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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ANGEL V., a Person
Coming Under the Juvenile
Court Law.

B287144
(Los Angeles County
Super. Ct. No. DK24369)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Appellant,

v.

PEDRO R.,

Defendant and Respondent.

APPEAL from an order of the Superior Court of Los
Angeles County, Philip L. Soto, Judge. Affirmed.

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

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Respondent.

INTRODUCTION

Pedro R., father of 18-month-old Angel V., sexually molested Angel's 13-year-old stepsister, Y.O., while the mother of Y.O. and Angel was dying in the hospital. The Los Angeles County Department of Children and Family Services (DCFS) brought a dependency action on behalf of Angel concerning that conduct, as well as other violent conduct.¹ The juvenile court dismissed all counts concerning father's sexual abuse of Y.O. and sustained one count concerning father's violent conduct. DCFS appeals from the dismissal of the sexual abuse counts and the grant of family reunification services. We find the challenge to the dismissal of the sexual abuse counts non-justiciable and therefore affirm.

¹ The Welfare and Institutions Code section 300 petition alleged sexual abuse as the basis for counts under subdivisions (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling) and risk of serious physical harm as the basis for counts under subdivisions (a) (serious physical harm) and (b) (failure to protect). All further statutory citations are to the Welfare and Institutions Code.

BACKGROUND

I. The Detention Report

On August 7, 2017, DCFS received a referral reporting emotional abuse by father. Nancy V., mother, had a brain tumor and had passed away at a convalescent home on August 3, 2017. Before mother's death, Rafael B., father of Angel's stepsiblings Y.O., Glen O., and Ethan O., took his children to see mother and "say their goodbyes."² Father would not permit them to enter and an altercation ensued in which father assaulted Rafael and T.L., the maternal grandmother. Father was arrested.

The reporting party stated that Y.O. had been "extremely emotional" and had recently disclosed that father had "touched her." When asked to elaborate, Y.O. cried and was unable to speak.

On August 7, 2017, Rafael contacted law enforcement and reported that Y.O. had disclosed that she and father had sex approximately 10 times. Father's sexual relationship with Y.O. began in June 2017. Y.O. denied father used force and said she liked the sexual relationship with him.

On August 9, 2017, a social worker spoke with Rafael. He said that he and mother had joint custody of Y.O., Glen, and Ethan and that the children had remained in mother's home under father's supervision while mother was in the hospital. Father limited Rafael's access to the children. When mother's health worsened, Rafael requested the family court place the children in his care. The family court denied the request and, thereafter, father denied Rafael access to the children. A few

² Angel had another stepsibling, Susan F., who lived with her father, Edgar F. She apparently was not present.

days before mother died, Rafael requested and obtained the assistance of law enforcement in removing his children from father's care.

According to Rafael, after mother died, he took their children to the hospital to see mother one last time. Father attempted to restrict their access to mother's room and instructed them to leave. Rafael asked father to move out of his way so he and the children could see mother. Father became extremely upset and punched Rafael several times and pushed him against a wall. Rafael did not hit father back. Law enforcement arrived and arrested father. Y.O., Glen, and Ethan were present during the altercation.

The social worker asked Rafael about the sexual abuse allegations involving Y.O. Rafael said that he had a "feeling" father was sexually abusing Y.O. and had asked Y.O. if anyone had touched her inappropriately. Y.O. responded, "[A]re you asking me if I am still a virgin? Why do you want to know? Is someone going to get in trouble[?]" Rafael told Y.O. that everything would be okay and that no one would get in trouble. Rafael again asked Y.O. if anyone had touched her inappropriately, and she responded, "[Y]es you already know who did [i]t." Y.O. said that she and father had sex on multiple occasions and that it was "consensual." Y.O. stated that she loved father. Rafael immediately called law enforcement.

