Filed 4/25/17 In re Aaron R. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re AARON R., a Person Coming Under the Juvenile Court Law.	B277198 (Los Angeles County Super. Ct. No. DK17814)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ERASTO R., Defendant and Appellant.	

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

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

Mary C. Wickham, County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

Erasto R., father of four-year-old Aaron R., appeals from the juvenile court's order removing Aaron from his custody and requiring Erasto to leave the family home, contending the court failed to consider other reasonable means to protect Aaron. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2016 the Los Angeles County Department of Children and Family Services (Department) received a referral alleging Erasto and Aaron's mother, Arilene R., had abused Aaron and Moises, Erasto's 10-year-old son from an earlier marriage. The caller also alleged Erasto had abused Arilene. Interviewed at the family's home, Arilene denied the allegations and blamed Erasto's ex-wife (Moise's mother, Lizette R.) for spreading rumors and instigating poor behavior by Moises when he spent time with Erasto and Arilene. Arilene denied that either she or Erasto had ever abused Aaron, who appeared healthy and bore no marks or other evidence of abuse, and insisted they had disciplined Moises appropriately when necessary. Arilene also denied Erasto was currently abusing her, although she acknowledged an isolated incident a year earlier in which he had been intoxicated and hit her on the head during an argument. She had called the police on that occasion, and Erasto had been arrested. Arilene forgave him because she believed he was a good father and husband. She said Erasto no longer drank to the point of intoxication.

In a parallel investigation on behalf of Moises, the Department interviewed Moises and his mother. The social worker found Moises to be visibly afraid of Erasto. He told her Erasto frequently yelled at him and threw things at him, sometimes causing bruises or other marks. Moises had never seen Erasto hit Arilene, but Arilene had showed him a photograph of bruises on her leg she said Erasto had inflicted. Moises said Erasto drank alcohol frequently when Moises was visiting the family, sometimes to the point he "looks like a zombie" and "walk[s] funny." Lizette confirmed Moises's account, telling the social worker Erasto had always been a heavy drinker and a family law order required him not to drink when visiting Moises.

When first interviewed, Erasto stated he was not living at home because of marital difficulties. Although cooperative, he claimed everyone else was lying. He denied having an alcohol problem and dismissed his arrest for cohabitant abuse as a family argument. He also blamed Lizette for making problems for him and claimed Lizette's new husband was a sexual abuser, an allegation based on an occasion in which Moises kissed Aaron on the mouth in a manner Erasto believed inappropriate. By the next interview, Erasto had moved back into the family home.

The Department obtained the police report related to Erasto's attack on Arilene. According to Arilene, Erasto had hit her approximately 100 times in the past and on numerous occasions had come home drunk and forced her to have sex with him. On the night in question Erasto had become upset and began to yell at her. He then punched her on the head, causing her to lose consciousness and fall to the floor. When she woke up, he began to kick her in the torso and leg. She climbed out a

window to escape and called the police. When confronted by the police, Erasto admitted he had been drinking with his colleagues at work but denied he had hit Arilene and insisted nothing had happened. He was arrested, and an emergency protective order was issued for Arilene; but Erasto was never prosecuted.

Shown the police report, Arilene provided additional details relating to the attack and told the social worker Erasto had denied the incident because he was so intoxicated he did not remember hitting her. She again stated there was no current abuse. When confronted with the report, Erasto admitted he had been drinking that night but denied hitting Arilene and stated he did not know why she had lied to the police.

In the parallel proceeding the juvenile court removed Moises from Erasto's custody. On June 9, 2016 the Department filed a petition under Welfare and Institutions Code section 300[1] alleging Erasto's physical abuse of Moises and Arilene and his alcohol abuse placed Aaron at risk of abuse and neglect. (§ 300, subds. (a), (b) & (j).)[2] At the detention hearing the juvenile court found the Department had established a prima facie case that Aaron was a child described by section 300, subdivisions (a), (b)

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[1] Statutory references are to this code.

[2] The petition also alleged Aaron was at risk of abuse and neglect because of Arilene's physical abuse of Moises, an allegation based on Moises's statement to Lizette when he came home with red marks on his arm, blaming Arilene for hitting him. Lizette reported the abuse to the police, who questioned Arilene about it. In fact, Erasto had hit Moises, but Moises was afraid to name Erasto. Moises later admitted to a social worker he had lied when he blamed Arilene. The allegations against Arilene were dismissed at the jurisdiction hearing.

and (j), and temporarily removed him from Erasto's custody and released him to Arilene. Erasto was ordered to undergo drug and alcohol testing pending the jurisdiction hearing, set for June 30, 2016. The Department was ordered to implement a safety plan to allow Erasto to return to the family home by June 13, 2016. The Department complied, and Erasto returned to the home pursuant to a safety plan requiring him to attend a domestic violence program and obtain individual counseling.

