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

In re JOSHUA C., a Person
Coming Under the Juvenile
Court Law.

B272242

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK91922)

Plaintiff and Respondent,

v.

JOHN C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Linda J. Vogel, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

This is the third appeal involving the same family, and the second appeal by John C. (father), in a case that is now more than five years old. (See *In re Joshua C.* (Dec. 9, 2014, B251967 [nonpub.]) (*Joshua I*); *Joshua II* (Oct. 22, 2015, B260673 [nonpub.]) (*Joshua II*).) In October 2014, the juvenile court entered a family law order terminating dependency jurisdiction over minor Joshua C. (now 12 years old), awarding J.C. (mother) legal and physical custody of Joshua, and granting father supervised visitation with Joshua on the condition that the child was willing to visit. In *Joshua II*, we reversed the juvenile court's family law order to the extent it failed to ensure visitation between Joshua and father would occur. We remanded the case with directions for the court to conduct a new hearing on the issue of visitation. On remand, the court issued a new family law order denying father any visitation with Joshua. Father appeals.¹ We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL SUMMARY

1. Initiation of Joshua's dependency proceedings

In February 2012, the Department filed a dependency petition under Welfare and Institutions Code² section 300, subdivisions (a), (b), and (d), after receiving reports that father had physically and sexually abused Joshua. A little over a year

¹ In November 2016, the Department of Children and Family Services (Department) filed a letter explaining it takes no position with respect to father's appeal.

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

later, Joshua entered therapy to address behavioral issues that mother believed stemmed from father's alleged sexual abuse. By this time, Joshua had stopped communicating with father, and he would often become upset when asked about father.

In August 2013, the court sustained the allegation under section 300, subdivision (b), finding father used inappropriate physical discipline by hitting Joshua with a belt. The court dismissed the sexual abuse allegations, noting that Joshua's testimony about father's alleged sexual abuse was unbelievable, nonspecific, and uncorroborated by other evidence.

The court removed Joshua from father's custody and placed him with mother. The court ordered the Department to provide father enhancement services, including conjoint counseling with Joshua and mother once a month, and individual counseling to help rebuild father's bond with Joshua and to educate father on appropriate forms of discipline. The court also ordered father to submit to random drug testing or participate in a 12-step substance-abuse program. The court granted father, who had moved to Sacramento before the jurisdiction and disposition hearing, visitation with Joshua via Skype twice a month.

2. Post-disposition events

Following the disposition hearing, Joshua refused to have any contact with father, including through conjoint counseling or supervised visits via Skype. When asked about father, Joshua would become very upset, once screaming, " 'He touched me. Why doesn't [father] apologize? Say he's sorry?' "

Joshua's therapist did not believe Joshua was ready to begin conjoint counseling or visiting with father, and she opined that requiring him to do so would be detrimental to his well-being until he developed appropriate skills to cope with his feelings and

regulate his emotions about father. For example, Joshua refused to discuss father during therapy sessions, often saying, “ ‘I don’t have a father’ ” or “ ‘I’ll never speak with him.’ ”

Between September 2013 and April 2014, father contacted the Department and Joshua’s therapist on several occasions inquiring about when he could begin visiting with Joshua. Joshua’s therapist explained to father that based on Joshua’s unwillingness to have any contact with father, Joshua was not ready to begin conjoint counseling.

The Department’s social worker also responded to father, explaining that Joshua had refused to have any contact with father since the disposition hearing. The social worker explained that Joshua would not be able to participate in conjoint counseling until he was cleared to do so by his therapist. The social worker also reminded father that he needed to enroll in therapy, attend a 12-step program, and submit to random drug tests to comply with his court-ordered case plan.

In its report prepared for a contested review hearing scheduled for October 2014, the Department noted that father had yet to enroll in individual therapy, submit to any drug tests, or complete a 12-step program. According to father, he did not have the time to participate in any services because he was his mother’s sole caretaker and needed to look after her 24 hours a day. The Department recommended the court discontinue father’s services and terminate jurisdiction.

3. The original family law order

In October 2014, the court conducted a contested review hearing. Father asked the court to continue jurisdiction and order Joshua to participate in conjoint counseling.

The court denied father's request, explaining it would not order Joshua to participate in conjoint counseling with father until Joshua's therapist believed he was prepared to do so. The court then issued a family law order under section 362.4 terminating jurisdiction, awarding mother legal and physical custody of Joshua, and granting father supervised visitation with Joshua in a therapeutic setting on the condition that Joshua was willing to visit, explaining, "If the child refuses, this court is not going to order mandatory visitation with father."