On August 9, 2017, the social worker spoke with Y.O. privately. Y.O. stated she wanted to live with father because she could "trust him." If that was not possible, Y.O. indicated she wanted to live with her aunt. The social worker asked Y.O. if she had ever been touched inappropriately. Y.O. responded that she had had consensual sex with father on multiple occasions while

mother was in the hospital. Y.O. said that she and father had sex at night while her siblings were asleep and there was penetration. Y.O. stated that her siblings never witnessed her having sex with father and that she never witnessed father inappropriately touching her siblings.

Over the next two days, the social worker spoke with Glen, Ethan, and Susan individually. All denied father had touched them inappropriately. Glen had never seen father touch Y.O. inappropriately. Ethan had not seen father touch any of his siblings. Susan had not seen father touch any of her siblings inappropriately or sleep with Y.O.

On August 10, 2017, the social worker met with father. He told the social worker that he cared for the children while mother was hospitalized. Father stated that he had earned Y.O.'s trust. The social worker asked father if anyone had ever accused him of sexually abusing any of the children. Father's demeanor changed. He appeared to be nervous and uncomfortable and did not make eye contact. He said that maternal grandmother spread rumors that he had molested "the girls." He stated that there was no sexual abuse in the family and offered maternal grandmother's failure to call the police as evidence that her allegations were false.

The social worker received a copy of the police report concerning father's alleged sexual abuse of Y.O. Y.O. told a detective she first had sexual intercourse with father in June. According to Y.O.'s account in the report, Y.O. and father were sleeping on a couch in the living room. She remembered that father was on top of her and that they were having sex. While they were having sex, father asked if she was sure she wanted have sex with him. They had sex again the next night and about

eight additional times thereafter. The detective asked Y.O. if she knew what had happened to her was wrong. She rolled her eyes and said, “I guess.” Y.O. said that father never forced her and the sex was always consensual.

II. The Section 300 Petition

The a-1 and b-2 counts alleged: “On or about 08/03/2017, the child, Angel [V.]’s father, Pedro [R.] engaged in a violent altercation with unrelated male, Rafael [B.] and the maternal grandmother, [T.L.] The father struck the unrelated male and pushed the unrelated male against the wall. Additionally, the father pushed the maternal grandmother against the wall. Such violent conduct on the part of the child’s father endangers the child’s physical and emotional health and safety and places the child at risk of serious physical harm, damage, and danger.”

The b-1, d-1, and j-1 counts alleged: “In June 2017, and numerous prior occasions, the child, Angel [V.]’s father, Pedro [R.], sexually abused the child’s sibling, [Y.O.] [age 13] in that the father raped the child’s sibling by placing the father’s penis in the child’s sibling’s vagina. Such sexual abuse of the child’s sibling by the father endanger[s] the child’s physical health and safety and place[s] the child at risk of serious physical and emotional harm, damage, danger, sexual abuse and failure to protect.”

III. The Jurisdiction/Disposition Report and Hearing

A DCFS investigator spoke with a detective about criminal sexual abuse charges against father. The detective reported that the District Attorney’s office “dismissed” the case because it did not want to put Y.O. through the emotional turmoil of the criminal court process. Also, Y.O. reportedly cared very deeply

for father, causing her to be secretive and hide details about their sexual encounters. Accordingly, she would not have made a good witness.

DCFS recommended that the juvenile court declare Angel a dependent of the court. It further recommended that the juvenile court deny father reunification services pursuant to section 361.5, subdivision (b)(6) due to his severe sexual abuse of Y.O.

At the jurisdiction/disposition hearing, DCFS's attorney asked the juvenile court to sustain the sexual abuse counts. He argued that father's conduct was so sexually abhorrent that it placed Angel at risk even though Angel did not witness the abuse. The DCFS attorney asked the juvenile court to deny father reunification services pursuant to section 361.5, subdivision (b)(6) because father's sexual abuse was severe.

The juvenile court noted the other children in the household denied father had sexually molested them and asked DCFS's attorney if he was arguing that a seven-month-old baby boy was at risk because father was having sex with his 13-year-old stepdaughter. The DCFS attorney responded that father's sexual abuse of Y.O. was so sexually aberrant and shocking that it fell within subdivision (d).

