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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.R. et al., Persons Coming
Under the Juvenile Court Law.

B272231

(Los Angeles County
Super. Ct. No.
CK73891)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ENRIQUE G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Frank J. Menetrez, Judge.
Affirmed.

Maryann M. Goode, under appointment by the
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

Enrique G. (father) appeals from an order granting a petition under Welfare and Institutions Code section 388¹ to require his one hour of visitation to take place in a therapeutic setting. Father contends the lower court erred in imposing such a restriction because his sons' troubling behaviors abated after they were placed with a prospective adoptive couple. Finding no abuse of discretion, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Sara M. (mother)² are the presumed parents of sons A.R. (born December 2011), J.G. (born May 2013), and R.M. (born March 2014). The two older boys were detained in December 2013, and the youngest shortly after his birth. Jurisdiction over A.R. and J.G. under section 300, subdivision (b), was based

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² Mother is not a party to this appeal.

on domestic violence by mother against father and father's failure to protect the children.³ R.M. was declared a dependent under section 300, subdivision (j). The court ordered father to participate in reunification services, including Al-Anon, parenting classes, and domestic violence counseling. The court granted father monitored visits with all three boys, three times a week for three hours.

In March 2014, the court ordered the Los Angeles County Department of Children and Family Services (Department) to inspect father's home for the children's possible placement. The Department reported that father attempted to convince the social worker that mother was not living in father's apartment, even though the social worker found mother's belongings in a closet and ultimately found mother lying on the floor in a bedroom, hidden from view. Mother claimed she had been resting and father explained mother was pregnant and had been hospitalized, and she was staying with him so he could care for her.

Mother and father made substantive progress towards reunification over the summer of 2014. Visitation was liberalized to unmonitored. Mother tested positive for alcohol on two urine tests in September 2014. For the first test, the lab and mother

³ The court also sustained allegations based on mother's mental health problems and unresolved substance abuse history.

believed it was a false positive due to mother's diabetes. Mother later admitted to drinking two beers. Both mother and father agreed that mother would no longer live with father, so that father could regain custody of the three children. At the six-month hearing on September 25, 2014, the court placed the three boys with father, and gave the Department discretion to liberalize mother's visits to unmonitored and permit her to return to the family home.

In January 2015, the Department detained the children from father's home and filed a supplemental petition under section 387. Mother had been making multiple unauthorized visits to father's home, and would become increasingly aggressive if father denied her access to the children. Father admitted to the social worker that while the children were in foster care, mother had continued to verbally and physically assault him, but that he had been afraid to report this information to the Department. Father obtained a temporary restraining order against mother in November 2014, but the Department was concerned he was continuing to allow mother into the home and was falsely denying that she was visiting. Mother was also missing therapy sessions. On January 5, 2015, the court entered a permanent restraining order against mother. The Department expressed concern that even though father had participated in classes, he had not learned how to protect himself and the children from

mother. The court ordered the children detained on January 28, 2015, and ordered monitored visitation for both parents three times a week for three hours. The court sustained the supplemental petition in April 2015. In October 2015, the court terminated reunification services for the parents and ordered the Department to initiate an adoptive home study and prepare a report under section 366.26.

The Department's section 366.26 report from January 2016 noted that father was visiting the children for one hour a week, but the children did not appear bonded to him. He would bring them food and send them to play in the playground, but did not engage them in play or activities. The Department had not yet identified a prospective adoptive parent for any of the three children, but had identified adoption as the most appropriate permanent plan. A.R. and J.G.'s foster mother had given notice to the Department that she wanted the two boys removed, saying she was exhausted and could no longer care for them. A.R. (age four) was not speaking, instead using signs and expressions to communicate. He would defecate on himself and purposefully cough to the point of making himself vomit. J.G. (age two) exhibited signs of a child with fetal alcohol syndrome (FAS) or Down syndrome. A licensed social worker conducted a primary psychiatric assessment that identified some special needs and recommended further assessment to rule out

autism for A.R. and FAS or Down syndrome for J.G. The report also noted that the Montebello school district was in the process of evaluating A.R.

In late December 2015, a psychiatric social worker with the Los Angeles County Department of Mental Health (DMH) evaluated A.R. and J.G. The DMH report stated that A.R. displayed symptoms of trauma, such as tantrums, excessive fear, hypervigilance, and dissociative states such as “freezing” and being unresponsive. A separate report for J.G. said he showed symptoms and behaviors involving dysregulation, including excessive tantrums and angry outbursts, difficulty following rules, and excessive clingy behaviors. The reports noted that foster mother reported A.R. engaged in maladaptive behaviors following visits with father, including defying rules in the home, tantruming, and defecating on himself. Foster mother also expressed concern that father lacked insight into J.G.’s specific needs.

On January 22, 2016, all three children were placed with prospective adoptive parents, who “appear to be able and willing to provide permanency for the children and meet the children’s needs.”

On January 27, 2016, the Department filed a petition under section 388 seeking to change the court’s January 2015 visitation order from three times a week for three hours to one weekly one-hour visit in a therapeutic setting. The Department’s petition

explained the changed circumstances as follows: “The children have been experiencing regression following visitation with the parents. The children were evaluated by [a county psychiatric social worker] who reported that [the] children’s current behaviors and symptomology [*sic*] displayed following each visit has impacted their children’s ability to regulate behaviors.” Explaining why the requested change would be in the children’s best interests, the Department stated the requested limitation “would allow the children to adequately address their clinical needs with limited regressive symptoms that are currently experienced following visitation. The visits being conducted in a therapeutic setting would allow for the development of relations skills and assist parents in implementing appropriate bonding and attachment skills with direction of [a] trauma trained clinician.” The court granted a hearing on the Department’s petition.⁴ The evaluations referenced in the Department’s section 388 petition were filed with the court as an attachment to a last minute information on January 27, 2016.

