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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

B270919

(Los Angeles County
Super. Ct. No. DK14844)

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Jessica Paulson-Duffy, Deputy County Counsel, for Plaintiff and Respondent.

Presumed father J.L. (father) appeals from the dependency court's jurisdictional and dispositional orders over his son J. Father does not challenge the sufficiency of the evidence supporting the jurisdictional allegations against him. Instead, relying on *In re A.G.* (2013) 220 Cal.App.4th 675, father argues that the court should not have asserted jurisdiction because J. remains in the custody of his nonoffending mother. We find *In re A.G.* incongruent with the facts of this case and affirm the juvenile court's jurisdictional and dispositional order.

BACKGROUND

1. Petition

Dependency proceedings began when J. was eight years old. In a petition filed December 16, 2015, the Los Angeles County Department of Children and Family Services (DCFS) alleged: "On 04/21/2015, the child[']s . . . father . . . placed the child in a detrimental and endangering situation by driving a vehicle, while the father was under the influence of alcohol with the child in the vehicle. The father was involved in a collision with a second vehicle. On 04/21/2015, the father was arrested for Driving under the Influence of Alcohol, Hit and Run, Driving with a Suspended License and Child Endangerment. The detrimental and endangering situation established for the child by the father endangers the child's physical and emotional health and safety and places the child at risk of serious physical harm, damage, danger and death."

2. DCFS's Reports

In connection with their investigation, social workers interviewed father, mother, and J.

a. Father

The detention report indicated that father backed his car into a parked car and then fled the scene. Father subsequently acknowledged that J. was in the car at the time of the accident. Father claimed that he had a low sugar level and denied being intoxicated at the time of the accident. But, officers who interviewed father after the accident reported that father appeared to have been drinking and smelled of alcohol. Father was unable to walk in a straight line and refused to submit to a chemical test.

A search revealed that father had multiple arrests for driving under the influence. DCFS concluded that father drove under the influence three times. On two occasions, J. was in the vehicle with father. Initially, father voluntarily agreed that J. would be detained from him and that he would take classes and have monitored visits. In August 2015, father completed an educational program and counseling ordered by the court as part of a “first offender program.” Father also completed a parenting program.

When interviewed by a social worker prior to the jurisdictional hearing, father stated that with respect to the incident described in the Welfare and Institutions Code section 300¹ petition, he had been charged with child endangerment and driving under the influence and was anticipating serving a five- or six-month sentence in county jail as part of a plea agreement. Father continued to deny that he had been under the influence of alcohol at the time of the accident. Father, however,

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

acknowledged making a poor choice when he drove while he “felt sick.”

Although there was evidence father suffered from complications of diabetes, he was convicted of misdemeanor child endangerment based on the incident alleged in the petition and was incarcerated at the time of the jurisdictional hearing. By the time of the jurisdictional hearing, father no longer wanted to voluntarily participate in services.

b. Mother

When interviewed, mother denied that father had a drinking problem. Mother (incorrectly) reported that father did not drive dangerously with J. inside the vehicle prior to the incident alleged in the petition. Mother had “no concerns with [J.L.]” spending time in father’s care. Mother and father informally agreed to share custody of J., and he spent approximately two days a week with father.

In a subsequent interview, mother again denied any knowledge that father drank alcohol. However, mother acknowledged that father previously was required to take classes as a result of driving under the influence. Mother stated that officers did “not like” father and would frequently stop him. Mother promised to protect J.

c. J.

J. reported that father was not feeling well on the day of the car accident and appeared sleepy. J. enjoyed spending time with father.

3. *Juvenile Court Assumes Jurisdiction over J.*

No witness testified at the jurisdictional hearing. Father’s counsel argued that the court could dismiss the petition and mother could obtain a custody order in family court awarding her

sole legal and sole physical custody. J.'s attorney argued that the petition should be sustained.

The juvenile court sustained the allegations in the section 300 petition. The court found that father was "making excuses for his behavior." The court was concerned that father had driven under the influence on multiple occasions. The court noted that father refused field sobriety tests and showed symptoms of driving under the influence. The court also was concerned that father drove during a period of time his license had been suspended. The court rejected father's counsel's argument that family law court was a viable alternative, noting that mother made excuses for father's conduct.

J. was ordered to continue living in his mother's custody. DCFS was ordered to provide mother family maintenance services and to provide father enhancement services. Father was granted monitored visits. Mother could not serve as father's monitor. Father was ordered to complete a program to address alcohol use/abuse and to test randomly.

Father appealed from the jurisdictional and dispositional order.

DISCUSSION

Father's sole argument is that the juvenile court erred in sustaining the petition because mother was able to properly care for J. He believes that this case should be litigated in family court rather than juvenile court.² As we shall explain, his argument lacks merit.

² Juvenile court and family court have different goals. "The family court is established to provide parents a forum in which to resolve, inter alia, private issues relating to the custody of and visitation with children. In that setting, parents are presumed to

The purpose of dependency law is to protect children. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) Dependency jurisdiction may be triggered by the conduct of one parent even when the other parent is nonoffending. (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1212.) J. is a dependent child if the actions of either parent bring him within the statutory definition of a dependent, and here it is undisputed that substantial evidence supported the jurisdictional findings against father. (*In re I.A.*, *supra*, at pp. 1491-1492.)

In *In re A.G.*, *supra*, 220 Cal.App.4th 675, the appellate court considered whether a dependency petition alleging the mother suffered from a mental illness was properly sustained when the father cared for the children and never left them under mother's sole supervision. (*Id.* at pp. 677, 684.) "Father ensured that there was adult supervision, other than Mother, of the minors at all times." (*Id.* at p. 684.) There was "no doubt that Father could ensure the minors' safety." (*Id.* at p. 685.)

be fit and capable of raising their children. [Citation.] The juvenile court, by contrast, provides the state a forum to 'restrict parental behavior regarding children, [and] to remove children from the custody of their parents or guardians.' [Citation.] When, as in this matter, a juvenile court hears a dependency case under section 300 . . . , the court deals with children who have been seriously abused, abandoned, or neglected. The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child. [Citation.] Accordingly, although both courts focus on the best interests of the child, '[t]he presumption of parental fitness that underlies custody law in the family court . . . does not apply to dependency cases' decided in the juvenile court." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

The critical distinction between this case and *In re A.G.* is that here the juvenile court doubted that mother could ensure J.'s safety. Whereas the father in *In re A.G.* demonstrated that he would protect the children by ensuring adult supervision other than mother at all times, here mother regularly left J. in father's care, reporting that he spent two days a week in father's custody. Mother left J. in father's custody despite the fact that father had driven under the influence multiple times with J. in the vehicle. Evidence of father's repeated child endangerment supported the juvenile court's determination that mother was not able to shield J. from harm. Moreover, as the juvenile court noted, mother either was ignorant of father's problem or was attempting to shield father rather than J. This important distinction between this case and *In re A.G.* shows that jurisdiction was warranted.³ Stated otherwise, father demonstrates no error in the juvenile court's jurisdictional and dispositional order.

³ Because *In re A.G.* is distinguishable from this case we need not consider the limitation on the holding imposed in *In re Nicholas E.* (2015) 236 Cal.App.4th 458, 465.

DISPOSITION

The jurisdictional and dispositional order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.