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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

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

C068677

CALAVERAS WORKS AND HUMAN
SERVICES AGENCY,

(Super. Ct. No. 11JD5154)

Plaintiff and Respondent,

v.

DAVID B.,

Defendant and Appellant.

David B., father of the minor, appeals from the judgment of disposition in the juvenile court. (Welf. & Inst. Code, §§ 358, 395.)¹ Father contends the court abused its discretion in refusing to permit him to present evidence at the dispositional hearing and that the order for shared custody of the minor was not supported by substantial evidence. We shall affirm.

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

FACTUAL BACKGROUND

Calaveras Works and Human Services Agency (CWHSA) filed a petition in February 2011 alleging seven-year-old L.B. suffered severe emotional damage due to the conduct of both parents over several years. At the initial hearing, the court referred the minor to therapy, ordered the parents not to engage in corporal punishment or questioning of the minor and not to disparage the other parent in the minor's presence.

The jurisdiction report described a history of mutual domestic violence between the parents and the mother's physical abuse of a niece, which resulted in removal of the niece and the minor. The parents put the minor in the middle of their ongoing conflicts and he remained at risk of serious emotional damage as shown by his anxious, withdrawn behavior and unprovoked aggression.

The mother waived her rights and submitted on the social worker's report. Father did not contest that the minor had suffered severe emotional damage, but filed a declaration of submission and explanations in which he detailed what he contended were inaccuracies in the jurisdiction report that affected the question of fault. At the jurisdictional hearing, counsel explained to father that, since the mother submitted on the petition, fault was no longer an issue and the witnesses father wanted to call to dispute the accuracy of the facts of specific historical events or to assess fault were not relevant. Father was assured he would be able to call witnesses at the dispositional hearing when placement was at issue. With that

assurance, father also waived his rights and submitted on the social worker's report and the document he previously filed. The court sustained the petition, finding the minor came within the provisions of section 300, subdivision (c).

The report for the dispositional hearing recommended continuing the current shared custody arrangement, with some modifications, and offering family maintenance services to both parents. The CWHSA found there was a history of violence by both parents directed toward each other and minors in the mother's care as well as various accusations and untrue statements about each other's conduct. In 2009, the minor and the mother's niece, who was also her ward, were placed in protective custody due to the mother's substantiated physical abuse of the niece. The minor was later returned to the mother because he was at a lower risk for physical abuse. After this incident, both parents increased pressure on the minor by questioning him, encouraging him not to disclose information and engaging in heated exchanges in the minor's presence.

The disposition report further stated that each parent acknowledged the minor was at risk of severe emotional harm and each could clearly identify the other's issues but were unable to evaluate their own contributions to the minor's ongoing emotional damage or change their behavior to decrease the stress they placed on him. The social worker considered the minor to be in an impossible situation although the minor said he felt safe in both homes. The social worker observed that each parent

displayed a rigid mindset and needed to focus on their own contribution to the minor's problems and not the other parent's issues. The constant and extensive questioning of the minor about the other parent and about perceived abuse was not helpful and actually harmed him. The minor's therapist said the repeated questioning of the minor had to stop and both parents needed therapy.

According to the report, the CWHSA investigation found that most of the allegations of physical abuse of the minor were unfounded or inconclusive.² The report emphasized that the role of CWHSA at disposition was not to parcel out blame to each parent for the minor's emotional suffering, but to protect the minor from emotional abuse by both parents by offering services. The team evaluating the case recommended reducing the exchanges of the minor by modifying the shared custody arrangement so that

² The prior physical abuse which led to filing the petition in 2009 was substantiated as to the niece but not as to the minor. In the social worker's opinion, father was fixated on four incidents that had occurred prior to filing the petition: (1) a report in 2009 of a mark on the minor's back that was not caused by the mother and was alleged to be a cigarette burn but did not appear to the investigating officer to be a burn; (2) an incident in 2009 in which the mother, who may have been drinking, was driving with the minor but the mother was tested and found to be below the legal limit; (3) scratches on the minor's face in 2010, which may have been caused by the mother's boyfriend's dog or by the mother and led to extensive and repeated questioning of the minor by father; and (4) a bruising injury on the minor's arm that allegedly occurred when the mother hit him with a stick or board after he broke a window in 2011, but the mother's house had no broken window. None were substantiated for physical abuse.

only one custody exchange a week was necessary. Further, the minor was to have liberal telephone contact with the noncustodial parent at his discretion. The case plan included parenting and counseling for both parents and continued counseling for the minor.

