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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

W.R.,

Defendant and Appellant.

B295642

(Los Angeles County
Super. Ct. No. 18LJJP00395B)

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

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father W.R. appeals the juvenile court's denial of his Welfare and Institutions Code section 388 petition (all further statutory references are to the Welfare and Institutions Code, unless otherwise indicated), claiming the court abused its discretion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are drawn largely from father's earlier appeal. (*In re P.R.* (Aug. 2, 2019, B293713) [nonpub. opn.]) Eight-month-old P.R. came to the attention of the Los Angeles County Department of Children and Family Services (Department) in May 2018, after the Department received a report of a domestic violence incident between mother, O.E., and father. On May 18, father pushed mother to the ground, and mother sprained her wrist. P.R., and mother's two-year-old daughter from a previous relationship, L.E., were present. According to mother, she and father were arguing, father pushed her, and she lost her balance and fell. She told the social worker father had pushed her once before. But she told police there had been five unreported incidents of domestic violence between her and father. Mother declined an emergency protective order. Father denied he pushed mother. (*Ibid.*)

There was another domestic violence incident between mother and father on June 22, 2018. P.R., L.E., and father's three older sons with a different mother were in the home. Father and mother argued, and mother punched father in the face and scratched him. Father's eight-year-old son witnessed the incident, and his 13-year-old son called police. Mother was arrested, but father refused an emergency protective order. P.R. and L.E. were detained from mother's care. P.R. was placed with father, and L.E. was placed with maternal great-grandmother, Dorothy B. Mother and father did not live together at the time. They shared custody of P.R., and

mother spent the night at father's home several nights per week. However, father was P.R.'s primary caregiver. (*In re P.R., supra*, B293713.)

Father admitted to multiple domestic violence incidents where mother was the aggressor, but denied ever hitting mother. He told the Department he was no longer in a relationship with mother, but allowed her to be in his home to coparent P.R. Father admitted mother punched him in the face in the June incident, causing his lip to bleed. Regarding the May domestic violence incident, father admitted he pushed mother "to get her off of me." Regarding the June incident, he admitted that both his eight-year-old son and infant P.R. witnessed the incident. (*In re P.R., supra*, B293713.)

Father's eight-year-old son saw mother punch father in the mouth. He had seen father "push [mother] around when they are mad." He admitted "it happen[s] a lot." (*In re P.R., supra*, B293713.)

Father's six-year-old son denied witnessing the incident, but overheard father and mother screaming, and learned that mother had punched father "and broke his mouth." He told the Department investigator he sometimes saw father push mother. (*In re P.R., supra*, B293713.)

Father's 13-year-old son heard arguing and screaming, so he called 911. He had called 911 in the past to report other incidents of domestic violence. (*In re P.R., supra*, B293713.)

On June 25, 2018, mother pled no contest to one count of disturbing the peace, was placed on probation, and was ordered to participate in a domestic violence program. That same day, the court issued a criminal protective order protecting father from mother for a period of three years, and personally served the order upon mother. The order required that mother have "no personal,

electronic, telephonic, or written contact” with father. It also required her to stay 100 yards away from father. (*In re P.R., supra*, B293713.)

Father has a history with the Department. The Department received a referral in 2010 that father and the mother of his older sons were arguing, and that the mother stabbed herself. There were also numerous referrals in 2013 related to father’s drug use and sales, gang activity, weapons in the home, and two domestic violence incidents, one where father was a perpetrator and one where he was the victim. The 2013 domestic violence incidents were witnessed by his older sons and a half sibling, and father refused an emergency protective order, and did not want his then-girlfriend prosecuted. There was also a 2016 referral where father was arrested for domestic violence after he slapped an ex-girlfriend in front of her children. (*In re P.R., supra*, B293713.)

Father has an extensive criminal history, spanning 1992 to 2016, with numerous arrests for robbery (with multiple sustained juvenile petitions), vehicle theft (with one sustained petition), an arrest for receiving stolen property, a conviction for being a gang member carrying a loaded firearm in a public place (for which father served time in prison after violating his probation); numerous other drug sale, gun, and gang-related arrests, some resulting in convictions for which father did time in prison, and arrests for other offenses such as vandalism, assault, and parole violations. Father was also arrested for domestic violence in 2011 and 2016. (*In re P.R., supra*, B293713.)

Father also has unresolved mental health issues. He had diagnoses for schizophrenia and bipolar disorder, but was not taking his prescribed psychotropic medication. He also tested positive for hydrocodone at a very high level, and admitted he was

using his prescribed pain medication to self-medicate his mental health issues. (*In re P.R., supra*, B293713.)

On June 26, 2018, the Department filed a dependency petition. At the June 27, 2018 detention hearing, P.R. was released to mother and father under the supervision of the Department, with family maintenance services. The court entered a no contact order between mother and father, and ordered the Department “to effectuate custody agreement/exchange between mother and father.” (*In re P.R., supra*, B293713.)

At the July 27 adjudication hearing, father denied that he pushed mother, or that she fell during the May incident, and testified that he had “never” pushed her. Regarding the June incident, father claimed mother pushed him and that he “busted his lip.” She had never hit him before. He testified he was aware the juvenile court had entered a stay away order between him and mother, but denied knowing whether the criminal court had made any stay away orders in mother’s criminal case. Father had been abiding by the court’s order, but did “not know” whether he would resume his relationship with mother in the future. (*In re P.R., supra*, B293713.)

Father also denied he had ever been arrested for domestic violence. He had never participated in any domestic violence programs. (*In re P.R., supra*, B293713.)

