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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re WAYNE D., III, a Person
Coming Under the Juvenile Court
Law.

B280586

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK18814)

Plaintiff and Respondent,

v.

WAYNE D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Philip L. Soto, Judge. Affirmed.

Deborah Dentler, under appointment by the Court of Appeal, for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Sally Son, Senior Associate County Counsel, for Respondent.

In January 2017, the juvenile court asserted dependency jurisdiction over five-month-old Wayne D., III. Wayne D. (father) challenges a disposition order requiring him to submit to 10 random or on demand consecutive drug tests. Although father concedes the evidence may have supported an order requiring him to submit to alcohol testing, he argues the evidence did not support an order for *drug* testing. We affirm the juvenile court order.

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles County Department of Children and Family Services (DCFS) detained Wayne D. III days after he was born in August 2016. DCFS received information that Felicia D. (mother) was expected to report to Riverside County after being discharged from the hospital. Mother's probation officer told DCFS there was a felony warrant pending for mother because she had repeatedly failed to register as a sex offender and had cut off her ankle monitoring bracelet while on parole. The probation officer indicated mother would likely have to serve two to four years in custody.

There were also reports that in July 2016, the parents had a violent altercation. Mother told police that father strangled her, punched her in the face, and she may have lost consciousness. At the hospital following the incident, a physician noticed mother had a black eye and a mark on her stomach. She was 37 weeks pregnant. Mother admitted she used cocaine on the day of the incident; she also reported she had used methamphetamines for 12 to 13 years before becoming pregnant. Mother had a history of mental illness.

In an interview with a DCFS social worker at the hospital after Wayne was born, mother denied that father had ever been

physically violent. Mother said she lied about the July 2016 incident. She reported that on the day of the incident father drank an alcoholic beverage and she feared he would do something to her. Mother admitted she had used cocaine in July, but she said father did not know about her drug use.

During the social worker's interview with the parents, father left for a medical procedure. Father told the social worker he had been in an accident and was having plates removed from his face. Mother later informed the social worker father was "jumped" in July 2016, while he was intoxicated. Father was injured in the altercation.

Mother and father agreed to drug test. Father denied any substance abuse. He told a social worker he had neither used drugs nor been charged with any drug offenses in over 10 years. When asked about a 2010 conviction for transporting or selling narcotics, father said "he was with his cousin who had the narcotics but that he does not have a substance abuse issue."

On August 16, 2016, DCFS filed a dependency petition based on father's physical violence against mother, mother's failure to protect Wayne from such violence, mother's history of substance abuse and father's failure to protect the child, mother's history of mental and emotional problems and her failure to participate in treatment and services, and mother's criminal history. Wayne was detained and placed in a foster home.

In a DCFS interview in advance of the jurisdiction/disposition report, father indicated he abused drugs and alcohol as a teenager but he had not used drugs in 15 to 20

years.¹ Father said he consumed alcohol on occasion, but it had been about a year since he had a beer. He told the social worker authoring the report he was “willing to test” and planned to attend AA meetings to have Wayne returned to his care. He told a different social worker he had “a 10 year history of alcohol and marijuana use.” Father denied any domestic violence and further denied any knowledge that mother had been using drugs, except on a single occasion in July 2016. Father reported he had been diagnosed with schizophrenia and short-term memory loss; he received regular mental health treatment and complied with a medication regime.

The DCFS report noted that although visits with father were scheduled to take place at a local IKEA, the foster mother told a DCFS social worker “father was bringing unapproved people to the visit and was acting strange.” The visit location was changed to a DCFS office. At the time of the interview, father claimed not to know mother’s whereabouts. However, it was later revealed that father had dropped mother off at a drug treatment program.

DCFS recommended that father be provided with reunification services and that the court order him to: complete parenting and domestic violence or anger management programs; undergo individual counseling to address case issues; continue to maintain his mental health treatment; and submit to “10 consecutive random drug/alcohol tests, if any tests are missed or positive, he is to complete a drug treatment program.”

¹ The social worker noted this timeline would mean father last used drugs when he was in his 30s, well after his teenage years.

At the August 31, 2016 jurisdiction hearing, the juvenile court found Wayne to be a person described by Welfare and Institutions Code section 300, subdivisions (b) and (d).² Mother was not present at the hearing. Later that day she was arrested for probation and parole violations in Riverside County.

At the January 2017 disposition hearing, father asked that Wayne be returned to him. Father also objected to the recommendation that he submit to random or on demand drug tests. Father's counsel argued there had been no indication since the jurisdiction hearing that father was under the influence, that he was using drugs, or that he had been observed under the influence or had drugs or drug paraphernalia. DCFS's counsel pointed out that father had a criminal conviction in 2010 for transporting or selling narcotics. DCFS also rejected father's suggestion that he should not have to complete a lengthy domestic violence program. DCFS counsel asserted father lied to the court and DCFS at the jurisdiction hearing when he claimed not to know mother's whereabouts.