An addendum stated that the parents were given the proposed reunification plan. The mother had participated in parenting classes but needed additional instruction. Father continued to violate prior court orders by discussing the case with the minor and admitted to questioning the minor, who, he said, was drilled by the mother to lie and arrived at the custody exchange scared and shaking. Father did not think his own behavior contributed to the minor's anxiety. The social worker observed that, when the minor was questioned in father's presence, he checked with father before answering but, if questioned without father present, freely stated that things were going well at the mother's home and he had no concerns with her. The minor's therapist reported she had to admonish father about discussing the case in front of the minor. The social worker's assessment was that the minor continued to show anxiety over the parents' fighting. Further, while both were continuing behaviors that were emotionally damaging to the minor, father's behavior was most troubling because he perseverated about past events and affixed blame rather than trying to address the current situation.

Father filed a position statement in which he objected to various parts of the social worker's report and addendum, including the recommended changes in custody and telephone contact, provided alternative explanations of past events and clarified information about his criminal past. The court set a contested dispositional hearing.

Father filed a trial brief seeking primary physical custody, contending he was a nonoffending parent. He opposed the recommendation of continued shared custody. Father contended the reports were flawed and contained erroneous facts that adversely affected the conclusions of the disposition reports. Father's witness lists included approximately 30 names of individuals who were investigators of, or witnesses to, various incidents between the parents or alleged physical abuse of the minor who presumably would be able to testify about the facts of the various incidents and the mother's credibility. Some witnesses were character witnesses for father.

CWHSAs responded that both parents were offending parents and the factual veracity of the jurisdiction report was no longer relevant because jurisdictional facts had been established. CWHSAs also objected to father's witness lists on grounds of relevance (Evid. Code, § 351) and undue consumption of time (Evid. Code, § 352). CWHSAs listed specific objections as to each witness and requested offers of proof as to several of them.

At the readiness hearing, counsel for father argued that the minor's emotional issues were due solely to the mother's conduct and wanted to show she was not credible and had a history of being untruthful. Counsel further argued father should have primary custody based on the mother's history of physical abuse and untruthfulness and her practice of encouraging the minor to lie. CWHSA pointed out the facts father wanted to litigate were identical to those found true at the jurisdictional hearing and not relevant to the dispositional issues. The court took the matter under submission. The court issued a written ruling excluding 21 of the witnesses pursuant to Evidence Code sections 351 and 352. These witnesses were character witnesses for father, witnesses to specific incidents between the parents or witnesses who investigated allegations of physical abuse by the mother, all of which occurred prior to the filing of the petition. The court excluded an additional seven witnesses unless father provided an offer of proof to establish the relevance of their testimony because the expected testimony of these witnesses had not been identified. The remaining witnesses included father, a court-appointed custody evaluator, the minor's counselor and the minor's teacher.

Prior to the dispositional hearing, the therapist provided a report that summarized the parents' conflicting allegations and discussed the minor's resulting stress from father's constant insistence on telling the truth and the mother's yelling at him and telling him not to talk about the time she

hit him. The therapist stated that father was so obsessed with the minor telling the truth that he was unable to see that he was making the minor feel stressed. In the therapist's opinion, the minor's stress and anxiety could not be dealt with until the parents addressed their own issues that caused the stress. The therapist believed that both parents were guilty of emotional abuse of the minor and suggested that the minor spend some time away from both parents so that they could begin individual therapy.

At the dispositional hearing, only father and the social worker testified. Father's testimony focused on his distrust of the social worker and therapist due to inaccuracies in their reports and his belief that CWHSA had an agenda; specifically, to make him look as bad as the mother so that services could be provided to her. Although he initially testified that the minor's emotional damage was not his fault but due instead to the mother's actions, father eventually did acknowledge there was a potential for damage to the minor from ongoing pressure to tell the truth. Father also discussed several incidents that occurred prior to filing the petition in order to tell his version of events or to point out inaccuracies in the reports. Father testified he would try to address the concerns of the social worker and the minor's therapist by refraining from questioning the minor and had seen some improvement in the minor when he did so. He believed the minor was not safe with the mother and only wanted what was best for the minor. He had

found a therapist for himself and was willing to participate in parenting instruction, but saw no need for a psychological evaluation.

