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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.W.,

Defendant and Appellant.

B277794
(Los Angeles County
Super. Ct. No. CK78078)

APPEAL from an order of the Superior Court of Los
Angeles County, Robert S. Draper, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals from the juvenile court's jurisdictional and dispositional orders declaring S.S. a dependent child, removing S.S. from mother, and placing S.S. with father. We affirm.

BACKGROUND

Petition June 27, 2016

The Los Angeles County Department of Children and Family Services (DCFS) alleged under Welfare and Institutions Code section 300, subdivision (a)¹ that mother exposed then eight-year-old S.S. to a detrimental home environment, in which mother and S.S.'s maternal grandfather (MGF) engaged in physical altercations, including one during which MGF struck S.S.'s head. Under section 300, subdivision (b), the petition alleged that mother had failed to obtain timely, necessary medical treatment for an extended period for S.S.'s severe urinary tract infection, and also alleged that the altercations between MGF and mother endangered S.S.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

The family had numerous prior referrals involving S.S., most of which DCFS concluded were unfounded or unsubstantiated, and which appeared to be “a result of an ongoing custody issue between the mother and the father.” The juvenile court had sustained two prior dependency petitions, one in 2009 which alleged that mother had mental and emotional problems (including bipolar disorder) and failed to take her medication, which prevented her from being able to provide regular care (the court granted primary physical custody to father); and one in 2013 which alleged that mother had mental and emotional problems and that father physically abused S.S (the court granted mother and father joint physical and legal custody, with S.S. residing with father during the week). On May 16, 2016, however, a family law order awarded mother primary physical custody of S.S., with parenting time for father every other weekend.

DCFS received a referral on June 13, 2016, reporting that when S.S. arrived for a visit on June 10, she told father that for about a month, she had a brown discharge from her vagina, with burning and itching. S.S. told mother, but mother responded, “ ‘I don’t care.’ ” S.S. was diagnosed with a urinary tract infection and prescribed antibiotics, but mother refused to give father S.S.’s Medi-Cal number. Further, when father took S.S. to the dentist on June 13, she had four cavities, and she had not been to the dentist in 18 months. S.S. also said she had seen mother and MGF in physical fights, and had seen MGF hit mother in the face and bang her head against a cabinet.

Father told the social worker that S.S.'s stepmother told him she had noticed a strong smell, and when father took S.S. to the doctor the next day the doctor told him S.S. had a serious urinary tract infection that threatened to affect her kidneys. Father also took S.S. to the dentist who found four cavities which would require the removal of four teeth. S.S. also told father that she had seen many physical fights between mother and MGF and did not want to return to mother's home because there was too much fighting. S.S.'s stepmother stated that S.S. told her she had noticed the brown discharge a month ago, and S.S. had been with mother since the end of April.

S.S. told the social worker that she had told mother a month ago "her private area was burning," and mother said, "I don't care" and did not take her to the doctor. During one of the physical fights between mother and MGF, MGF accidentally hit S.S. on the head. S.S. preferred to live with father and stepmother, because she was afraid of the fighting at mother's home.

Mother denied that she and MGF had physical fights, saying she had been upset because a social worker came to the home while the power was out. S.S. had diarrhea a few days before she went to visit father. Mother asked the social worker "who was sexually abusing her daughter at the father's home," and denied that S.S. told her of any pain. Mother could not make a dental appointment for S.S. until she completed her own dental work. Mother said she had proof that father sent her abusive messages, she could not

communicate with him, and he was telling S.S. what to say. Mother became very upset and yelled so loudly that the social worker ended the interview.

MGF said if he and mother had known that S.S. had an infection, they would have taken her to the doctor right away.

S.S.'s medical and dental care was now up to date. She seemed emotionally healthy and was not afraid of anyone in mother or father's home, but she did not like the frequent fights between mother and MGF.

On June 22, DCFS had removed S.S. from mother and placed her in protective custody with father. At the detention hearing on June 27, the court detained S.S. and placed her with father, with monitored visitation for mother at least twice a week.

