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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re D.B. III, a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

Dante B.,

Defendant and Respondent;

D.B. III,

Appellant.

A134349

(Alameda County
Super. Ct. No. OJ11017185)

Minor, D.B. III (minor), appeals the juvenile court’s dispositional order placing him with his father, Dante B. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2011, Alameda County Social Services Agency (Agency) filed a juvenile dependency petition pursuant to Welfare and Institutions Code section 300¹ (petition) in regard to minor, then 11 months old. The petition states M. B. is the minor’s mother and Dante B. (aged 22) is the alleged father. The detention report states the minor was taken into protective custody on June 16, 2011 after father and stepmother, Alexis J.,

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise noted.

became embroiled in a conflict with neighbors, resulting in father's arrest by Hayward Police. Family members reported the minor is often unkempt, dirty and smells of marijuana, and that alleged father and stepmother smoke a lot of marijuana in the home and in the presence of the children. In addition the petition alleged that in February 2011, the minor's half-sister (same father), A.B., was removed from the home of her mother, Alexis J., due to physical abuse and domestic violence and is in the care of the paternal grandparents; both Alexis J. and the minor's alleged father were the alleged perpetrators of the abuse against A.B. Currently the minor is in the care of non-relative extended family member (NREFM) E. G., the paternal step-grandmother. The whereabouts of the minor's birth mother are unknown. The court authorized the Agency to detain the minor in the approved home of the NREFM following parents failure to appear at the detention hearing.

The Agency filed a jurisdiction/disposition report on July 1, 2011 (July 2011 report) stating mother has been located and wants custody of the minor. The Agency recommended Dante B's status be elevated from alleged to presumed father because Dante B. cared for the minor from birth. The Agency notes Dante B. "has an extensive criminal history in both Alameda and Contra Costa Counties, . . . currently has an active CPS case in Alameda County with [A.B.] and is currently receiving Family Reunification services until 9/01/2011." Dante B. appeared in custody at the jurisdiction hearing held on July 5, 2011. Mother was not present. Following testimony from Dante B., the court adopted the Agency's recommendation and found Dante B. was the presumed father (hereinafter father). The matter was set for a continued hearing after father's release from custody.

On September 2, 2011 prior to the continued hearing, the Agency filed an Addendum Report (addendum). The addendum noted father was released from custody on August 20, 2011 and since then has "expressed a strong desire to reunify with the minor" and has been "very proactive in contacting [the Agency] to arrange for visitation with the minor." Father told the caseworker that "he is willing to do 'whatever it takes to get his son back,' including participating in therapy and drug testing." Father is currently

living with his mother in Concord and father and his mother enjoyed several supervised visits with the minor in August 2011. The Agency recommended the minor be placed in the home of his father and paternal grandmother and that father receive family maintenance services as the sole custodial parent.² Father's case plan included individual, weekly therapy sessions directed at anger management and abstaining from use of illegal drugs, as well as bi-monthly drug testing.

Father appeared with counsel at the continued jurisdiction hearing held on September 7, 2011. Mother did not appear. Father agreed with the Agency's recommended disposition. Father admitted jurisdiction allegations, as amended, including allegations that in February 2011 the minor's half-sister, A.B., was removed from the home of her mother, Alexis J., due to physical abuse by Alexis J. and due to prior domestic violence altercations between Alexis J. and father. Father also admitted the minor has been exposed to marijuana by father, "which is detrimental to the minor's health and well-being." The court granted the Agency discretion to permit "liberal visitation" for father, which could include "unsupervised visits [and] overnight visitation" and directed the Agency to immediately suspend visitation if father tested positive for drugs.

In advance of the September 26, 2011 continued disposition hearing, the Agency filed a further Addendum Report (second addendum). The second addendum reported that since the September 7 hearing the minor has continued in placement in the home of the paternal grandfather and step-grandmother. Father has been very proactive in seeking visitation and has enjoyed a series of unsupervised visits with the minor, each spanning three or four days. These extended overnight visits took place at paternal grandmother's house where father resides. Father's therapist reports father has been engaged and cooperative in therapy sessions; father has a good relationship with the minor and "picks up on the minor's triggers and non-verbal cues when something is needed." Father has

² The addendum states mother has not responded to Agency efforts to contact her.

cooperated in taking random urine drug tests, which showed a significant reduction in THC levels over time and did not test positive for any other substances.

