Filed 10/11/12 In re K.H. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.H., a Person Coming Under the Juvenile Court Law.	B237963 (Los Angeles County Super. Ct. No. CK90162)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.H., Defendant and Appellant.	

APPEAL from an order of the Superior Court of the County of Los Angeles, Jacqueline H. Lewis, Commissioner. Dismissed.

Law Office of Lisa A. Raneri, Lisa A. Raneri for Minors and Appellants.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Peter Ferrera, Senior Deputy County Counsel for Respondent.

INTRODUCTION

The Department of Children and Family Services (DCFS) moves to dismiss the appeal of minors K.H. and A.H. (the minors), which appeal challenges the juvenile court's disposition order removing custody of them from their father. According to DCFS, because the juvenile court returned custody of the minors to father on May 30, 2012, the appeal from the disposition order is moot. We agree and dismiss the appeal.

BACKGROUND

DCFS filed a Welfare and Institutions Code section 300[1] petition alleging, inter alia, that the children's father had failed to protect the minors from the risk of harm posed by their mother living in the home. At the October 3, 2011, detention hearing, the juvenile court detained the minors from father and mother and ordered DCFS, inter alia, to provide the family with reunification services. Between the detention hearing and the disposition hearing, the minors were placed in a foster home. At the November 30, 2011, contested disposition hearing,[2] the juvenile court removed custody of the minors from their father and mother. The minors filed a timely notice of appeal from the juvenile court's disposition order removing them from their father's custody. On May 30, 2012, however, the juvenile court entered an order returning custody of the minors to their father.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Mother and father previously entered no contest pleas to the petition and the juvenile court sustained it.

DISCUSSION

In its motion to dismiss, DCFS contends that this appeal is moot because the sole issue raised by the minors—the propriety of the juvenile court's order removing custody of them from their father—has become moot by the subsequent order returning custody to their father. "A case is considered moot when 'the question addressed was at one time a live issue in the case,' but has been deprived of life 'because of events occurring after the judicial process was initiated.' (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120 [145 Cal.Rptr. 674, 577 P.2d 1014].) Because '"the duty of . . . every . . . judicial tribunal . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or . . . to declare principles or rules of law which cannot affect the matter in issue in the case before it[,] [i]t necessarily follows that when . . . an event occurs which renders it impossible for [the] court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment . . . ." [Citations.]' (*Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863 [167 P.2d 725].) The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief. (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 227 [123 Cal.Rptr.2d 735]; see also *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [92 Cal.Rptr.3d 219] [case moot where contract with county had expired and court could not award it to disappointed bidder].) If events have made such relief impracticable, the controversy has become 'overripe' and is therefore moot. (*California Water* [*& Telegraph Co. v. County of Los Angeles* (1967)] 253 Cal.App.2d [16,] 22-23, fn. 9; see *Paul v. Milk Depots, Inc*. (1964) 62 Cal.2d 129, 132 [41 Cal.Rptr. 468, 396 P.2d 924].)" (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574.)

"Thus, '"[m]ootness has been described as '"the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)."' [Citations.]"'

(*Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1008 [106 Cal.Rptr.2d 381], quoting *Arizonans for Official English v. Arizona* (1997) 520 U.S. 43, 68, fn. 22 [137 L.Ed.2d 170, 117 S.Ct. 1055].) When events render a case moot, the court, whether trial or appellate, should generally dismiss it. (See *Lillbask ex rel. Mauclaire v. Connecticut Dept. of Education* (2d Cir. 2005) 397 F.3d 77, 84; see also *Consumer Cause, Inc. v. Johnson & Johnson* [(2005)] 132 Cal.App.4th [1175,] 1183 [trial court should have refused to decide case upon plaintiff's discovery that allegations of complaint were wrong and defendant was not violating statute at issue].)" (*Wilson & Wilson v. City Council of Redwood City, supra,* 191 Cal.App.4th at p. 1574.)

