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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re F.C. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

JOSE C.,

Defendant and Appellant.

G051449

(Super. Ct. Nos. DP013956 &
DP024867)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Andre Manssourian, Judge. Affirmed.

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

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

* * *

Jose C. appeals from a juvenile court dispositional judgment denying him family reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(6) (All statutory citations are to this code unless noted.). Jose contends the juvenile court prejudicially erred by denying his request for additional cross-examination of a social worker concerning her recommendation to bypass services. We do not find the contention persuasive and therefore affirm the judgment.

I

FACTS AND PROCEDURAL BACKGROUND

In April 2014, the Orange County Social Services Agency (SSA) filed a petition alleging F.C. (a girl born in May 2006) and Israel C. (a boy born in March 2009), along with their older half siblings, came within the juvenile court's jurisdiction because there was a substantial risk they would suffer serious physical harm or illness in the custody of their parents, Z.M. (mother) and Jose C. (Jose) (§ 300, subd. (b)). The petition further alleged a sibling had been abused or neglected and there was a substantial risk the children would be abused or neglected (§ 300, subd. (j)).

The petition cited numerous specific instances of physical and emotional abuse, and neglect by the parents against the children and their half siblings Y.L. (a girl born January 1998) and twin girls Kl.L. and Kr.L (born October 2000). The four older children previously had been adjudicated dependents of the juvenile court in October 2006 because their father (Javier L.) had physically abused the three older children and engaged in domestic violence. The court also found the girls had been sexually abused by an unrelated minor male and neglected by their mother, who suffered from emotional instability. The children were returned to their mother's care between October 2007 and February 2009.

The current petition alleged Jose had sexually abused his stepdaughter Y.L., including sexual intercourse, over a five-year period. Authorities arrested Jose,

who faced multiple counts of sexual abuse at the time of the jurisdiction and disposition hearing. Mother initially equivocated in her belief whether the sexual abuse occurred and the children feared mother would allow Jose to return home. The older girls suffered from significant mental health and behavioral issues, and Israel C. suffered from developmental and speech delays. Mother admitted she was overwhelmed with her children's needs.

F.C. and Israel C. were placed together in a foster home. SSA's jurisdiction and disposition report recommended reunification services for mother, but not for Jose because he had sexually abused Y.L.

At the combined jurisdiction and disposition hearing, the court admitted into evidence SSA's reports. The social worker, Sandy Brown, testified she interviewed the children after receiving the case in April 2014 and she had spoken with Y.L. on five or six occasions. Y.L. repeatedly asserted Jose had molested her over a five-year period.

Y.L. testified Jose began sexually abusing her when she was around 10 years old. The misconduct included sexual intercourse and oral sex. The abuse occurred frequently, whenever mother left the home. The last incident occurred the day before she disclosed the abuse on November 20, 2013. Y.L.'s boyfriend saw text messages from Jose stating he loved her and asking why she would not accept him. Y.L. disclosed the abuse to the boyfriend, who explained they should notify the police. The boyfriend's father called Y.L.'s aunt, and they called the police. Y.L. testified Jose had planned to take her to Mexico when she turned 16. She ran away four times in 2013, and admitted she repeatedly lied to social workers and the police that no abuse had been occurring.

Jose did not testify but his lawyer called several witnesses. Kr.L. testified Y.L. frequently got into trouble with Jose for misbehavior. Mother admitted child protective agencies had been involved with her and her family since Y.L. was one year old. She was shocked when Y.L. made the disclosure of sexual abuse, and claimed it was not unusual for Y.L. to lie. Y.L. used drugs when she was 15 or 16, and had overdosed

on methamphetamine. Y.L. had a cell phone, purchased for her by Jose, and told mother she broke the phone after Jose's arrest because he was sending her messages.

The juvenile court found Jose engaged in a sexual relationship with Y.L. The court noted Y.L. was "a very troubled young lady" and acknowledged concerns about her credibility, but found her "ultimately believable. There was no doubt in the court's mind that when it came to her recitation, her description, her explanation of the sexual abuse that she endured . . . that she was to be believed in that regard." The court found the allegations of the petition to be true, and that it would not benefit F.C. and Israel C. to offer Jose reunification services.

II

DISCUSSION

Although preservation of the family unit is among the juvenile court's highest priorities, the court retains discretion to deny reunification services in situations the Legislature has concluded are likely to be futile (*In re Kenneth M.* (2004) 123 Cal.App.4th 16, 20). As relevant here, "[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: . . . (6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian." (§ 361.5, subd. (b).) Severe sexual abuse includes sexual intercourse and "stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact . . ." (§ 361.5, subd. (b)(6).)

Section 361.5, subdivision (i), provides, “In determining whether reunification services will benefit the child . . . , the court shall consider any information it deems relevant, including the following factors: (1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling. (2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling. (3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling. (4) Any history of abuse of other children by the offending parent or guardian. (5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision. (6) Whether or not the child desires to be reunified with the offending parent or guardian.”