In interviews with social workers following the detention hearing, Erasto continued to deny he abused alcohol or had ever hurt Arilene. He blamed Lizette for involving the Department and the juvenile court and Arilene for lying to the police and the Department concerning abuse: "I can't believe that I'm in this situation because two women decide[d] to lie."

In its jurisdiction/disposition report prepared for the June 30, 2016 hearing, the Department expressed concern that Erasto had been allowed to return to the home prematurely and that he had not enrolled in an approved domestic violence program, obtained counseling or submitted to any alcohol tests as required by the safety plan. The Department recommended the allegations in the petition be sustained, Aaron remain detained from his father and Erasto not be allowed to reside in the home. Troubled that both parents continued to minimize the domestic violence and Erasto's alcohol abuse, the Department recommended both parents enroll in anger management and parenting programs, as well as obtain domestic violence and individual counseling, and Erasto continue to undergo random drug and alcohol testing.

At the June 30, 2016 jurisdiction and disposition hearings Aaron's attorney, who had earlier agreed Erasto should be

permitted to remain in the home, joined the Department in recommending the petition be sustained and Erasto prohibited from living in the home. Erasto's attorney argued the statements by Moises were not credible and there was no evidence that Erasto's treatment of Moises put Aaron at risk. Further, she argued, there was no new evidence since the detention hearing to indicate Aaron would not be safe with Erasto in the home.

The court sustained the petition under section 300, subdivisions (a), (b) and (j), based on evidence Erasto had physically abused Moises; Erasto and Arilene had a history of domestic violence; and Erasto had a history of abusing, and continued to abuse, alcohol. Focusing on the parents' failure to acknowledge their current problems, the court ordered Aaron placed in the custody of Arilene only (thus barring Erasto from living in the home) and restricted Erasto to visitation outside the home under the supervision of a neutral monitor. Arilene and Erasto were ordered into individual counseling and domestic violence programming for victims and abusers, respectively; Erasto was also ordered to undergo random drug and alcohol testing and to participate in a substance abuse program.

DISCUSSION

1. *Governing Law and Standard of Review*

At the jurisdiction hearing the juvenile court determines whether one or more of the statutory conditions identified in section 300 has been established and, therefore, whether to exercise dependency jurisdiction over the child. (§§ 355, subd. (a), 356; Cal. Rules of Court, rule 5.684(f); see *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345.) The jurisdiction findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1); *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

In all cases in which a child has been adjudged a dependent child within the meaning of section 300, the juvenile court "has broad discretion to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court's supervision." (*In re Anthony Q.*, *supra,* 5 Cal.App.5th at p. 346 [discussing statutory powers of the juvenile court]; accord, *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992; *In re Maya L.* (2014) 232 Cal.App.4th 81, 97.) Notwithstanding this broad discretion, the court "may impose only those limits on parental rights that are necessary to protect the child." (*Anthony Q.*, at p. 346; see §§ 361, subd. (a) ["[t]he limitations may not exceed those necessary to protect the child"]; 362, subd. (a) [orders for the care, supervision and custody of the child must be "reasonable"].)

To support removal of a child from parental custody, the Department has the burden of proving by clear and convincing evidence there is a risk of substantial harm to the child if returned home and a lack of reasonable means short of removal to protect the child's safety. (§ 361, subd. (c);[3] *In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992; *In re Anthony Q.*, *supra,* 5 Cal.App.5th at p. 346.) Section 361, subdivision (c)(1),

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[3] Under section 361, subdivision (c)(1), "[a] dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence" that there "is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . ."

expressly requires the court to "consider, as a reasonable means to protect the minor, each of the following: [¶] (A) The option of removing an offending parent or guardian from the home. [¶] (B) Allowing a nonoffending parent . . . to retain physical custody as long as that parent . . . presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." As the Supreme Court has explained, "the statutory scheme is designed to allow retention of parental rights to the greatest degree consistent with the child's safety and welfare, and to return full custody and control to the parents or guardians if, and as soon as, the circumstances warrant." (*In re Ethan C.* (2012) 54 Cal.4th 610, 625.)

