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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re EMILY S. et al.,

Persons Coming Under the Juvenile
Court Law.

B237588

(Los Angeles County
Super. Ct. No. CK83142)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GREG S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Melinda White Svec, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Greg S. (Father) appeals from restraining orders requiring him to stay away from his minor children. He contends the juvenile court had no jurisdiction to issue the orders once it made a determination under Welfare and Institutions Code section 364¹ that dependency court jurisdiction was no longer necessary. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 28, 2010, the Department of Children and Family Services (DCFS) filed a petition under section 300, subdivisions (a), (b), (c) and (j), against Father and E.S. (Mother), alleging domestic violence and physical and emotional abuse putting their three minor children, 13-year-old Emily, 11-year-old H., and 6-year-old N., at risk of physical and emotional harm.

Mother had obtained a temporary restraining order against Father and moved with the children to the maternal grandparents' home. DCFS received a referral regarding the family from the Child Abuse Hotline. In subsequent interviews, Mother and the children claimed that Father was verbally abusive and had repeatedly threatened to kill them; Father physically abused Mother and the children; Father drove recklessly at high speed with Mother and the children in the car; Father told Emily she would be raped if she ran away from home; Father told H. about having sex with Mother, describing it in such detail that it caused H. to vomit; Father had asked the children to make a list of people they love and then said he would kill those people. Emily stated that Father hates women and since she was becoming a woman, she was a target. H. and N. stated they were afraid of Father.

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

In an interview with DCFS, Father denied the allegations of the petition, stating that his behavior had never gone beyond arguments and name calling. He also stated that he had enrolled in a 52-week domestic violence batterer's program and was making satisfactory progress.

At the detention hearing, the juvenile court found a prima facie case for detention and ordered the children placed with Mother. The court extended the temporary restraining order and ordered no visitation with Father pending the jurisdictional hearing.

The children were assessed at a domestic abuse center. The therapist reported that the children displayed symptoms consistent with traumatic stress. They were "terrified" by the prospect of seeing Father. H. and N. believed that Father would kill them. The therapist recommended therapy for the children and that there be no visitation with Father.

Father's counsel asked the juvenile court for monitored visitation with the children. The court granted a one-hour visit with N., which took place on September 1, 2010. N. was visibly stressed, did not want the birthday gifts Father had brought him and did not want to play a game with Father. At N.'s request, the visit was terminated after 15 minutes. N. later told a social worker that he did not want to visit with Father again. He said that Father was nice during the visit but was never nice to him at home.

Prior to the jurisdictional/dispositional hearing, Mother and the children moved back into the family home, and Father moved into his parents' home. He continued to participate in the domestic violence batterer's program and had enrolled in a parenting program. He continued to deny and minimize the allegations against him, and DCFS recommended a psychiatric evaluation.

At the jurisdictional/dispositional hearing, the juvenile court sustained the petition and ordered the children placed with Mother. It extended the temporary restraining order against Father. It ordered Father to undergo an Evidence Code section 730 psychiatric evaluation (section 730 evaluation) and to participate in individual counseling, domestic violence and anger management counseling for perpetrators, and parenting education. While the court denied Father's request for therapeutic visits with the children, it

indicated it would order such visitation in the future unless it would be detrimental to the children.

While Father was in compliance with his case plan and the restraining order, his section 730 evaluation led to section 730 evaluations for the children and a recommendation that they not be forced to visit with Father. The children were adamant in their opposition to visitation and continued to indicate that they were afraid of Father. The juvenile court again extended the temporary restraining order.

The children were all diagnosed with post traumatic stress disorder and remained afraid of Father. Their therapists agreed it would be detrimental to their well-being to force them to see Father. Father did not believe that the children were actually afraid of him but suggested that they were influenced by family members and were “being dramatic.” However, the juvenile court continued to extend the temporary restraining order.

At the section 364 hearing on September 22, 2011, the court found the continued supervision of the children was no longer necessary. It stated that it was going to award full physical and legal custody to Mother and requested that Mother’s counsel prepare an order. Mother’s counsel noted that the temporary restraining order expired at midnight, and no one was seeking to renew it. The minute order stated that the court terminated jurisdiction and stayed its order to September 23 pending receipt of a family law order. On September 23, the matter was continued to September 30 for receipt of the family law order.

On September 30, DCFS reported that on September 24, Father had shown up at the children’s soccer games with his parents, who acted inappropriately toward the children. The children were scared and upset by this. DCFS believed that Father had been “biding his time until he thought that the restraining order was no longer in effect so he could start forcing the children to see him again.” DCFS recommended that the court not terminate jurisdiction without issuing a new restraining order.

The juvenile court indicated that it could not reissue the restraining order, since it did not have a request for one before it at that time. However, it was willing to hear

information regarding a stay away order. Mother's counsel made a request for a temporary restraining order. Father's counsel stated that there had been no violations of the prior temporary restraining orders. Counsel had spoken with Father after the section 364 hearing, and Father stated that he would not go near the children. Counsel added that "there was nothing in effect at the time that he went to the sporting event to make his appearance there a violation of anything." He pointed out that Father merely went to the sporting event; Father did not try to visit with the children.

Father's counsel agreed to an appropriate stay away order, and the court ordered that Father stay at least 100 yards from the children and let his parents know that they were not to contact Mother or the children. Counsel for DCFS then informed the court that he had an application affidavit for a temporary restraining order. Father's counsel objected to the issuance of a restraining order.

The court responded that Father's counsel knew the issue of a temporary restraining order might be raised at the hearing, and the court issued the order, to expire at midnight on October 5. The court also ordered that the children be brought to the October 5 hearing and that they remain dependents of the court.

At the October 5 hearing, it was pointed out that the juvenile court inadvertently failed to sign the temporary restraining order. Father's counsel was unwilling to stipulate to an extension of the order. The court issued a new temporary restraining order to remain in effect until November 4. The court set a contested hearing and ordered the children to return to court on that date. Again, it ordered that the children remain dependents of the court.

At the November 4 hearing, Father's counsel pointed out that at the September 22 hearing, the court had terminated jurisdiction. The court reminded him that it had stayed its order. Father's counsel agreed but noted that it was "stayed for receipt of the family law order, which we all agreed to on September 22nd. And that family law order was never received." Mother's counsel then responded that "[t]he receipt of the family law order did not occur when expected, but did occur a week later."

Counsel for DCFS added that they had a section “364 hearing accompanying this. The court did terminate jurisdiction on the case, stated the order, we all envisioned at that state, was simply going to be a filing of a family law order and the restraining order issues came along.” Counsel therefore “ask[ed] the court to issue a restraining order, to lift the stay and terminate the case.”

Following the contested hearing, the juvenile court granted a restraining order for a period of two years. It reiterated that it was granting sole legal and physical custody of the children to Mother. Again, the court stated that it would terminate jurisdiction upon receipt of the family law order. Mother’s counsel indicated that she had the family law order, and she had given a copy of the order to Father’s counsel for review earlier in the day. After making sure that the order gave Father visitation in a therapeutic setting upon recommendation of the children’s therapists, Father’s counsel had no objection to the order. The court then terminated jurisdiction.

DISCUSSION

Father contends that the juvenile court exceeded its jurisdiction by failing to terminate jurisdiction at the September 22, 2011 section 364 hearing. Therefore, it lacked jurisdiction to issue the November 4 two-year restraining order. We disagree.

As Father notes, it is common practice in the juvenile court to stay orders terminating jurisdiction under section 364 pending issuance of a family law order. (See, e.g., *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) Father is correct that section 364 does not specifically permit a stay of the termination order. However, neither section 364 nor rule 5.706 of the California Rules of Court, which governs proceedings under section 364, specifically precludes such a stay.

In support of his contention, Father cites *In re Melvin A.* (2000) 82 Cal.App.4th 1243. In *Melvin A.*, the juvenile court issued an order terminating parental rights under section 366.26 but stayed the order pending completion of an adoptive home study. The court lifted the stay approximately eight months later, when DCFS informed the court

that the home study was nearly complete. On appeal, the mother claimed that an eight-month delay between the issuance of the stay order and its execution precluded a timely consideration of her appeal and violated her due process right to a speedy trial. (*Melvin A.*, *supra*, at pp. 1247-1248.)

The appellate court agreed “that it was error for the trial court to order [the mother’s] parental rights terminated but indefinitely stay that order, leaving [the mother] in limbo as to the status of the termination order and her ability to immediately appeal that order. This action by the court was inconsistent with the fundamental policy of dependency law which seeks to resolve cases expeditiously. [Citation.]” (*In re Melvin A.*, *supra*, 82 Cal.App.4th at p. 1248.)

The court found no statutory authority for staying a termination order. (*In re Melvin A.*, *supra*, 82 Cal.App.4th at p. 1248.) There was statutory authority for continuing the section 366.26 hearing beyond the statutory time limit for good cause and for only the necessary period of time. (*Melvin A.*, *supra*, at p. 1248.) There also was statutory authority for a stay pending appeal, but that was not the situation before the court. (*Id.* at pp. 1248-1249.)

The court concluded “that the trial court abused its discretion by staying the order terminating parental rights, thus delaying an appeal from that order and consideration of the petition for adoption. [Citation.] Once the court proceeded with the section 366.26 hearing and issued an order terminating [the mother’s] parental rights, any sense of urgency to complete the adoptive home study apparently faded, and the case languished for eight months. [The mother’s] opportunity to promptly appeal the order terminating parental rights was thwarted, as was the legislative mandate that dependency matters proceed expeditiously.” (*In re Melvin A.*, *supra*, 82 Cal.App.4th at p. 1249.)

The concerns present in *Melvin A.* are not present in the instant case. The stays of the order terminating jurisdiction were for very limited periods of time, with specific expiration dates. Father was not left in limbo for an extended period of time, with the possible loss of the opportunity to challenge the order.

While the *Melvin A.* court found no statutory authority for a stay of the order, neither did it find that the order was void for lack of jurisdiction. The court noted that the mother failed to object to the stay of the termination order, “arguably waiv[ing] any error by failing to raise it below.” (*In re Melvin A., supra*, 82 Cal.App.4th at p. 1249.) Nevertheless, addressing the merits of the mother’s claim, it found that the juvenile court’s error in staying the termination order was harmless. (*Id.* at p. 1250.)

The juvenile court has the inherent power to control the proceedings before it. (§ 350; cf. *People v. Superior Court (Carl W.)* (1975) 15 Cal.3d 271, 280.) As stated in *In re M.B.* (2011) 201 Cal.App.4th 1057, ““The juvenile court is a special department of the superior court whose powers are limited to those granted by the Juvenile Court Law [citation] plus those incidental thereto. [Citations.] Under the Juvenile Court Law, the juvenile court is authorized to make orders pertaining to abused or neglected children who come within the court’s jurisdiction. [Citations.]’ [Citation.]” (*Id.* at pp. 1063-1064.) The juvenile court, like other courts, has ““inherent powers which enable [it] to carry out [its] duties and ensure the orderly administration of justice. The inherent powers of courts are derived from article VI, section 1 of the California Constitution and are not dependent on statute. [Citations.]’ [Citation.]” (*M.B., supra*, at p. 1064.)

In the absence of a statute specifically delineating the court’s power, it may exercise its inherent power. (*In re Amber S.* (1993) 15 Cal.App.4th 1260, 1264; see *In re Jacob E.* (2004) 121 Cal.App.4th 909, 924-925.) In exercising this power, however, it ““must consider the primary objective of the proceeding, which is the promotion of the best interests of the child,” bearing in mind the rights of the parents as well. (*Amber S., supra*, at p. 1265.)

A stay of the order terminating dependency jurisdiction pending issuance of a family law order promotes the best interests of the children by ensuring that the orders necessary for their future well-being are in place before the juvenile court terminates its jurisdiction over them. And clearly here, once the juvenile court learned of Father’s appearance at the children’s soccer games, the children’s best interests were promoted by

continuing the stay until a new restraining order, as well as the family law order, was issued.

Moreover, Father's counsel did not object to the initial stay on September 22 and agreed to a subsequent stay in order to present a witness on Father's behalf at the contested hearing. So long as the juvenile court had jurisdiction to stay the termination order—and we conclude it did—the failure to object resulted in a forfeiture of any challenge to the court's action. (*In re Melvin A.*, *supra*, 82 Cal.App.4th at p. 1249.)

DISPOSITION

The orders are affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.