The contested disposition hearing was held on October 3, 2011. Before receiving evidence, the court addressed the Agency's motion to quash the subpoena issued by minor's counsel to Robin Stults, the Agency caseworker in A.B.'s dependency proceeding. The court noted potential "confidentiality issues" with respect to Stults' testimony and suggested minor's counsel "should . . . pursu[e] the 827 W&I procedure"³ rather than opposing the motion to quash, adding, "Why don't you make that decision in a few moments, and we will get back to that." Thereafter, presentation of evidence commenced.

The Agency moved the admission of its reports into evidence, the court received the reports without objection and the Agency rested. Minor's counsel called Aaron Leavy, the minor's caseworker. Leavy testified that in June 2011 the Agency's main concerns were father's current incarceration, mother's unknown whereabouts and parental grandparents' concern about father's alleged substance abuse. Leavy noted that after father was released, he reported using marijuana during his incarceration and began drug testing on September 2. Father has tested a total of three times and all three tests have all been positive for marijuana but show decreasing levels of THC in his system. Following Leavy's direct examination, proceedings were adjourned for the day and the matter was continued to October 17, 2011. The court indicated it would rule on the Agency's motion to quash on that date as well.

Caseworker Leavy resumed the stand at the continued disposition hearing on October 17, 2011. On cross-examination, Leavy testified father has a case plan in A.B.'s proceeding and his coworker, Ms. Joyner, spoke to A.B.'s caseworker Stults on one occasion. In addition, Leavy noted in A.B.'s proceedings, the Agency recommended

³ Section 827 governs the inspection and release of confidential juvenile case files; it provides that a case file may only be inspected by persons specified in the statute and that members of the public may obtain a confidential juvenile case file only by order of the juvenile court after filing a petition affording interested parties the opportunity to object to the petition. (See § 827, subd. (a)(1)-(2).)

termination of family reunification services to father and the Agency considered the circumstances of A.B.'s case in framing its recommendation to place minor with father and provide father with family maintenance services. Although the Agency had concerns about placing the minor with father due to father's history of drug use and criminality, father's conduct in conforming with his case plan in these dependency proceedings mitigated those concerns. On this point, Leavy testified, "[Father] has shown by his own drive to remain free from dependency of drugs, he has engaged in his case plan, despite having not had a disposition on the case, he has had the child in his care for hundreds of hours." Also, tests showed father had desisted from his use of marijuana.

Following the conclusion of Leavy's testimony, the minor called Sylvia Joyner, a dependency investigation worker for the Agency. Joyner testified that she works under Leavy's direction as the secondary caseworker. Joyner spoke with caseworker Stults on or about August 31; the conversation lasted about 10 minutes and they discussed avoiding duplication of services to father and items for the case plan. They also discussed Stults' recommendation to terminate services to father in A.B.'s case and the reasons for her recommendation. Stults concern regarding father in A.B.'s case was that father was currently incarcerated. Joyner conveyed the substance of her conversation with Stults to Leavy.

Following Joyner's testimony, the court turned to the issue of the Agency's motion to quash the subpoena issued to caseworker Robin Stults by minor's counsel. After entertaining argument of counsel, the court granted the motion to quash. Minor's counsel stated he still intended to file a section 827 petition. The court ordered the hearing continued until November 16, 2011 as minor's counsel wished to call the paternal grandfather and advised minor's counsel to "move on [the section 827 petition] real quick."

On November 15, the day before the continued disposition hearing, the Agency filed a further Addendum Report (third addendum). In the third addendum, the Agency continued to recommend placement with father in the home of paternal grandmother. However, the Agency reported that father had not drug-tested recently, apparently due to

lack of funds for transportation. Leavy provided father with BART fare so he could attend drug testing as soon as possible.

