Filed 7/13/18 In re Martha C. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re MARTHA C. et al., Persons Coming Under the Juvenile Court Law.	B286689 (Los Angeles County Super. Ct. No. CK55173)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MARICELA J., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Thomas Grodin, Judge. Affirmed in part; dismissed in part.

Annie Greenleaf, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

* * * * * *

In this dependency case, the mother of five children, ages 15 and younger, whom she had left in the exclusive care of their destitute father over two years earlier, seeks reversal of dependency court determinations placing the children in the care of others. We dismiss her appeal as to the oldest child and affirm the dependency court orders as to the four younger children.

FACTUAL AND PROCEDURAL BACKGROUND

The family unit in this case consists of Ramon, the father, and five children, Martha, age 15, Maria, age 14; Olivia, age 11; Ramon, Jr., age 10; and Jose, age 8.[1] The mother, Maricela, had left the family group two to three years prior to the commencement of proceedings in this matter. On June 12, 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed a juvenile dependency petition alleging violations of Welfare and Institutions Code section 300, subdivisions (b)(1) and (j) as to Martha, Maria, Ramon, Jr., and Jose, and of subdivision (b)(1) as to Olivia (the Petition).[2] Following an investigation that had begun with a reporting party

---

[1] The ages of the children are stated as of the time of filing of the juvenile dependency petition under Welfare and Institutions Code section 300.

[2] All further undesignated statutory references are to the Welfare and Institutions Code.

contacting the California Highway Patrol,[3] DCFS alleged in the Petition that Maria and Olivia suffered from chronic poor hygiene, including foul body odor, streaking dirt on their bodies and recurring head lice and scabies; that the parents had failed to provide adequate care to their children on an ongoing basis, endangering the health and well being of all of the children; and that the parents' acts and omissions placed Maria and Olivia and their siblings at risk of serious harm and damage in violation of section 300, subdivisions (b)(1) and (j). DCFS also alleged Olivia suffered from posttraumatic stress disorder (PTSD), had a speech disorder, and was in need of counseling, speech therapy and special educational services, all of which her parents failed to provide, in violation of section 300, subdivisions (b)(1) and (j); and that mother had medically neglected Olivia's older sibling (I.), in violation of section 300, subdivision (b)(1).[4] DCFS alleged the medical neglect of Olivia by her parents deprived Olivia of necessary medical services, endangering her physical health, safety and well being, and placed her and her siblings at risk of serious physical harm, damage and medical neglect, in violation of section 300, subdivision (b)(1).[5] DCFS also alleged these same acts and omissions, and the circumstance that sibling I. had been subjected to medical neglect by mother, placed Olivia and her

---

[3] The contact with the California Highway Patrol likely resulted from the circumstance that father and the children were living in a motor home parked on a highway.

[4] I. and her parents had been the subject of a separate Juvenile Court proceeding in which she was detained.

[5] DCFS did not check the appropriate box in paragraph 6 of its Petition, but alleged the violation of section 300, subdivision (j) in attachment JV-129 to the Petition.

siblings (other than I.) at risk of serious physical harm, damage and medical neglect, in violation of section 300, subdivision (j).

In the detention report, which DCFS filed on June 9, 2017, it reported the following. At the time of filing of the Petition, the children's whereabouts were unknown; the family was reported to be living in a trailer, with a last known address as parked on 42nd Street in Los Angeles.

This was not the first contact DCFS had had with the children or their parents. There had been 24 prior referrals to DCFS and two prior dependency court proceedings. In a proceeding initiated on February 27, 2012, DCFS had alleged the children, then including I., had been found in filthy, unsanitary conditions, with urine permeating their home, which itself was filthy, infested with bedbugs and had no electricity; the children all had insect bites on their bodies. The half sibling of the children, Luis, had sexually abused I., who was then seven years of age, but the parents denied that it had occurred and had failed to protect I. and the other children from this activity. At that time the court had determined it had jurisdiction and ordered suitable placement for Luis and home of parent placement for the other children.

