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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re G.S., a Person Coming
Under the Juvenile Court Law.

B286651
(Los Angeles County
Super. Ct. No. CK93362)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.G. et al.,

Defendants and
Appellants.

APPEALS from an order of the Superior Court of Los
Angeles County, Thomas E. Grodin, Juvenile Court Referee.
Dismissed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant Y.G.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant Omar S.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Y.G. (Mother) and Omar S. (Father) appeal from the juvenile court's jurisdictional findings that Father had sexually abused their nine-year-old daughter G.S. in 2012, and Mother failed to protect G.S. by allowing Father to reside in the home in violation of a juvenile court custody order, which permitted only monitored visits for Father. The parents contend the evidence is insufficient to support the jurisdictional findings under Welfare and Institutions Code section 300, subdivisions (b)(1) and (d).¹ Mother also asserts the juvenile court abused its discretion by ordering her to attend sexual abuse awareness counseling for a second time.

While the appeals were pending, on August 1, 2018 the juvenile court terminated jurisdiction and entered a custody order granting joint legal custody to Mother and Father, physical custody to Mother, and monitored visits for Father—the same custody terms in place prior to the filing of the dependency petition. Because we cannot grant Mother and Father effective relief, we dismiss the appeals as moot.

¹ Unless otherwise specified, all statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Prior Dependency Case*

On July 19, 2012 the juvenile court declared G.S. a dependent of the court under section 300, subdivision (d). The court sustained the allegations in the petition that on April 30, 2012 Father sexually abused then-four-year-old G.S. when he digitally penetrated her vagina and caused a vaginal tear. On June 10, 2013 Mother completed sexual abuse awareness counseling in compliance with the dispositional order. On July 18, 2013 the juvenile court terminated jurisdiction and entered “a Family Law Order granting joint legal custody to the parents, sole physical custody to the mother/primary residence with the mother, and monitored day visits for the father.”

B. *The Section 300 Petition*

On May 11, 2017 the Los Angeles Department of Children and Family Services (the Department) filed a petition under section 300, subdivisions (b)(1) and (d). The petition alleged Father had sexually abused G.S. in 2012, and Mother failed to protect G.S. by permitting Father to reside in the home with unlimited access to the child in violation of the prior juvenile custody order, which allowed only monitored visits. The petition alleged Father’s sexual abuse of G.S. and Mother’s failure to protect placed the child at substantial risk of physical harm and future sexual abuse.

C. *The Jurisdiction and Disposition Hearing*

The juvenile court sustained the allegations in the petition as to Mother and Father pursuant to section 300, subdivisions (b)(1) and (d). The court ordered G.S. to remain in Mother's home, with monitored visits for Father. Mother could not be the monitor. The court also ordered Mother to participate in sexual abuse awareness counseling and Father to participate in sexual abuse counseling for perpetrators.

Mother filed her notice of appeal on September 1, 2017. Father filed his notice of appeal on September 28, 2017.

D. *Termination of Jurisdiction*

While the appeal was pending, the Department filed a July 20, 2018 status review report, showing that Mother had completed 18 sexual abuse awareness group sessions and was compliant with her case plan.² On July 27, 2018 the juvenile

² We augment the record on our own motion to include the July 20, 2018 status review report, the July 27, 2018 order, and the August 1, 2018 juvenile custody order. (Cal. Rules of Court, rule 8.155(a)(1)(A).) Consideration of postjudgment evidence is appropriate when the later orders are relevant to a motion to dismiss an appeal or to determine whether the evidence renders the appeal moot. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676 ["appellate courts routinely consider limited postjudgment evidence" for motions to dismiss]; *In re N.S.* (2016) 245 Cal.App.4th 53, 58 [appellate court may consider postappeal rulings that affect its ability to grant effective relief]; *In re A.S.* (2012) 205 Cal.App.4th 1332, 1339 [postjudgment evidence may be considered to determine mootness].) However, we deny the Department's request for judicial notice of the January 31, 2018 last minute information for the court, January 31, 2018 minute order, March 22, 2018 last minute information for the court, and

court terminated jurisdiction over G.S., but stayed the order pending receipt of the juvenile custody order. On August 1, 2018 the court entered a custody order granting joint legal custody to Mother and Father, sole physical custody to Mother, and monitored visits for Father. Mother could not serve as the monitor for visitation.³

DISCUSSION

A. *An Appeal Is Rendered Moot If the Appellate Court Cannot Provide Effective Relief*

We have a duty to decide actual controversies, and not to give opinions upon moot questions. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *In re David B.* (2017) 12 Cal.App.5th 633, 644.) A dependency appeal ““becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.”” (*In re J.P.* (2017) 14 Cal.App.5th 616, 623; accord, *In re David B.*, at p. 644 [appeal moot where minor was over 18 at time of appeal]; *In re N.S.*, *supra*, 245 Cal.App.4th at p. 60 [mother’s appeal moot where juvenile court awarded her custody of minor and dismissed

March 22, 2018 minute order. “[A]n appellate court should not consider postjudgment evidence going to the merits of an appeal and introduced for the purposes of attacking the trial court’s judgment.” (*In re Josiah Z.*, at pp. 1138-1139]; accord, *In re Zeth S.* (2003) 31 Cal.4th 396, 413; *In re N.S.*, at p. 58.)

