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

In re BROOKLYN L., et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

SHAKA L.,

Defendant and Appellant.

B283310

(Los Angeles County
Super. Ct. No. CK37201)

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

Konrad S. Lee, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Kimberly Roura, Deputy County
Counsel for Plaintiff and Respondent.

Appellant Shaka L. (father), appeals from the juvenile court's orders, made at the six-month review hearing held pursuant to Welfare and Institutions Code section 366.21, subdivision (e),¹ continuing the placement of his twin daughters, Brooklyn and Londyn (born July 2016), outside of his custody and according him monitored visits. We affirm the orders.

BACKGROUND

Detention and section 300 petition

In July 2016, the Los Angeles Department of Children and Family Services (the Department) filed a section 300 petition on behalf of newborn Brooklyn and Londyn, who had positive toxicology screens for cocaine and were exhibiting withdrawal symptoms. The petition alleged that the children came within the provisions of section 300, subdivisions (b) and (j) as a result of an 11-year history of illicit drug use by their mother, Christina C. (mother),² her current abuse of cocaine, her criminal conviction for possession of narcotics, and her failure to reunify with several of her older children. As to father, the petition alleged that father knew or reasonably should have known of mother's substance abuse and failed to protect the children, that he had a history of substance abuse and drug-related criminal convictions, that three of father's older children had been dependents of the juvenile court and received permanent placement services, and that father's parental rights were terminated as to another child.

Father was present at the July 27, 2016 detention hearing when the juvenile court found him to be the presumed father of Brooklyn and Londyn and further found a prima facie case for detaining the children from parental custody. The court ordered

¹ All further statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

the Department to conduct a further investigation and to provide services to the family.

Father's prior child welfare history

Father first came to the Department's attention in March 2002 when the mother of two of his sons, Shakeen and Shakeena, reported abuse while the children were staying with father. Eleven-year-old Shakeen stated that father had hit him and Shakeena with a cord. A third child, eight-year-old Shakeema, who was also living with father at the time, denied that father hit her with a cord, but said that father used to spank her with a belt. All three children were detained.

A section 300 petition was sustained in July 2002, after the juvenile court found, under subdivisions (a) and (b), that Shakeen, Shakeena, and Shakeema were at risk of serious physical and emotional harm as the result of father's use of extension cord to spank Shakeen and Shakeena. The petition further alleged that father was on parole for possession for sale of narcotics and that he had been arrested on March 28, 2002, for violation of parole.

In 2003, the Department reported that father had attended individual counseling and parenting classes. Father tested positive for cocaine five times, missed five drug tests, and had nine subsequent negative tests. Father attended 12 sessions of counseling that addressed child abuse and the law, parenting skills and appropriate discipline, and responsibility and consequences of one's own behavior.

On April 21, 2003, the juvenile court terminated jurisdiction over Shakeen and Shakeena with a family law order granting physical custody to their mother with reasonable visits for father. On October 15, 2003, the juvenile court returned Shakeema to father's custody. The case was closed on February

10, 2004, with a family law order granting father sole legal and physical custody of Shakeema.

In November 2007, father's child Shavodka was born with a positive toxicology screen for cocaine and heroin. The juvenile court sustained a section 300 petition that alleged that father's history of substance abuse rendered him unable to provide regular care for the child and placed her at risk of physical and emotional harm.

In March 2009, the juvenile court sustained a section 300 petition filed on behalf of Shakeema alleging that father had physically abused her by repeatedly striking her, causing swelling, bruising, and welts to her body. The petition further alleged that father's history of substance abuse and criminal convictions for possession of controlled substances endangered the child's physical and emotional health and safety. At the same time, the juvenile court sustained a section 300 petition as to Shavodka, alleging that she was at risk of harm because of father's physical abuse of Shakeema.

Both Shakeema and Shavodka were removed from father's custody, and father was offered family reunification services. Father was subsequently incarcerated and unable to comply with any court ordered services.

Father's reunification services were terminated as to Shavodka in October 2009 and as to Shakeema in May 2010. Shakeema remained in foster care as a minor and then as a non-minor dependent until February 2015. Father's parental rights as to Shavodka were terminated in July 2010.

Jurisdiction/disposition

The Department interviewed father in connection with its August 25, 2016 jurisdiction/disposition report concerning Brooklyn and Londyn. Father stated that he had been sober since 2008 and was drug testing and attending a 12-step

program. He was employed as a caregiver providing in-home supportive services.

With regard to his child welfare history, father stated that he had raised Shakeen and Shakeena until their mother wanted to care for them and got the Department involved. He said the Department again became involved when Shakeema “made up allegations that he was ‘beating on her.’” He was unable to complete his court ordered services because he was subsequently imprisoned. He believed Shavodka was “stolen” from him and “sold into adoption” by the Department.

