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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

MARCO R.,

Defendant and Appellant.

G045784

(Super. Ct. No. DP018835)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Cheryl L. Leininger, Judge. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

The juvenile court did not err when it declined to grant a continuance of the 18-month review hearing. Nor did the court err when it found there would be substantial risk to the minor were he returned to the father. We affirm.

I

FACTS

Andrew R. was born in 1997. The report of the Orange County Social Services Agency (SSA), states what precipitated taking the child into protective custody: “On August 28, 2009, while at a parking lot . . . [Andrew R.] broke father’s car stereo. The child’s father became angry and repeatedly punched the child in the face, back and neck, resulting in injuries. The child’s father was subsequently arrested by Orange County Sheriff’s Department The child’s mother refused to take the child, [Andrew R.], as she claimed she cannot care for the child alone. Reportedly, the child has been diagnosed with Attention Deficit Disorder and Bipolar Disorder. The child’s mother described the child as violent and fears for the safety of the child’s siblings. [¶] The child’s mother has the child’s five siblings in her care.”

The family had 21 contacts with SSA since 2001. The contact just previous to the current one, is related by SSA in its report to the court: “. . . dated February 23, 2009 alleged physical abuse of the child, [Andrew R.], . . . which was substantiated. [T]he father struck the child, [Andrew R.], with a television antenna causing a three to four inch linear mark. The child . . . suffered a three inch linear mark with broken skin on the child’s chest. The child also expressed sensitivity on his head due to father pulling his hair. The child, [Andrew R.], described his father throwing a shoe at him, hitting his left hand resulting in redness and swelling.”

Both of Andrew R.’s parents have a criminal history. His mother, Maria G., was placed on probation for violating Penal Code section 415, fighting in a public place. His father, Marco R., was placed on probation for violating Penal Code section 148, obstructing a police officer. A few years later, he was convicted of violating Penal

Code section 273.5, corporal injury to a spouse/cohabitant. He has been arrested for driving under the influence of alcohol, and a few months thereafter, for driving under the influence of drugs. In 2008, he was arrested for child cruelty, but the disposition of that matter is unknown.

The juvenile court found a prima facie case under Welfare and Institutions Code section 319, and that staying in the home was contrary to Andrew R.'s welfare. (All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.) Monitored visitation for the mother was ordered, and no visitation for the father. Andrew R. was placed in Orangewood Children's Home, and SSA was ordered to evaluate relatives for possible placement.

The father was present at the detention hearing on September 1, 2009, the pretrial hearing was on October 1, 2009, the adjudication hearing on October 15, 2009, the six-month review hearing on April 5, 2010, and the 12-month review hearing on October 26, 2010.

On February 28, 2011, the father appeared for the 18-month review hearing, but the hearing was continued to March 30, 2011, and the father signed a "PROMISE TO APPEAR" form for March 30. He did appear on March 30, when his lawyer was sick; the matter was continued to April 18, 2011. The father signed another form promising to appear on April 18. On April 18, the matter was once more continued "so father can participate in additional counseling services," and the father signed another form promising to appear at the continued hearing on June 21, 2011. On June 21, the matter was once more continued until July 18 because the court was engaged in another matter. Once again, the father signed a form promising to appear on the continued date. On July 18, after the court and counsel conferred, another continued hearing on the 18-month review was scheduled for August 1, 2011. The father signed a form promising to appear again.

After appearing five previous times for the same hearing, the father did not appear the sixth time, on August 1, 2011. His lawyer stated to the court: “He has never missed a hearing on this case. [¶] I do have some concern as it relates to that and I would be asking for a brief continuance in order to attempt to secure his presence. I would note that the two phone numbers I currently have for father at this point in time, those phones do not appear to be working so I would need to send the father a letter indicating my concern and indicating to him his need to be at the next court date.” The court denied the request for a continuance.