At the continued disposition hearing on November 16, the court stated it had read and considered the Agency's further Addendum Report. Also, counsel for the Agency informed the court father had reported for drug testing the day before, had tested positive for marijuana, and that testing to determine the concentration of THC in father's urine sample would be available within a week. Minor's counsel requested a continuance to await a ruling from the presiding judge on his section 827 petition. The court denied the minor's oral request for continuance but on its own motion continued the matter to November 29 "to get that lab result." The court indicated that if minor's counsel's section 827 petition had been granted by then, the minor could present testimony from Stults at the continued hearing.

At the continued disposition hearing on November 29, 2011 the court reviewed the toxicology report from father's drug test on November 15. The level of THC detected in the sample was 192 ng/mL, down from 317 ng/mL detected in the most recent test 40 days earlier. Caseworker Leavy reported father has obtained a residence of his own, "right around the corner from his mother's house" in Concord. Minor's counsel requested a further continuance on the basis of his pending section 827 petition. The court denied the request, adding that if the section 827 petition is granted and counsel finds "something that is overwhelming," he could file a section 388 petition. After entertaining argument of counsel regarding disposition, the court ordered care and custody of the minor to father with family maintenance services. The court also ordered that father continue to reside with his mother in Concord so that she is readily available to provide support in father's care of the minor; also, the court gave the Agency discretion to allow the minor to reside solely with father if father's new home is investigated and approved. The minor filed a timely notice of appeal on January 13, 2012.

On September 26, 2012, the Agency filed a request for judicial notice, which we deferred pending disposition. The Agency requests judicial notice of (1) the Minute Order from the six-month review hearing held on May 14, 2012, continuing the minor as

a dependent child of the Court in care of father; (2) the Superior Court docket (JCMS Case Summary) in the minor's case (number OJ11017185), showing activity in the case from the date the section 300 petition was filed on June 17, 2011 through September 04, 2012; and (3) the Superior Court record on the minor's section 827 petition, showing the petition was filed on October 20, 2011 and was granted by the Superior Court on December 19, 2011. The Agency's request for judicial notice is hereby granted.

DISCUSSION

The minor contends the juvenile court erred by granting the Agency's motion to quash the subpoena issued by minor's trial counsel to Robin Stults, the Agency caseworker in A.B.'s dependency proceeding. The minor also contends the court erred by denying his oral motion for a continuance of the November 29 continued disposition hearing. Last, the minor contends these alleged errors violated his procedural due process right to present evidence relevant to his safety in father's care. We shall address these contentions in turn.

In regard to minor's contention the juvenile court erred by granting the Agency's motion to quash, we note that “ ‘[m]anagement of discovery lies within the sound discretion of the trial court. Consequently, appellate review of discovery rulings is governed by the abuse of discretion standard. [Citation.]’ Where there is a basis for the trial court's ruling and the evidence supports it, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] [Citation.] The trial court's determination will be set aside only when it has been established that there was no legal justification for the order granting or denying the discovery in question. [Citation.]” (*Save Open Space Santa Monica Mountains v. Superior Court* (2000) 84 Cal.App.4th 235, 245-246.)

Here, the Agency filed its motion on October 3, 2011, seeking to quash the subpoena on the grounds the minor was attempting to circumvent the confidentiality accorded juvenile court files under section 827 by eliciting testimony from caseworker Stultz regarding the separate dependency proceedings pertaining to A.B. The Agency stated that A.B.'s dependency proceeding involved several persons not party to the minor's proceedings. Therefore, the Agency took the position that to obtain information

relating to A.B.'s dependency proceeding, the minor should follow the procedure set forth in section 827. The record reflects that the juvenile court granted the Agency's motion to quash at the hearing on October 17. However, the record does not clearly establish whether the juvenile court granted the motion to quash on procedural grounds, i.e., that section 827 was the proper mechanism by which to obtain information about A.B.'s juvenile case, or, whether the court granted the motion to quash on the grounds that Stults' testimony about A.B.'s case was not material to disposition in the minor's case. In all events, we find the court did not abuse its discretion in granting the motion to quash.

