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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re EDWARD W., a Person Coming
Under the Juvenile Court Law.

B235340
(Los Angeles County
Super. Ct. No. CK88238)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

WESLEY B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Donna Levin, Juvenile Court Referee. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Tracey Dodds, Deputy County Counsel, for Plaintiff and Respondent.

Wesley B. appeals from the jurisdictional and dispositional orders in the dependency proceedings concerning his son Edward W., called Chance. We affirm.

Facts

Chance came to the attention of DCFS in May of 2011. He was 13 years old and was living with his paternal grandmother, Virginia B. ("Grandmother"). His paternal aunt Penny also lived in the home. Other relatives lived nearby. Chance had been with Grandmother since 2006, when his mother gave Grandmother a notarized letter to the effect that she was giving Grandmother custody. Mother did this because she was living in her car and Father was in prison.

DCFS became involved after receiving a report that on May 30, 2011, Penny hit Chance with a hoe, and a man named Mike (later identified as someone who lived in a trailer on Grandmother's property) put him in a chokehold.

DCFS interviewed Penny, Grandmother, and Chance about the incident.

Penny told DCFS that she saw her nephew and niece following Chance as he walked down the street. Penny said that she saw Chance grab her niece, who was six, by the arm and "drag" her toward her home, which was nearby. Penny intervened, took the little girl home, then returned to her own home, where Chance and Grandmother were "going at it." Penny threatened Chance with the hoe, saying that she would "beat the living crap" out of him because he had put his hands on Grandmother. Chance then tried to grab the hoe. He threatened to kill her. She and Chance struggled over the hoe, but she did not hit him with it. She called her friend Mike for help. Mike pushed Chance because Chance "went after him," but did not put Chance into a chokehold.

Grandmother told DCFS that she had hit Chance multiple times during the incident, and that she had slapped him on the arms because he was using foul language. She said that Penny did not hit Chance with the hoe. Instead, they struggled over the hoe. She said that Chance had no respect for her or for Penny, and that she had suffered bruises in the incident. The social worker observed bruises on Grandmother's arm.

Chance was not at Grandmother's home when DCFS arrived, but he was soon located at Mother's home and a social worker went there to interview him. He said that he was holding his cousin's hand, walking her home. Penny ran at him because he was grabbing his cousin's hands. Penny kicked him. Chance cursed her and told her to smoke her dope somewhere else. At the house, Grandmother smacked him on the head. He grabbed her hands, causing bruises. Penny came in and hit him with a hoe.

Chance also said that Penny used drugs in his presence, that he did not want to remain in Grandmother's home because of the drugs, and that Penny and Mike "make me feel like crap. Like trashy." He also said that Mike sold drugs from his trailer.

When the social worker spoke to him, Chance had marks on his right hand, near the knuckles, and on his right forearm.

DCFS learned that although Chance was attending school, he was failing everything.

DCFS learned of additional incidents on that same day. At some point, apparently at Chance's behest, Father (no longer in prison) went to Grandmother's house to get Chance. Chance's 20-year-old half brother Kyle believed that Father was under the influence of drugs. He let the air out of the tires of Father's motorcycle to keep him from leaving with Chance. Police were called, but Father left the scene before they arrived.

Police were called back to Grandmother's house later that day. Kyle was sitting on the curb, and the back of his head was bleeding. Witnesses told police that Father had returned to the house, and that Kyle had taunted him, saying such things as "You wanna start shit?" Father became angry and hit Kyle in the face with a baseball bat. Father and other witnesses said that Kyle and one or more other individuals confronted Father, and that Father acted in self-defense. Police reports confirmed, at least, that one of the individuals with Kyle had a knife.

Chance described both incidents to the social worker in some detail, but also said that he was in the house "trying to get away from it all," and that "I didn't see

anything, . . . I walked out when the cops were there and I saw my brother on the ground because he got what he deserved."

Within a day or two, another paternal relative, Holly D., contacted DCFS. She said that Chance was staying with her, at Mother's and Chance's request. With DCFS approval, Chance has remained with Holly.