Mother entered a no contest plea, and the juvenile court sustained allegations under subdivision (b) of section 300 as to both parents as follows: “The children[’s] . . . mother . . . and [father] have a history of engaging in physical altercations in the children’s presence. In May 2018, the father pushed the mother, in the presence of the [L.E.], causing mother to fall. On prior occasions, the father pushed the mother. In June 2018, the mother struck the father, in the presence of [P.R.’s] half-sibling . . . causing the

father's mouth to bleed. [¶] Such conduct on the part of the . . . father and the mother places the children at substantial risk of serious physical harm." (*In re P.R., supra*, B293713.)

P.R. remained released to father. The court reminded the parties of its stay away order, and the criminal protective order issued in mother's criminal case, and told mother and father they were to have no contact. (*In re P.R., supra*, B293713.)

According to a September 28, 2018 last minute information for the court, mother and father were not abiding by the stay away orders. Father was seen at mother's house, and both mother and father had been seen at domestic violence class together. On September 22, 2018, mother was discovered at father's home during an unannounced home visit. Father initially lied to the social worker and denied mother was in the home, but eventually admitted she was there. Father told the social worker there were no problems between them, and that he never wanted a restraining order. (*In re P.R., supra*, B293713.)

On October 1, 2018, the Department sought a removal order for P.R. and his half sister. The order was granted that same day, and the children were removed on October 4, 2018. (*In re P.R., supra*, B293713.)

On October 9, 2018, the Department filed a supplemental petition pursuant to section 387 based on mother's and father's violation of the protective order. (*In re P.R., supra*, B293713.)

According to the Department's October 2018 detention report, mother told the Department she and father intended to have the criminal protective order "rescinded so that they could be together." On October 9, 2018, the criminal protective order was modified by the criminal court to remove the "no contact" provisions. (*In re P.R., supra*, B293713.)

At the October 10 detention hearing on the supplemental petition, the court detained P.R. in foster care finding that mother and father had violated the juvenile court's stay away order and criminal protective order. The court ordered that its stay away order would remain in full force. (*In re P.R., supra*, B293713.)

When father spoke with the Department on October 24, he reported he had not had any contact with mother following the October 10 hearing. He admitted having contact with mother in September. He claimed he was not aware of the juvenile court's stay away order, or the criminal protective order. Nevertheless, he was currently abiding by the orders so he could have P.R. returned to him. He admitted he wanted to continue his relationship with mother. (*In re P.R., supra*, B293713.)

Father's older sons admitted that mother had come to their home multiple times in September. (*In re P.R., supra*, B293713.)

The subsequent petition was adjudicated on October 31, 2018, and a combined disposition hearing on the original and subsequent petition was also held. (*In re P.R., supra*, B293713.)

The section 342 petition was sustained as to mother pursuant to a no contest plea, and found true as to mother and father as follows: "The children['s] mother . . . and [father] violated a criminal protective order by having contact with each other. The children are current dependents of the Juvenile Court due to domestic violence between the mother and the . . . father. Such conduct by the parents places the children at substantial risk of physical harm." (*In re P.R., supra*, B293713.)

The court removed P.R. from mother and father, and ordered them to participate in reunification services. (*In re P.R., supra*, B293713.)

Father appealed from the jurisdiction and disposition orders, and we affirmed them in our opinion filed August 2, 2019. (*In re P.R.*, *supra*, B293713.)

Father filed a section 388 petition on December 7, 2018, asking that P.R. be returned to his custody, and the juvenile court set the petition for hearing. Father alleged there were changed circumstances in that he had substantially completed his case plan, his visits had been liberalized to unmonitored, and it was in P.R.'s best interests to be returned to father's care. The Department submitted a response on January 31, 2019, opposing the section 388 petition. The Department acknowledged father had completed a domestic violence program, parenting education program, individual counseling, and an Evidence Code section 730 evaluation, and his home at the E-Z 8 Motel in Palmdale was suitable.

However, the Evidence Code section 730 evaluator concluded father should be on medication to stabilize his mental health, yet father was not taking any psychotropic medications.

Father had unmonitored visits with P.R. in the home of maternal great-grandmother, but the visits were sporadic. Maternal great-grandmother reported father held P.R. but did not seem to be bonded with him, and he had shown hostility toward her on the phone when setting up a visitation schedule. Father had also exhibited hostility toward the Department and other caregivers, including during visits at Department offices. The Department believed it was premature to release P.R. to father due to concerns about father's mental health.

The juvenile court found the petition did not offer new evidence or show a significant change of circumstances and the proposed change of order would not promote the best interest of P.R. The court explained the Evidence Code section 730 evaluator

observed significant disturbances, paranoia, delusions and recommended counseling, compliance with prescribed medications to treat father's disorders, anger management, therapy and education regarding the misuse of prescription pain medication.

DISCUSSION

The court did not abuse its discretion in denying father's section 388 petition. A parent who petitions to modify an existing dependency court order under section 388 must show, by a preponderance of the evidence, both changed circumstances and that the modification would be in the child's best interest. (§ 388; Cal. Rules of Court, rule 5.570(e), (h); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47, 48.) A change of circumstances "must be of such significant nature that it requires a setting aside or modification of the challenged prior order." (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.) A trial court has discretion in determining changed circumstances and the child's best interest, and a reviewing court will not disturb the trial court's decision unless the trial court abused its discretion by making an arbitrary, capricious, or patently absurd determination that exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The court acted well within its discretion in finding that, while father "is on the right path," it was not in P.R.'s best interest to release him to father's custody when his mental health issues remained untreated and unresolved.

DISPOSITION

The order is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.