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

In re ANTHONY G., et al., Persons
Coming Under the Juvenile Court Law.

SAN FRANCISCO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.G.,

Defendant and Appellant.

A145794

(City & County of San Francisco
Super. Ct. No. JD152033,
JD153033A, JD153033B)

C.G. (Father), father of Anthony G., born in November 2011, Anthony's older sister, AN G., born January 2011, and Anthony's younger sister, AR G., born December 2012, appeals from orders at a dispositional hearing in the children's dependency cases. He challenges the court's decisions to deny him reunification services, and to issue a restraining order that prevents him from contacting the children for two years. Father contends that these rulings were not supported by substantial evidence, and that the cases must be remanded for compliance with the requirements of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA).

The Agency concedes, and we agree, that a remand to confirm ICWA compliance is required. We conditionally reverse the denial of services to Father to allow for confirmation of ICWA compliance, and affirm the restraining order.

I. BACKGROUND

According to the Agency's detention report, the children's mother, M.M. (Mother), went with Father and the children to the hospital on the evening of January 22, 2015, for treatment of pain in her neck. Mother told hospital personnel that Father held her head and "shook her really hard" in front of the children the week before. The assault occurred because Father believed that Mother was cheating on him. Mother stated that Father " 'was previously married and that his other kids were taken away because of this violence with his first wife.' "

In a later interview that night, Mother said that she and Father had lived together for five years, and there were over 100 incidents of domestic violence during that time. On January 13, Father punched her twice in the face and twisted her neck. Mother was "always scared but stated she has to overcome her fear because this always happens and she tries to fight back but [Father] is bigger than her." Whenever they had a physical altercation he took her phone away so she could not call the police. Mother "stated her belief that [Father] was violent toward his previous partner, but she also stated, ' . . . the woman had mental health problems.' "

Father was interviewed by a "DV [domestic violence] specialist," who reported that Father was obsessed with Mother and "presented with mental health symptoms." Father did not ask about the children's welfare, did not accept any responsibility for violence toward Mother, and denied wrongdoing. Staff at the family's homeless shelter reported that Father was "delusional," and thought Mother was having affairs with a staff member and another resident. The children were placed in protective custody on January 23, the day after the hospital visit.

On January 27, the Agency filed a dependency petition alleging that both parents failed to protect the children from harm and caused them serious emotional damage, and that Father did not provide for their support and had abused a sibling. (Welf. & Inst.

Code, § 300, subds. (b), (c), (g), (j).)¹ On January 28, the children were ordered detained in foster care.

On February 11, the Agency filed a disposition report recommending that Father be denied reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11). These statutes provide a basis to bypass a parent for reunification services if those services have been terminated for a sibling or half-sibling of a dependent child because of the parent's failure to reunify (§ 361.5, subd. (b)(10), or the parent's parental rights have been terminated as to a sibling or half sibling (§ 361.5, subd. (b)(11)). Under both provisions of section 361.5, it must also be shown that the parent subsequently made no "reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent."

Father admitted that his parental rights were terminated for two of his other children in a dependency case in Alameda County. He admitted that "there was 'alleged' violence in his previous relationship," and that he had been arrested for domestic violence multiple times. However, father said the charges "were always dropped because of lack of evidence." He denied any domestic violence in his relationship with Mother. Although Father had been diagnosed with "Intimate (*sic*) Explosive Disorder,"² he said he was told by a psychologist that diagnosis was made by an unqualified person.

Mother reported that "the father is very controlling. Mother stated that the father quits working because he thinks she is cheating on him when he goes to work. Mother stated that the father is with her and the minors 24 hours a day and that he does not 'allow' them to go anywhere by themselves. . . . Mother stated that sometimes the father yells at her and calls her 'whore, prostitute, nymphomaniac' in front of the children and

¹ Subsequent statutory references are to the Welfare and Institutions Code.

² We assume this is actually a reference to possible Intermittent Explosive Disorder, a condition recognized in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV).

will do this for hours at a time. . . . Mother stated that the father has ‘put hands on her’ numerous times when he is angry and ‘loses control.’ ”

The children’s foster mother (FM) reported that AN said “the father ‘treats my mom and sometimes he treats me too.’ FM stated that she asked [AN] what ‘treat’ means and that [AN] replied ‘treat is when you do something to somebody that hurts.’ FM stated that she asked [AN] if the father had used his hand to hurt her. FM stated that [AN] replied ‘no, he used a belt. He hits my mom, me and the baby with a belt.’ FM stated that she asked about Anthony but that [AN] stated that Anthony did not get ‘treat.’ ”

The case worker was “concerned about the minors’ emotional and psychological well being. It was the impression of the undersigned that all of the minors exhibit fearful, anxious, and angry behaviors and lack positive coping skills.” “The father stated that he has no mental health issues but speaks in very delusional and paranoid statements causing the undersigned to seriously question his mental health and ability to discern reality from fantasy.” In the case worker’s opinion, Father was a threat to the safety of Mother and children.

