

Filed 12/13/17 In re F.G. CA2/1

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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

STEPHANIE G.,

Defendant and Appellant.

B279302

(Los Angeles County
Super. Ct. No. DK03263)

APPEAL from an order of the Superior Court of Los
Angeles County, Anthony Trendacosta, Judge. Dismissed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Respondent Edwin G.

No appearance for Plaintiff and Respondent.

Stephanie G. (mother) appeals from an order dismissing a juvenile dependency petition after a contested jurisdictional hearing. Mother contends the evidence does not support the dismissal. However, we conclude mother lacks standing to challenge the juvenile court's decision and dismiss the appeal.

BACKGROUND

I. Procedural History

A. *Dependency Petition*

On September 30, 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed its juvenile dependency petition in this case. Pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b)(1), and (j), DCFS alleged that Edwin G. (father) physically abused F.G. and K.G.—his two children with mother—as well as their two half siblings, and that father engaged in domestic violence with his companion.

In counts a-1, b-1, and j-1, DCFS specifically alleged that father struck F.G. in the head with his fist on August 17, 2016, that father struck F.G.'s back with a belt multiple times in June or July 2016, that father struck F.G.'s head on prior occasions, that father pushed F.G.

against a closet door on a prior occasion, and that father pushed F.G. onto a couch on a prior occasion. Accordingly, F.G. was afraid of father and did not wish to live with him due to father's physical abuse.

In counts a-2, b-2, and j-2, DCFS alleged that father struck K.G. with a belt in July 2016, inflicting bruising to the child's body, that father pushed K.G. and struck K.G. with his hands on prior occasions. Accordingly, K.G. feared father and did not wish to live with him due to father's physical abuse.

In counts a-3, b-3, and j-3, DCFS alleged that father also physically abused the children's half siblings by striking them with a belt on prior occasions. In counts a-4, b-6, and j-6, DCFS alleged that father exposed the children to domestic violence, including an incident on March 27, 2016, when father's companion repeatedly struck father's face, head and body, and father repeatedly pushed his companion, which led to the arrest of father's companion.

In counts b-4 and j-4, DCFS alleged that the children's paternal uncle struck F.G. in the head with his fist on August 23, 2016, that F.G. was afraid of paternal uncle due to paternal uncle's physical abuse, and that father had failed to protect F.G. Lastly, in counts b-5 and j-5, DCFS alleged that father's companion physically abused the children by striking them with belts and her hands, and that father knew or should have known of the abuse and failed to protect the children.

B. *Detention and Adjudication Hearings*

The juvenile court conducted the detention hearing on September 30, 2016. Both mother and father were present as were F.G. and K.G. The court found father to be the presumed father of both K.G. and F.G. The court found that DCFS had established a prima facie case for detaining the children and that “substantial danger exists to the physical or emotional health of minor(s) and there is no reasonable means to protect the minors without removal.” The court ordered the children detained from father and released them to the care of mother pending the next hearing.

The juvenile court conducted the adjudication hearing on November 2, 2016. Both mother and father were present as were F.G. and K.G. Exhibits admitted into evidence included the September 30, 2016, detention report and the October 28, 2016, jurisdiction and disposition report. The court also took judicial notice of the prior sustained petition, the court-ordered case plans, the contents of the judicial file, and all other prior orders. Neither the children nor mother presented evidence at the hearing. Father testified on his own behalf. After father testified, DCFS asked the court to sustain all the allegations of the petition. The children’s attorney also asked the court to sustain the petition, as did mother’s counsel. Father asked that the petition be dismissed and that the children be returned to him.

The court noted that although there was a “past history” of physical abuse, both children indicated that the any abuse had “occurred a long time ago.” “So

assuming . . . that there was some earlier physical discipline, the question is, is there any current risk . . . [or] is there any risk that this . . . will occur in the future?” “So the court’s concern [is] that the children are reporting something, but their last reports indicated that they’re not afraid of the father at this particular point, not afraid to return home, that F[G.] denied being hit with any object recently, hit him with a belt a long time ago and hits him on the [buttocks] with [his hand], which is appropriate physical discipline under the law. Same with K[G.]” The court then determined that DCFS had not met its burden of proof and dismissed the petition with prejudice.

Mother filed a timely appeal. Although DCFS advocated against dismissal of the petition, the agency did not appeal and thus cannot take a position here. Like DCFS, the children advocated against dismissal of the petition but did not appeal. Consequently, father is the single respondent in this case.