Jose does not challenge the court’s finding his molestation of Y.L. constituted severe sexual abuse. Rather, he contends the juvenile court erred by denying his request to recall the social worker for further cross-examination after Y.L. testified. (See *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1513 [parent in a dependency proceeding has a due process right to confront and cross-examine persons who prepared reports or documents submitted to the court by the petitioning social services agency].) Jose acknowledges his attorney cross-examined Brown during the jurisdictional phase of the proceedings but “was operating under the belief that dispositional issues would be addressed in separate proceedings” and “did not ask questions related to the social worker’s recommendation to bypass family reunification services.” He argues the denial of counsel’s request to recall the social worker “effectively precluded Jose from even attempting to defend against the adverse recommendation.”

Jose's lawyer asked the court for permission to recall Brown and to admonish her "to read her report so that she can properly answer the questions"

Counsel explained, "My position, as the court can recall, is Ms. Brown did not remember a whole lot of all the details in the case and she testified before [Y.L.] testified, and the court has heard [Y.L.'s] testimony. I'm hoping that with the input of [Y.L.'s] testimony then maybe [the social worker will] have a more informed recommendation this time."

The court asked, "So how in your mind would it come out differently as she retakes the witness stand?" Counsel responded, "Well, I'm hoping that somebody would have informed her of the proceeding [i.e., about Y.L.'s testimony], and I think it's very relevant of what [Y.L.] said in terms of her veracity and truthfulness of some of these things that she told people" and "I would . . . ask her if she would change her opinion about no services [for Jose] as to his own children."

The court rejected counsel's offer of proof, explaining, "[J]ust speculating that maybe, if somebody would tell [the social worker] Y.L. lied on the witness stand, the social worker would change her recommendation, that won't cut it." The court also noted counsel "had an opportunity to cross-examine" the social worker, and spent approximately two hours doing so.

Due process guarantees apply to dependency proceedings. (*Santosky v. Kramer* (1982) 455 U.S. 745, 753-754.) But parents in dependency hearings "are not entitled to full confrontation and cross-examination." (*In re Sade C.* (1996) 13 Cal.4th 952, 992.) "The states strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence [citation], such as when the presentation of evidence will 'necessitate undue consumption of time.'" (*Maricella C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146-1147.) The dependency court does not offend due process by

excluding marginally relevant evidence; due process requires the court to hear only relevant evidence of “significant probative value.” (*Ibid.*)

Here, the social worker in her testimony had difficulty recalling specific details from her reports of Y.L.’s sexual abuse claims against Jose. In asking to recall the social worker, Jose’s counsel explained he “would inform her of [Y.L.’s] testimony and ask her if she would change her opinion about no services to [Jose] as to his own children.” As described above, the court denied the request to recall the social worker, explaining “your offer of proof is, well, I hope somebody would have told the social worker about how [Y.L.] lied on the witness stand and maybe she’ll change her mind now if I recall her That’s not a sufficient offer of proof.”

We discern no abuse of discretion in denying counsel’s request to recall the social worker. Jose’s lawyer already had cross-examined the social worker about Y.L.’s statements in SSA’s reports. Counsel based his offer of proof not on hard evidence, but on his hope the social worker would change her mind because counsel believed Y.L. lacked credibility. Counsel’s hope the social worker would change her recommendation does not constitute evidence, let alone evidence of significant probative value. The court heard Y.L.’s testimony and could determine her credibility without the assistance of the social worker, who was not in the courtroom when Y.L. testified.

Jose admits the sexual abuse of Y.L. triggered section 361.5, subdivision (b)(6), and this weighed against a finding F.C. and Israel would benefit from pursuing reunification services with their father. But he suggests counsel was precluded from questioning Brown concerning the likelihood the children might be returned safely to Jose within 12 months (§ 361.5, subd. (i)(5)) and whether the children desired reunification with Jose (§ 361.5, subd. (i)(6)).

Significantly, counsel's offer of proof did not touch on these issues, as Jose acknowledges. In any event, the likelihood of reunification within the specified period appeared slim given that Jose was facing a possible life sentence based on criminal charges arising from the alleged abuse of Y.L., and there was no indication exoneration was imminent at the time of the dispositional orders. Concerning the children's desire to reunify with Jose (§ 361.5, subd. (i)(6); see *In re B.T.* (2011) 193 Cal.App.4th 685, 695-696 [parent's misconduct with unrelated child does not necessarily undermine a biological child's interest in protecting parent-child relationship]), reports prepared for the jurisdiction and disposition hearing suggested F.C. and Israel C. enjoyed weekly visits with Jose in jail. Jose also cites a report prepared during trial that was not admitted into evidence (see *In re Zeth S.* (2003) 31 Cal.4th 396, 405 [error to look at postjudgment evidence outside record on appeal and never considered by juvenile court to reverse the juvenile court's judgment]) stating the foster parents reported F.C. was upset after visits with mother and did not want to return to her care and would like to go home with father when he got out of jail. It is highly unlikely cross-examination of Brown concerning the children's views and relationship with Jose would have affected Brown's recommendation, or the court's finding reunification services would not benefit the children, given the court's findings Jose sexually abused Y.L. over a five-year period.

III

DISPOSITION

The judgment is affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.