Filed 3/14/12 In re W.H. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re W.H. et al., Persons Coming Under the Juvenile Court Law.	B234170 (Los Angeles County Super. Ct. No. CK86140)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. WESLEY H., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed.

Thomas S. Szakall, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

Wesley H. (Father) appeals from the June 8, 2011 dispositional orders of the juvenile court requiring him to attend individual counseling and parenting classes. The court adjudged minors W.H., born in 2003, and J.H., born in 2005, dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect).[1] Father contends that the dispositional orders were not designed to eliminate Mother's illicit drug use; that the orders "did not relate to the [minors'] care, supervision, custody, conduct, maintenance or support, because [Father] was not asking for custody of the [minors]," and that there was no substantial evidence supporting the court's implied finding that he was aware of the conditions in Mother's home, and that in any event, the dismissed allegation cannot support the dispositional orders. We conclude the court did not abuse its discretion in fashioning the dispositional orders and affirm the dispositional orders of the court.

BACKGROUND

On March 20, 2010, Felicia S. (Mother) was referred to DCFS for allegedly using crack cocaine in front of her home on 105th Street in Los Angeles, emotionally and physically abusing the minors, choking and bruising W.H., having no running water or gas in the home, and failing to bathe the minors. On March 23, 2010, DCFS investigated the home and reported unsafe and unhealthy living conditions, including human waste in the toilet, no means to clean the toilet, no sink in the kitchen and bathroom, no stove, no heat, no gas, multiple damaged walls, and windows that had been changed without a permit. Mother told DCFS that she had lived in maternal great-grandmother's home on 105th Street with the minors for approximately a year. She stated that Father was currently incarcerated, that he was due to be released in April 2010, and that "he does take care of his children when he is around." A paternal aunt lived next door to Mother.

DCFS and Mother completed a safety plan for Mother and the minors to move to the home of a family friend. On March 24, 2010, Mother tested positive for marijuana. Meanwhile, Father, who had been incarcerated for a probation violation in September

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

2009, was released on April 19, 2010. Father's criminal history included a conviction in 2006 for driving under the influence of alcohol; an arrest in 2007 for possession of a controlled substance; a conviction in 2008 for possessing marijuana for sale; and a conviction in 2009 for possession of marijuana.

In July 2010, DCFS found that Mother and the minors had returned to the 105th Street home contrary to the agreed-upon safety plan. The minors were "unusually dirty," and a maternal uncle who appeared to be under the influence of alcohol or drugs and a pit bull dog were present in the home, which was filthy. There was a strong scent of feces in the bathroom and the toilet would not flush. Mother and paternal grandmother attended a team decision-making meeting with DCFS on August 2, 2010. Father participated by telephone. Mother and Father agreed to receive voluntary reunification services and attend parenting classes. Mother agreed to attend individual counseling, to submit to random drug testing, and to complete a drug awareness program. Father agreed to submit to random drug testing and to complete a substance abuse program if he tested positive for illegal drugs.

In October 2010, DCFS visited Mother and gave her bus tokens for her and Father. Mother told DCFS that Father refused to speak to DCFS. In November 2010, DCFS spoke on the telephone with Mother to tell her that she would not receive bus passes if she did not attend the plan programs. DCFS could hear Father in the background and asked to speak to him. DCFS heard Father say he did not want to talk to DCFS. Later in November 2010, Father left a message with DCFS, but failed to call back as he had promised. Father missed three scheduled drug tests in November and December 2010.

On February 2, 2011, DCFS interviewed Father at paternal aunt's home, where he resided. Father denied that Mother smoked marijuana or used other drugs. He claimed that she drank alcohol only on social occasions. He also stated that he did not use drugs and only drank on social occasions, but admitted that he had been caught in possession of marijuana when he was 16 years old. He did not graduate from high school, nor did he complete a job corps program. Father admitted that he and Mother needed parenting classes and that he currently was unable to care for the minors. Father told DCFS that he

had not attended parenting classes because he "went back to jail for a Bench Warrant in November 2010" for 10 days. Father claimed that after he was released from jail, he lived with paternal aunt and did not know about Mother's and the minors' unsanitary living conditions until November 2010. Father claimed that he currently resides with a paternal uncle and that he had never lived with Mother. He stated that he had ended his relationship with Mother five years previously and they only spoke regarding the minors. Father said that he let Mother deal with DCFS because he "'didn't have anything to do with it'" and did not "'know what house they found to be in a filthy condition.'" DCFS reported that Father had not been forthcoming because Mother had lived at 105th Street for a year and Father had been living with paternal aunt next to Mother's residence prior to being incarcerated. DCFS opined that Father must have visited Mother's home.

The voluntary family reunification services failed because neither Mother nor Father had complied with their case plan by January 2011. On January 13, 2011, the minors were placed with paternal grandmother, who lived in the City of Paramount. In February 2011, paternal grandmother told DCFS that she takes the minors to visit Father, who lives with paternal aunt, and Mother, who lives next door to paternal aunt, nearly every day for at least two hours.

On January 19, 2011, DCFS filed a petition pursuant to section 300 on behalf of the minors, alleging, as amended and sustained, that Mother had a history of "illicit drug abuse," including marijuana, which renders Mother incapable of providing regular care for the minors and endangers their physical and emotional health and safety and places them at risk of physical and emotional harm and damage. A dismissed allegation stated: "On prior occasions, the [minors'] home was found to be in a filthy, unsanitary and hazardous condition including no sink in the kitchen and the bathroom and feces in the toilet. There was no running water and gas. Such a filthy, unsanitary and hazardous home environment established for the children by [Mother] endangers the [minors'] physical and emotional health, safety and well being and places the [minors] at risk of physical and emotional harm and damage."

