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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CASSANDRA H.,

a Person Coming Under the Juvenile Court Law.

B232973
(Los Angeles County
Super. Ct. No. CK62947)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSIE H., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court for Los Angeles County,
Timothy R. Saito, Judge. Reversed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant
and Appellant David H.

Nancy Rabin Brucker, under appointment by the Court of Appeal, for
Defendant and Appellant Josie H.

Amir Pichavai for Plaintiff and Respondent.

David H. (father) and Josie H. (mother) (collectively, the parents) appeal from an order of the juvenile court declaring their daughter, Cassandra, a dependent child of the court under Welfare and Institutions Code¹ section 300, subdivision (b). The parents contend there is insufficient evidence to support the juvenile court's jurisdictional finding because there was no evidence at the time of the hearing that the parents could not adequately supervise and protect Cassandra.² The Los Angeles County Department of Children and Family Services (DCFS) defends the jurisdictional finding, but also moves to dismiss the parents' appeal on the ground that it is moot because the juvenile court has terminated jurisdiction. We conclude that the appeal is not moot, and that there was insufficient evidence to support the jurisdictional finding. Accordingly, we reverse the order declaring Cassandra a dependent child of the court.

BACKGROUND

Cassandra and her two younger siblings were first declared dependent children of the court in 2006 when the juvenile court sustained a petition alleging that mother struck Cassandra's back and body with her hand and pulled Cassandra's hair (§ 300, subd. (b)) and emotionally abused the children by yelling and cursing at them and blaming Cassandra for all of the family's problems (§ 300, subd. (c)). The family received family reunification services for a month, and family maintenance services for a year. The case was closed on May 14, 2007, after mother completed her court-ordered anger management classes, parenting education, and individual counseling, and mother and father attended court-ordered

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² Although mother and father filed separate notices of appeal, mother joined in father's opening brief on appeal.

conjoint counseling. During the year of family maintenance services, Cassandra was hospitalized for the first time after she threatened to kill her family, neighbors, and herself. She was nine years old.

Two years later, in September 2009, the parents called the police after Cassandra hit her sister (who was seven) in the face. She spent a week at juvenile hall. While there, she told an employee of the Department of Mental Health that she suffered physical and emotional abuse by mother. That employee reported Cassandra's allegations to DCFS, which conducted an investigation and determined the allegations were unfounded. DCFS noted that Cassandra was seeing a therapist twice a week, and that "[t]he parents are proactive in getting the necessary help for the child." A voluntary family maintenance case was opened, and remained open as to Cassandra through the filing of the petition at issue in this appeal.

Cassandra was hospitalized again in April 2010 after she attacked her mother. The parents once again called the police, who took her to Harbor UCLA; she was transferred to Del Amo Hospital and placed on a 72-hour hold. At that time, it was recommended that Cassandra go on medication, but the parents declined because they were concerned about possible side effects and the lack of research on how the medication affected developing brains.³

After Cassandra was released from the hospital, the parents voluntarily agreed to have her placed in a foster home. In July 2010, while she was living in the foster home, Cassandra was once again placed on a 72-hour hold at a psychiatric hospital, after which she returned to the foster home. Cassandra was returned to the parents' home a month later so she could begin eighth grade at her

³ Cassandra eventually started taking medication just before she turned 14, in February 2011.

original school. Two months later, in October 2010, Cassandra was hospitalized again after she threatened to jump from a second story window. The psychiatrist who examined her did not believe her threat was credible, and believed it was a manipulative act. She was released the following day. By January 2011, Cassandra began to refuse to meet with her therapist and was acting defiantly when asked to follow directions or complete household tasks and chores. Despite the parents' efforts, she also refused to attend school. The parents told the DCFS social worker that Cassandra was out of control and not disciplinable; father said, "Whatever we're doing, it's not working."

DCFS conducted a safety assessment and held a team decision-making meeting in February 2011. According to DCFS, the parents agreed at the meeting that it would be in Cassandra's best interest to be detained from their home and placed in a residential facility.⁴ DCFS filed a petition under section 300, subdivision (b), alleging (as amended) that Cassandra exhibited aggressive, threatening, and assaultive behavior resulting in three psychiatric hospitalizations and injuries to mother, and that the parents "have a limited ability to adequately supervise and protect the child, which places the child at risk of physical and emotional harm."