A combined jurisdiction and disposition hearing was set for April 20, and the Agency filed an addendum report on March 30. Father is African American, and a clinical assessment of AN found that she was “presenting with extreme fear reactions to strangers, with a particularly strong fear of African-American men, in the form of crying, screaming, and attempting to hide herself underneath or behind objects.” Anthony and AR were assessed to have a “Language Disorder” based on their limited abilities to communicate, but were thriving in foster care. The children had “blossom[ed] from frightened, uncertain and timid children to children that are smiling, playing and positively engaging the environment around them. It was the impression of the undersigned that the minors have gone through a drastic change in a short period of time.”

At the April 20 hearing, Mother submitted to jurisdiction on amended allegations of failure to protect and causing serious emotional damage. Mother agreed to a

disposition that provided the services the Agency recommended. Although Father was initially present in court on April 20, he left before the hearing began. In a subsequent request for a restraining order, Mother stated: “In the hallway prior to the [April 20] hearing, I observed [Father] become very agitated, and he made verbal accusations directed to me. . . . As I was departing the courthouse with my attorney after the hearing, [Father] was waiting in Civic Center Plaza, and he approached us. He aggressively put his arms around my shoulders and tried to take me away with him. When that did not work, he grabbed my wrists and tried to pull me with him, which I resisted. When he did not succeed, he reached into my purse without my permission and took my phone. He also attempted to pull a ring off my finger. During this whole incident, he verbally harassed me and my attorney. When informed that the police were being called, he stated that ‘He did not care.’ My attorney brought me back into the courthouse to notify the sheriff’s deputies.”

Mother further stated: “The most recent incident occurred on May 18, 2015, when I went to the Calworks office for a meeting. [Father] appeared in the waiting room and again attempted to physically take me away from the premises, which I resisted. A security guard saw the incident and intervened. The Calworks social worker also observed the incident. [Father] was asked to leave the premises on two occasions on this date. My dependency social worker was contacted, and we called the police to make a report, which is still pending. [¶] Last week, I moved into safe housing and, in the interim, [Father] has left numerous harassing voice mails and text messages. He is aware of my daily schedule, and I fear that he will follow me to a visit and place our children’s safety at risk. Moreover, based upon the above incidents and interactions, I am in fear for my physical and emotional safety on a daily basis.”

On May 29, the court held a jurisdiction and disposition hearing in Father’s case, and on the children’s request for a restraining order that would prevent Father from contacting them. Father was again initially present in court but left before the hearing. Father’s counsel submitted to jurisdiction on amended allegations of failure to protect, which stated: “ [F]ather has mental health issues which require assessment and

treatment,’ ” and “The father is involved in a relationship characterized by domestic violence, and the children were present.” Counsel submitted to an allegation of serious emotional damage that stated: “The children are at risk of suffering serious emotional harm in that the father is involved in a relationship that is characterized by domestic violence.” Counsel also submitted to an abuse of sibling allegation that stated: “The children have two paternal half-siblings . . . who are not in the father’s care and were dependents of the court in Alameda County. The father’s parental rights were terminated as to both children. [The son] was adopted by a non-relative, while [the daughter’s] case is under appeal. The children have a maternal half-sibling who is under legal guardianship with the mom in San Mateo County.” The court found these allegations to be true.

Father’s counsel requested reunification services. Counsel for the children objected, arguing: “These children, considering how young they are, we’re talking two, three and four, are three of the more traumatized little children we’ve seen come through the system in a long time. And we have a father who is in denial about everything. . . . [¶] He has, under very similar circumstances he lost his children in Alameda county, domestic violence. . . . [¶] These children do not need this man in their life. That’s really the bottom line. He has harmed them in many ways. [¶] They have been in foster care now for four months and they are really starting to do very well. And I just don’t believe that they need [Father] making them backslide” The court denied Father reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11).

With respect to the restraining order, counsel for the children stated: “[O]rdinarily I would be asking for at least three years. But . . . [Father’s counsel] is going to agree to the restraining order as to the children as long as it’s two years. And at this point I think a two-year will be fine.” The court asked Father’s counsel to confirm such an agreement, and counsel said, “[A]fter reviewing the documents and noting the age of the children and the standard of proof, I believe that it is in the best interest of my client [Father]—who is not present and chose not to participate in this proceeding—to submit after objecting and agree to a two-year restraining order.” The court granted the restraining

order, stating that it was “certainly . . . of the view that there is a factual basis here and that the burden has been met.” A restraining order was filed prohibiting Father from having any contact with the children, other than therapeutic visitation arranged by the Agency, through May 29, 2017.