When the investigation concluded, on June 10, a Welfare and Institutions Code¹ section 300 petition was filed. A hearing on the petition took place on August 4. In the meantime, DCFS reported that:

Father had a criminal history of drug-related offenses beginning with a 1984 conviction for possession of marijuana/hashish for sale. There were also convictions for possession, possession for sale, or transportation of a controlled substance in 1997, 1999, 2006, and 2010. In June, Father told the social worker that he had started using drugs in 2001, when his father and sister died, and after a cancer diagnosis meant that his left kidney, prostate, and bladder were removed. At that point, he "kind of went off the deep end," and used methamphetamine. He had, however, regrouped and "taken care of it." Probation had recommended a drug program, and he was six meetings away from completion.

The program's supervising case manager told DCFS that Father had enrolled in September 2010, had completed 45 sessions, even though he had taken a leave for two weeks in March, when he was "having some family issues." He was seven sessions from completion and was in full compliance with the program. He had had random once-a-month testing throughout the program since September, and had been clean.

Father, Grandmother, and Penny agreed that Father spent time at Grandmother's house when he was not incarcerated, but in other respects DCFS received conflicting information about Father's involvement with Chance. Penny said that Father sometimes spent the night at Grandmother's house and Grandmother said that he lived there "off and

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

on." Father said that he loved Chance, paid his bills, and took care of him. Penny said that when Chance needed something, Grandmother would give Father a receipt, and that Father would reimburse Grandmother "when he wasn't in jail or locked up."

Grandmother said that Father did not help out financially.

Chance said that as far as he knew, Father did not use drugs. He also said that Father had always taken care of him.

In this period, Father and Mother lived together for a time, in housing which they believed was not suitable for Chance. By August, Mother had moved out of state. Father would not provide the social worker with his address, but said that if Chance was returned to him he would rent a home in Mojave. He said that he spoke to Chance every day and wanted to take a bus to visit him.

Father tested negative for his program in June and July, but when scheduled to test for DCFS in July, said that he could not due to complications with his urine bag.

In June, the social worker asked Chance about the placement with Holly. He said "I love this place, this is the best place ever." He said that his aunt and uncle were nice to him, and that no one hurt him or was mean to him. In July, Chance said that he wanted to stay with Holly until he was 18, that "there are no drugs, I'm around family, we talk every day." He said that he spoke to his parents on the phone every day, that Mother wanted him to live with her, but that he did not think placement with Mother was the best place for him, saying that "this is the best place for me." He had made friends and was looking forward to starting school. At his grandmother's house, there were no rules, and he had gotten into trouble with police for tagging, something his grandmother never knew.

At the section 300 hearing, Mother pled no contest to the petition, on the factual allegation that when she left Chance with Grandmother, she made an inappropriate plan for his care, endangering him under subdivision (b).

As to the allegations concerning Father, social workers testified that Father was still in his drug program and testing clean and Father represented that he had completed the program.

As to Father, the petition was sustained under subdivision (b) on allegations that Chance was exposed to a violent confrontation between Father and Kyle, in which Father struck Kyle in the face, causing Kyle to fall and lose consciousness, and that Father had a history of substance abuse and criminal history of drug-related offenses, which rendered him incapable of providing regular care for Chance.

As to the allegation that Chance was endangered by Father's altercation with Kyle, the juvenile court noted that "although [Chance] was in the house, there was a violent confrontation going on," and that although there was conflicting evidence on whether Father or Kyle was the aggressor, "the fact remains that this is a family with baseball bats and knives and slashing and hitting, and the father was right in the middle there. He may have been protecting himself, but he was prepared to protect himself."

As to the allegation concerning drug use and criminal history, the juvenile court found, "Father has a very, very long history of substance abuse. He is in a program. I hope he's going to remain in that program, but he has a lot to deal with. . . . He doesn't have a track record of showing that he can remain clean."

As to disposition, Chance testified that he wanted to live with Holly or with Father. He wanted to live with Mother, but did not want to leave the state.

Father asked that Chance be placed with him. He did not yet have a home where Chance could live, but argued that he could make a plan for him, and represented that he was not opposed to having Chance remain with Holly.

The court found that neither parent was ready to have Chance, and ordered him placed with Holly, finding that while he obviously loved his parents and did not want to hurt them, that placement was his first choice, and was in his best interest.

Father's reunification services included a drug program, weekly random drug testing, conjoint counseling with Chance, and unmonitored visits with him as frequently as could be arranged with Chance's caregiver.

Discussion

1. The jurisdictional order

Father challenges the sufficiency of the evidence for the assertion of jurisdiction. On such a challenge, "the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.) We find sufficient evidence here.