In a January 29, 2016 last minute information report, the Department expressed concern that mother and father continue to have contact with one another even though there was a permanent restraining order

⁴ The hearing was originally scheduled for March 24, 2016, and ultimately took place on April 11, 2016.

in place. The Department noted the difficulties the children were experiencing following visits with their parents and referred to the social workers' conclusion that multiple placements and changes in caregivers have impacted the children's ability to regulate their behaviors, and her recommendation against increasing visitation.

On March 25, 2016, the Department filed a status review report, noting its recommendation that the parents' visits with A.R. and J.G. be limited and conducted in a therapeutic setting. The prospective adoptive parents reported no behavioral concerns with the children. They reported mother and father brought clothes and toys to visits and were appropriate, although father frequently arrived late. The status review report also attached two assessment reports by the Montebello Unified School District, assessing whether A.R. qualified for special education services. The Montebello assessments concluded A.R. was not eligible for special education services.

On April 11, 2016, the court received evidence and heard argument on the Department's section 388 petition. Father's counsel argued that the DMH reports described the children's issues as generally attributable to both parents, and that was insufficient to limit father's visitation. The court granted the Department's section 388 petition, finding there was

sufficient evidentiary support to order visits to take place in a therapeutic setting. Father appealed.

DISCUSSION

Father's appeal is limited to the court's requirement that visits occur in a therapeutic setting. He concedes that reducing visits from three times a week to once a week was not prejudicial, because his current schedule only allows him to visit once a week. Father contends that the court's order was an abuse of discretion because the Department failed to show changed circumstances or that the requested order was in the children's best interest. We disagree.

"To prevail on a section 388 petition, the moving party must establish that (1) new evidence or changed circumstances exist, and (2) the proposed change would promote the best interests of the child. [Citation.] 'The petition is addressed to the sound discretion of the juvenile court, and its decision will not be overturned on appeal in the absence of a clear abuse of discretion.' [Citation.]" (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.) "To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice." (*In re Joey G.* (2012) 206 Cal.App.4th 343, 346.) We do not inquire whether substantial evidence would have supported a

different order, nor do we reweigh the evidence and substitute our judgment for that of the lower court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) We ask only whether the court abused its discretion with respect to the order it actually made. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

A parent's right to ongoing visitation is governed by different standards depending on whether the parent is still receiving reunification services or such services have been terminated. (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1090 (*D.B.*) [rejecting parent's argument clear and convincing evidence standard of proof applies to a section 388 petition seeking restrictions on visitation].) "Visitation is a necessary and integral component of any reunification plan. [Citations.]" (*In re S.H.* (2003) 111 Cal.App.4th 310, 317.) After the reunification period has ended and a parent has been unable to successfully reunify with his or her child, the focus shifts to permanency and stability for the child. (*In re D.B., supra*, 217 Cal.App.4th at p. 1090.) The dependency court "must define the rights of the parties to visitation. The definition of such a right necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and

length of visitation. The court may, of course, impose any other conditions or requirements to further define the right to visitation in light of the particular circumstances of the case before it.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

Here, the December 2015 report describing serious behavioral issues with both A.R. and J.G. was sufficient to support both a finding of changed circumstances and that therapeutic visitation was in the boys’ best interests. In concluding that it would be in the boys’ best interests to require father’s visits to take place in a therapeutic setting, both the Department and the court primarily relied on the evaluation of A.R. and J.G. completed by the DMH psychiatric social worker, and her recommendation for therapeutic visits. The evidence of the boys’ ongoing behavioral issues and father’s lack of engagement during visits was sufficient to support the court’s decision to restrict father’s visitation to a therapeutic setting.

Father argues that because there was no evidence the boys’ negative behaviors continued after they were placed with the prospective adoptive foster fathers in late January 2016, it was an abuse of discretion to grant the requested change. Evidence of improvement in the boys’ behavior would be a relevant factor in determining whether therapeutic visits were in the boys’ best interests, but the fact that the boys had

stabilized after being transferred from a problematic foster placement to a prospective adoptive home is not enough for us to conclude that the court abused its discretion in deciding therapeutic visits would be in the boys' best interests.

Father also claims the court neglected to consider two reports from the Montebello School District from early 2016. Father ignores the fact that the two later reports focused on determining whether A.R. was eligible for special education services, not on whether his behavior was affected by parental visits.

Father tries to distinguish *In re D.B.* by emphasizing the fact that the boys' problematic behaviors persisted for over 18 months before the lower court decided to restrict visitation. (*In re D.B., supra*, 217 Cal.App.4th at pp. 1083–1087.) Father claims the school district evaluations establish that the boys' problems were temporary in nature, and that the therapeutic restriction on father's visits was unwarranted. While father's claim is a valid inference that could be drawn from the evidence before the court, it is not the only reasonable inference. In light of the December 2015 DMH reports attributing the boys' serious behavioral problems to the parents' visits we cannot say that the court "exceeded the bounds of reason" in granting the requested relief.

DISPOSITION

The court's order granting the Department's section 388 petition is affirmed.

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KRIEGLER, Acting P.J.

We concur:

BAKER, J.

KIN, J.*

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