II. DISCUSSION

A. Denial of Reunification Services

Father argues there was no substantial evidence presented to justify denying him reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11) because the Agency failed to prove that issues of domestic violence were involved in the prior Alameda County cases where reunification services and his parental rights were terminated. He contends that without such evidence there was no showing he failed to make “a reasonable effort to treat the problems that led to removal” of the children in the Alameda cases. He notes that the Agency could have obtained records from the Alameda cases to support its recommendation to bypass services, but it did not.

We are familiar with the Alameda cases because we decided three appeals arising from them. (*A.G. v. Superior Court* (April 13, 2011) A130940, A130942, 2011 WL 1413242 [nonpub. opn.] (*A.G. I*); *In re A.G.* (2012) 204 Cal.App.4th 1390 (*A.G. II*); *In re A.G.* (Oct. 3, 2013, A137605, A138150) [nonpub. opn.].) The facts in *A.G. I* were incorporated by reference in our published opinion in *A.G. II*. (*A.G. II, supra*, 204 Cal.App.4th at p. 1394.) *A.G. I* affirmed an order setting a section 366.26 hearing. (*A.G. I*, 2011 WL 1413242 at *1.) In *A.G. I* we wrote in relevant part:

“Five-year-old A.G. and his two-year-old sister were removed from their parents’ care in September 2008, and petitions were filed alleging they were at a substantial risk of harm as described in section 300, subdivision (b) due to the parents’ domestic violence and Mother’s threats to injure them. Following a contested jurisdictional and dispositional hearing, the court sustained modified allegations of domestic violence [¶] . . . [¶] . . . Although A.G. was suffering the effects of post traumatic stress disorder from witnessing his parents’ violent fights, Father persisted in ‘trying to prove to the Court that there was no domestic violence in the home.’ . . . Father continued to ‘play

with words' about his domestic violence arrests, and failed to appreciate that his children continued to suffer due to their exposure to domestic violence.” (*A.G. I, supra*, at *1-2.)

“Father continued to deny any responsibility for domestic violence and still blamed Mother for the problems in their relationship. Father did not think he had a problem, and did not understand the impact domestic violence had on the children or their emotional needs. . . . The court’s findings that Father failed to make significant progress toward alleviating the problems that led to the removal of the children from him, and that return to his custody would create a substantial risk to the children, are supported by substantial evidence.” (*A.G. I, supra*, at *6.)

Thus, it is clear that domestic violence was a central concern in the Alameda cases, and there is no need for further proof of that fact. The denial of reunification services here was fully justified.

B. Restraining Order

Father contends that no substantial evidence supported issuance of the restraining order that prevents him from contacting the children. In addressing this argument, “we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court’s determination. If there is substantial evidence supporting the order, the court’s issuance of the restraining order may not be disturbed.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210–211.)

Under section 213.5, subdivision (a), the court may enjoin “any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing . . . contacting, either directly or indirectly . . . or disturbing the peace” of a dependent child. “Accordingly, evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child is certainly sufficient.” (*In re B.S.* (2009) 172 Cal.App.4th 183, 193.) Here, AN reported that Father “sometimes” hit her with a belt, indicating that he had done so on multiple occasions. She said he also struck two-year old AR with a belt. This evidence alone was arguably sufficient to warrant the restraining order. (*Ibid.*)

But there was a good deal more. The children's fearful demeanor improved when Father was out of their lives. Father continued to stalk and assault Mother, who feared that he would follow her to visits with the children and endanger them. Father had untreated mental health problems that caused him to be delusional. The court had ample reason to issue the restraining order, and it is unsurprising that Father's counsel virtually stipulated to it. Father's argument against the restraining order is without merit.

C. ICWA

At the outset of the case, Father filed a Parental Notification of Indian Status indicating he had possible tribal ancestry. Before the May 29 hearing, the Agency filed Notice of Child Custody Proceeding for Indian Child forms for each child, listing potential tribal affiliations for Father and the tribes to whom notice was mailed. At the May 29 hearing, the court stayed Father's disposition "pending the outcome of the ICWA." It is not apparent from the record that the juvenile court made findings on ICWA compliance, and the Agency acknowledges that some required notices were not given. Accordingly, a remand is appropriate to confirm compliance with ICWA.

III. DISPOSITION

The restraining order is affirmed. The dispositional order denying Father reunification services is reversed, and the case is remanded with directions to confirm that notices required by ICWA have been given. If after proper notice has been given, a tribe intervenes in the case or determines that the children are Indian children within the meaning of ICWA, the court shall proceed accordingly. If no tribe intervenes, or responds indicating that the children are Indian children, the dispositional order shall be reinstated.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.

In re Anthony G., A145794