The juvenile court found that father had sexually abused Y.O., stating, "Well, I don't doubt that he had sex with the 13-year-old. The question is, though, the other three say he's never done anything to them."

The juvenile court then had the following discussion with Angel's attorney:

"The Court: Anything that you want to add about the risk to your client of sex abuse by somebody who is having—and I will clear this up right now: A 13-year-old cannot consent to sex. But

she was not an unwilling participant. Even though she wasn't legally able to consent, she wasn't an unwilling participant to the sex. And then she's not turning out to be a very good witness in regards to the criminal case, because she doesn't want to see this man—she doesn't want to see this man prosecuted for whatever reasons.

“[Angel's attorney]: It's a very disturbing situation. While her mother was dying in the hospital, she was having consensual sex with her stepfather. She appears to be in love with him. So it was apparently consensual although, of course, a child of her age cannot consent. And I don't know if this child, Angel, would be at risk of sexual abuse. But his father's actions are just so abhorrent. And I just—as far as the sexual abuse and what happened at the hospital, I just think his actions are also unpredictable, and I just don't know what he's capable of. So I'm submitting on [DCFS's] recommendations.”

Father's attorney first argued DCFS had not proved by a preponderance of the evidence that father sexually abused Y.O. The juvenile court responded, “Oh, believe me, I believe it occurred. The issue is whether or not the baby is at risk.”

Father's attorney then argued that Angel was not at risk and that father “was clearly an appropriate and responsible father” because seven-year-old Ethan referred to father as “dad” and said that father took care of him and his siblings, cooked for them, cleaned the home, took them to the park, and played video games with them. Also, father's attorney added, Y.O. was not father's biological daughter, Angel was not close to the age at which father sexually abused Y.O., and there was no evidence of incest, force, or same gender sexual abuse.

Father's attorney thus argued the juvenile court should dismiss the petition in its entirety and return Angel to father's custody. Alternatively, father's attorney argued that father should be granted reunification services, noting there were no criminal charges filed and claiming "this is a misplaced use of the severe sexual abuse bypass."

Concerning father's sexual abuse of Y.O., the juvenile court said, "I believe the 13-year-old when she says she willingly had sex with him. I have to wonder what's going through her mind that she's so stressed and upset by losing the mother that she feels that she has to gain some kind of acceptance by having sex with the stepfather. [¶] Clearly, [Y.O.] has serious issues that will need a long time in therapy to address. And father, going forward with that, his conduct is so despicable. To be having sex with the 13-year-old stepdaughter while your wife, her mother, is dying in the hospital from a brain tumor, is just beyond the pale. But is it so aberrant that we are going to say that he's a risk to all of the other children?"

The juvenile court noted that Glen, Ethan, and Susan denied any sexual abuse by father. The court then stated, "But to just say automatically because he had sex with the 13-year-old stepdaughter that he's a sexual risk as a predator of a seven-month-old male child, I think without more I'd have to say, 'No, not at this time.'"

The juvenile court stated that, although what father had done to 13-year-old Y.O. was not right and a 13-year-old was too young to consent to sex, Y.O. was a "willing victim," which made the case different from those in which the victim was unwilling. The juvenile court found that father "certainly need[ed] some type of training" which could only be provided if the juvenile

court had jurisdiction over him. Nevertheless, the juvenile court concluded that the b-1, d-1, and j-1 counts concerning risk of harm to Angel due to sexual abuse of Y.O. could not be sustained.

With respect to the counts concerning father's violent conduct, the juvenile court dismissed the a-1 count because Angel was not present at the hospital when father assaulted Rafael. The court, however, sustained the b-2 count based on the same conduct.

Accordingly, the juvenile court removed Angel from father's custody. It granted father monitored visits and ordered him to participate in parenting and anger management classes, as well as individual sexual abuse counseling for perpetrators to address issues including adult responsibility, behavior control, avoiding violations of trust, and appropriate sexual boundaries.