Father did not appear at the January 19, 2011 detention hearing because "[h]e just didn't want to come in." Mother stated that Father had been living with Mother and the minors that year and in previous years. The court ordered the minors detained from Mother and Father.

On February 9, 2011, Father appeared at the jurisdiction hearing and was appointed counsel. On May 6, 2011, Mother waived her rights and pleaded no contest to the amended section 300 petition. The juvenile court sustained the amended petition and adjudged the minors dependents under section 300, subdivision (b).

At the contested disposition hearing on June 8, 2011, Father's counsel argued that Father was not offending under the petition and there was no allegation in the petition regarding his unfitness as a parent. Father's counsel stated that Father would not object to an order that he comply with the terms of his probation but objected to orders requiring parenting and individual counseling. Prior to being sworn in, and in response to the juvenile court's inquiry, Mother stated that Father lived next door to her. Father denied that he lived next door to Mother, and Mother then stated that Father lived with paternal grandmother in Paramount. Under oath, Father subsequently testified he used paternal aunt's residence as a mailing address, had never visited the minors at the 105th Street location, and only visited the minors at paternal grandmother's home in Paramount. Father stated that after he was released from jail on April 19, 2010, he visited paternal aunt's home "once a month." He then stated that he had visited paternal aunt's home only "once," on "the day [he] was released." Father stated that he had been inside Mother's home prior to going to jail in 2009, but could not recall if the residence had running water or a sink. Father then denied going inside the house and stated that he had only gone into the front yard because Mother and the minors were living somewhere else.

The juvenile court stated that the minors "need Father to be there for them. He has not been." The court stated that Father needed to be involved in counseling and ordered Father to attend parenting education classes and individual counseling and to continue to test for drugs and alcohol through his probation officer.

Father appealed from the dispositional orders regarding the parenting classes and individual counseling.

DISCUSSION

Father contends that the dispositional orders were not designed to eliminate Mother's illicit drug use; that the orders "did not relate to the [minors'] care, supervision, custody, conduct, maintenance or support, because [Father] was not asking for custody of the [minors]," and that there was no substantial evidence supporting the juvenile court's implied finding that he was aware of the conditions in Mother's home, and that in any event, the dismissed allegation cannot support the dispositional orders. We conclude the court did not abuse its discretion in fashioning the dispositional orders.

The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) Although Father urges that the dismissed allegation cannot support the dispositional orders, the court is not limited to the content of the sustained petition when it considers what disposition would be best for the child, but may rely on family history and behavior. (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.) Thus, section 358, subdivision (b) provides that: "Before determining the appropriate disposition, the court shall receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and other relevant and material evidence as may be offered . . . ."

Section 362, subdivision (c) provides: "The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section . . . . That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program . . . . The program in which a parent . . . is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." As we explain, the orders fashioned by the juvenile

court were designed to eliminate the conditions that led to the court adjudging the minors dependents of the court.

"'"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]"' [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]" (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

In making its orders, the juvenile court stated that the minors "need Father to be there for them. He has not been." The court's orders are supported by Father's demonstrated lack of responsibility for the welfare of the minors by his failure to protect them from squalid living conditions brought on by Mother's drug use and inability to care for the minors, his failure to cooperate with voluntary family maintenance services, and his lack of candor with the court.

Notwithstanding Father's argument to the contrary, the evidence supports the inference that Father was aware of the minors' living conditions. Mother told DCFS that Father cared for the minors when he was not in jail and that he had lived with her and the minors before going to jail. Mother, Father, and paternal grandmother told DCFS that after his release from jail, Father lived with paternal aunt next door to Mother's residence. Before the minors were detained, DCFS could hear Father in the background during a telephone call to Mother. Paternal grandmother stated that after the minors were detained, she brought the minors to visit Father at paternal aunt's house almost every day. Thus, the juvenile court could infer from the evidence that when Father was not living with Mother, he lived next door to her and was aware of the minors' living conditions caused by Mother's drug use and inability to care for them.

Father simply lacks credibility. The evidence disproves Father's claim that he did not know of the minors' living conditions until he was released from jail in November 2010. Voluntary family maintenance services had been offered from March 2010, and Father had participated by telephone in a team decision-making meeting on August 2, 2010. Yet Father refused to comply with the plan and did not attend the detention hearing because "[h]e just didn't want to come in." And almost immediately after making statements to DCFS and testifying to the juvenile court, he changed his statements and testimony regarding whether he lived with paternal aunt or paternal uncle, how many times he visited paternal aunt's home after his release from jail, and whether he had been inside Mother's residence or had visited only the front yard. And DCFS had interviewed Father at paternal aunt's home in February 2011, even though Father claimed at one point to have only visited paternal aunt's home when he was released from jail in April 2010.

Further, the evidence showed that Father had a lengthy criminal history involving drug-related crimes and that he had failed to drug test as he had agreed under the voluntary family reunification plan. In one moment of candor, Father admitted that he needed parenting classes. Therefore, the juvenile court's determination that Father had not been available for the minors was well substantiated and the parenting and counseling orders were designed to give Father training and awareness of his personal issues and his responsibility for the minors.

We conclude that the court did not abuse its discretion in ordering Father to attend individual counseling and parenting classes.

DISPOSITION

The juvenile court's June 8, 2011 dispositional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.