As of September 2016, father had attended eight sessions of a parenting program. A letter from the program stated that father was an active participant, raising issues and asking for guidance. Father had two negative drug tests in August and September 2016. The Department confirmed that father had completed a drug program in prison as well as a three-month program in April 2016.

Father was present at the September 29, 2016 adjudication hearing at which the juvenile court sustained the allegations of the section 300 petition, declared the children to be dependents of the juvenile court, and ordered them removed from parental custody. Father was accorded monitored visits twice a week for two hours.

Father’s court-ordered case plan required him to complete a drug and alcohol program with drug testing, aftercare, and a 12-step program, parenting classes focusing on fatherhood, and individual counseling to address child abuse and substance abuse.

Six-month review period

In March 2017, the Department reported that father had successfully completed an outpatient drug and alcohol program

and had enrolled in an aftercare program with 12-step meetings. All of father's drug tests were negative.

Father's therapist, MFT intern Julie Dale, provided a letter dated November 21, 2016, stating that father had attended six individual therapy sessions focusing on positive coping strategies, parenting skills, and child development. Dale apparently told the social worker that there had been only six therapy sessions because father had requested short-term therapy only. The therapy sessions did not address case issues concerning father's history of child abuse and substance abuse. Dale believed that father was presently able to parent and care for the children; however, she could provide no feedback or comment regarding any child abuse or substance abuse issues.

Father visited consistently with the children two times a week. The monitors reported that father was attentive, caring, and nurturing, that the children were responding positively to him, and that a significant bond was developing between father and the children.

Father repeatedly requested unmonitored visitation and return of the children to his custody, prompting a team meeting. At the meeting, father agreed to continue with individual counseling, monitored visitation, and family reunification services.

At father's request, the Department's social workers met with him again on May 1, 2017, to discuss unmonitored visits. At the meeting, the Department raised the unaddressed case issues in father's individual counseling. Father agreed to reenroll in counseling at another facility, and the Department agreed that once father was enrolled in therapy, it would allow unmonitored visits at its offices.

On May 6, 2017, father made a referral against the foster parents alleging neglect due to diaper rash, scratches, and

recurring colds. The children's doctor reported, however, that the children were well cared for and that there were no indications of abuse or neglect. Father asked that the children be moved and that his case be transferred to a different Department office.

On May 17, 2017, father's drug and alcohol aftercare program provided a letter and a certificate stating that father had successfully completed a six-month aftercare program. On May 18, 2017, father enrolled in individual therapy at another facility. Also in May 2017, the Children's Institute provided a letter stating that father had been participating for two months in a psychotherapeutic group program called Project Fatherhood. Father's employer, Alexandria House, also provided a letter stating that father had worked there on a regular basis since 1999; that his responsibilities included maintenance and landscaping in the mornings, and working with K-5 children in an after school program in the afternoons; and that father was conscientious, responsible, and professional at all times.

In a last minute information for the court filed on May 22, 2017, the Department's social worker reported that she had spoken with father's former therapist, Julie Dale, who said that father had attended 10 therapy sessions that focused on parenting, protective factors, and child development stages. Dale stated that father had terminated the therapy sessions because he believed he had gotten everything he needed out of them.

The social worker further reported that father was insisting he had completed his court-ordered individual counseling. The social worker expressed concerns that case issues concerning father's history of substance abuse and child abuse had not been addressed in his therapy. The social worker noted that father had attended therapy sessions at the same agency in 2003 during a previous case involving physical abuse of

his children, but father subsequently abused another child in 2009, causing welts and bruises on the child's body.

Six-month review hearing

At the contested six-month review hearing held on June 2, 2017, the juvenile court admitted into evidence the Department's reports and heard testimony from several witnesses, including father.

Ken Schlussel, who had monitored father's visits every Monday for nine months, testified that father had not missed any visits, that he interacted with the children during the visits, singing and speaking to them, feeding them, and changing their diapers. Schlussel stated that father was appropriate and that he had never seen any behavior by father that was inconsistent with the children's well being.

MFT intern Julie Dale testified that she was father's therapist from October 7, 2016 to January 13, 2017. During father's therapy sessions, they discussed positive parenting strategies related specifically to the developmental stage of Brooklyn and Londyn. Dale stated that the therapy included a brief discussion of disciplinary issues in the context of infant development. She said she knew very little about father's past history with the Department. Dale further stated that she was unable to make a recommendation as to whether father should continue with therapy because she had met with him only 10 times and they had not progressed beyond the assessment phase of his therapy. She said she could not make a recommendation as to whether father should have unmonitored visitation because she did not have enough information.

Dale further stated that she had tried, unsuccessfully, to obtain father's reports from the Department. She found it very difficult to get in touch with the supervising social worker and was able to speak with him only once. Dale said she had received

only the petition and a minute order and was never provided with a copy of father's case plan, the detention report, jurisdiction report, or any status review reports.