First, the juvenile court had a sufficient "legal justification" to grant the motion to quash on procedural grounds. (*Save Open Space Santa Monica Mountains v. Superior Court, supra*, 84 Cal.App.4th at p. 246.) Section 827 is specifically directed at protecting the confidentiality of juvenile case files and governs access to and release of such files; section 827 provides that before disclosure of the contents of a juvenile file, a petition must be filed and served on "interested parties," who may file an objection to the petition. (See § 827, subd. (a)(2)(A), (D)-(E); see also California Rules of Court, rule 5.552(c) (rule 5.552) ["With the exception of those persons permitted to inspect juvenile court records without authorization under sections 827 and 828, every person . . . seeking to inspect or obtain juvenile court records must petition the court for authorization. . . ."].) Thus, section 827 and rule 5.552 provide an adequate legal justification for the trial court's decision to grant the Agency's motion to quash on the grounds that Stults' testimony regarding the A.B.'s dependency proceeding might violate juvenile case file confidentiality. (See *In re Anthony H.* (2005) 129 Cal.App.4th 495, 502 ["section 827, subdivision (a)(1)(O) gives the juvenile court the exclusive authority to determine when juvenile records will be released to anyone other than those designated in section 827,

subdivision (a)(1)(A) through (N),” citing *People v. Superior Court* (2003) 107 Cal.App.4th 488, 491.)⁴

Alternatively, the record reasonably supports an implicit finding by the trial court that testimony from Stults was not probative to disposition in the minor’s case. “In exercising its discretion, the trial court is required to make a ‘ “ ‘reasoned judgment’ ” and compl[y] with the “ ‘legal principles and policies appropriate to the particular matter at issue.’ ” [Citations.]’ [Citation.]” (*In re Lee G.* (1991) 1 Cal.App.4th 17, 27.) Moreover, courts are empowered to quash subpoenas “where the witness would not have contributed material evidence. [Citations.]” (*People v. Superior Court (Long)* (1976) 56 Cal.App.3d 374, 378, citing *In re Finn* (1960) 54 Cal.2d 807, 813.)

Regarding the materiality of Stults’ testimony, we note the issue before the court at disposition was whether clear and convincing evidence supported *removing* the minor from his father’s care. (See *In re Henry V.* (2004) 119 Cal.App.4th 522, 525 [noting a “child may not be taken from a parent’s physical custody during juvenile dependency proceedings, except for a temporary detention period, unless clear and convincing evidence supports a ground for removal specified by the Legislature”].)⁵ In this regard, the evidence before the court showed father was minor’s primary caregiver from birth,

⁴ Minor contends the juvenile court based its challenged ruling on an erroneous legal determination that testimony from Stults concerning A.B.’s juvenile case was prohibited by the confidentiality provisions of section 827. However, any legal controversy concerning the confidentiality of A.B.’s juvenile file was resolved when the Superior Court granted the minor’s section 827 motion, allowing minor to inspect and copy documents from A.B.’s juvenile case. Accordingly, we dismiss minor’s legal challenge as moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404-405 [“ ‘[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.’ [Citation.]”].)

⁵ By contrast, as a non-custodial parent, father’s entitlement to family service in A.B.’s dependency proceedings involves different considerations. (See *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 54 [section 361.5 governs the grant or denial of reunification services to a noncustodial parent who has not assumed custody of his or her child under section 361.2, subdivision (b)].)

that he was in compliance with his case plan and that his drug use was in remission. Also, the record showed the minor had bonded with father and the Agency had nothing negative to report concerning father's care of the minor. Accordingly, on the record before it the trial court properly determined that the minor should not be removed from father's care. Moreover, for several reasons, Stults testimony regarding A.B.'s case would not have undermined the trial court's determination. In the first place, the Agency is the petitioner in both cases and was aware of the circumstances in each case, as demonstrated by the fact the caseworkers for A.B. and the minor discussed provision of services in each case. Indeed, the Agency caseworker testified the Agency considered the circumstances in A.B.'s case and factored them into account when framing its dispositional recommendation in minor's case. In all events, the risk factors identified in A.B.'s case and the minor's case were the same, namely, father's criminal history and incarceration, his use of marijuana and the history of domestic violence between father and A.B.'s mother, and caseworker Joyner testified father had satisfactorily alleviated any risk to the minor associated with those factors. Accordingly, we cannot say the juvenile court abused its discretion by granting the motion to quash on the grounds Stults' testimony was not material to disposition.