In its investigation of the present matter, a DCFS clinical social worker (CSW) contacted Olivia at her school and observed her extremely poor hygiene, including her emanating a body odor characteristic of urine, and observed that she was infested with lice. The child reported she showers occasionally, misses a lot of school and eats every day at school and at home, where her father cooks the meals. She reported that her mother does not live in the home. The child denied physical abuse.

In a contact with a school social worker, the CSW learned the children are rarely at school, being absent approximately 80

percent of the time. The school social worker was of the opinion that father was clinically depressed. The CSW learned from two sources at the school that father had not complied with Olivia's Individualized Educational Program (IEP), which also was out of date. The school had also recommended that Olivia attend psychotherapy for her PTSD. In interviewing a prior CSW who had had contact with the family in one of its 24 previous referrals to DCFS and its two prior sustained petitions (beginning in 1999 and continuing through 2016) the reporting CSW had learned the parents had a history of living in unsanitary conditions and that, at one point, they had been placed in a clean residence but had vacated it at an undetermined time. All of the supplies that had been provided to help them in that apartment (including a refrigerator, beds, bedding and a stove) were no longer in the family's possession. The prior CSW also had concern for father's metal health. The CSW also reported that on May 25, 2017, she was advised by a school employee that Maria had not reported to school that day and that Olivia had arrived at school, but the odor emanating from her body was so strong it was highly disruptive to the classroom and, although the father was called to pick her up, he never appeared; Olivia eventually walked home alone.

The 24 prior referrals included repeated evidence of neglect, filthy living conditions, and a pattern of leaving the children unsupervised in a public park, leading DCFS to conclude that "there appears to be a pattern of medical neglect and general neglect due to unsanitary conditions and homelessness." (Boldface omitted.) In some of the prior referrals there was evidence of mother's frequent verbal abuse of the children, whipping them "with anything she has in her hand at the time," slapping and grabbing the children by their hair and ears, and

hitting them with belts, shoes and sticks. Mother was reported to be selling the WIC vouchers she received.[6]

In its present report, DCSF concluded there was substantial danger to the physical health of the children, who were suffering severe emotional damage and there was no reasonable means to protect the children from the acts and omissions of their parents without detaining the children. DCFS noted that mother and father had not made themselves available to DCFS notwithstanding many attempts to contact them.

The parents had participated in prior preplacement preventative services, including DCFS locating housing and providing financial assistance with utility bills; DCFS also had provided the stove, refrigerator and beds referenced above.

DCFS recommended that the court authorize mental health and/or developmental assessment of the children and treatment, if indicated; medical "HUB" services and followup care. With this information, DCFS requested issuance of a protective custody warrant for Ramon, Jr., Jose, Olivia, Maria and Martha.

At the detention hearing on June 12, 2017, the parents and Martha were present, each with appointed counsel. The court found there was a prima facie case for detaining all of the children as each was a person described by section 300, subdivision (b). The court also found with respect to all minors other than Martha (age 15) that substantial danger existed to the physical or emotional health of the minors (ages 14, 11, 10 and 8);

---

[6] We take judicial notice that WIC vouchers are part of the federal government Special Supplemental Nutrition Program for Women, Infants and Children, which provides grants to states for supplemental food and health care for low-income families. (Evid. Code, §§ 451, subd. (a), 452, subd. (b).)

reasonable efforts had been made to prevent or eliminate the need to remove the minors from the home; continuance in the home was contrary to the children's welfare; and temporary placement and custody with DCFS was proper pending disposition or further order of the court. The court found with respect to Martha that DCFS had made reasonable efforts to prevent her removal and there were services available to prevent her detention. She was released to her parents pending the next hearing, but on the condition she reside in the home of a designated third party (where she had been living with father's consent for an extended period of time). The other minors were detained in shelter care. The court also ordered that the specified services which DCFS had recommended (including multidisciplinary assessment and HUB medical services) be provided to the children. The parents were allowed monitored visits, with DCFS granted the authority to liberalize visitation. The matter was continued for a nonappearance progress report and for a subsequent appearance at a detention hearing. Protective custody warrants were issued.