C. Postappeal Developments

After briefs were filed in this case, father’s counsel informed this court that during the pendency of this appeal, DCFS filed a new juvenile dependency petition regarding F.G. and K.G. On August 3, 2017, the juvenile court found the allegations of the most recent petition to be true and removed the children from father’s custody. The children were placed with mother, under the supervision of DCFS.

Father's appeal from that order is now pending before this court in case number B284294.¹

DISCUSSION

I. Standing Law

An aggrieved party generally may appeal a judgment in a juvenile dependency matter. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948.) To be aggrieved, however, "a party must have a legally cognizable interest that is injuriously affected by the court's decision." (*Ibid.*; *In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) The interest must be immediate and substantial, and not nominal or remote. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) Thus, a parent cannot raise issues on appeal which do not affect his or her own rights. (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806.) Nevertheless, we liberally construe the issue of standing and resolve doubts in favor of the right to appeal. (*Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 540; *In re Valerie A.* (2007) 152 Cal.App.4th 987, 999.) As noted by the parties, there is a split of authority as to whether a parent has standing to appeal an order dismissing a juvenile dependency petition after a contested jurisdictional hearing.

In *In re Tomi C.* (1990) 218 Cal.App.3d 694 (*Tomi C.*), a social services agency filed a petition alleging a father had sexually molested his children. Before the jurisdictional

¹ We take judicial notice of counsel's letter as well as the attached juvenile court minute order. (Evid. Code, § 452.)

hearing, the family court awarded custody of the minors to their mother. The juvenile court subsequently granted the agency's motion to dismiss the petition without prejudice. The father appealed. The Fifth District Court of Appeal, dismissed, holding, in part, that the father lacked standing to challenge the ruling.

“Even if father could have successfully defended against the allegations in the petition, he could not thereby regain custody of his children since the custody issue had already been decided in family court. Moreover, to the extent father believes mother is unfit to care for the minors, he may make an application to the probation officer to initiate section 300 proceedings. [Citation.] Furthermore, if the probation officer fails to initiate the proceedings within three weeks after such application, father may apply to the juvenile court to review the decision of the probation officer. [Citation.] The juvenile court is then empowered to affirm the probation officer's decision or order him to commence juvenile court proceedings. [Citation.] Therefore, we hold that father is not aggrieved by the dismissal and his appeal must be dismissed as having been taken from a nonappealable order.” (*Tomi C.*, *supra*, 218 Cal.App.3d at p. 698.)²

² In this case, DCFS has now initiated section 300 proceedings against father. Consequently, the potential remedy cited by the *Tomi C.* court—seeking the initiation of section 300 proceedings against the custodial parent

Conversely, in *In re Lauren P.* (1996) 44 Cal.App.4th 763 (*Lauren P.*), the Fourth District Court of Appeal, held that a mother did have standing to appeal the dismissal of the petition. There, the parents were divorced and the mother had custody of the minor child. A social services agency filed a juvenile dependency petition alleging that the father had sexually molested the child. After a contested jurisdictional hearing, the juvenile court dismissed the petition without prejudice. The mother appealed the judgment. With respect to standing, the *Lauren P.* court recognized the general rule that only an aggrieved party has standing to appeal but concluded the mother satisfied this requirement. (*Id.* at pp. 768, 771.)

“We agree . . . that the public agency is not the only party whose interest is affected by the dismissal of a dependency petition. Any parent who takes the position that dependency jurisdiction is warranted is aggrieved by dismissal of the petition. Just as a parent must be permitted to present evidence and to argue in opposition to dismissal below, so such a parent must be allowed to appeal from a dismissal on the merits. [¶] The state’s exclusive power to initiate a dependency proceeding does not equate to an exclusive interest in the outcome of the proceeding. ‘A parent’s interest in the companionship, care, custody and management of his children is a compelling one, ranked

(*Tomi C.*, *supra*, 218 Cal.App.3d at p. 698)—has already taken place here.

among the most basic of civil rights.’ [Citation.] ‘That some parents “may at times be acting against the interests of their children” . . . creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child’s best interests. [Citation.] The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition.’ [Citations.] Here, [mother] had a natural interest in obtaining the state’s protection for her daughter against future sexual abuse. Dismissal of the petition injuriously affected this interest.” (*Lauren P.*, *supra*, 44 Cal.App.4th at pp. 770–771.)

