

Filed 10/30/19 In re D.R. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B294870

(Los Angeles County
Super. Ct.
No. 18CCJP05669A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Peter R. Navarro, Commissioner. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant D.B.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel for Plaintiff and Respondent.

D.B. (Mother) appeals from the juvenile court's orders exercising dependency jurisdiction over her young son D.R. and removing D.R. from her custody based on her violent behavior and substance abuse. We affirm, concluding substantial evidence supports the orders, and the court did not otherwise abuse its discretion.

FACTUAL AND PROCEDURAL BACKGROUND

A. Events Leading up to Dependency Jurisdiction

Mother and D.R.'s father (Father) had a volatile relationship. Mother gave birth to D.R. in July 2017. Mother and Father were no longer living together when D.R. was born and agreed to an informal child custody sharing arrangement.

On November 8, 2017, the Los Angeles County Department of Children and Family Services (Department) received a referral from the police. Father alleged that Mother slapped him three times in D.R.'s presence while arguing over an exchange of custody. The police advised Father to obtain a family court order governing custody and visitation. The Department determined the referral was inconclusive; four-month-old D.R. exhibited no symptoms of emotional abuse.

On November 21, 2017, Mother was involved in a physical altercation with Father during which she tore a window screen off Father's home. Mother was charged with misdemeanor assault, vandalism and domestic violence. A hearing ensued in family court on December 14, 2017. The family court granted Mother and Father joint legal custody and shared physical custody of D.R. and set a visitation schedule. The court ordered the custody exchanges of D.R. were to take place at a local police station.

On March 26, 2018, Mother pleaded no contest to misdemeanor vandalism and the remaining charges were dismissed. The court suspended imposition of sentence and placed Mother on three years of probation on condition she complete domestic violence classes, perform community service and stay away from Father with the exception of the safe exchange of D.R. The court scheduled a restitution hearing for May 2018. Mother failed to appear at the restitution hearing, and the court issued a bench warrant for her arrest.

On June 17, 2018, D.R. was at Father's home as scheduled. Mother arrived unannounced, struck Father and threw a shoe at the paternal great grandmother, hitting her in the head. The police were called, and Mother fled.

On July 8, 2018, Mother returned D.R. to Father's home with a large bump and bruising on the child's forehead. Mother left without explaining how D.R. had been injured.

On August 31, 2018, Mother contacted Father, said she had an interview and wanted him to care for their son. They met at a gas station. Father noticed one of D.R.'s eyes was red and swollen. When Father asked how the injury had occurred,

Mother became upset. She pulled Father's shirt and tore it in D.R.'s presence. Mother then walked to the bus stop, while holding the child with her arm around his neck and dragging the stroller.

On September 2, 2018, the Department took D.R. into protective custody after removing him from Mother's home. The Department intervened in response to a report of Mother's general neglect, and emotional and physical abuse of D.R. When taking custody of D.R., a social worker noted swelling under D.R.'s right eye and an abrasion on his face.

The Department conducted an investigation. In interviews, Father told a social worker that Mother frequently ignored the family court custody order and would come to his home to pick up D.R. even on days when Father was supposed to have custody. Father added Mother always returned D.R. to him in an unclean condition with dirty clothes and a soiled diaper. Father further stated Mother reeked of marijuana on occasion, and he had seen "pieces of weed" in D.R.'s stroller and "blunts" in the child's diaper bag. Father acknowledged he used marijuana, but not when he was caring for D.R.

When interviewed, Mother denied physically assaulting Father and stated he verbally abused her. Mother explained the incidents in which she was purportedly violent toward Father in D.R.'s presence and/or D.R. appeared injured. The window screen incident of November 2017 happened because Mother was upset that Father would not surrender D.R. Mother said her son was ill and she wanted to visit family with him in Las Vegas. When Father refused to release D.R., she tore the window screen off the house. D.R.'s head bump in July 2018 happened when

Mother was at a July 4th gathering and D.R. was outside in his stroller. Mother asked some of the children to watch him. When D.R. stood up, one of the children pushed the stroller, and D.R. fell out and hit his head.

As for D.R.'s red and swollen eye in August 2018, Mother said while sitting on her bed, D.R. dropped her cellphone between the wall and the bed. Mother attempted to retrieve the phone, and D.R. fell off the bed. That same day, she decided to leave D.R. with Father because she had an interview. When Father saw D.R., he became upset and verbally assaulted her. Mother left with her son when it appeared Father's relatives were telephoning the police.

Mother denied using marijuana. She repeatedly refused to submit to a Department drug test. Mother had no explanation for her failure to abide by the terms of the court-ordered exchange of D.R. with Father. Mother accused Father of trying to take D.R. away from her.