Two days after the hearing, DCFS filed a report in which it summarized an interview with mother in which she stated she had not been living with the children for the past two to three years, but visited them in the park infrequently, and was "unaware of how bad things were." Mother stated the children would be better off in her care, also reporting that the children had been removed from her care in the past due to general neglect. DCFS had not been able to assess mother's home as she had not made herself available there. DCFS also reported it had assessed the living situation for Martha and was recommending that her caregivers obtain legal guardianship of her.

At the detention hearing on June 15, 2017, the court found there was a prima facie case for detaining Maria, Ramon, Jr., and Jose under section 300, subdivisions (b) and (j) and for detaining Olivia under section 300, subdivision (b). As to minors Maria, Olivia, Ramon, Jr., and Jose, the court found substantial danger existed to their physical and emotional health and there was no reasonable means to protect these minors without removal, and that continuance in the home was contrary to their welfare, even though reasonable efforts had been made to eliminate the need for removal. The court ordered temporary placement and custody to continue with DCFS in shelter care with a Ms. L., a distant relative of the family. Martha was ordered to continue to be detained and released in the care of the same third party pending the next hearing.

DCFS was ordered to provide family maintenance services to the minors and their parents and to prepare a pre-adjudication social study and a jurisdictional report. HUB medical services and multidisciplinary assessments of the children and parents were again ordered. Supervised visits of the children by the parents were ordered to continue. DCFS was also ordered to assess the mother's home for placement. The matter was continued for adjudication to August 1, 2017.

In a "Last Minute Information" for the court filed on July 24, 2017, DCFS reported that the person with whom the four younger children had been placed, Ms. L., was being investigated for neglect, malnourishment of the children, lack of proper supervision, failing to cooperate in allowing the parents to visit their children, and failing to maintain an adequate living environment for the children. DCFS asked the court for permission to relocate them. In a hearing that date, the court

granted DCFS discretion to appropriately relocate the four children.

In its August 1, 2017, jurisdiction/disposition report, DCFS detailed the history of the 24 prior referrals and two prior cases referenced above, concluding this report with the statement, "In evaluating DCFS history, there appears to be a pattern of medical neglect and general neglect due to unsanitary living conditions and homelessness." (Boldface omitted.) DCFS also reported that in its conversation with mother, she told the CSW that it had become too expensive to get the children deloused and she had left to father the matter of obtaining a proper IEP for Olivia as mother had separated from him and moved out, away from the family. She also stated Olivia had enuresis and needed to wear diapers, but father would not purchase them. Mother stated she had intended to go to court to obtain custody of the children (but had not done so). Father reported to the CSW he had asked the school to place Olivia in a different class, but it had not done so even though she was still unable to read. He acknowledged Olivia's enuresis and stated he encouraged her to shower when needed, also stating she could not control her bladder and would urinate on the way to school. Maria reported her siblings would not listen to father when he told them to clean themselves, stating they had changed since returning from foster care during a prior DCFS case.

In its assessment of the circumstances of the present case, DCFS concluded that the family was in need of court intervention as it had an extensive history of referrals and "open cases," most of which involved neglect by the parents of the children's needs and unsanitary living conditions. It noted the family had exhausted the funds available to it through DCFS programs and mother's abandonment of the family two or more years earlier,

and father's demonstrated inability to provide appropriate care and supervision supported DCFS's conclusions. In this regard, DCFS stated that mother's claim she still saw the children on a regular basis was false; the only time she sees them is when her friend and she happen to be in the same park as they are. Mother also took no action to care for the children even though she had knowledge of the children's situation. Martha and Jose do not want to live with her; Martha expressing anger at mother's abandonment of the family. The other three children stated they would like to have her care for them but wanted to be assured they would be able to attend school on a consistent basis.

