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

In re J.M., et al., Persons Coming Under
the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

A140940

(Contra Costa County
Super. Ct. Nos. J13-00824,
J13-00825, J13-00826, J13-00827)

In these consolidated juvenile dependency proceedings, J.M. (father) appeals from dispositional orders entered on January 13, 2014, in which the juvenile court declared three of his children dependents, removed them from the home, and ordered reunification services for the parents. Father challenges so much of the orders as required him to participate in domestic violence and sexual abuse treatment programs as part of a family reunification plan. As we now discuss, we conclude the court did not abuse its discretion in ordering father to participate in the challenged treatment programs. Accordingly, we affirm the January 13, 2014 dispositional orders.¹

¹ Father's notices of appeal also seek review of orders entered on July 24, 2013 (continuance of jurisdictional hearing) and the jurisdictional findings and orders entered on October 7, 2013, concerning the three children. However, we shall dismiss the appeals from those earlier findings and orders as they are not separately appealable. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, fn. 8.) We review the

FACTUAL AND PROCEDURAL BACKGROUND²

At the commencement of these juvenile dependency proceedings, father and mother had been married for over 20 years and had five children. This appeal concerns three of their children, B.M., born August 1996, A.M., born June 1997, and S.M., born January 1999 (hereafter also referred to as the children).

On July 9, 2013, the children (then ages 16, 16, 14) were removed from their parents' home and detained by the Contra Costa Children & Family Services Bureau (the agency). The detention was based on allegations made on July 7, 2013, by J.T., father's 17-year-old nephew, who reported that when he was between 12 to 14 years of age, he was repeatedly sexually molested by his uncle and a cousin whenever he went to the parents' home. J.T. had also witnessed father molest B.M., one of the children who was the subject of the dependency proceeding. J.T.'s statement was cross-reported to the police department. Two days later, on July 9, 2013, the agency received a request for an immediate response to the residence because both parents had been arrested and the children needed placement. At the residence the agency social worker spoke with a police detective, who stated that father had been arrested on charges of "continued sexual abuse of a minor, age 10" (Pen. Code, § 288.7), "physical abuse, great bodily injury" of a child (Pen. Code, § 273a, subd. (a)), and incest (Pen. Code, § 285), and mother had been arrested on a charge of "failure to protect the children" (Pen. Code, § 273a). Two days

jurisdictional findings and orders as necessary to resolve the appeals from the dispositional orders of January 13, 2014, concerning the three children in Superior Court Case Nos. J13-00825, J13-00826, J13-00827. (*Ibid.*) Father also seeks review of certain findings and orders entered on July 24, 2013, October 7, 2013, and January 13, 2014, concerning a fourth child who is now an adult. However, the court issued orders concerning this fourth child only on July 24, 2013, and January 13, 2014, and not October 7, 2013. Because father does not otherwise challenge any findings made by the court at the hearings held on July 24, 2013, October 7, 2013, and January 13, 2014, concerning this fourth child, we shall dismiss the appeals from the orders of July 24, 2013 and January 13, 2014, and the purported order of October 7, 2013, in Superior Court Case No. J13-00824.

² Because mother is not a party to this appeal, our recitation of the facts focuses primarily, if not exclusively, on father's circumstances.

later, on July 11, 2013, the agency filed Welfare and Institutions Code section 300³ petitions for each child, asking the court to take jurisdiction and declare the children dependents based on allegations of failure to protect (§ 300, subd. (b)), and no provision for support (§ 300, subd. (g)).

Before the detention and jurisdictional hearings, the agency social worker prepared a report regarding the family. In explaining the circumstances giving rise to the parents' arrests, the agency social worker reported information gleaned from the police investigating the sexual abuse allegations made against father. A police detective reported that the children's paternal aunt had stated that father as a minor had sexually abused all his sisters, and that father's 17-year-old nephew, J.T. (child of a paternal aunt) had stated that about five years ago father had sexually abused J.T. and one of father's now adult sons, and father had physically abused another son by beating him with a belt numerous times. During the agency social worker's discussions with the children, the children stated their extended paternal family members were "out to get their family," and they had not spoken to them in a long time. The agency social worker also interviewed father, who said he did not know the specifics of the charges against him but he was " 'not guilty.' " Father had been told that one of his nephews had accused father of doing " 'something to him, and that's not true.' " Father claimed he had been feuding with his mother, and that his nephew was being coached as to what to say because he was a minor. Both parents claimed the only incident of physical domestic violence between them took place in 1993, when they were both 18 years old. Father " 'slapped' " mother and she called the police and father went to jail in 1994 and 1995. He participated in counseling and one year of anger management education. Both parents described the family's current living arrangements, giving explanations for the condition of the home on the day of their arrest, including the locked door to the pantry closet in the kitchen, the lack of food, plates, cups, utensils and bedding, the presence of cockroaches, and several patched holes in the walls of the house.

