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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B237433
(Los Angeles County
Super. Ct. No. CK89242)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.R., JR., et al.,

Defendants and Appellants.

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

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant B.R., Jr.

Grace E. Clark, under appointment by the Court of Appeal, for Defendant and Appellant H.H.

Lori A. Fields, under appointment by the Court of Appeal, for Minor.

No appearance for Plaintiff and Respondent.

B.R., Jr. (Father), and H.H. (Mother) appeal from the November 8, 2011 dispositional orders of the juvenile court. The court adjudged minor B.R. a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect).¹ Father challenges the order requiring him to complete a 52-week batterers' program. Mother challenges the order requiring individual counseling. We conclude that the court did not abuse its discretion in making the challenged orders and affirm.

BACKGROUND

On August 8, 2011, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivisions (a) and (b) on behalf of B.R., born in 2010. As amended and sustained, paragraph a-1 of the petition alleged under section 300, subdivision (a) that on a prior occasion, Father physically abused B.R. by striking B.R.'s cheek with his hand. Mother knew of the physical abuse of B.R. by Father but failed to protect B.R. Paragraph a-2, alleging under section 300, subdivision (a) that Father and Mother have a history of engaging in violent altercations in which Father violently assaulted Mother by repeatedly striking Mother, pushing and shoving Mother, and pulling Mother's hair in the presence of B. R., was dismissed. As amended and sustained, paragraph b-2 alleged under section 300, subdivision (b) that Father has a history of alcohol abuse and is a frequent abuser of alcohol, which renders him incapable of providing regular care for B.R. On prior occasions, Father was under the influence of alcohol while B.R. was under his supervision. Mother was aware of Father's alcohol abuse and failed to protect B.R. by continuing to allow Father to reside in the home and have unlimited access to B.R. As amended and sustained, paragraph b-3 alleged under section 300, subdivision (b) that Father and Mother have a history of engaging in violent altercations in which Father violently assaulted Mother by striking, pushing, shoving, and choking her and pulling on her hair in the presence of B.R. On July 22, 2011, and on prior occasions, Father slapped Mother's face, causing her to fall in

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

the presence of B.R. On a prior occasion, when Mother was five months pregnant, Father pushed Mother, causing her to fall. Paragraph b-1, alleging under section 300, subdivision (b) that on a prior occasion Father physically abused B.R. by striking him in the mouth with his hand, was dismissed.

The events leading up to the filing of the petition were as follows. Father, who was 23 years old at the time the petition was filed, is not married to Mother. Paternal grandfather was an alcoholic who died when Father was 17 years old and “there was some conflict between” paternal grandmother and paternal grandfather. Mother was 20 years old at the time the petition was filed. When Mother was eight years old, maternal grandmother left maternal grandfather because he was an alcoholic and physically abused maternal grandmother.

DCFS received a referral on July 27, 2011, alleging that Father was an alcoholic who neglected and physically and emotionally abused Mother and B.R. That same day, DCFS interviewed Mother and Father at their home. They denied the allegations of physical and emotional abuse and neglect. B.R. was reported by DCFS to be healthy and age-appropriate in development.

On July 29, 2011, DCFS spoke by telephone to maternal grandmother, who said that Mother had told her that Father shoved and choked Mother and pulled her hair. Father also was verbally aggressive toward Mother. Maternal grandmother asked DCFS to meet with Mother again to discuss the domestic abuse.

On August 3, 2011, DCFS met with Mother, who told DCFS that she had been afraid to say anything in front of Father during the interview on July 27, 2011, because Father said if she reported his abuse, ““they”” would call immigration and take B.R. away. Mother told DCFS that Father drank from 12 to 24 cans of beer almost every day, became violent when drunk, abused Mother, and called her ““bitch, prostitute, stupid.”” Two weeks previously, while Mother was bathing B.R., Father called her ““stupid,”” grabbed her by the hair, pulled her down, and choked her almost to unconsciousness. When paternal grandmother tried to intervene, Father told paternal grandmother, ““get the fuck away, or I will punch you [too].”” On another occasion, after Father found Mother’s

birth control pills, he became angry, called her a bitch, told her she was not allowed to take birth control pills, and slapped her so hard in the face that she fell and bruised her legs. Mother said that Father was drunk at the time. When Mother was five months pregnant with B.R., she tried to leave the house because Father was drunk. Father grabbed and pushed her, causing her to fall in the street on her stomach. Once, when Father was very drunk, he started screaming at Mother and calling her names. Then, when B.R. started crying, Father became upset and slapped him in the mouth. Later, Mother elaborated that sometimes Father would be drunk all weekend or for three days straight. But she also stated that Father had not been drunk when he beat her after finding her birth control pills and she did not sustain bruises in that incident. Mother obtained a temporary restraining order against Father and moved out to a family member's home. Mother stated that she was willing to work things out with Father if he stopped drinking.