DISCUSSION

DCFS appeals solely from the juvenile court's dismissal of the b-1, d-1, and j-1 counts asserting jurisdiction over Angel based on father's alleged sexual abuse of Y.O. But, the juvenile court *did* assume jurisdiction over Angel on dependency grounds other than the sexual abuse, namely father's violent altercation with another man and the maternal grandmother in the presence of several minor children, as alleged in the b-2 count. (§ 300, subd. (b)(1).) Having found jurisdiction, the juvenile court entered a disposition order removing Angel from father's custody, granting only monitored visitation, and ordering reunification services, including sexual abuse counseling for perpetrators.

Our Supreme Court has explained that “[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a

reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) In other words, when jurisdiction over a dependent child would exist regardless of our disposition of an appeal from only some but not all of the found bases for jurisdiction, the appeal is often not justiciable. (See, e.g., *In re Briana V.* (2015) 236 Cal.App.4th 297, 308, 310-311; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492; see also *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address challenge to remaining allegation after finding one allegation for jurisdiction was supported].)

Here, no one contests the propriety of the section 300, subdivision (b)(1) jurisdiction finding the juvenile court made based on father’s violent altercation alleged in the b-2 count. Thus, even proceeding on the understanding that the juvenile court wrongly dismissed the counts alleging sexual abuse, the appeal of the dismissal of those counts would be non-justiciable—but, perhaps, for one feature of the Welfare and Institutions Code.

Section 361.5, subdivision (b) provides in relevant part as follows: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (6)(A) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse . . . 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.” The immediately following subdivision in the same statute further provides that a juvenile court “shall not order reunification for a parent or guardian described in paragraph . . . (6) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” (§ 361.5, subd. (c)(2).)

Under these statutory provisions, the Department would argue, the appeal of the dismissed counts alleging sexual abuse is justiciable because the juvenile court would have been required to forego ordering reunification services for father entirely unless it found by clear and convincing evidence that ordering such services was in Angel’s best interest. But on this record, we find the juvenile court undoubtedly would have made that finding. Notably, the juvenile court dismissed the sexual abuse allegations entirely and yet decided to order sexual abuse counseling for perpetrators as part of its disposition order, indicating the juvenile court believed such tailored reunification services would not have been “fruitless.” (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.) Indeed, the juvenile court specifically noted that father “certainly need[ed] some type of training,” suggesting the various reunification services it ordered were in the best interests of Angel.

Thus, the dispositive question here is whether we would reverse an order granting reunification services—even assuming sustained sexual abuse findings—for lack of substantial evidence. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880 [reviewing for substantial evidence the juvenile court’s

determination by clear and convincing evidence that reunification services were not in child's best interests under section 361.5, subdivision (b)(2)]; see also *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 196 ["We review an order denying reunification services by determining if substantial evidence supports it"].)³ We would not. Although the juvenile court rightly observed that father's sexual abuse of Y.O. was "despicable" and "beyond the pale," there is also a basis in the record to support a finding that reunification services would nonetheless be in Angel's interests. As father's attorney pointed out at the dispositional hearing, father had provided care for the children (including cooking, cleaning, taking them to the park, playing video games together), and there was no evidence of force with respect to Y.O. or sexual abuse of any of the other children.

Moreover, we note that the juvenile court ordered reunification services only after removing Angel from father's custody, and the court permitted only monitored visitation with the child in the interim. Juvenile court jurisdiction over the child, combined with the watchful eyes of DCFS personnel, will reveal whether father is fit to parent his infant son Angel, notwithstanding the harm he caused to the teenage girl who was effectively his stepdaughter. Should father's demonstrated performance with court-ordered services fall short in any

³ While the courts have treated our review as one for substantial evidence, some courts have, at the same time, reviewed whether the grant or denial of reunification services constituted a clear abuse of discretion. (See, e.g., *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) Under either standard, we would not disturb the juvenile court's dispositional order here.

manner, the juvenile court would be well within its right to terminate services at that time.

Accordingly, because we find DCFS's appeal non-justiciable, we hold the challenged juvenile court orders must stand.

DISPOSITION

The order dismissing the b-1, d-1, and j-1 counts is affirmed.

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KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.