At the detention hearing on February 23, 2011, the parents asked that Cassandra be released to them, saying that they have medical insurance and are able to handle Cassandra's condition without DCFS supervision. The juvenile court found that Cassandra was a child described under section 300, but, over DCFS's objection, ordered that she be placed with the parents under the condition that she continue her therapy and keep taking her prescribed medication.

⁴ The parents contend they did not want Cassandra to be detained, but DCFS told them that if they did not agree, DCFS would open up a case and detain all of their children.

Cassandra was hospitalized three more times in March 2011. On March 5, Cassandra got upset with her sister and started to yell at her. Mother asked Cassandra to take a ride with her, to try to calm her down. When they got home Cassandra was still upset and began acting depressed. The parents tried to contact the “PET team” to get her assessed, but could not reach them, so they watched her to make sure she did not leave the house. After a while, Cassandra told them she was feeling better and was not going to try to leave, so the parents relaxed their vigil, at which point Cassandra ran out the door. Mother tried to catch her, but when she lost sight of Cassandra, she called 911. The police found her and took her to Del Amo Hospital to be assessed; she was placed on a section 5150 hold.

Cassandra was hospitalized for the second time in March after she physically assaulted mother on March 21. Mother immediately called the Psychiatric Mobile Response Team (PMRT), and was told to contact the police. Cassandra calmed down when the police arrived, but when the PMRT arrived, she got angry again and would not respond. The “PET team” advised mother to call the police again; the police then assisted the “PET team” in taking Cassandra to Del Amo Hospital.

When Cassandra returned home from Del Amo Hospital on March 29, mother told her to get ready for bed because she had to go to school the next day. Cassandra became irate and said she would rather be dead than go to school. When she later told mother she had taken seven to nine Tylenol pills and wanted to end her life, she was rushed to the hospital, where it was determined she had taken only two or three pills.

By April 29, 2011, when DCFS filed a last minute information for the court in anticipation of the jurisdiction/disposition hearing on May 2, the parents had requested an assessment for an Individualized Education Plan (IEP). The assessment was scheduled for May 24, 2011, but it was unclear whether Cassandra could be adequately assessed due to her resistance and refusal to participate in

most of her treatment. An IEP is necessary for Cassandra to receive school based services such as AB3632.⁵

At the jurisdiction/disposition hearing, the attorneys for mother and father asked that the petition be dismissed. They argued that the case was not filed because of anything that the parents had done to Cassandra, but rather because she has special needs for which the parents need assistance. But they contended that the parents need services from the Department of Mental Health, not DCFS. The court denied the parents' request and sustained the petition as amended and declared Cassandra a dependent child of the court under section 300. Mother and father each filed timely notices of appeal from the jurisdictional order.

DISCUSSION

A. *Motion to Dismiss Appeal*

On January 31, 2012, after briefing was completed, DCFS moved to dismiss the parents' appeal on mootness grounds. Accompanying the motion was an application to take additional evidence, consisting of a minute order from the juvenile court terminating its jurisdiction and a status review report filed in the juvenile court by DCFS on January 26, 2012. We grant the application but deny the motion.

⁵ "AB3632" refers to Assembly Bill No. 3632, which enacted what is now chapter 26.5 of division 7 of title I of the Government Code, section 7570 et seq., entitled "Interagency Responsibilities for Providing Services to Children with Disabilities." (*Grossmont Union High School Dist. v. State Dept. of Education* (2008) 169 Cal.App.4th 869, 880.) Under AB3632, "[s]pecial education pupils who require mental health services in any of the 13 disability categories may receive services from county mental health programs. To be eligible to receive services, they must have a current individualized education plan (IEP) on file." (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1273, fn. 2, quoting the California State Department of Mental Health's Web site.)

1. *Factual Background for Motion*

In the status review report, DCFS reported that Cassandra was hospitalized twice more after the jurisdiction/disposition hearing, on June 6, 2011 and July 5, 2011. She began the ninth grade at Malaga Cove Academy, a special education school run by the Los Angeles County Office of Education for children who have difficulty accessing their education because of emotional problems. In early October, a meeting was held at Malaga Cove with the Department of Mental Health. The Department of Mental Health presented a report stating that Cassandra was found to be eligible for mental health services and that her evaluation indicated that she was in need of residential treatment. The parents requested that she be placed in a residential facility, and the Department of Mental Health arranged for her to be placed in a residential program in Colorado. She was placed in the program on December 7, 2011, with an expected program completion date in June 2012.