On August 3, 2011, Father admitted to DCFS that he had slapped, choked, and pushed Mother when he was drunk. He “admitted to having a substance abuse problem as he reports that drinking alcohol is normal for him and reports doing it almost every day.” Later, Father said he started drinking when he was 18 after his father died and that he drank every weekend. Father reported that he was diabetic and suffers from high blood pressure and high cholesterol. He admitted drinking 12-packs of beer and arguing with Mother when he was drunk. He said he enjoyed drinking but denied being a “chronic drinker.” Father stated that he hit B.R. once when he was crying. He stated that Mother “spoils him; she has never hit him, that’s why he’s spoiled. But you have to discipline your children otherwise they grow up to be gangsters.” Father admitted that he called Mother a “bitch, prostitute and stupid.” He admitted that he pulled her when she was trying to leave the house, but stated she tripped and fell. He said that he had slapped her on one occasion because he thought she was cheating on him. He was unable to recall events that took place while he was under the influence of alcohol, including physically assaulting Mother while she was bathing B.R. He stated that he had not had a drink from the time DCFS became involved.

On August 16, 2011, Father enrolled in parenting education, substance abuse, individual counseling, and a 52-week batterers' program.

At the adjudication hearing, which began on November 4, 2011, and was continued to November 8, 2011, Mother and Father pleaded no contest to the petition as amended and sustained.

At the November 8, 2011, contested disposition hearing, the DCFS investigator testified that she recommended Father and Mother participate in group domestic violence counseling. The investigator stated that group counseling had been beneficial for Mother because she was able to open up in a group setting. The investigator was not opposed to individual counseling. She stated that Mother minimized or denied some previous reports of abuse with respect to being bruised or kicked by Father. The investigator testified that when Mother had been assessed for individual counseling, she had been rejected because she did not "meet the requirements," based solely on what Mother disclosed to the evaluator. The investigator testified that Mother helped maternal grandmother sell food and that she would have time to do more than one program. The investigator testified that Father's domestic violence issues could be addressed in individual counseling. The investigator opined that Father would not have to do the 52-week batterers' intervention program if his domestic violence issues were addressed in individual counseling.

B.R.'s counsel requested individual counseling for both parents and did not object to group counseling; DCFS had no objection to both individual and group counseling; Father's counsel agreed that individual counseling was appropriate for Father but argued against a 52-week batterers' intervention program on the basis that it would be a financial hardship and overly burdensome to Father; and Mother's counsel argued against individual counseling for Mother.

The juvenile court stated, "I think [Mother] not only will benefit, but I think it is necessary. . . . This is a serious matter. I reviewed the files in this matter. And I think she endured more than she had to. Why, I'm not really clear on that. And I think that she would benefit from individual counseling, so I'm adopting the Department's

recommendations with the added individual counseling to address the case issues. We'll just have to be patient. We'll have to offer her further assistance. [¶] I recognize that . . . Father has a substantial amount of programs being asked of him, but I think they're all necessary, and I think in the long run both parents and the child will benefit by a successful completion of these programs and counseling." The court directed DCFS to provide assistance for low-cost or no-cost referrals and acknowledged that the counseling and batterers' program would have a financial impact, but "if that were the standard, hardly anyone would have to do any programs and we wouldn't solve any problems." The court ordered Father to participate in a "tried and true" 52-week batterers' program, alcohol program with random testing, and individual counseling to address anger management. The court ordered Mother to participate in group domestic violence and individual counseling. Both parents were ordered family maintenance services, including parent education, and family preservation services, including Al-Anon meetings and programs. B.R. was placed home of Mother.

Mother and Father appeal from the dispositional orders.

DISCUSSION

The juvenile court did not abuse its discretion in ordering Father to complete a 52-week batterers' program and Mother to engage in individual counseling

Mother and Father contend that the juvenile court erred in ordering Father to complete a 52-week batterers' program and Mother to engage in individual counseling. We disagree.

The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) When a minor is adjudged a dependent child of the court under section 300, section 362, subdivision (a) gives the juvenile court authority to "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court." When a minor is not removed from the parents' custody, "the parents or guardians shall be required to participate in child welfare

services or services provided by an appropriate agency designated by the court.” (§ 362, subd. (b).) The court may make orders to the parents as it “deems necessary and proper to carry out the provisions of this section,” including participating “in a counseling or parent education program The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (c).)

The court is not limited to the content of the sustained petition when it considers what disposition would be best for the child, but may rely on family history and behavior. (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.) Section 358, subdivision (b) provides that: “Before determining the appropriate disposition, the court shall receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and other relevant and material evidence as may be offered”

“The juvenile court has broad discretion to decide what means will best serve the child’s interest and to fashion a dispositional order accordingly. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) Its determination will not be reversed absent a clear abuse of that discretion. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.)” (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

Father argues that the juvenile court failed to tailor the reunification plan to his specific needs by ordering him to complete a 52-week batterers’ program “on top of all the other services ordered.” He contends that his domestic violence problems can be addressed in individual therapy, leaving him time to focus on his alcohol program. Father urges that the court abused its discretion by overloading him with services that place an unnecessary financial burden on the family. He claims any failure to participate

regularly in and make progress in all of the services ordered could be used against him at subsequent review hearings.