On appeal we review an order removing a child from parental custody for substantial evidence, viewing the record in the light most favorable to the juvenile court's findings. (*In re Anthony Q.*, *supra,* 5 Cal.App.5th at p. 344; *In re A.R.* (2015) 235 Cal.App.4th 1102, 1116.) In determining whether a child may be safely maintained in a parent's physical custody, the juvenile court is required to consider all admissible evidence on the question of the proper disposition for the child (§ 358, subds. (a) & (b)(1)), including the parent's response to the conditions that gave rise to juvenile court intervention (see *In re Cole C.*, *supra*, 174 Cal.App.4th at p. 918 [noting father's failure to participate in voluntary service referrals].) "'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.'" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1293-1394.)

2. *Substantial Evidence Supports the Juvenile Court's Order Removing Aaron from the Custody of Erasto*

Erasto's principal contention is that nothing had changed between the time of the court's detention order allowing him to remain in the family home pursuant to a safety plan devised by the Department and the court's disposition order terminating his right to remain in the home—a period of less than three weeks. Pointing to the court's observation Erasto "would have to accept that there's a problem, a current risk, and deal with it," he argues the court improperly construed his denial of misconduct as clear and convincing evidence he is an ongoing risk to Aaron, a conclusion he strenuously denies. As support for his position, he cites *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 (*Blanca P.*), in which the court stated, "[I]t is an outrageous injustice to use the fact parents deny they have committed . . . [an] act as proof they did it. That really is Kafkaesque." (*Id.* at pp. 1752-1753.)

The facts that gave rise to Justice Sills's spirited opinion in *Blanca P.* are readily distinguished from the circumstances here. The original allegations in *Blanca P.* supporting dependency jurisdiction concerned the mother's physical abuse of her seven-year-old son. After the children were removed from their parents' custody, a foster parent reported the toddler daughter had said her father had touched her "pee-pee,"[4] prompting the agency to file a subsequent petition against the father. (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1742.) Both parents (who were compliant

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[4] The three-year-old girl first named her mother and then "boy" as the alleged perpetrators but added her father when the foster parent asked her for a third time if anyone had touched her. (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1742.)

with their respective case plans) denied the new charge. At the hearing on the subsequent petition the juvenile court judge, mistakenly believing the issue had already been decided against the father, sustained the petition without hearing any testimony concerning the alleged molestation. Even though a court-appointed psychologist thereafter discredited the allegation, the court nonetheless found at a later review hearing it would be detrimental to return the children to parental custody, in part because of the mother's steadfast denial that any improper touching had occurred, which a social worker attributed to her failure to internalize what she had learned in parenting classes. (*Id.* at p. 1751.) The Court of Appeal granted the mother's writ petition, stating, "The idea that, despite enduring countless hours of therapy and counseling (much of it predicated on the possibly erroneous assumption that her husband is a child molester), a parent who has faithfully attended required counseling and therapy sessions must still relinquish her child because she has not quite 'internalized' what she has been exposed to has an offensive, Orwellian odor. The failure to 'internalize' general parenting skills is simply too vague to constitute substantial, credible evidence of detriment." (*Ibid.,* fn. omitted.)

The facts here are hardly similar. Indeed, Erasto's attempt at self-justification strongly resonates with the lack of insight that so concerned the Department and juvenile court. At the jurisdiction hearing Erasto continued to deny he had ever had a problem with alcohol or had beaten Arilene. He called Arilene, Lizette and Moises "liars" and blamed them for the involvement of the juvenile court in their lives. Unlike *Blanca P.,* however, Erasto's alcohol abuse and violent conduct had been documented by a detailed police report and photographic evidence of Arilene's

bruises, in addition to the statements of Arilene, Lizette and Moises. The allegations were thus properly substantiated.

Moreover, when the juvenile court allowed Erasto to return to the home pursuant to the safety plan prepared by the Department, Erasto failed to comply with any of its provisions. Instead of enrolling in a program approved by the Department at the court's insistence, Erasto tried to enroll in a class taught by a friend that was not on the list. He also failed to participate in counseling or comply with the requirement for alcohol testing. In short, he gave no indication to the Department or to the court he was willing to commit to the terms of the safety plan that constituted the alternative reasonable means he claims should have been sufficient. Under these circumstances substantial evidence supports the juvenile court's decision to order Erasto's removal from the home. (See § 361.5, subd. (c)(1)(A).)

DISPOSITION

The order of the juvenile court is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.