In mid-January 2012, the DCFS social worker spoke to mother, who reported that Cassandra was doing well in the residential program. Mother also told the social worker that when Cassandra returns home after completing the program, the parents would work with the school district and the Department of Mental Health to make sure Cassandra got the support she needed.

Based upon its assessment of future risk, DCFS determined there was no need to continue services to the family and recommended to the juvenile court that it terminate jurisdiction. The juvenile court entered a minute order on January 26, 2012 finding that jurisdiction was no longer necessary and terminating jurisdiction.

2. *Motion*

DCFS argues that mother's and father's appeals should be dismissed because the juvenile court has terminated jurisdiction and Cassandra is receiving

the treatment needed to obviate any risk of harm to her, and therefore any reversal of the jurisdictional order would be academic and without practical effect. The parents oppose the motion to dismiss, arguing that a dependency appeal ordinarily will not be dismissed as moot when the asserted error undermines the juvenile court's jurisdictional findings. (Citing *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547.) They also contend that reversal of the jurisdictional order would have a practical effect, because it would result in the striking of an order that could be used against the parents in any future dependency case involving their children. There is merit in the parents' argument.

While DCFS is correct that "[w]hen no effective relief can be granted, an appeal is moot and will be dismissed" (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315), in this case reversal of the jurisdictional order would provide effective relief. As the parents note, the fact that a dependency petition was sustained against the parents, even though dependency jurisdiction subsequently was terminated, could prejudice the parents in the future if any issue arose concerning their care of any of their children. If there was insufficient evidence to support the jurisdictional order, reversal of the order would eliminate that prejudice and remove the sword of Damocles hanging over them. Therefore, the parents' appeal is not moot. (*In re Joshua C.*, *supra*, 24 Cal.App.4th at p. 1547.)

B. *Sufficiency of the Evidence to Support Jurisdiction*

The parents contend the jurisdictional order must be reversed because there was no evidence that, at the time of the jurisdiction/disposition hearing, the parents were unfit or neglectful or that dependency jurisdiction was necessary to protect Cassandra from the risk of serious physical harm or illness. We agree.

Section 300, subdivision (b) provides in relevant part that a child is within the jurisdiction of the juvenile court and may be declared a dependent child of the

court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” (§ 300, subd. (b).) To declare a child a dependent child of the court under this subdivision, the evidence must establish three elements: ““(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.]’ [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135; accord, *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1259.) “The third element ‘effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]’ [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 829.) We review the juvenile court’s jurisdictional findings for sufficiency of the evidence. (*Id.* at p. 828.)

In the present case, there was evidence the parents may have been slow to appreciate the extent of Cassandra’s mental health issues and her need for medication and/or significant professional assistance to overcome those issues. But even so, the evidence shows that the parents did what was necessary to protect Cassandra and her siblings from physical harm by calling the police and/or the PMRT when they were unable to control Cassandra, or having her hospitalized when she threatened to kill herself. Thus, there is some doubt that the parents’ conduct in not seeking more substantial psychological treatment (including medication) constituted neglect that caused a risk of harm to Cassandra. (See *In re Precious D.*, *supra*, 189 Cal.App.4th at p. 1254 [“parental unfitness or neglectful

conduct must be shown in order to assert dependency court jurisdiction under that part of section 300(b) providing for jurisdiction based on the parent's 'inability . . . to adequately supervise or protect the child'"].)

Even if that conduct were sufficient to support a finding of neglect, however, the evidence shows that by the time of the jurisdiction/disposition hearing, the parents had accepted that Cassandra needed medication to control her behavior and had started the process to obtain AB3632 services for her from the Department of Mental Health so she could receive more effective long-term treatment. Although there might have been some concern on the part of the juvenile court about Cassandra's lack of progress in her treatment up to that point, that lack of progress was due to Cassandra's refusal to attend school or go to therapy, not the parents' unfitness or neglect. In short, because there was no evidence that at the time of the jurisdiction hearing there was a substantial risk of serious harm to Cassandra caused by the parents' unfitness or neglect, the juvenile court's jurisdictional order must be reversed.

DISPOSITION

The order declaring Cassandra a dependent child of the court is reversed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.