The juvenile court removed Wayne from mother pursuant to section 361, subdivision (c) and concluded it would be detrimental to return Wayne to father. The court ordered reunification services for father, including "ten random on-demand, consecutive drug tests. If [he] misses or is dirty in any test, he must complete a full drug/alcohol program with random testing." Father's counsel asked for the court's basis for the drug test order; the court responded: "The arguments from the county counsel." This appeal followed.

² All further statutory references are to the Welfare and Institutions Code.

DISCUSSION

The Juvenile Court Did Not Abuse its Discretion in Ordering Father to Submit to 10 Random or On Demand “Drug” Tests

Father’s sole argument on appeal is that the juvenile court erred in ordering him to submit to drug testing. Father contends there was no evidence he had a substance abuse problem, thus the order exceeded the juvenile court’s discretion. In his reply brief, father asserts that while an order for alcohol testing may have been reasonable, the order for “drug” testing was not. We find no abuse of discretion.

Under section 362, subdivision (a), “If a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child. . . .” The court is not limited to the content of the sustained petition in fashioning a disposition order in the best interest of the child. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) Still, “ ‘the juvenile court’s discretion in fashioning reunification orders is not unfettered. Its orders must be “reasonable” and “designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (c).) “The reunification plan ‘ “must be appropriate for each family and be based on the unique facts relating to that family.” ’ [Citation.]” ’ [Citations.] We review the propriety of court-ordered reunification services at this stage for abuse of discretion.” (*In re D.C.* (2015) 243 Cal.App.4th 41, 56.)

In this case, there was evidence that father had a history of substance abuse and, potentially, ongoing issues with alcohol. Father admitted using drugs in the past and the record showed he was convicted of transportation or sale of narcotics in 2010. Although father denied recent drug use, he had been living with mother, who admitted a long history of methamphetamine use and cocaine use in July 2016. Mother reported father had been drinking when he physically attacked her, beating and strangling her when she was 37 weeks pregnant. Mother further informed DCFS that father was “intoxicated” when the altercation occurred that resulted in father having plates inserted in his mouth and under his eye. After Wayne was detained, the foster mother reported father acted strangely at a visit. It was also determined that father had been untruthful about mother’s whereabouts, placing his credibility into question.

Under all of these circumstances, the juvenile court could reasonably conclude a limited number of drug tests was appropriate to confirm that father was not using any substances that would impair his ability to care for his infant son. (*In re Briana V.*, *supra*, 236 Cal.App.4th at p. 311 [court may consider the evidence as a whole in determining which dispositional orders are in the child’s best interests].) On appeal, father asserts that while an order requiring alcohol testing would have been reasonable, a drug testing order was not. As an initial matter, we do not assume the juvenile court’s order excluded alcohol as a substance to be included in any testing. The “case plan” order requiring the testing was under a heading for “drug/alcohol services.” Even though the box checked referred only to “drug tests,” unlike boxes above referencing “random or on demand drug/alcohol testing,” in light of the record in this case it would be

reasonable to interpret the order as requiring 10 random or on demand consecutive “drug tests” that would include alcohol as a substance to be checked.

Moreover, to the extent the court specifically ordered “drug” testing that would include substances other than alcohol, we find no abuse of discretion. Father had an admitted history of drug use, mother admitted to using drugs during a time in which she was living with father, and, although father denied any recent drug use, he was untruthful regarding other matters, calling into question his credibility generally. Father had recently been involved in violent conduct with mother and others, while intoxicated. Although the evidence suggests father was violent while drinking alcohol, as opposed to other drugs, his behavior while under the influence of a mind-altering substance raised significant concerns. (See *People v. Beal* (1997) 60 Cal.App.4th 84, 87 [probation case; alcohol use may lead to future criminality where the defendant has a history of substance abuse and is convicted of a drug-related offense]; *People v. Lindsay* (1992) 10 Cal.App.4th 1642, 1644-1645 [alcohol-use condition of probation reasonably related to appellant’s sale of cocaine]; *People v. Smith* (1983) 145 Cal.App.3d 1032, 1035 [describing nexus between drug use and alcohol consumption].) In light of father’s history of drug abuse, his recent violent behavior when under the influence of alcohol, and Wayne’s need for a heightened level of care as an infant, the juvenile court did not act outside the bounds of reason in requiring father to submit to a limited number of random or on demand drug tests. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008.)

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.