel at the time of the incident, Junior, D.H., and another child were in the backseat of Brian's car. Brian got out of the car with a gun in his hand and began arguing with another man.³ Junior heard a gunshot outside the car, and Brian then ran back to the car and drove away very fast, eventually arriving at a friend's house where Mother was waiting. When a CPS social worker spoke to Mother about the incident, she stated Brian admitted he fired a shot into the ground during the confrontation with the other man. But Mother claimed the children were with her, not with Brian, at the time at the time of the shooting—notwithstanding Junior's statement to the contrary.⁴

As for its discussion of post-detention-hearing developments in this case, DCFS's report described difficulties scheduling interviews with Mother and the children. Mother stated she had limited availability because of her work schedule, and DCFS was unable to accommodate the single date Mother offered prior to the deadline for finalizing the report. DCFS stated it would file a supplemental report with additional information and

² Both Mother and Father were living in Las Vegas at the time.

³ DCFS obtained criminal history records for Brian from CPS, which revealed a 2012 conviction for "altering, removing, and obliterating serial numbers of a firearm" in Nevada.

⁴ Police in Nevada arrested Brian as the result of the incident, and CPS closed the case without taking further action because Brian was in jail and not in the home with the children.

recommendations concerning disposition when interviews of Mother and the children were completed.

DCFS filed a “last minute information” report just prior to the scheduled jurisdiction and disposition hearing. In it, DCFS stated Mother “remains uncooperative” and declined to make herself or the children available for an interview. DCFS recommended the court admonish Mother and order her to cooperate in scheduling interviews. DCFS also indicated that Mother had not complied with the court’s prior order preventing her from leaving Junior and D.H. alone with Brian. Mother told the social worker she thought the court “threw out” the order, and she admitted Brian was caring for the children while she was at work. DCFS recommended the court admonish Mother on this issue too, and order her to comply with the prior order that barred leaving the children alone with Brian.

At the jurisdiction and disposition hearing on August 13, 2015, counsel for all parties were present, but the parties themselves (Mother, Father, and the children) were not. On the question of jurisdiction, the juvenile court found Junior and D.H. were dependent children under section 300. Specifically, the court sustained the allegations against Father in the petition, but it struck the allegations against Mother, which asserted she failed to protect the children from physical harm (and the risk thereof) caused by Father.

As to disposition, Mother and Father asked the court to terminate jurisdiction with a family law order awarding custody of the children to Mother, the non-offending parent. Counsel for the children joined in the recommendation for termination of jurisdiction, stating he had spoken to Junior and D.H. and they were “content” in Las Vegas. DCFS objected to terminating jurisdiction because Mother had not cooperated in making the children available for interviews. DCFS asked the court to continue jurisdiction for six months to ensure the children remained in a safe and stable environment.

The court declined to terminate jurisdiction and instead ordered that it would continue jurisdiction over the children for 90 days, at which point it would again assess

whether termination of jurisdiction was warranted. The court explained it was continuing jurisdiction because of the shooting incident involving Brian and the children, and because Mother had not made herself or the children available so DCFS could verify their safety and welfare. The court set the matter for a three-month review hearing to permit DCFS to verify the safety of the children in Mother's home, and to verify Father's progress with the case plan the court ordered. The court stated that it did not see why jurisdiction could not be terminated in 90 days with verification from DCFS that the children were doing well with Mother.

DISCUSSION

Under section 361.2, a juvenile court must place a dependent child with a non-offending, non-custodial parent unless such a placement is detrimental to the safety or well being of the child. (§ 361.2, subd. (a); *In re Z.K.* (2011) 201 Cal.App.4th 51, 70; *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1820.) When a court places a child pursuant to subdivision (a) of section 361.2, it then has three choices: the court may (1) order the formerly non-custodial parent to become the legal and physical custodian of the child and terminate jurisdiction; (2) order the formerly non-custodial parent to assume custody subject to the jurisdiction of the juvenile court and require DCFS to conduct a home visit within three months, at which point the court may terminate jurisdiction or continue its supervision of the child; or (3) order the formerly non-custodial parent to assume custody subject to the continued jurisdiction of the court. (§ 361.2, subd. (b)(1)-(3).) When deciding whether to terminate jurisdiction, the court must determine whether there is a need for continued supervision. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451; *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1135 (*Austin P.*).)