After hearing from counsel on August 1, the court made the following findings: “Court finds pursuant to [section] 366.22 [subdivision] (a) that return of the child to the parents would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child and that reasonable services have been provided or offered to the parents. [¶] The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement by mother have been minimal and by father have been moderate.” The juvenile court then ordered termination of reunification services for both parents and that the child remain in long-term foster care with “the permanent plan then of placement with the maternal aunt or . . . a fit and willing relative, with the specific goal, or transition to independent living with identification of a caring adult to serve as a life-long connection”

II

DISCUSSION

Denial of Continuance Request

The father claims the juvenile court abused its discretion in refusing to continue the hearing at his counsel’s request. County counsel argues the father failed to show good cause to continue the hearing.

Denial of a request for continuance is reviewed for abuse of discretion. (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) Section 352 provides: “Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor’s interests, the court shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. Further, neither a pending criminal prosecution nor family law matter shall be considered in and of itself as good cause. Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.” (§ 352, subd. (a).)

Here, the father appeared at the 10 previous hearings, which certainly provides a strong indication he cares about his son. But, he had not given his lawyer an up-to-date phone number, and he was supposed to be at court at 8:30 a.m. The court did not call the matter until 2:10 p.m. Before denying the request for continuance, the court stated: “We have been trailing this case all day to see if counsel could contact his client or see if counsel—if the client had left any messages for counsel.” No evidence was provided to indicate why the father was not there, and counsel informed the court it would take him “between ten days and two weeks” to sort things out with the father. A court may presume absence from court is voluntary when there is no showing of an emergency. (*Young v. Redmon* (1976) 55 Cal.App.3d 827, 832.) Under these circumstances, it was not an abuse of discretion to deny a request for continuance.

Finding of Substantial Risk if Returned to Father

The father argues he “complied with his case plan and ameliorated the risk to [Andrew R.] such that there is no evidence that returning him to his custody would present a substantial risk to his safety.” County counsel concedes the father did complete many services, but points out he “continued to be described by his therapist as angry, rude, passive-aggressive, and in need of further therapy.”

At the 18-month review hearing, “[t]he court shall order the return of the child to the physical custody of the parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).) Appellate review of a finding that return of a child to a parent would be detrimental is limited to considering whether substantial evidence supports the finding. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625.) This standard of review “requires us to determine whether there is reasonable, credible evidence of solid value.” (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.)

Here, the court received SSA’s reports into evidence. Those reports contain descriptions of the physical beatings the father inflicted upon Andrew R., a report the father attended only four of 11 scheduled visits with Andrew R., a report of the father’s inflexibility with regard to providing alternative visitation dates and times and that the father eventually said he could not commit to visits even one day a week. There was also a report the father had not inquired of other adults about their willingness to watch Andrew R. when the father is at work so no adults in the father’s home were approved by SSA, that the father’s financial stability is uncertain, and that there were ongoing disputes between the father and the mother over the father’s visitation with Andrew R.’s siblings. When the father went to counseling, he was “angry, resistant, upset.” When the social worker telephoned the father to schedule therapy dates for

father/son sessions, the father “stated that he was very busy and that he would no longer be participating in services.”

Additionally, there was information from Andrew R.’s psychologist that the child’s “anxiety and depression have increased in the last year where he is now showing physical, psychological and cognitive signs of distress[,] . . . nightmares and flashbacks of the abuse he suffered [, and] thoughts of suicide . . .,” and a recommendation that monitoring of the father’s visits continue and that the monitor “identify any self-help and assertiveness skills that [Andrew R.] may be able to show in the context of a relationship with his father.” As the court noted when the findings and orders were made, Andrew R. is considered to be “not adoptable.” Also, SSA recommended reunification should be terminated.

The father cites *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, to make his point that a showing more than “just that the parent is somehow less than ideal” is necessary for a finding of a substantial risk of detriment. In that case, the court stated: “A child’s dislike of a parent’s living arrangement, without more, does not constitute a substantial risk of detriment within the meaning of section 366.22, subdivision (a).” (*Id.* at p. 1401.) The situation here is quite different, so that argument is unavailing.

Under the circumstances we find in this record, we find no error. We conclude substantial evidence supports the court’s finding Andrew R. would be under substantial risk of detriment to his safety, protection and physical, and emotional well-being were he returned to his father.

III

DISPOSITION

The findings and order of the juvenile court are affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.