4. Father's first appeal

Father appealed from the October 2014 family law order, arguing the court erred in denying his request to require Joshua to participate in conjoint counseling and supervised visits via Skype. In October 2015, we decided *Joshua II*, affirming in part and reversing in part the family law order, concluding the court acted within its discretion when it refused to require Joshua to participate in conjoint counseling with father but erred in issuing a visitation order that did not ensure visits between father and Joshua would occur. Specifically, we concluded the visitation order was illusory because it did not "establish a minimum number of visits father is entitled to receive each month, specify when visitation should begin, or establish any conditions that must be satisfied before visitation may begin." We remanded the case with directions for the court to conduct a new hearing on the issue of visitation. We instructed the court that it could reexamine whether visitation was still appropriate in light of the evidence and circumstances existing at the time of the new hearing.

5. The new family law order

After we issued our opinion in *Joshua II*, the case social worker from the Department interviewed Joshua, father, mother, and Joshua's therapist. When the social worker told Joshua that she wanted to talk to him about visiting with father, Joshua replied that he had not "changed his mind" about father and did not want to visit with him. When the social worker asked Joshua how he would want the visits to be structured if the court ordered visitation against his wishes, Joshua replied that even if the court did make such an order, he would not want to see father "no matter what." Joshua then stated he did not want to talk anymore about visiting with father, and he began to withdraw from the social worker.

Mother reported that Joshua's behavior has improved since the October 2014 review hearing. He gets along well with other students his age, and he is kind to younger children. His ability to focus and stay on task has improved. Joshua's grades are average or better, and he has had fewer behavioral issues in class. However, Joshua still experiences issues with anxiety. He is afraid of the dark and sometimes wets his bed. He is also afraid to be alone upstairs and asks mother to remain within earshot when he takes a shower.

When the social worker reached out to father about the upcoming hearing, he provided the following response: "I have been doing the best that I can, considering the situation. My Mother fell again last week, she is OK but very forgetful and confused now. I am her only caregiver and it is a 24/7 job. Our sewer line has broken up because of tree roots and this must be addressed immediately. Between my Mother's Social Security and my Disability I am barely able to keep the bills paid.

Unfortunately, I have not had time to contact any agencies concerning this case. I have not had time to contact any agencies that might be able to help me with my situation with my Mother. I have NOT had ANY visits or communication with Joshua since February 7, 2012. I hope you are doing well.”

The social worker also spoke to Joshua’s therapist. The therapist stopped having regular therapy sessions with Joshua in February 2015 because the child was doing well. However, the therapist conducted a session with Joshua in October 2015 to evaluate whether it would be suitable for the court to order him to visit with father in the future. Joshua had told his therapist that he does not want, nor does he know when he will be willing, to see father. The therapist told the social worker that she would agree to monitor visits between father and Joshua, but only after she could evaluate father and determine he is ready to visit with Joshua.

In a report prepared on February 8, 2016, the Department opined that Joshua was making positive progress and doing well in mother’s care.³ As for father, the Department found “the reassessment of risk factors made on [father] for child safety continue[d] to be ‘high.’” Nevertheless, the Department recommended the court grant father supervised visits with Joshua in a therapeutic setting.

On February 18, 2016, the court conducted a hearing in accordance with our decision in *Joshua II*. Despite the Department’s recommendation, the court denied father any visitation with Joshua, finding that continuing visitation would

³ Although the Department filed the report on the day of the hearing, it served father with the report by mail on February 1, 2016.

cause substantial detriment to the child's physical and emotional health. The court observed that Joshua has remained adamant about having no contact with father and has continued to experience severe trauma that he associates with father's abuse. The court also noted that father has taken no serious steps to address the issues that led to Joshua being declared a dependent of the court. The court then entered a new family law order awarding mother sole legal and physical custody of Joshua, denying father visitation, and terminating dependency jurisdiction.

Father filed a timely appeal.

DISCUSSION

1. Standard of review

A juvenile court has broad discretion to make custody orders tailored to the child's best interests when it terminates jurisdiction in a dependency case. (§ 362.4; see also *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4.) We review a juvenile court's custody order for an abuse of discretion. (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1456.) Thus, we will not disturb a custody order unless it constitutes an "arbitrary, capricious, or patently absurd determination [citations.]" [Citations.] (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) In other words, if we can draw two or more reasonable inferences from the facts, we have no authority to substitute our discretion for that of the juvenile court. (*In re J.N.* (2006) 138 Cal.App.4th 450, 459.)

2. The juvenile court did not abuse its discretion by denying father visitation with Joshua.

Father contends the court abused its discretion by denying him visitation with Joshua. He contends the court erred because dependency jurisdiction was based solely on a finding that father had used an inappropriate form of physical discipline on Joshua (striking Joshua with a belt), and the court never made a finding that father had engaged in serious physical or sexual abuse. Father argues his use of inappropriate discipline on Joshua was not serious enough to warrant denying him visitation with the child once the court terminated dependency jurisdiction. We find no abuse of discretion.