³ All further unspecified statutory references are to the Welfare and Institutions Code.

On July 12, 2013, the juvenile court ordered the continued detention of the children after the parents, through their counsel, submitted on the agency's detention and jurisdiction report of July 12, 2013, and the matter was continued for a jurisdictional hearing. At a jurisdictional hearing on October 7, 2013, the court assumed jurisdiction of the children and declared them dependents after the court amended the allegations in the petitions, and parents, through their counsel, submitted on the agency's detention and jurisdiction report of July 12, 2013. In pertinent part, the court found true that father had (a) failed to provide for the children (§ 300, subd. (b)) in that on July 9, 2013, the family home was found to be in a condition not conducive to the health and welfare of the children and (b) failed to provide support for the children (§ 300, subd. (g)) in that on July 9, 2013, he was arrested for multiple counts of sexual abuse of a minor, and he "remains in custody and is unable to make arrangements for the care of his children." The matter was continued for a dispositional hearing that was ultimately scheduled for January 13, 2014.

Before the dispositional hearing, the agency filed a report recommending that the children be continued as dependents and that the parents be offered reunification services. In support of the recommendation, the agency social worker noted father's criminal history as showing that (1) in 1997 he was convicted of the misdemeanor offense of infliction of corporal injury on spouse (Pen. Code, § 273.5), and sentenced to "36 months probation and 13 days in jail;" and (2) the current criminal charges against father that were filed on July 9, 2013, included "Sodomy Victim: Under 10 years" (Pen. Code, § 288.7, subd. (a)), "Incest" (Pen. Code, § 285), and "Child Cruelty: Possible injury/death" (Pen. Code, § 273a). The agency social worker also reported on the family history: "The parent[s]' extended family described the parent[s]' courtship and marriage as characterized by [father's] violence toward the mother and control over her contact with the maternal family. Multiple paternal and maternal family members have described the mother as a victim of ongoing domestic violence that includes more than just one incident of domestic violence and with common themes pointing to severe use of control and intimidation." Mother denied that there was any domestic violence between herself

and father. However, one of the children reported the holes in the walls of the home were made by father “during angry outburst and fights” with mother. The agency social worker further opined that both the parents’ and children’s explanations regarding the condition of the home, including the lack of dishes, utensils, pots, pans, cups, common pantry items, and toilet paper, did not make sense and made plausible the information gathered from the criminal investigation.⁴ In concluding her assessment and evaluation of the family, the agency social worker reported: “ ‘Nothing adds up.’ . . . The facts that are presented by the victims and witnesses in the criminal proceeding in this case detail abuse and neglect, fear and intimidation as to the conditions of the home. The parents would want us to believe that the house was merely in disarray because of overactive children and inattentive parents. This does not make sense. The gross neglect of the home and the lack of provision [cannot] be explained away by such simple explanation. Locks on food cabinets, no basic eating utensils, no plates and cups, no toilet paper, little or no bed linens [cannot] be explained away so simply. [¶] Further, we have reports of domestic violence not only in law enforcement reports, but by maternal and paternal family members and evidence in the home in the way of holes in the walls and a confirming statement by one child that there was domestic violence in the home. Yet [mother] will state that there was just one incident of domestic violence. [Mother] states that she is quite capable of taking care of herself The mother did present as very confident during her interview with this worker. However, she is described by one of her children as timid and tearful. This child asked that this worker take this [into] consideration and indicated that she hoped this worker would be kind to the mother. This does not make sense. . . . [Mother] states that she is not a victim of ‘the battered woman syndrome’ and that she is a good mother. She would deny that her words and story is ‘practiced’ and perfected after years of enduring abuse by her husband. [¶] In interviews

⁴ Thus, the agency social worker commented: “When a home has a very strong odor of urine and multiple reports contain information about members of the family not able to use the bathroom for fear of leaving the bedroom or as has been reported about the mother, being forced to relieve herself in a bucket, it seems unlikely that the family dog urinating in the home is . . . the only cause for the strong odor.”

