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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CHRISTOPHER B. et al., Persons
Coming Under the Juvenile Court Law.

B247330
(Los Angeles County
Super. Ct. No. CK53082)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAMES B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Terry Truong, Juvenile Court Referee. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

James B. (Father) appeals from the disposition orders removing his children, Christopher and Shannon, from his custody and directing that he have only monitored visits with them. We affirm.

FACTS AND PROCEEDINGS BELOW

The orders that led to this appeal are the latest in a series of dependency proceedings stretching back 10 years to July 2003 when the Department of Children and Family Services (DCFS) removed the children from their parents' custody based on allegations of drug use and domestic violence.

In July 2003, the juvenile court sustained a petition under Welfare and Institutions Code section 300, subdivision (b)¹ based in part on a finding that the children were exposed to domestic physical and verbal abuse and altercations between Father and Mother. Subsequent petitions were sustained on the basis of domestic violence between the parents in 2005, 2006 and 2010.

In August 2012, the DCFS filed the current petition. It again alleged aggression and fighting between Father and Mother including allegations that "the father threw a box of beer at the mother [and] the mother threw the beer at the father's car" and that "the father brandished a rifle at the mother and threatened to kill the mother, the children and himself."

Shannon told a DCFS worker that she witnessed the argument between her parents in the parking lot of a market that led to the beer-throwing incident. She did not witness Father's threat with the rifle but she knew that Father kept guns in the house, knew where he kept them and could get them if she wanted to. She described the guns in detail and told the worker that once she pulled one of the guns from under Father's bed, unwrapped it from its covering and then rewrapped it and put it back.

Christian told a DCFS worker that he did not witness the beer incident or the death threat. He stated he knew that Father had two or three guns because he had seen them

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

and knew where Father kept them. He told the worker that he could reach the guns easily if he wanted.

The court found true the allegations of the beer fight and Father's threat to kill Mother and the children and sustained the petition on those grounds. The court ordered the children removed from their parents' custody and placed in foster care. Father and Mother were granted monitored visits.

Father filed a timely appeal from the jurisdiction and disposition orders but briefs only the latter.²

DISCUSSION

We conclude that substantial evidence supports the court's removal and visitation orders.

Section 361 states in relevant part: "(c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following . . . (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . . The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm."

Thus, before the court may order a minor physically removed from his or her parent, it must find by clear and convincing evidence that the minor would be at

² Mother did not appeal the court's orders.

substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. The minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135-1137.)

Father does not challenge the court's factual findings regarding the altercation in the market parking lot and his death threat. He contends, nevertheless, that he is a good parent and that Mother is the problem as demonstrated by the dispositional orders in the prior cases which allowed the children to remain in Father's custody. The way to protect the children, he argues, is to order Mother to stay away from Father and to restrict her to monitored visits with the children with someone other than Father as the monitor. We disagree.

The court tried Father's solution in past proceedings and it failed. The record shows that in spite of case plans, which Father signed, and court orders of which Father was aware, Father permitted Mother back into the home and gave her unfettered access to the children. Even when she stayed away from him, he tracked her down and sparked a physical altercation. In the current case the children reported to the DCFS worker that Mother either resided in the home or frequently visited on her own which was in violation of court orders.

In addition to evidence of Father's past behavior toward Mother, new evidence in this proceeding showed that Father displayed a rifle and threatened to kill the children, Mother and himself. Furthermore, the children told the DCFS that Father kept two or three guns in the house and that they knew where he stored them.

Given this evidence, the court could reasonably conclude that Father's death threat combined with his apparent ability to carry it out and the presence of firearms in the home within the children's easy access posed "a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the children and

“there are no reasonable means by which the [childrens’] physical health can be protected without removing [them] from the . . . parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).)

For the reasons stated above we also conclude that the court did not abuse its discretion in ordering that Father’s visits be monitored. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284 [visitation orders are reviewed for abuse of discretion].)

DISPOSITION

The jurisdiction and disposition orders are affirmed.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.