B. Dependency Proceedings

1. *Initial Petition*

On September 5, 2018, the Department filed a petition on behalf of D.R. seeking dependency jurisdiction on the following grounds: (1) Mother had a history of violent and assaultive behavior in D.R.'s presence which placed the child at risk of serious physical harm (Welf. & Inst. Code¹ § 300, subds. (a) & (b)(1)); (2) Mother had a history of substance abuse and was a current user of marijuana which rendered her incapable of

¹ Statutory references are to the Welfare and Institutions Code.

providing regular care and supervision of D.R., thus placing the child at substantial risk of serious harm (§ 300, subd. (b)(1)); and, (3) Father, knowing of Mother's substance abuse, failed to protect D.R. by allowing Mother unlimited access to the child. (*Ibid.*)

On September 6, 2018, the juvenile court ordered D.R. detained from Mother and released to Father under Department supervision. Mother was granted monitored visitation.

2. *Jurisdiction Hearing*

The contested jurisdiction hearing was held on October 31, 2018. The Department introduced into evidence minute orders of Mother's criminal proceedings and the Department's reports. Neither Mother nor Father testified at the hearing. J.W. testified she managed the transitional housing facility where Mother resided. Residents must submit to a drug test or be refused housing. Marijuana use was prohibited at the facility. J.W. tested Mother for marijuana, "there wasn't an issue with her," and Mother never appeared to be under the influence of any substance. J.W. never saw Mother behave violently or assault anyone, including D.R. In monitoring Mother's visits with D.R., J.W. testified she had no concerns about the child's safety. J.W. never saw interactions between Mother and Father.

When the hearing concluded, the juvenile court struck the section 300, subdivision (a) allegation, but sustained the amended section 300, subdivision (b)(1) allegations that Mother's violent behavior and abuse of marijuana placed D.R. at risk of serious physical harm. The court struck any reference to Father as an offending parent.

Mother requested a contested disposition hearing, which the juvenile court scheduled for December 18, 2018. The juvenile

court ordered Mother to appear on that date. Pending disposition, the court ordered that Mother could have overnight and alternate weekend visits conditioned on having her criminal warrant recalled, enrolling in the domestic violence classes ordered by the criminal court, continuing to drug test, and refraining from any substance abuse. The court ordered family maintenance services be provided to Father and D.R., and for Father to submit to on-demand drug testing.

3. *Disposition Hearing*

The contested disposition hearing on December 18, 2016 was scheduled to begin at 8:30 a.m., but did not in fact commence until 10:50 a.m. Although the hearing began almost two and half hours past its noticed starting time, Mother was not present. Mother's counsel told the court she was "requesting a continuance on behalf of [Mother]. I have been in contact with her, and she's indicated that she is going to try to arrive to court before noon." The court replied, "Well, on those grounds, the court denies your request for a continuance." The hearing then proceeded in Mother's absence, but with her counsel present arguing on her behalf.

The Department reported that in separate meetings with Mother and Father in November 2018, they both expressed the desire to refrain from further physical altercations with each other, and to engage in amicable co-parenting. Mother further agreed to comply with the juvenile court orders, and to begin drug testing to receive liberalized visitation. As of December 12, 2018, however, neither parent had submitted to drug testing.

The Department also reported that up until December 12, 2018, Mother had been behaving appropriately during monitored

visitation. On that date, Mother became enraged when the social worker asked if D.R. could be ill because he would not stop crying. Mother yelled and screamed, prompting security personnel to be summoned. Mother informed the Department she did not have time to appear in criminal court to have her outstanding warrant withdrawn. She also failed to comply with the criminal court's order to enroll in anger management classes.

Following argument by counsel, the juvenile court declared D.R. a dependent under section 300, subdivision (b)(1), removed him from Mother's custody, and released him to Father's custody. The court expressed concern that Mother could be arrested on her outstanding warrant when D.R. was with her. Mother was to receive enhanced services and was to participate in domestic violence and anger management classes, co-parenting counseling and random drug testing, and was to comply with the previously ordered terms of probation. Her visitation was to remain monitored. Father was ordered to submit to three random drug tests. Father and D.R. were to receive family maintenance services.

Mother filed a timely notice of appeal.

DISCUSSION

A. Mother's Appeal is Not Moot

During the pendency of Mother's appeal, the juvenile court terminated its jurisdiction, awarding Father sole legal and physical custody, with Mother receiving supervised visitation. This order is the subject of a separate appeal (B298752) still being briefed. We accordingly asked for supplemental briefing from the parties on whether this appeal was now moot.

