

Filed 12/23/19 In re Eli T. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ELI T. et al., Persons Coming
Under the Juvenile Court Law.

B295079

(Los Angeles County
Super. Ct. No. 18LJJP00680)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Steven E. Ipson, Juvenile Court Referee. Reversed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Jacklyn K. Louie, Principal
Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

A.M., mother of seven-year-old Eli T. and five-year-old Ali T., appeals from the juvenile court’s jurisdiction findings and disposition order declaring Eli and Ali dependents of the juvenile court and removing them from her care. A.M. contends that substantial evidence supported neither the jurisdiction finding relating to her nor the removal order and that the court erred in ordering her visits to be monitored. We agree substantial evidence did not support the jurisdiction finding relating to A.M. or the removal order. Therefore, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Eli and Ali were living with their father, Elliott T., when in October 2018 the Los Angeles County Department of Children and Family Services filed a non-detain petition under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1),¹ alleging Eli and Ali came within the jurisdiction of the juvenile court because of domestic violence between Elliott and his “female companion[s].” Specifically, the Department alleged Elliott had a violent altercation with his current girlfriend in

¹ Statutory references are to the Welfare & Institutions Code.

September 2018 (count one) and a history of violent altercations with a former girlfriend, L.F., including an incident in August 2017 when he choked her and hit her in the stomach while she was pregnant (count two). The Department indicated A.M.'s whereabouts were unknown.

In its accompanying report the Department described several unsuccessful attempts to contact A.M. The Department also reported that Elliott stated A.M. "dropped the children off at his house roughly [three] years ago[] and has not had contact with the children since." The Department further reported that Eli, when asked if he "ever sees his mother," answered, "A long time ago I saw her." Eli said that his mother "lives far away," that he "talks with her on the phone sometimes," and that she "is nice to him and his brother."

At the initial hearing on the petition, at which A.M. did not appear, the juvenile court found the Department made a prima facie showing Eli and Ali were persons described by section 300 and detained them from A.M. The court ordered the children remain released to Elliott under Department supervision.

In November 2018 the Department, having located and interviewed A.M., filed a first amended petition adding two counts relating to A.M. under section 300, subdivision (b)(1). The first alleged A.M. placed Eli and Ali at risk of physical harm by failing "to provide [them] with the basic necessities of life including food, clothing, shelter and medical treatment." The second alleged A.M. had a criminal history, including an April 2018 conviction for assault, that put the children at risk of physical harm. In December 2018 A.M. appeared at a hearing on the first amended petition, at which time the juvenile court

ordered the children to remain released to Elliott with monitored visits for A.M.

In January 2019 the juvenile court held a jurisdiction hearing on the first amended petition. The court admitted into evidence several reports prepared by the Department, including a jurisdiction and disposition report, that included witness statements relating to the allegations of domestic violence by Elliott and the allegations involving A.M. A.M. testified at the hearing she left Eli and Ali with Elliott in December 2015 because she was working in Las Vegas and “didn’t have any child care that I was able to provide for the children.” “I didn’t have any family in Las Vegas . . . who could watch them for me,” she stated, “so I went the next route which would be father.” A.M. testified that, from December 2015 until at least April 2018,² she visited Eli and Ali irregularly, sometimes not for several months at a time.

The juvenile court sustained the first amended petition, finding true the allegations in three counts under section 300, subdivision (b)(1): the two counts relating to domestic violence between Elliott and his female companions and the count relating to A.M.’s failure to provide Eli and Ali the basic necessities of life. Regarding the latter count, the court stated: “I don’t believe the mother made any sort of appropriate plan. It was more just a

² In October 2017 A.M. was arrested after a fight in which she cut another woman’s face severely with a knife. A.M. was incarcerated until April 2018, at which time she pleaded no contest to assault with means likely to produce great bodily injury and received a sentence of time served and probation for three years.

drop off and leave. So I will sustain it.” The court dismissed the remaining counts.

Proceeding to disposition, the juvenile court removed the children from A.M., placed them with Elliott, and ordered monitored visits for A.M. In rejecting A.M.’s argument there was no “clear and convincing evidence that the children are at such a risk of harm that they should be removed from [her],” the court merely reiterated its determination that “the mother did simply drop off the minors to the father and essentially disappeared for a substantial period of time.” A.M. timely appealed.