We disagree with Father's arguments and conclude that the evidence supports the juvenile court's determination that the 52-week batterers' program was necessary to eliminate the conditions that led to the finding that B.R. was a dependent child. The order for the batterers' program was specifically linked to the sustained allegations in the petition, Father's admissions of domestic violence, and evidence presented by Mother and others. Father pleaded no contest to allegations that he suffered from an alcohol addiction that interfered with his ability to parent. He stated that he drank alcohol almost every day, that he had slapped B.R. in the face when B.R. was crying, and that he has engaged in frequent and violent attacks on Mother when he was drunk, including pushing, choking, and slapping her. He also stated that he called Mother derogatory names when he was drunk. But Father tried to excuse his actions, claiming that physical discipline would prevent B.R. from becoming a gangster and that Mother was spoiling B.R. by not hitting him. And Father appeared to be in denial of his alcoholism, stating that he was not a "chronic drinker" and had not had a drink from the time DCFS became involved. He also minimized the incident when he pushed Mother on the ground when she was pregnant, stating that she had tripped and fallen. He also claimed that he slapped Mother because he believed she had cheated on him.

Mother stated that Father often drank continuously all weekend or for three days straight and became verbally and physically abusive when he was drunk. On one occasion, Father pushed Mother onto her stomach in the street when she was five months pregnant with B.R., and on another occasion, choked her almost into unconsciousness. Father also slapped B.R. in the mouth when he was crying.

In making its order, the juvenile court took into consideration that Father was required to complete a substantial number of programs, but determined that they were necessary for reunification. And the record shows that on August 16, 2011, three months prior to the dispositional hearing, Father had enrolled in all the required case plan services, including a 52-week batterers' program. Father's reference to his trial counsel's

argument below that Father would suffer a financial hardship by enrolling in that 52-week batterers' program is unavailing. Counsel's argument is not evidence and there is no evidence in the record to support Father's argument that attendance in the batterers' program causes him undue hardship or financial difficulties. We conclude that the juvenile court did not abuse its discretion in ordering the 52-week batterers' program.

Mother contends that the order requiring her to participate in individual counseling was "unnecessary" and "overly burdensome." She concedes that she was "not a non-offending parent," but urges that individual counseling was not necessary because she had been rejected for individual counseling because the "evaluator believed it was unnecessary," and the DCFS investigator "believed Mother was successfully addressing her issues in group therapy," citing *In re Jasmin C.* (2003) 106 Cal.App.4th 177. *In re Jasmin C.* does not assist Mother. In that case, the mother was nonoffending, promptly removed the minors from the father's presence when he became abusive, and directed that the police be called when the father followed her and the minors. (106 Cal.App.4th at p. 179.) Unlike here, the juvenile court in that case imposed a parenting class condition on the mother "without making any findings or giving any explanation." (*Id.* at p. 181.) "Even more troubling, nothing in the record supported the order." (*Ibid.*)

Here, the evidence supports the juvenile court's determination that the order for individual counseling was "necessary" to eliminate the conditions that led to B.R. being found a dependent child. Mother was repeatedly and violently abused by Father in front of B.R. and failed to protect B.R. when Father slapped him. She also was abused by Father when she was pregnant with B.R. And Mother, whose father was an alcoholic and an abuser, was not forthcoming to DCFS during its initial investigation. After the initial visit, Mother did not reach out to DCFS. Only after maternal grandmother was contacted by DCFS and urged DCFS to meet with Mother again, did Mother disclose the emotional and physical abuse and her failure to protect B.R. from Father. And the DCFS investigator reported that in subsequent contacts with DCFS, Mother had minimized or denied abuse perpetuated by Father that she had previously reported. In addition, Mother had stated she was willing to go back to Father if he stopped drinking. The DCFS

investigator stated that even though Mother helped maternal grandmother sell food, she had time to participate in more than one program. And the court recognized that the order required Mother to participate in a lot of programs and that “we’ll just have to be patient. We’ll have to offer her further assistance,” and accordingly ordered DCFS to provide assistance for low or no cost referrals. Although Mother contends that she had already been evaluated and rejected for individual counseling, the evaluation was based only on self-reporting by Mother. Further, B.R.’s attorney requested individual counseling for Mother and DCFS did not oppose individual counseling.

We conclude that the juvenile court did not abuse its discretion in ordering Father to complete a 52-week batterers’ program and Mother to engage in individual counseling.

DISPOSITION

The juvenile court’s jurisdictional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.