³ On August 21, 2018 we invited the parties to submit letter briefs to address whether the appeals should be dismissed as moot. Mother and the Department filed supplemental briefs.

dependency proceedings].) Although an order terminating court jurisdiction generally renders moot the appeal from a previous order, dismissal for mootness is considered on a case-by-case basis. (*In re J.P.*, at p. 623; *In re M.C.* (2011) 199 Cal.App.4th 784, 802.)

Termination of jurisdiction will not render an appeal moot where erroneous jurisdictional findings “could have severe and unfair consequences to [a parent] in future family law or dependency proceedings.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 [father’s appeal not rendered moot by termination of jurisdiction where juvenile court placed children with mother]; accord, *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547-1548 [father’s appeal not rendered moot by termination of jurisdiction where juvenile court awarded sole physical and legal custody to mother and restricted father’s visitation]; see also *In re J.P.*, *supra*, 14 Cal.App.5th at p. 623 [father’s appeal not moot where he lost legal and physical custody of his children with only monitored visitation].)

B. *Mother’s and Father’s Appeals Are Moot*

Mother concedes her appeal from the dispositional order is moot because she has completed her sexual abuse awareness counseling sessions. However, she contends her appeal from the jurisdictional findings is not moot because she is impacted by the August 1, 2018 custody order. We disagree.

Mother and Father have the same custody order in place as they did before the petition was filed, with joint legal custody to Mother and Father, sole physical custody to Mother, and monitored visits for Father. This procedural posture is similar to *In re N.S.*, in which the court concluded the mother’s appeal was

moot because she was awarded custody of her child and “the jurisdictional findings were not the basis of any current order that [was] adverse to her.” (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 60.) By contrast, in *In re J.P.*, *supra*, 14 Cal.App.5th at page 623, *In re Daisy H.*, *supra*, 192 Cal.App.4th at page 716, and *In re Joshua C.*, *supra*, 24 Cal.App.4th at pages 1547 to 1548, the appeals were not rendered moot because the parents lost custody of their children as a result of the jurisdictional findings and subsequent proceedings.

Mother and Father challenge the jurisdictional findings under section 300, subdivisions (b)(1) and (d), that Father sexually abused G.S. in 2012, and Mother failed to protect G.S. by allowing Father to reside in the home in violation of the juvenile court’s custody order, which provided for only monitored visits. However, relitigation of the jurisdictional finding in the prior dependency case that Father sexually abused G.S. is barred by the doctrine of res judicata. (*In re Andrews L.* (2011) 192 Cal.App.4th 683, 690 [“Relitigation [of section 300 jurisdictional findings] is barred by the doctrine of res judicata.”]; *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1156 [““An appeal from the most recent order entered in a dependency matter may not challenge prior orders, for which the statutory time for filing an appeal has passed.””].)

Neither can we grant effective relief from the juvenile court’s finding that Mother and Father violated the previous juvenile court custody order—it is undisputed that Father lived with Mother and G.S. at the time the petition was filed, notwithstanding the July 2013 custody order that allowed only monitored visitation for Father. The only dispute is whether Mother knew about the prior juvenile court custody order when

she allowed Father to move back into the family home. Regardless of whether we reach the merits, “those facts would almost certainly be available in any future dependency proceedings,” including that Mother’s lawyer prepared the final custody order. (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 62.) Neither Mother nor Father explains how the jurisdictional findings “could have severe and unfair consequences to [them] in future family law or dependency proceedings.” (*In re Daisy H.*, *supra*, 192 Cal.App.4th at p. 716; see *In re N.S.*, at p. 62 [“We see no reason to review the juvenile court’s jurisdictional findings here on the basis of such speculation or caution.”]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1494-1495 [“Father . . . fails to suggest any way in which this [jurisdictional] finding actually could affect a future dependency or family law proceeding, and we fail to find one on our own.”].)

We conclude the appeals are moot.

DISPOSITION

The appeals are dismissed.

FEUER, J.

We concur:

ZELON, Acting P. J.

SEGAL, J.