Here, the juvenile court placed Junior and D.H. with Mother pursuant to section 361.2, and Mother and Father argue the juvenile court abused its discretion by not choosing option one—terminating jurisdiction. They argue, as counsel for the children asserted at the hearing, that the children are doing well and there are no problems in

Mother's home. The parents also argue "[t]he juvenile court's maintenance of jurisdiction directly affected and unnecessarily interfered with Mother's exercise of her constitutionally protected parental rights." We reject Mother and Father's arguments and hold the trial court had a sound evidentiary basis for its decision to continue jurisdiction for a short time to ensure the children's welfare when transitioning to living with Mother.

We review the juvenile court's decision to continue jurisdiction under section 361.2 for an abuse of discretion; in so doing, we assess any pertinent factual findings to determine whether they are supported by substantial evidence in the record. (*In re A.J.* (2013) 214 Cal.App.4th 525, 535, fn. 7; see also *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300; *Austin P., supra*, 118 Cal.App.4th at p. 1134.)

We see no abuse of discretion in the juvenile court's order here. Substantial evidence before the court entitled it to conclude that Brian previously discharged a firearm while arguing with another man in the presence of the children, and that Mother had failed to comply with the court's prior order that obligated her to refrain from leaving the children alone in Brian's care. Continued court supervision would allow DCFS to monitor the children when they went to live in a home where Brian would be present, and to make efforts to ensure Mother complied with the court's direction not to leave Junior and D.H. alone with Brian. (See *Austin P., supra*, 118 Cal.App.4th at p. 1134 [without continued jurisdiction, social worker could not ensure the child would be adequately protected when transitioning to the father's home].) In addition, substantial evidence in the form of DCFS's jurisdiction and last minute information reports supports the juvenile court's finding that Mother had refused to make herself and the children available for further interviews with DCFS. The court believed the absence of current information from DCFS interviews of Mother and the children was further reason why terminating jurisdiction at that time would be inappropriate.⁵ Under these circumstances, ordering a

⁵ Mother and Father argue the court should have terminated jurisdiction because counsel for the children represented that the children were content in Las Vegas. The juvenile court disagreed for sound reasons. The court indicated it would have terminated

short period of additional supervision was warranted, not an abuse of the juvenile court's discretion.

Citing to portions of two Court of Appeal decisions that address parental rights to visitation with children (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50; *In re James R.* (2007) 153 Cal.App.4th 413, 429), Mother and Father also argue the juvenile court's decision to maintain jurisdiction unnecessarily interfered with Mother's constitutionally protected parental rights. This argument is meritless. A parent's rights are not absolute, and a court may act when necessary to protect the welfare of a child. (See, e.g., *In re Jasmon O.* (1994) 8 Cal.4th 398, 419.) For the reasons we have already given, the court believed a period of additional supervision was necessary, and that determination was a proper exercise of its discretion. The order continuing jurisdiction for 90 days does not violate the Constitution.

jurisdiction if "mother made herself available . . . and made the children available and the Court was able to verify the concerns with respect to [Brian] . . . and verify the information that's being reported to the Court by [counsel for the children]." The court explained, however, that statements made by the children's attorney were "not evidence . . . in the record" and that "relying on the record" it was not "appropriate to terminate jurisdiction, given the lack of cooperation and the totality of the facts." Contrary to Mother and Father's contentions, the juvenile court was not obligated to accept the position advanced by the children's attorney. (§ 317, subd. (e)(1) ["Counsel may also introduce and examine his or her own witnesses, *make recommendations* to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child"] [emphasis added].)

DISPOSITION

The order continuing jurisdiction is affirmed.

BAKER, J.

We Concur:

TURNER, P.J.

KUMAR, J.^{*}

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.