Jurisdiction and Disposition Report August 2, 2016

Interviewed in father's home, S.S. explained that the day MGF and mother fought, a social worker had come to the house and mother would not let S.S. talk to her. When MGF came home mother was yelling, MGF hit her, and by accident hit S.S. MGF had also "hit [mother] into the china cabinet" and another time the police came after he beat her up. She didn't want to be at mother's house because " '[t]hey didn't do anything and I got cavities,' " and her genitals started to hurt when she was staying with mother.

Father said S.S. had told him mother and MGF were fighting. MGF beat mother up in 2009 and threw mother

out after a fight in 2012, and MGF had been in jail for domestic violence. When S.S. visited she complained about itching in her vaginal area and said she told mother, who did nothing. The doctors told him the urinary tract infection was so severe it started to affect her kidneys and prescribed three antibiotics. Mother refused to provide S.S.'s Medi-Cal card, but he was able to get the card number by using S.S.'s social security number. The stepmother stated that S.S. said she had had discharge for a month, and when S.S. told mother, she didn't care.

MGF denied that he ever hit mother or S.S., and father needed “‘an ass whooping’” and a mental evaluation. A maternal cousin also denied any domestic abuse.

Mother was hard of hearing and wore hearing aids. She insisted that S.S. loved MGF. She and MGF had argued because DCFS regularly visited as a result of father's harassment, including when mother was being treated for brain cancer. S.S. never told her that anything hurt, and nothing was ever wrong with S.S.'s genitalia; that was just more of father's harassment. Mother emailed the social worker reports of harassing and abusive texts and emails from father.

As of June 30, mother had not visited S.S. because her disabilities prevented her from traveling to father's home in Hemet. DCFS set up telephonic contact; and on July 7, S.S. reported she was calling mother every day to talk for 30 minutes (father and stepmother said S.S. was reluctant to call). Mother had a monitored visit on July 11.

Jurisdiction hearing August 30, 2016

A last minute information for the court filed August 30, 2016 reported that S.S.'s maternal great aunt (MGA), who had been monitoring mother's visits, reported that S.S. told her that father had told S.S. to lie, and to tell everyone that mother knew about her infection although mother did not. The social worker who monitored mother's visits with S.S. reported that mother was appropriate during the visits.

At the hearing, the court took judicial notice of the prior sustained petition and four DCFS reports. In chambers, S.S. testified that father did not tell her to lie but to tell the truth to the court. She did not feel well when she was with mother and she "had told her that it burns," and mother "didn't care. Like it's because we were at home and [mother] was on the computer, and sometimes I don't know if she heard me right, but I think she did. I don't know. . . . [S]ometimes she has her hearing aid turned down." Shortly thereafter, she went to father's. S.S. had seen MGF and mother fight three times, with MGF slapping and socking mother. MGF was trying to hit mother and hit S.S. on the head, and he did not apologize.

MGA testified that she had monitored four or five of mother's visits with S.S. During one visit, S.S. walked away from mother, and told MGA that father told S.S. to tell everyone that she had told mother about her burning sensation, but that was not true (she had not told mother). MGA went over to mother's home about twice a week, and had never seen domestic violence between MGF and mother.

Counsel for DCFS asked the court to sustain the petition. Mother's counsel requested dismissal of the entire petition, pointing out the extensive family law issues in the case and that the allegation of medical neglect arose just after May 2016, when mother and father had reached a custody agreement (which provided that mother would have primary physical custody). Mother had strong family support, and although she may have argued with MGF, there had been no physical altercations. Mother believed S.S. was being coached by father, who had convinced S.S. to tell a made-up story. Father's counsel joined with DCFS in requesting that the court sustain the petition, and pointed out that S.S. had been with mother during the entire month of May 2016, when father would not have been able to get her medical care. S.S.'s counsel agreed with father and with DCFS. S.S.'s statements that she told mother about her discomfort and about the domestic violence between MGF and mother were consistent.