“[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error.” (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) When a juvenile court has terminated its jurisdiction, an appeal from the jurisdictional findings may be dismissed where effective relief cannot be granted because the juvenile court no longer has jurisdiction. (E.g., *In re Michelle M.* (1992) 8 Cal.App.4th 326, 328.) However, where jurisdictional findings continue to negatively affect a party, an appeal like the one before us is not moot. (E.g., *In Re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547–1548 [father’s appeal of jurisdictional findings not moot because those findings were basis for restrictive custody order that continued to negatively affect father].)

Here, Mother asserts (and the Department does not dispute for purposes of analyzing mootness) that the juvenile court’s later exit order awarding sole custody to Father was based in part on the proceedings at issue in this appeal. As Mother continues to be affected by that restrictive custody order, we decline to dismiss this appeal as moot and proceed to consider it on the merits.

B. Substantial Evidence Supports the Jurisdictional Findings

Mother contends the juvenile court’s exercise of dependency jurisdiction based on her violent and assaultive behavior and abuse of marijuana must be reversed for insufficient evidence. Because we conclude substantial evidence supports the jurisdictional finding her violent and assaultive behavior placed D.R. at risk, we need not and do not consider whether the finding concerning her abuse of marijuana is supported by substantial

evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [A single basis for exerting jurisdiction over a child is enough to sustain juvenile court’s exercise of that jurisdiction.].)

When a parent challenges the exercise of dependency jurisdiction as lacking substantial evidentiary support, we review whether the record contains evidence that is reasonable, credible, and of solid value sufficient for a reasonable trier of fact to make its orders. (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) In so doing, we consider the record as a whole, and resolve all conflicts and draw all reasonable inferences to support the juvenile court’s findings; we may not reweigh the evidence or gainsay its credibility findings. (*In re I.J.* (2013) 56 Cal.4th 766, 733.) The parent challenging jurisdiction has the burden of showing there is insufficient evidence to support it. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Under section 300, subdivision (b)(1), a juvenile court may exert dependency jurisdiction if, as pertinent here, a “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” due to “the failure or inability of . . . [the] parent . . . to adequately supervise or protect the child.” (§ 300, subd. (b)(1).) A child’s exposure to domestic violence places that child at risk of such injury (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194–195), particularly where there is a likelihood of recurrence. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.)

Substantial evidence supports the juvenile court’s finding that D.R.’s exposure to Mother’s verbal and physical abuse of Father and the paternal great grandmother placed D.R. at substantial risk of serious physical harm. Mother’s aggressive

and violent behavior—verbal assaults, pulling off a window screen, tearing clothing, throwing a shoe and slapping and hitting—occurred on multiple occasions. Most if not all of Mother’s conduct occurred in D.R.’s presence, placing the child in harm’s way of her violent outbursts. Moreover, because Mother refused to acknowledge, let alone address, her anger issues and their detrimental effect on her child, the risk of violence, and the consequent risk of serious physical harm to D.R., remained substantial. (*In re S.O* (2002) 103 Cal.App.4th 453, 461 [“Past conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.”] The fact that D.R. had yet to be physically hurt in the continuous crossfire between Mother and Father and his relatives was of no consequence. (E.g., *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.)² Indeed, the juvenile court need not wait until a child is seriously injured to exercise jurisdiction to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.)

In contesting dependency jurisdiction, Mother relies solely on her version of events, given in Department interviews, in which she minimized her negative behavior and blamed the ill motives of Father and his relatives for the ongoing disputes. The juvenile court discounted those statements as not credible, and we defer to this credibility finding. (See *In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

² The juvenile court did not make a finding one way or the other on the cause of the injuries to D.R.

C. The Juvenile Court's Orders at the Disposition Hearing Were Not Erroneous

Mother raises three challenges to what occurred at the disposition hearing. She first argues the juvenile court erred in denying her counsel's request for a continuance when Mother failed to appear at that hearing. She also contests whether substantial evidence supported the court's removal order, and whether the trial court abused its discretion in setting the terms of the family case plan preservation order.

1. *Denial of Continuance*

Mother contends the juvenile court abused its discretion and denied her due process by refusing her request for a continuance and proceeding with the hearing in her absence. We disagree.

The juvenile court may continue a dependency hearing at a parent's request only for good cause shown. (§ 352, subd. (a)(2); Cal. Rules of Court,³ rule 5.550(a)(2).) The requirement of good cause has been interpreted to expressly discourage the granting of continuances. (*In re Karla* (2003) 113 Cal.App.4th 166, 179.) Moreover, obtaining a continuance generally requires written notice at least two court days prior to the hearing, together with affidavits showing why a continuance is necessary. (§ 352, subd. (a)(3).) The denial of a request for a continuance will not be reversed on appeal absent an abuse of discretion. (*In re Karla*, *supra*, 113 Cal.App.4th at p. 180.) "Discretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice." (*Ibid.*)

³ Rule references are to the California Rules of Court.