However, in *In re Carissa G.* (1999) 76 Cal.App.4th 731 (*Carissa G.*), a different division of the Fourth Appellate District expressly rejected the reasoning of *Lauren P.*, *supra*, 44 Cal.App.4th 763, holding that the mother did not have standing to appeal the dismissal of a petition after a jurisdictional hearing. In *Carissa G.*, the child of divorced parents allegedly told her mother that her father touched her vagina during a visit. The mother filed a request with the family law court to limit the visitation of the father, who shared legal custody of the child with the mother. After the family law court declined to limit the father’s visitation, the mother prompted an investigation by the county social services agency. This resulted in a dependency petition alleging sexual abuse by the father. A contested jurisdictional hearing was held, after which the juvenile

court dismissed the petition due to the absence of “physical findings” and because the child’s statements were inconsistent. (*Carissa G.*, at pp. 733–734.)

The *Carissa G.*, *supra*, 76 Cal.App.4th 731 court concluded that the mother lacked standing to challenge the juvenile court’s decision. (*Id.* at p. 733.) “[T]he mere fact a parent takes a position on a matter at issue in a juvenile dependency case that affects his or her child does not alone constitute a sufficient reason to establish standing to challenge an adverse ruling on it.” (*Id.* at p. 736; accord *In re Paul W.* (2007) 151 Cal.App.4th 37, 60 (*Paul W.*).) Although parents have a “natural interest in obtaining the state’s protection for [their children] against future sexual abuse,” in a dependency proceeding that interest is vindicated by the state which initiates “the proceeding . . . under the theory of *parens patriae*, to protect a minor from abuse or neglect as defined by section 300.” (*Carissa G.*, at pp. 735–736.) Moreover, the dismissal did not affect the child’s custody in this case, and thus did not impact the mother’s “fundamental right” to parent the child—even if the petition had been sustained, custody would have been altered “only slightly by limiting father to monitored visitation.” (*Id.* at p. 736.) Lastly, the court noted, the mother could address issues concerning custody and visitation in family court and therefore was not left without a remedy. (*Ibid.*)

II. Application Here

As noted above, in order to obtain review of a dependency ruling, a parent must establish that she is “a ‘party aggrieved.’” (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 734.) “To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the [juvenile] court’s decision,” and “[a] nominal interest or a remote consequence of the ruling” does not suffice. (*Ibid.*) Because a “ ‘parent’s primary interest in dependency is usually reunification,’ ” “a parent is aggrieved by a juvenile court order that injuriously affects the parent-child relationship.” (*Paul W.*, *supra*, 151 Cal.App.4th at p. 62.) “[T]he mere fact a parent takes a position on a matter at issue . . . that affects his or her child,” however, does not establish “standing to challenge an adverse ruling on it.” (*Carissa G.*, at p. 736.)

Mother contends she has standing to challenge the juvenile court’s dismissal order because it resulted in a change of custody over the children. Mother is incorrect. We initially note that the child welfare history in this case began back in 2008, with multiple allegations, both substantiated and unsubstantiated, lodged against both mother and father. Before the instant petition against father was filed, however, the children had been removed from mother’s care and placed with father. Once the current petition was filed, temporary placement and care of the children was vested with DCFS during the September 30, 2016, detention hearing pending further disposition or order of the court.

The children were then released to the care of mother with the court ordering monitored visitation for father. Mother argues that because custody reverted back to father upon dismissal of the petition, the court's order impacted her fundamental right to parent her children, thus granting her standing here pursuant to *Carissa G.*, *supra*, 76 Cal.App.4th 731.

Father counters that “a detention order cannot stand in place of a custody order entered by a juvenile court or family court.” A detention order is a “temporary order that lasts only until the placement decision is made in a dispositional order.” (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1420 (*Sabrina H.*)). In this case, the juvenile court never reached the dispositional stage and thus never considered the possibility of changing the custody of the children by way of a removal order. “That [M]other wishes to have custody of the children is apparent,” father concludes. However, “[h]er remedy lies in family court. She should take her arguments there.”

The final hearing in this case, held on November 2, 2016, has been described as an adjudication hearing as well as a “jurisdictional disposition hearing.”³ Labels aside, a

³ At the jurisdictional hearing, the public agency has the burden of proof; if it fails to meet its burden of proof, the juvenile court is statutorily required to dismiss the petition. (Welf. & Inst. Code, § 350, subd. (c); see Welf. & Inst. Code, §§ 355, 356.) An order dismissing a dependency petition is appealable because, “[u]nlike a jurisdiction order, which is

review of the transcript reveals the parties did not discuss the children's placement during the hearing and that the juvenile court ordered the petition dismissed before ever reaching the dispositional stage. Indeed, rather than make a placement decision in a dispositional order, the court simply observed in its final remarks that father had already been awarded custody of the children. This alone distinguishes the instant case from *Lauren P.*, *supra*, 44 Cal.App.4th 763, where no custody order had been entered by the family court or juvenile court and "custody remained unresolved." (*Id.* at p. 771.) Thus, *Lauren P.* is distinguishable here.⁴

followed by an adjudication of dependency and many possible subsequent orders, nothing follows a dismissal order: It is the end of the matter, and the child goes home." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 197, fn. omitted.)