. . . multiple paternal and maternal family members share a common history that is quite different than that which this worker is told and this history is quite disturbing. For example, it is reported that [father] showed the children pictures of dead people on the internet to instill fear and intimidation in his children. [Father] forced male children to fight with each other and their cousin to the point of injury. This history accounts that children were so fearful of leaving their bedrooms that they urinated and defecated in the closet and on themselves. A police report details that years ago, [mother] was even encouraged by the paternal great grandmother to file charges for domestic violence against [father]. This history includes details of a father with a long history of committing sexual crimes against children and family members with implications that his own children have been victims of sexual crimes as well.” In conclusion, the agency social worker strongly asserted that the children “were placed at extreme danger and risk in the care of the parents and that their basic needs were not being met,” and “[w]ith grave concern for the welfare of the children,” it was recommended that the court order family reunification services for both parents. The agency case plan for father included several service objectives and responsibilities including compliance with medical or psychological treatment, attendance and demonstrated progress in a county-certified domestic violence prevention plan, and successful completion of parenting education. Relevant to this appeal, the case plan also required father to meet the following pertinent responsibilities: (1) “Offending parent will enter and successfully complete a sexual abuse treatment program, approved by the social worker and receive a positive evaluation from therapist addressing: [¶] i) Understanding of parent’s role in the molest [¶] ii) Understanding the effect of the molest on the child [¶] iii) Ability to protect the child in the future [¶] iv) Understanding the effect of the molest on the victim’s siblings [¶] v) Understanding the need for personal boundaries in order to protect the child from further victimization [¶] vi) Experiencing sexual abuse as a child;”and (2) “a. Parent will refrain from further instances of domestic violence. [¶] b. Parent will enter and successfully complete a domestic violence counseling program, approved by the social worker, addressing the issues of: [¶] i) The cycle of violence and the parent’s role in the

cycle [¶] ii) Preventing the domestic violence from recurring [¶] iii) Develop safety plan for self and child [¶] iv) Impact of domestic violence on the entire family [¶] v) Assertiveness practice [¶] vi) Anger Management.”

Father filed an objection to the proposed case plan, challenging, among other things, the requirements that he participate and complete sexual abuse and domestic violence treatment programs. Specifically, he contended: “The Case plan requires the ‘offending parent’ to enter and successfully complete a sexual abuse treatment program. Father objects to this requirement. There is no nexus between this plan requirement and the Jurisdictional findings made by this court to require such treatment. Nor has father been determined to be an ‘offending parent.’ [¶] Father also objects to the requirement for Domestic Violence Treatment. There were no such findings made by this court, nor any other. The only documented Domestic Violence between the parents occurred more than eighteen years ago, for which father was prosecuted, served a sentence and received treatment.”

On January 13, 2014, the juvenile court held a dispositional hearing regarding the children. At that time father was still in custody and a preliminary hearing on the criminal charges against him was then scheduled for a date in February 2014. The court adjudged the children to be dependents, awarded custody of the children to the agency, and granted the parents reunification services directing compliance with the agency’s case plans as modified by the court. However, the court rejected father’s objection to his case plan requirements that he participate and complete sexual abuse and domestic violence treatment programs. In so ruling, the court explained: “The G count . . . relates directly to many of the services[.] [F]ather is unable to provide support and care because he is in custody, and he is in custody because he is accused of sexually abusing a young family member. And given the age of the victim in that case and the circumstances as well as what is set forth in the disposition report as it relates to food and use of a restroom and that sort of thing. I believe what is suggested by way of a case plan, . . ., is directly related to the G count as well as the B count. [¶] It’s the control, intimidation and then standing accused of sexually molesting the victim in that case that I think supports the

request for those services in the case plan.” The court further explained that “control, intimidation through use of the restroom and when food is provided and how it’s provided as well as the holes in the walls support the domestic violence services.” Father’s appeal ensued.

DISCUSSION

Father argues the juvenile court erred in ordering that his case plan include domestic violence and sexual abuse treatment programs because the jurisdictional findings did not include sustained allegations of domestic violence and sexual abuse, and the evidence of such conduct was “too weak and attenuated to be within the discretion of the court to order remedial services.” We conclude father’s arguments are unavailing.

“At the dispositional hearing, the juvenile court must order child welfare services for the minor and the minor’s parents to facilitate reunification of the family. (§ 361.5, subd. (a); Cal. Rules of Court rule [5.695(h)(1)].) The court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court’s determination in this regard absent a clear abuse of discretion.” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006, 1007, 1008 (*Christopher H.*) [even though juvenile court made no jurisdictional findings based on father’s substance abuse problem appellate court upheld random drug or alcohol testing as part of reunification plan where record showed father had substance abuse problem].)