As to the assertion of jurisdiction on the ground that Chance was endangered by the altercation with Kyle, Father cites the evidence that Chance was in the house when the altercation took place, and the evidence that Father was acting in self-defense. There is such evidence, but there is also evidence that Father returned to Grandmother's house although there had earlier been an incident there, and that, as the juvenile court observed, he went there ready to engage in an altercation. And, while Chance was in the house when the incident occurred, he knew about it in detail, and in fact saw his brother, bleeding, on the curb.

Father argues that the evidence was that the fight was an unusual incident, and that there was no evidence that it would ever recur. From the evidence that Father returned to a place where there had been trouble, and walked toward, rather than away from, the fight, the juvenile court was entitled to conclude otherwise.

As to the allegations that Chance was endangered by Father's history of substance abuse and history of drug-related offenses, Father argues that the record indicates that he did not have a current problem with either drugs or criminal behavior. We do not so read the record. There was evidence that Father was high on drugs when he went to pick Chance up and while there was evidence that he was doing well in his program, he drug-tested for the program only once a month. As the juvenile court observed, he had a long history of drug related offenses, and at best a short one of remaining drug free.

Father argues that despite his drug use and criminal history, he always took good care of Chance. The evidence is otherwise. Father apparently provided some financial support, and spent some time at Grandmother's house with Chance, but his drug use and incarceration meant that for long periods he could not make a home for Chance and take care of him. Even after his latest release, he left Chance in a home in which drugs were used and in which Chance was unhappy, failing in school, and in trouble with police.

Father also challenges the assertion of jurisdiction on factual allegations concerning the inadequacy of the plan Mother made for Chance. DCFS argues that he does not have standing to make the argument. We agree. The allegation was to Mother alone, and she pled no contest to the petition, thus admitting all matters essential to the assertion of jurisdiction. (*In re Troy Z.* (1992) 3 Cal.4th 1170, 1181.) We cannot see that Father can seek to undo that admission now. Further, a parent does not have standing to appeal in a dependency matter unless the parent has a legally cognizable interest injuriously affected by the decision. (*In re D.S.* (2007) 156 Cal.App.4th 671, 674.) Given that jurisdiction was asserted over Chance due to Father's actions, as well as Mother's, and given that we hereby affirm those jurisdictional orders, Father is not injured by the assertion of jurisdiction based on Mother's acts.

2. The dispositional order

As to disposition, the juvenile court made a finding under section 361, subdivision (c)(1), which provides that a dependent child may not be taken from the physical custody of a parent with whom the child resides at the time the petition was initiated, unless that court finds clear and convincing evidence that there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child is left in the home, and there are no reasonable means to protect the child without removing the child from the parent's physical custody.

Father argues that there was insufficient evidence that there would be a substantial danger to Chance if left with Father, or in the home Father would provide for him. He also argues that he was a non-custodial parent under section 361.2, so that the court was

obligated to place Chance with him, unless it found by clear and convincing evidence that the placement would be detrimental to Chance's safety, protection, or physical or emotional well-being. (§ 361.2, *In re John M.* (2006) 141 Cal.App.4th 1564, 1569.)

We note that in the juvenile court, Father did not argue that he was not a custodial parent, or that section 361.2 applied. However, even if that statute is considered, we cannot see that section 361.2 obligated the court to place Chance with Father, or that the finding the court did make was unsupported by the evidence.

Father cites the evidence that he frequently asked the court for custody of Chance, DCFS's reports that paternal relatives said that he saw Chance frequently and took care of him financially and emotionally, and Chance's own statement to the social worker, early in the case, that his father took good care of him. He again argues that neither the altercation with Kyle or his history of drug use and drug-related convictions endangered Chance.

As we have already noted, the court had before it evidence that Father had a long history of drug offenses and drug use, and had engaged in a violent altercation with Chance's brother. That alone constitutes substantial evidence for the finding that Chance would be at risk of harm if custody was given to Father.

Further, although Father identified a good placement, placement with Holly, as his current choice for Chance, he had no record of finding or making a good home for Chance. Instead, he engaged in drug dealing, was frequently incarcerated, and did not make a home for Chance when he was not incarcerated. Those facts, too, constitute substantial evidence for the juvenile court's findings.

Disposition

The jurisdictional and dispositional orders are affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.