⁴ Indeed, this case more closely resembles *Tomi C.*, *supra*, 218 Cal.App.3d 694, a case expressly distinguished by *Lauren P.*, *supra*, 44 Cal.App.4th 763, where the father—the parent seeking standing—could not show he had been aggrieved by the juvenile court's dismissal order. The father was the subject of the now-dismissed petition. However, even if the father could have successfully defended against the petition's allegations, he could not have regained custody of his children given that the issue had already been decided in family court. Consequently, the father did not have standing to appeal the dismissal. (*Tomi C.*, at p. 698.) Thus, a noncustodial parent, whether an offending parent who successfully defends against a petition's allegations—or a nonoffending parent who successfully proves the allegations lodged against the other parent—cannot appeal an order

Since the publication of *Lauren P.*, *supra*, 44 Cal.App.4th 763, several, mainly unpublished, cases have cited its holding regarding parental standing. But if handed down after *Carissa G.*, *supra*, 76 Cal.App.4th 731, which expressly rejected *Lauren P.*'s reasoning, courts have either presumed standing without actually deciding the issue or explicitly agreed with *Carissa G.*'s holding on standing. (*Paul W.*, *supra*, 151 Cal.App.4th at p. 60.)⁵

As the Sixth Appellate District, as well as Divisions Two and Three of the Second Appellate District, so found, we find *Carissa G.*'s reasoning persuasive and applicable here. At the outset we note that here, as in *Carissa G.*, *supra*, 76 Cal.App.4th 731, although the parties litigated father's alleged abuse in juvenile court, mother is not barred from seeking relief in a family court. The parties are *not* bound by the doctrine of res judicata. (*Id.* at p. 736.) "[T]he 'issues' before the family law court and juvenile court can never, in fact, be 'identical,' even if some or all of the facts of abuse or neglect adduced in the two proceedings are the same, because of the important differences between the purposes and operations of the two courts, and the state's overriding

dismissing a juvenile dependency petition after a contested jurisdictional hearing. Their remedy lies instead with family court. (See *Carissa G.*, *supra*, 76 Cal.App.4th at p. 736.)

⁵ Courts disagreeing with *Carissa G.*, *supra*, 76 Cal.App.4th 731 have done so not because they took issue with the *Carissa G.* court's reasoning but because they were faced with factually distinguishable cases.

concern for the protection of the children.” (*In re Travis C.* (1991) 233 Cal.App.3d 492, 502; see *In re Desiree B.* (1992) 8 Cal.App.4th 286, 291–293; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470.)

Next, while parents are entitled to appear and participate in a juvenile dependency action, the proceeding is initiated by the *state*. Thus, although a parent may take a position on a matter at issue in the action, this does not grant the parent standing to challenge an adverse ruling on the matter. (*Carissa G., supra*, 76 Cal.App.4th at p. 736.) As noted by *Carissa G.*, many juvenile dependency cases have supported this conclusion.⁶ (See *id.* at pp. 736–737.)

Furthermore, although mother concededly has a fundamental right to parent the children, the juvenile court’s dismissal of the petition did not impact that right. (See *Carissa G., supra*, 76 Cal.App.4th at p. 736.) The children were placed with Mother only temporarily, while the juvenile court determined whether the allegations in the most recent petition had merit. (See *Sabrina H., supra*, 149 Cal.App.4th at p. 1420.) When the petition was dismissed, placement of the children was properly and necessarily

⁶ See, e.g., *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541 [parent does not have standing to challenge order terminating parental rights on ground order severed child’s relationship with foster family]; *In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806–1807 [parent does not have standing to challenge order terminating parental rights based on child’s relationship with siblings and grandparent].

returned to its previous state. (See Welf. & Inst. Code, §§ 356, 361.1, subd. (a), 702.)

Because the juvenile court's dismissal order did not affect the already-established custody status in this case, and thus did not impact mother's fundamental right to parent her children, she cannot be deemed an aggrieved party imbued with concomitant standing. (See *Carissa G.*, *supra*, 76 Cal.App.4th at p. 736.)⁷

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.

⁷ Furthermore, given that section 300 proceedings have now been initiated against father and the children are currently residing with mother as a result, any impact on mother's right to parent her children has been mooted.