The minors contend that the "appeal is not moot because the procedural posture of the dependency case would be materially different if, at the dispositional hearing, the juvenile court properly had placed [the minors] with their father with Family Maintenance Services, as opposed to removing them from their father's care and ordering Family Reunification Services. Specifically, the 18-month maximum period for Family Reunification Services would remain inapplicable to [the minors] with regard to their father if the juvenile court properly had ordered [the minors] placed with their father with Family Maintenance Services. (*In re A.C.* (2008) 169 Cal.App.4th 636, 649-650.)"

The minor's argument is premised on the assumption that the 18-month limitation on family reunification services[3] had not started to run prior to the disposition hearing. In support of this argument, they rely on *In re A.C., supra,* 169 Cal.App.4th 636 in which the court held that the time limitations for reunification services set forth in section 361.5

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[3] Section 361.5, subdivision (a)(3) provides in pertinent part: "[C]ourt-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian."

"start to run when a child is removed from all parental custody *at the disposition hearing*. The clock does not start running when the child is placed with a noncustodial parent pursuant to section 361.2." (*Id*. at p. 639, italics added.) In that case, however, it was unclear whether the family received reunification services following the initial detention of the minors from the parents. (*Id.* at p. 640 [juvenile court ordered reunification services to begin "as soon as possible," but there is no indication whether such services were provided].)[4]

As the minors acknowledge, the court in *In re N.M*. (2003) 108 Cal.App.4th 845 held that the 18-month limitation period in section 361.5 ran from the date the juvenile court originally removed custody from both parents *at the detention hearing.* (*Id*. at pp. 852-855.) In that case, the juvenile court originally removed custody from the parents at the detention hearing and ordered the county social services agency to provide family reunification services. (*Id.* at p. 848.) The Court of Appeal concluded that the section 361.5, subdivision (a)(3) 18-month limitation period began to run "at the time of the original detention and not later when [the mother] lost custody on the section 387 petition." (*Id.* at p. 855.)

Here, unlike in *In re A.C., supra*, 169 Cal.App.4th 636, it is clear that the juvenile court not only removed custody of the minors from both father and mother at the detention hearing, it also ordered DCFS to provide the family with reunification services, which they apparently received.[5] Because reunification services were ordered at detention and were provided as ordered, the clock on the 18-month time period in section

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[4] In a footnote, the court in *In re A.C., supra*, 169 Cal.App.4th 636 suggested that the mother and father in that case did not receive reunification services until sometime after the jurisdiction and disposition hearing. (*Id.* at p. 650, fn. 14.)

[5] "'[R]eunification services' are 'activities designed to provide time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and *needs temporary foster care*, while services are provided to reunite the family.' (§ 16501, subd. (h), italics added.)" (*In re A.C., supra*, 169 Cal.App.4th at p. 643, italics added.) As noted, the minors were placed in foster care from the initial detention through and including the disposition hearing.

361.5 began to run from the date of that order. (§ 361.5, subd. (a)(3) [court-ordered services not to exceed "18 months after the date the child was originally removed from . . . custody . . ."].) Therefore, even if, as the minors contend, the juvenile court should have released the minors to their father and ordered DCFS to provide family maintenance services at the disposition hearing, that order would not have stopped the limitation period in section 361.5 from continuing to run. (*In re N.M.*, *supra*, 108 Cal.App.4th at p. 854, citing *Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 165 [the fact that a parent temporarily regains custody of a child does not toll or start anew the running of the 18-month limitations period].)

Based on the foregoing, we disagree with the minors' contention in opposition to the motion to dismiss. We therefore dismiss the appeal as moot because there is no effectual relief we can grant the minors even assuming the juvenile court erred in removing custody of them from their father.

DISPOSITION

The appeal from the trial court's disposition order removing custody of the minors from their father is dismissed.

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MOSK, J.

We concur:

TURNER, P.J.

ARMSTRONG, J.