There is ample evidence to support the court's determination that continuing visitation between Joshua and father would not be in Joshua's best interests. Throughout almost the entirety of the dependency proceedings, Joshua has demonstrated an intense aversion to visiting with father, and he has refused to have any contact with father since March 2013. Joshua's therapist believes Joshua is not prepared to visit with father because the child continues to have difficulty coping with his feelings about what he perceives as father's abuse. Joshua has also consistently told his mother and the Department's social workers that he no longer wants to see father because he believes father abused him.

Joshua's feelings toward father have not improved since the October 2014 review hearing when the court issued its first family law order. When interviewed by a Department social worker in February 2016, Joshua quickly shut down emotionally after being asked about father. He told the social worker that he has not changed his mind about father and that he will refuse to

visit with father “ ‘no matter what.’ ” As we noted in *Joshua II*, whether Joshua’s beliefs about father’s alleged abuse are completely grounded in reality (father contends they are not), the physical and emotional reactions Joshua experiences when confronted with the idea of resuming visitation and contact with father are real, and they sometimes have serious negative effects on Joshua’s emotional well-being.

Our decision to affirm the court’s February 18, 2016 family law order denying visitation does not rely solely on Joshua’s refusal to have any contact with father because father’s own conduct throughout Joshua’s dependency proceedings also supports the court’s order. As the Department has reported since before our decision in *Joshua II*, father has made no effort to comply with the parts of his case plan that are most relevant to the issue of visitation. Specifically, father has never enrolled in individual counseling designed to improve his relationship with Joshua and address appropriate forms of discipline, despite being ordered to do so by the court more than three and a half years ago. Indeed, between the disposition hearing in August 2013 and the review hearing in October 2014, Joshua’s therapist and the Department repeatedly urged father to enroll in individual counseling so that he could begin conjoint counseling with Joshua and improve the prospect of reinitiating visitation with his son, but he never did so.

Father contends the new family law order lacks factual support because the court did not expressly admit any reports into evidence at the February 18, 2016 hearing. Father also argues that to the extent the court relied on the Department’s reports submitted throughout Joshua’s dependency proceedings in issuing the new family law order, the court was precluded

under section 364.05 from relying on the Department's February 8, 2016 report because the Department did not file the report until the day of the hearing and did not serve him with it at least 10 days before the hearing.⁴

To the extent father contends the court should not have relied on the Department's February 8, 2016 report because it was not timely served and filed before the February 18, 2016 hearing, father forfeited that argument by not objecting to the report at that hearing. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502 (*Dakota S.*) [failure to object to allegedly deficient report forfeited the parent's challenge on appeal to the court's reliance on that report].)

We are also not persuaded by father's argument that the court's new family law order lacks evidentiary support. Although the court did not expressly state at the February 18, 2016 hearing that it had admitted any reports into evidence, the reporter's transcript makes clear that the court was relying on the Department's reports that detail the circumstances leading to Joshua being declared a dependent of the court and the Department's discussions with Joshua, mother, and Joshua's therapist about whether it would be suitable to allow father to visit with Joshua. For example, in explaining why it was denying

⁴ Section 364.05 provides that, in any case where a child has been placed under juvenile court supervision but not removed from the custody of his or her parent, any report filed in connection with a status review hearing "shall be provided to all parties at least 10 calendar days prior to the hearing. This may be accomplished by mailing the report at least 15 calendar days prior to the hearing to a party whose address is within the State of California, or at least 20 calendar days prior to the hearing to a party whose address is outside the State of California."

father visitation with Joshua, the court stated: “Obviously, from everything we have learned in the case, from information from Joshua’s therapist and from Joshua that he was very traumatized by [father’s] physical abuse. He has himself been in therapy for about three and a half years to deal with this issue and remains traumatized to this day. [¶] . . . Joshua’s father, on the other hand, has really not dealt with the issues that brought this case to court. He never did go to do the counseling that was ordered of him. He really has not complied with the case plan, and there is no reason for this court to believe that he has addressed the issues that brought us to court and addressed the issues that caused both the physical and emotional trauma to Joshua. [¶] He is 11 years old. He is very able to express his views. He does not want to visit with his father. And I believe that is for very good reason.” It is therefore clear that the court relied on the Department’s reports outlining the circumstances that weighed against granting father visitation with Joshua when it issued the new family law order.

DISPOSITION

The February 18, 2016 family law order is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

GOSWAMI, J.*

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