Father testified on his own behalf and acknowledged that he had used corporal punishment on Shakeema in 2009 and on Shakeen and Shakeena in 2002 by striking the children on their buttocks with a belt, but denied inflicting welts or bruises on any of the children. He said that physical discipline was appropriate where he came from and that he had been disciplined that way as a child. He used physical discipline to get the children's attention, not to harm them. At the time, father believed physical discipline was appropriate, but had since learned in parenting classes that there are alternatives. He stated he would not use physical discipline in the future because "I'm a little older now, and I understand, especially after losing my child in the system."

Father admitted that he was imprisoned for a perjury conviction for obtaining a false identification card in the name of a friend who was incarcerated at the time. Father explained that he obtained the false identification card because his incarcerated friend had asked father to handle his affairs and having the identification card made it easier to do so. Father also stated that he handles money for a few people on skid row who receive unemployment or social security benefits but who are unable to manage their own finances because of drug addiction or other problems. He explained that he has ATM cards that give him access to their bank accounts, that he manages their money by paying their rent or disbursing funds to them as needed, and that he is paid by them for doing so.

After father's testimony concluded, the parties presented argument. The Department's counsel argued for continued reunification services with monitored visits, and counsel for the

children agreed. Father's counsel argued that the court should find the Department had failed to provide reasonable services and should order unmonitored visits in a public setting.

The juvenile court found that returning the children to father's custody presented a substantial risk to their safety, protection, and physical and emotional well-being, and ordered them to remain suitably placed. The juvenile court found father to be in partial compliance with his case plan, noting that he had not fully acknowledged the seriousness of his past physical abuse of his children and had not addressed those issues. The court ordered father to continue to drug test and to address his history of prior child abuse and his criminal lifestyle. The court expressed concern about father's handling of other people's money.

The juvenile court further found that the Department had failed to provide reasonable services by failing to provide the necessary documents and information to father's therapist to address case issues. The court ordered the Department to provide the necessary documents to father's therapist and to provide father with reunification services for an additional six months. The court ordered father's monitored visits to continue and authorized the Department to bring a walk-on request to liberalize the visits.

This appeal followed.

DISCUSSION

I. Father's request for return of the children

A. Applicable law and standard of review

At a six-month review hearing held pursuant to section 366.21, subdivision (e), the juvenile court must return a dependent child to a parent "unless the court finds, by a preponderance of the evidence, that return of the child to his or her parent . . . would create a substantial risk of detriment to the

safety, protection, or physical or emotional well-being of the child.” (§ 366.21, subd. (e).) A parent’s failure to participate regularly and make substantial progress in court-ordered treatment programs is prima facie evidence that returning the child to the parent would be detrimental. (*Ibid.*) The detriment precluding placement of a child with a parent under section 366.21, subdivision (e) need not be the same as the detriment that necessitated juvenile court jurisdiction. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899-901.) Rather, the proper focus is on the effect that return to the parent would have on the child. (*Ibid.*)

We review the juvenile court’s finding that Brooklyn and Londyn would suffer detriment if returned to father’s custody under the substantial evidence standard. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.)

B. Substantial evidence supports the juvenile court’s finding of detriment

Substantial evidence supports the juvenile court’s finding of detriment. The evidence shows that in 2002, father physically abused Shakeen and Shakeena, resulting in their removal from his custody. Their half-sibling Shakeema, who lived in the home at the time, was also removed from father’s custody. Thereafter, father received reunification services, including individual counseling and a parenting class, and Shakeema was returned to his custody. In 2009, father physically abused Shakeema, leaving welts and bruises on the child’s body, and Shakeema and her half-sibling Shavodka were removed from his custody. Father was unable to reunify with either child because he was incarcerated and could not participate in court-ordered services. His history of physically abusing his children therefore remained unaddressed.

In the instant case, although father attended parenting classes and individual therapy, those sessions did not address his past physical abuse of his children. Father's therapist testified that her sessions with father focused on child development issues for children aged one and under. She further testified that after only 10 sessions with father, they had not progressed beyond the "assessment phase," and that they had not addressed any past allegations of child abuse.

Father's own testimony indicated that he had not fully acknowledged the seriousness of his past actions. He denied leaving any welts or marks on the children and referred to the past incidents of physical abuse as discipline.

Substantial evidence supports the juvenile court's finding that returning Brooklyn and Londyn to father's custody would be detrimental to their safety, protection, and physical or emotional well-being.

II. Father's request for unmonitored visitation

An order setting visitation terms is reviewed for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) An abuse of discretion does not occur unless the juvenile court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.) A visitation order may not jeopardize the safety of the child. (§ 362.1, subd. (a)(1)(B).)

The evidence supporting the juvenile court's finding that returning the children to father's custody would be detrimental also supports the decision to continue father's monitored visits. The juvenile court did not abuse its discretion by concluding that father needed to make significant progress in addressing his history of physical abuse before assuming responsibility for the care of his infant children.

DISPOSITION

We affirm the juvenile court's June 2, 2017 orders for continued placement of the children and monitored visitation for father.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT