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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B239286
(Super. Ct. No. J-1164319)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
PROTECTIVE SERVICES,

Plaintiff and Respondent,

v.

JOHN M.,

Defendant and Appellant.

John M. appeals from the January 23, 2012 denial of a Welfare and Institutions Code section 388 petition for supervised visitation and phone contact with his 13-year-old son, Isaiah B.¹ This is appellant's fourth petition to modify visitation and third appeal. The trial court, in denying the petition, found that supervised visits and/or phone contact at this point in time would be detrimental to Isaiah's therapy and foster care placement. We affirm. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

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

Procedural History

On October 23, 2006, Santa Barbara County Child Welfare Services (CPS) detained Isaiah and filed a dependency petition for failure to protect (§ 300, subd. (b)), serious emotional damage (§ 300, subd. (c)), no provision for support (§ 300, subd. (g)), and sibling abuse (§ 300, subd. (j)). CPS had received 31 referrals, four of which were for sexual abuse by appellant. The trial court sustained the petition based on reports that Isaiah had sexually abused a half-sister, was living with appellant but not being provided for, and not taking his ADHD medication.

Appellant suffered from alcohol abuse and mental health issues, was on probation for driving under the influence, and had a lengthy criminal record.² Doctor Muriel Yanez conducted a psychological evaluation and reported that appellant suffered from mental health issues and was not fit or competent to parent Isaiah.

The trial court ordered services and foster care but CPS could not find suitable foster placement due to Isaiah's history of sexually acting out, oppositional defiance disorder, and ADHD. Isaiah was placed in emergency shelter care and, in 2007, placed in the ChildHelp Group Home (ChildHelp) in Riverside County.

At the 12 month review hearing, evidence was received that appellant had not completed parenting classes, did not understand Isaiah's needs, and had not complied with his case plan which included anger management or a substance abuse program. The trial court terminated reunification services on June 5, 2008 and ordered long term foster care with monthly supervised visits and reasonable phone contact. Appellant, however, abused visitation and engaged in irrational behavior that was detrimental to Isaiah's safety and welfare. Appellant accused CPS and ChildHelp of illegally detaining and drugging Isaiah, and filed complaints with the Lompoc Police, the Santa Barbara County Grand

² Appellant has a lengthy criminal history that includes arrests for obstructing a peace officer, fighting, false identification to a peace officer, grand theft, battery of a spouse, illegal possession of tear gas, corporal injury on a spouse/cohabitant, driving while intoxicated, evading a peace officer, making criminal threats, and disorderly conduct while intoxicated

Jury, the Commission on Judicial Performance, the Riverside County Grand Jury, and the California Department of Justice.

First Section 388 Petition

On July 23, 2009, appellant filed a section 388 petition to return Isaiah to his custody and close the case. The trial court denied the petition and ordered that contact between appellant and Isaiah M. be contingent upon the recommendation of Isaiah's therapist and that visitation be closely supervised. (§ 388.)

Appellant appealed from the order which was affirmed in an unpublished opinion on March 16, 2010. (B217881.)

Second Petition

Appellant filed a second petition to modify visitation which was denied March 25, 2010. Appellant appealed but the appeal was dismissed after appellant's attorney filed a no-issue brief. (B224603; *In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Failed Foster Care Placements

At the July 26, 2010 review hearing, CPS reported that Isaiah was struggling with anger and personal boundary issues at Child Help.

On January 24, 2011, at the next review hearing, CPS reported that Isaiah had been moved to a foster home but had regressed. The case worker reported that appellant was making angry phone calls, saying that Isaiah's social workers and mother had lied about him and that CPS had no legal grounds to remove Isaiah or stop in-person visitation. Appellant said that he had been diagnosed with a delusional disorder which was part of CPS's plot to build a case against him.

Appellant's attorney declared a conflict because appellant suffered from mental health issues and believed she was colluding with CPS and Isaiah's attorney. The trial court appointed new counsel and continued the review hearing to February 14, 2011, at which time it was informed that appellant had been involved in an altercation.

On July 18, 2011, at the next review hearing, evidence was received that Isaiah's last two placements had not worked out and was living in a shelter foster home. The case worker reported that Isaiah "is a hard sell to a foster parent" because of his

behavioral problems and short-lived stays at other foster homes. Appellant continued to send Isaiah letters and leave threatening voice mail that he was reporting the case worker to the FBI. At the July 18, 2011 hearing, Isaiah had information that was not to be shared with his parents and spoke with the trial court in chambers.

Third Section 388 Petition

On October 28, 2011, appellant filed a third petition for supervised visits and reasonable phone contact. The petition acknowledged that appellant suffered from deep-seated psychological problems and a drinking problem since his teens that resulted in aggressive behavior and paranoid ideation. Appellant claimed he was on the road to recovery and had been sober since May 2011. Two letters from Isaiah were attached to the petition in which Isaiah acknowledged that he had not written appellant and had received an IPOD Touch from appellant. Isaiah thanked appellant for the gift and wrote that he wanted a PSPgo video game player for Christmas.

The trial court believed the requests for gifts were inappropriate and denied the section 388 petition without prejudice. The trial court wanted input from Isaiah's counselor and said that it would like to see appellant's "actual involvement in counseling. I know that the sober living home is a good thing, it's great to see, but that's not enough."

At the next review hearing on January 9, 2012, CPS reported that Isaiah was in a new foster home and displaying manipulative and obnoxious behaviors to alienate his foster parents and teachers. Isaiah was receiving letters from appellant but did not want to write back or have contact with appellant.

Fourth Section 388 Petition

Appellant filed a fourth petition for supervised visits and phone contact which was opposed by CPS and Isaiah. The evidence showed that Isaiah was adjusting to his foster home placement and loved appellant but did not want to visit appellant or respond to his letters. Isaiah's therapist reported that Isaiah was testing his new foster parent and that therapeutic behavior services were being provided. Isaiah, however, was having problems in school and in danger of being expelled from an after-school program.

The foster parents worked and lacked the financial means to pay for private day care, which would require that Isaiah be removed and placed in another foster home.

The trial court denied the section 388 petition because Isaiah was having great difficulty transitioning to foster care and on the ground that visitation would be detrimental to Isaiah. "It's not been demonstrated to me that it's in his best interest. . . . I do want [Isaiah] to see the therapist, discuss it in therapy, and if and when it's determined there should be a therapeutic visit, I will be happy to look at that."

Best Interests of the Child

We review the denial of a section 388 petition for abuse of discretion. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318.) Section 388 authorizes a juvenile court to modify a prior order if a parent shows a change of circumstances exists and the proposed change is in the best interests of the child. (*Id.*, at p. 317.) "It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that undoing of the prior order would be in the best interests of the child. [Citation.]" (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.)

Although appellant is starting to address his alcohol abuse and mental health issues, there is no evidence that reinstating visitation or phone contact is in Isaiah's best interests at this time. Over the last five years, appellant displayed lack of insight about Isaiah's needs, threatened Isaiah's social workers, and engaged in confrontational behavior that was highly detrimental to Isaiah's welfare. Isaiah received letters from appellant but decided not to write back and told his case worker and foster parents that he wants no contact with appellant.

The evidence shows that Isaiah has a history of engaging in manipulative behavior which has sabotaged his foster care placement and schooling. Isaiah's therapist reports that Isaiah controls people and gets his needs and wants by engaging in negative behaviors. Those problems are being addressed by the therapist at a critical time in Isaiah's life. The foster parents are frustrated but want to help and are willing to give Isaiah another year before they "throw in the towel."

Appellant argues that visitation is a fundamental right but a parent has no right to insist on visitation orders that are detrimental to the child's therapy and foster care. (See e.g., § 362.1, subd. (a)(1)(B) [visitation order may not jeopardize child's safety; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699.) With so much in the balance, the trial court reasonably concluded that reinstating visitation and/or phone contact is not in Isaiah's best interests. In the words of the trial court, appellant "thinks that he has his act together at this point, but he's been absent for a long period of time, and it just doesn't happen overnight."

We concur. The focus here is what is best for Isaiah. Substantial evidence supports the finding that modification of the no-visitation/no-phone-contact order at this point in time could jeopardize Isaiah's badly needed therapy and foster care. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re Angel B.* (2002) 97 Cal.App.4th 454, 465.)

The judgment (January 23, 2012 order denying section 388 petition) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Maureen L. Keaney, under appointment by the Court of Appeal, for
Appellant.

Dennis A. Marshall, County Counsel, County of Santa Barbara, Maria
Salido Novatt, Sr. Deputy, for Respondent.