Here, Mother does not dispute she received sufficient notice of the disposition hearing. She was ordered six weeks earlier to appear at the hearing, which was set at her request. The hearing began nearly two and half hours after its scheduled start time, giving her a significant margin of error in her arrival time. While section 352, subdivision (a)(3) contemplates the making of an oral motion at the time of the hearing for good cause, Mother's counsel provided no reason for Mother's absence. Nor was counsel able to provide any assurance Mother would in fact appear even though she was already almost two and a half hours late, stating only that Mother was going to "try to arrive" later in the day. Because Mother failed to demonstrate good cause for a continuance, the court did not abuse its discretion in denying the request.

Mother asserts for the first time on appeal the juvenile court's decision to proceed in her absence was a denial of due process. Assuming Mother has not forfeited this claim by failing to raise it in the juvenile court (see *In re S.B.* (2004) 32 Cal.4th 1287, 1293), she cannot prevail. To be sure, a parent's right to due process in a dependency hearing generally includes the right to testify or present other evidence. (See *In re Armando L.* (2016) 1 Cal.App.5th 606, 620-621; rule 5.534(g)(1)(D)). However, "[w]hen a parent is absent without good cause at the properly noticed hearing, the court is entitled to proceed in the parent's absence." (*In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1131.) A parent's unjustified failure to appear "at a duly noticed hearing reflects a parent's choice not to attend," and the court "may properly treat this choice as a waiver of the right to be present *at that hearing* and of the benefits of being present." (*Id.* at pp. 1131–1132.)

Finally, Mother has failed to demonstrate she was prejudiced by her absence at the disposition hearing. (See *In re Celine R.* (2003) 31 Cal.4th 45, 59–60.) Her counsel was present and argued on Mother’s behalf. Mother enumerates the general advantages due process affords parents in dependency proceedings, but she does not point to any additional evidence she would have offered, or otherwise show it was reasonably probable the outcome would have been more favorable to her had she been present at the hearing. (*Ibid.*)

2. *The Removal Order*

A juvenile court may remove a child from a parent only if the court finds, by clear and convincing evidence, “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home,” and “there are no reasonable means” short of removal “by which the [child]’s physical health can be protected.” (§ 361, subd. (c)(1), *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.) As with jurisdictional orders, dispositional orders are reviewed for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Despite Mother’s claims to the contrary, substantial evidence supported the juvenile court’s finding, by clear and convincing evidence, that D.R. would face a substantial danger to his health and safety if he were returned to Mother’s custody. The court’s jurisdictional finding already constituted a finding, by a preponderance of the evidence, that D.R. was at substantial risk of serious physical harm. Following that jurisdiction hearing: (1) Mother’s eruptions of uncontrolled anger persisted, despite the proximity of D.R.; (2) Mother had yet to enroll in the

court-ordered domestic violence and anger management classes; and (3) Mother's bench warrant remained outstanding, meaning she could be arrested when D.R. was with her. This evidence, coupled with the volatile nature of her relationship with Father and his relatives, provided a sufficient basis to conclude that returning D.R. to Mother's custody would be dangerous. Such evidence also supports the finding that no reasonable means short of removal would protect the child.

3. *The Order for Mother to Take Classes and Participate in Counseling*

Lastly, Mother contests the family preservation case plan, which required her to participate in domestic violence and anger management classes, co-parenting counseling, and random drug testing, and to comply with her previously ordered terms of probation. The court further ordered that Mother's visitation was to remain monitored. Mother does not take issue with the Department's efforts to provide her with services, but instead contends there was insufficient evidence the orders were necessary and/or appropriate.

Mother's attack is untimely; she should have objected to the juvenile court's treatment orders at the time they were imposed. (See *In re S.B.*, *supra*, 32 Cal.4th 1287, 1293.) Whether or not she has forfeited this issue, it amounts to a challenge to the sufficiency of the evidence supporting the jurisdictional findings in another guise. We explained above, we have already resolved this issue against Mother. As for the court-ordered drug testing, it was eminently reasonable to require both Mother and Father, both marijuana users, to submit to random drug testing, particularly because they had failed to follow through with such testing in the past.

The child's best interests are of primary concern in dependency court, and a juvenile court has broad discretion to fashion orders designed to ameliorate the conditions that made the child a dependent of the court. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 224.) The juvenile court here did not abuse that discretion.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.