The juvenile court found that S.S. testified truthfully, and sustained the petition as alleged.

DCFS recommended that S.S. remain in father's custody and that mother receive services and monitored visitation. Father, joined by S.S.'s counsel, requested that the court terminate jurisdiction and grant him sole legal custody. Mother opposed terminating jurisdiction and the proposed custody order, requesting that the case stay open to give mother the chance to reunify.

Noting S.S.'s close relationship with mother, the court declared S.S. a dependent, removed her from mother's physical custody and placed her with father. The court ordered mother to participate in parenting classes, anger management and individual counseling to address domestic violence and child neglect, and ordered monitored visits.

Mother and father filed timely appeals. We dismissed father's appeal as abandoned when he failed to present any arguable issues for the court's consideration. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 838.)² Mother's appeal remains.

DISCUSSION

Jurisdiction

The juvenile court sustained all three counts in the petition. Mother challenges only the finding of jurisdiction on the count alleging medical neglect of S.S., without challenging the jurisdictional findings on the counts alleging under section 300 subdivisions (a) and (b) injury to S.S. and failure to protect related to mother's physical altercations with MGF. As a result, we need not consider her challenge to the juvenile court's decision to sustain the count regarding medical neglect. When a petition alleges multiple grounds for jurisdiction, we can affirm "if any one of the statutory bases for jurisdiction that are enumerated in the petition is

² At father's request, we took judicial notice of a minute order dated April 14, 2017, granting father sole legal and physical custody of S.S. with monitored visitation for mother.

supported by substantial evidence.’ ” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) As mother does not dispute that sufficient evidence of physical altercations between her and MGF supported the jurisdictional findings on two counts, she acknowledges that jurisdiction was proper on that ground. “[M]other cannot expect a more favorable result, and we need not consider her appeal.” (*Ibid.*)

While we are not required to address this issue, substantial evidence supports the finding of medical neglect. Our review for sufficient evidence resolves any evidentiary disputes and draws all inferences in favor of the juvenile court’s decision, and we leave credibility issues to the trier of fact. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) S.S. repeatedly stated that mother said she didn’t care when S.S. told mother of the pain in her genital area, and testified that she thought mother heard her. S.S.’s urinary tract infection was advanced and severe when father took her for treatment. This evidence is sufficient to support the finding of jurisdiction.

Disposition (Removal)

Mother also challenges the dispositional order removing S.S. from her custody, but she limits her argument to the court’s finding that the physical altercations between mother and MGF had injured S.S. and mother failed to protect S.S. from that violence. Because mother was the victim, not the instigator, of the violence, and because a 2009 family law order required mother to live with MGF, mother claims that the court should have chosen the less restrictive

alternatives of requiring MGF to move out of the home and ordering DCFS to make unannounced home visits.

We review a disposition order for substantial evidence. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.) First, we noted that substantial evidence supports the trial court's finding of jurisdiction on the ground of medical neglect; that jurisdictional finding is prima facie evidence the child cannot remain safely in the home. (*Ibid.*) Second, mother's counsel stated at the hearing that there were no physical altercations between mother and MGF, and requested dismissal of the count. Third, the count as sustained stated only that mother and MGF "engage[ed] in altercations," without a finding that mother was not the instigator and always the victim. Fourth, the petition states that after a petition was filed in 2009, on July 6, 2011, the court terminated jurisdiction over S.S. and granted mother legal custody "on the condition that she reside with maternal grandfather and takes her medication as prescribed" (the family law order is not in the record, and the minute order from the hearing terminating jurisdiction does not contain the condition.) The record also contains a January 15, 2013 order terminating jurisdiction over S.S. on a petition filed in 2012 pursuant to a custody-visitation order granting the parents joint physical and legal custody; the family law order is not in the record, and there is no indication that the 2013 order included a condition that mother reside with MGF. Finally, the court had no power to order MGF to move out of

his own home. Mother has not shown that the disposition order was not supported by substantial evidence.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.