The social worker testified she was concerned about both the mother's history of abuse and father's repeated questioning of the minor, father's increasing preoccupation with incidents that occurred prior to the filing of the petition and his lack of insight into how his behavior contributed to the minor's emotional damage. She stated that father and the mother did not get along and the minor was burdened by their conflict. The recommendation of an in-home dependency stemmed from the fact that the minor had a good relationship with both parents and they were willing to participate in services. The court adopted the recommended findings and orders, including an order for a psychological evaluation of father, and a respite summer camp as recommended by the minor's therapist. Shared custody was to continue on a week-on, week-off basis with the minor being allowed to make unlimited telephone calls to the other parent.

DISCUSSION

I. Evidence at Dispositional Hearing

Father contends the juvenile court abused its discretion in refusing to permit him to present the witnesses he provided in his witness lists to establish an accurate factual basis for the dispositional hearing and to demonstrate that the mother lacked credibility.

A party to a dependency proceeding has a due process right to call witnesses. (*In re Malinda S.* (1990) 51 Cal.3d 368, 383-384; § 341; Cal. Rules of Court, rule 5.534(k).) However, the right is not unfettered. "The judge of the juvenile court shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought." (§ 350, subd. (a)(1).) Ruling on objections, including those directed to witness lists, is a necessary part of the court's exercise of control of the proceedings.

Here, father initially contemplated a contested jurisdictional hearing in which he would be able to litigate the facts alleged in the petition. However, when the mother waived her right to a hearing and submitted the question of whether the minor came within the provisions of section 300 based upon the information in the social worker's report, proof of the jurisdictional facts was no longer necessary. The court could exercise jurisdiction over the minor on that submission alone. (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Father's submission allowed the court to consider his declaration when weighing the facts to determine whether the minor came within section 300. No further proof of, or challenge to, jurisdictional facts was required. The court and counsel correctly informed father that it would still be possible to

litigate the dispositional issues and that some of the issues father wished to litigate might be relevant there.

The issues at disposition are generally limited to placement and services. The focus at the dispositional hearing in this case was whether both parents continued to engage in conduct that placed the minor at risk and how best to protect the minor through placement orders and services. However, father's witness lists indicated that the bulk of his witnesses were offered for the purpose of challenging facts of incidents that occurred prior to filing the petition to show the mother's history of physical abuse and to show an alleged pattern of lying about her behavior. The court carefully reviewed the witness lists, excluding those individuals who were not offered for a relevant purpose, requiring an offer of proof as to those whose proposed testimony had not been identified and allowing those whose proposed testimony could be expected to address the issues involved at the dispositional hearing. Father was not denied the opportunity to present witnesses. The court's ruling was well within its discretion and duty to control the proceedings and limit the dispositional hearing to relevant testimony. No abuse of discretion appears.

II. Order for Shared Custody

Father argues substantial evidence did not support the court's order continuing the shared custody arrangement in the face of evidence that the mother had a substantiated incident of physical abuse of a child.

At disposition the court must select the appropriate orders for the circumstances of the case. (§§ 358, 360, 361.) It is the *current* circumstances of the parents that are relevant at a dispositional hearing in deciding issues of placement and services and formulating appropriate orders. (Seiser & Kumli, Cal. Juvenile Courts Practice & Procedure (2011) § 2.110[8], p. 2-253.)

The evidence showed that the mother had begun to engage in services designed to address her past history of physical abuse of a minor child. Similarly, the father had, somewhat reluctantly, begun services and made changes in his behavior patterns. Both parents were acting to reduce the risk of further harm to the minor. The minor was comfortable with both parents when their conduct did not create stress and anxiety. Accordingly, the court had no reason to remove custody from either parent. (§ 361, subd. (c).) The goal of dependency is to preserve the family and provide maximum safety and protection for the minor. (§ 300.2.) Continued shared custody with both parents met this goal and was in the minor's best interest. Substantial evidence supported the court's order continuing shared custody. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

DISPOSITION

The findings and orders of the juvenile court are affirmed.

_____ BUTZ _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ MAURO _____, J.