We next address minor's contention that the juvenile court erred by denying his oral motion for a continuance. The denial of a continuance of a hearing in dependency cases is reviewed under an abuse of discretion standard. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810–811 [“[W]e reverse an order denying a continuance only on a showing of an abuse of discretion [citation]”].) “The juvenile dependency statutory scheme requires that petitions under section 300 be heard, and decided rapidly. [Citation.] Continuances are discouraged. [Citation.]” (*In re Axsana S.* (2000) 78 Cal.App.4th 262, 272, disapproved on another point by *In re Jesusa V.* (2004) 32 Cal.4th 588, 624 fn. 12.) Section 352 provides that a continuance shall only be granted for good cause, must be supported by “specific facts showing that a continuance is necessary,” and must be submitted in writing at least two court days before the hearing, unless the court, for good cause, allows the motion to be made orally. (§ 352, subd. (a).) “ ‘To establish good

cause for a continuance, defendant had the burden of showing that he had exercised due diligence to secure the witness's attendance, that the witness's expected testimony was material and not cumulative, that the testimony could be obtained within a reasonable time, and that the facts to which the witness would testify could not otherwise be proven.' (Citation.)" (*People v. Roybal* (1998) 19 Cal.4th 481, 504.)

No error appears under these standards. At the October 3 hearing, the trial court expressed concerns regarding the confidentiality of juvenile files and suggested the minor proceed pursuant to section 827 in order to obtain Stults' testimony for disposition purposes. However, minor chose not to immediately file a section 827 petition, opting instead to oppose the Agency's motion to quash. Only after the court granted the Agency's motion to quash on October 17 did minor file a section 827 petition on or about October 20. Thus, although the Superior Court did not grant his section 827 until the disposition hearing on November 29 concluded, minor could have avoided this outcome by heeding the trial court's October 3 suggestion to seek the desired discovery via a section 827 petition. In fact, counsel could have pursued section 827 relief in tandem with opposing the Agency's motion to quash, yet he waited until October 20 to file the petition. Moreover, as the disposition hearing approached, minor knew his section 827 petition was still pending, yet he failed to file a motion explaining why the juvenile court should continue the disposition hearing until the Superior Court ruled on his section 827 petition. Accordingly, we conclude minor's lack of diligence in seeking relief under section 827 amply supports the trial court's finding he failed to demonstrate good cause for a further continuance of the November 29, 2011 disposition hearing. (*People v. Roybal, supra*, 19 Cal.4th at p. 504.)

Last, we reject minor's contention that, by granting the Agency's motion to quash the Stults' subpoena and by denying his oral motion for a continuance, the juvenile court violated his procedural due process right to present evidence relevant to his safety in father's care. Procedural due process requirements in dependency cases generally focus on "the right to a hearing and the right to notice" (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 412–413), and in this regard it has been noted that California's "dependency scheme

is a ‘remarkable system of checks and balances [Citation] designed to ‘preserve the parent-child relationship and to reduce the risk of erroneous fact-finding in . . . many different ways’ [Citation.]” (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1154.) As pertinent here, the court’s ruling on November 29 did not permanently foreclose presentation of evidence from A.B.’s dependency case if such evidence proved material to disposition in the minor’s case. Rather, the procedural protections set forth under section 388 allowed the minor to bring such evidence before the juvenile court. Indeed, a section 388 petition must be liberally construed in favor of its sufficiency (Cal. Rules of Court, rule 5.570(a)), and if the petition presents *any* evidence that a hearing would promote the best interests of the child, the court must order the hearing. (See *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431–432.) In sum, given the protections afforded to the minor by section 388, the trial court’s rulings, granting the Agency’s motion to quash and denying minor’s oral motion for a continuance, did not result in a deprivation of procedural due process.⁶

DISPOSITION

The juvenile court’s disposition orders are affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.

⁶ The documents submitted by the Agency for our judicial notice indicate that minor did not file a section 388 petition following disposition and prior to the six-month review hearing, and at the six-month review hearing the matter was submitted on the Agency’s report without presentation of evidence by minor.