“The reunification plan ‘ “must be appropriate for each family and be based on the unique facts relating to that family.” ’ ” (*Christopher H., supra*, 50 Cal.App.4th at p. 1006.) Concededly, “ ‘a reunification plan formulated to correct certain parental deficiencies need not *necessarily* address other types of conduct, equally deleterious to the well-being of a child, but which had not arisen at the time the original plan was formulated.’ ” (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1475.) “However, when the court is aware of other deficiencies that impede the parent’s ability to reunify with his

child, the court may address them in the reunification plan.” (*Christopher H.*, *supra*, at p. 1008.)

In support of his argument, father relies on *In re Basilio T.* (1992) 4 Cal.App.4th 155 (*Basilio T.*). In that case the appellate court reversed a juvenile court order that included a substance abuse treatment component in the reunification program for both parents. (*Id.* at p. 172.) In finding the case plan requirement could not be upheld because there was no evidence that either parent had a substance abuse problem, the court explained: “Other than the social worker’s observations that [mother] behaved somewhat out of the usual and was obsessed with discussing a fortune-making invention, there was nothing in the record to indicate either [parent] had a substance abuse problem. Given the offer of proof by [mother]’s counsel that there was indeed an invention that had a potential money-making aspect, the only remaining factor supporting the substance abuse component was [mother]’s behavior. On this record, [mother]’s behavior, by itself, cannot support a conclusion she had a substance abuse problem.” (*Id.* at pp. 172-173.)

Unlike the situation in *Basilio T.*, the record here includes evidence of a domestic violence problem that would pose “a potential risk of interfering with [father’s] ability to make a home and care for [his children].” (*Christopher H.*, *supra*, 50 Cal.App.4th at p. 1007.) The agency’s reports described the father’s misdemeanor conviction for domestic violence, one child’s statement that father made the holes in the walls of the house “during angry outburst and fights” with mother; one child’s description of mother as “timid and tearful” and in need of kindness; and family relatives’ reports of controlling and intimidating conduct by father. We reject father’s arguments that his reported conduct does not constitute domestic violence. Family Code section 6211 defines “ ‘[d]omestic violence’ ” to include “abuse perpetrated against” a spouse. Abuse is not limited to “actual infliction of physical injury or assault.” (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 202.) Rather, “ ‘[a]buse’ ” includes “engag[ing] in any behavior that has been or could be enjoined pursuant to [s]ection 6320” (Fam. Code, § 6203, subd. (d)), which in turn includes “destroying personal property” and “disturbing the peace of the other party” and “of other named family or household members.” (Fam. Code, § 6320,

subd. (a).) “ ‘[D]isturbing the peace . . . ’ ” means “conduct that destroys the mental or emotional calm of the other party” or family members. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497; see *People v. Kovacich* (2011) 201 Cal.App.4th 863, 895 [“defendant’s assault on the family dog amounted to ‘abuse’ within the meaning of Family Code section 6203”; “[t]his abuse was committed against his wife and children, who witnessed the violent assault, and amounted to ‘domestic violence’ within the meaning of Family Code section 6211”].)

Nor do we see any merit to father’s argument that the juvenile court abused its discretion as a matter of law by requiring him to participate and complete a sexual abuse treatment program while the allegations of sexual abuse against immediate and extended family members were being pursued in criminal court proceedings. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [“ ‘test for abuse of discretion is whether the trial court exceeded the bounds of reason’ ”; “[t]he reviewing court should interfere only if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did”].) We reject as forfeited father’s appellate claim that the juvenile court should have delayed ordering sexual abuse services until or unless recommended by father’s therapist or psychological evaluator or the children’s therapists. (See *In re Mark C.* (1992) 7 Cal.App.4th 433, 446 [father’s failure to pursue issue forfeited his claim that expert psychological testimony should have been admitted at dispositional proceeding].)

DISPOSITION

The appeals from the orders entered on July 24, 2013 and January 13, 2014, and the purported order of October 7, 2013 in Superior Court Case No. J13-00824, and the orders entered on July 24, 2013 and October 7, 2013 in Superior Court Case Nos. J13-00825, J13-00826, J13-00827, are dismissed. The orders entered on January 13, 2014 in Superior Court Case Nos. J13-00825, J13-00826, J13-00827, are affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.