DISCUSSION

A. *Substantial Evidence Did Not Support the Jurisdiction Finding Relating to A.M.*

A.M. contends the juvenile court erred in finding her alleged failure to provide the basic necessities of life for Eli and Ali placed them at substantial risk of serious physical harm. As an initial matter, the Department argues A.M.’s appeal from the jurisdiction finding is not justiciable because A.M. does not challenge the jurisdiction findings relating to Elliott. It is true “we need not address jurisdictional findings involving one parent where there are unchallenged findings involving the other parent.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 309.) But we may do so where the challenged finding “serves as the basis for dispositional orders that are also challenged on appeal.” (*Ibid.*) And we do so here, because it does.

Addressing the merits of A.M.’s contention, we agree substantial evidence did not support the jurisdiction finding relating to her. (See *In re I.J.* (2013) 56 Cal.4th 766, 773 [“In

reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . , we determine if substantial evidence, contradicted or uncontradicted, supports them.”].) “[S]ection 300, subdivision (b), establishes as a basis for dependency jurisdiction ‘the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment . . . ,’ provided there is a substantial risk the child will suffer serious physical harm or illness as a result of that failure.” (*In re Andrew S.* (2016) 2 Cal.App.5th 536, 542 (*Andrew S.*)). The statute does not, however, justify “the juvenile court’s assumption of jurisdiction over an otherwise well-cared-for child simply because an absent parent has not provided support.” (*Ibid.*; see *In re X.S.* (2010) 190 Cal.App.4th 1154, 1160 [“No substantial evidence supports the necessary finding under section 300, subdivision (b), that any failure of father to provide for his son caused the child to suffer serious physical harm or creates a substantial risk that the child will suffer serious physical harm.”].)

There was no evidence, let alone substantial evidence, Eli or Ali suffered, or was at substantial risk of suffering, physical harm from any lack of food, clothing, shelter, or medical treatment. In fact, there was no evidence they ever lacked any of these things. To the contrary, the only evidence touching on this subject indicated the boys were adequately provided for. Eli’s teacher reported: “In regards to [Eli] being well taken care of, I do not have any concerns. He does come to school appropriately dressed for the current season[,] and he comes with a lunch some days[,] and the days he does not he is able to purchase a hot lunch.” The Department reported that Eli’s immunizations were up to date and that neither boy had any medical issues.

The Department argues A.M.’s “spotty presence in the children’s lives left them vulnerable to violence in their father’s care,” and it points to evidence that shortly before her incarceration A.M. learned Elliott choked L.F. in 2017. But that argument and evidence are irrelevant. The issue is whether the juvenile court erred in sustaining the allegation A.M.’s failure to provide Eli and Ali with basic necessities placed them at risk of physical harm. The Department never alleged A.M. failed to protect the children from Elliott’s domestic violence, nor did the juvenile court amend the petition to conform to proof of any such failure. (See *Andrew S.*, *supra*, 2 Cal.App.5th at p. 544 & fn. 4 [where the child protective agency alleged the father failed to provide for his children but did not allege he failed to protect them from the mother’s abuse, the father “had no notice or opportunity to defend against” the latter allegation].) Therefore, the juvenile court lacked authority to sustain the petition on that basis. (See *ibid.*)

B. *The Juvenile Court Erred in Removing the Children from A.M.*

As stated, it appears the juvenile court removed Eli and Ali from A.M. because the court found her failure to provide the children with basic necessities placed them at risk of physical harm. And as discussed, there was no evidence to support that finding. The juvenile court therefore erred in removing the children from A.M. (See *Andrew S.*, *supra*, 2 Cal.App.5th at p. 544 [“[b]ecause we reverse the jurisdiction finding as to [the father], the court’s findings cannot support a disposition order

denying him custody of the children”].)³ Because we reverse the juvenile court’s removal order, we need not address A.M.’s challenge to the order requiring monitored visitation. (See *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1137 [“In light of our determination that the jurisdictional order must be reversed, the dispositional and all subsequent orders, including the visitation order, are moot.”].)

³ The juvenile court also removed the children from A.M. under section 361, subdivision (c), which does not apply because it “governs the removal of children from the physical custody of a parent or guardian ‘with whom the child resides at the time the petition was initiated.’” (*Andrew S.*, *supra*, 2 Cal.App.5th at p. 544.) Because the children did not reside with A.M. when the Department filed the petition, the statute governing removal from her was section 361, subdivision (d), which provides: “A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent . . . to live with the child or otherwise exercise the parent’s . . . right to physical custody, and there are no reasonable means by which the child’s physical and emotional health can be protected without removing the child from the child’s parent’s . . . physical custody.”

DISPOSITION

The juvenile court's jurisdiction finding and disposition orders relating to A.M. are reversed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.