DCFS recommended the Petition be sustained as pled, that the children become dependents of the court, and that the parents and children receive appropriate services.

At the adjudication hearing on August 1, 2017, the court sustained the section 300, subdivisions (b) and (j) allegations, determining by clear and convincing evidence that the children were sustaining severe emotional damage in the custody of their parents; that there was no reasonable means to protect them without removing them from the physical custody of the parents; that reasonable efforts had been made to prevent or eliminate the need for removal; that substantial danger existed to the physical health of the five minors; and that each child's placement was necessary and appropriate. The court also found the likely date by which the children could be returned to the parental home to be January 30, 2018. The court declared Martha, Maria, Ramon, Jr., and Jose to be dependent children under section 300, subdivisions (b) and (j) and Olivia to be a dependent child under section 300 (b).

Martha was ordered placed with father but was to reside with a designated individual, under the supervision of DCFS.

The other children were ordered placed in the care of DCFS, which was also ordered to find a suitable placement for them. The parents were allowed unmonitored visits with Martha in a public setting and monitored visits with the other children. DCFS was ordered to provide family maintenance services and family reunification services to the parents and counseling services for children and parents. Future dates were set for receipt of progress reports and judicial review.

Mother filed a timely appeal of all orders made on August 1, 2017.

Subsequent to the filing of the appeal, the parties stipulated that we may take judicial notice of certain postorder facts and circumstances. With this stipulation, and pursuant to Evidence Code sections 452, subdivisions (c) and (d) and 459, subdivision (a), we take judicial notice that on January 31, 2018, the dependency court ordered that parents shall have joint legal custody of Martha, but she shall be in the sole physical custody of father, with mother to have monitored visits. With those orders, and making the finding that the conditions warranting the initial assumption of jurisdiction under section 300 no longer extant, the court terminated jurisdiction as to Martha.

CONTENTIONS

Mother seeks reversal of the jurisdictional finding as to Martha, arguing (a) the circumstance that father did not appeal should not preclude this court from addressing the jurisdictional issues as to Martha, and (b) there is no substantial evidence to support the jurisdictional finding as to Martha. Mother also contends substantial evidence does not support the decision to place the children with anyone other than her and that the trial court committed reversible error by failing to comply with the

requirement of section 361.2, subdivision (a), to make specific findings to overcome the presumption that the children must be placed with her as she was the noncustodial parent.[7]

DISCUSSION

I. The Appeal As to Martha

Before addressing the merits, if any, of mother's claim that the jurisdictional finding as to Martha should be reversed, we consider the motion by DCFS to dismiss the appeal as to matters concerning Martha on the basis that the dependency court has terminated jurisdiction as to her.

In support of its motion, DCFS contends mother has failed to raise a justiciable controversy, also arguing the issue has been rendered moot by the subsequent orders of the dependency court granting the parents joint legal custody and father sole physical custody, with visitation orders for mother of not less than six hours per week. We find this motion meritorious and grant it for the reasons now discussed.

DCFS points out that it is the duty of the court to decide actual controversies and not to render opinions on questions that are moot. Indeed, "[i]t is a fundamental principle of appellate

---

[7] Mother's opening brief on appeal does not contain an argument contesting the order made under section 361, subdivision (c) removing the children from the custody of their *parents*, even though her notice of appeal (of all orders made) could be understood to include such a claim and DCFS's brief contains an argument responding to such a claim. Mother's reference in her opening brief to this statute is to argue by analogy in support of a claim she makes with respect to section 361.2, subdivision (c), discussed, *post*. Although the brief filed by DCFS contains argument responding to such a contention, as mother makes no such argument, we do not address this merely responsive argument of DCFS.

practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.] The justification for this doctrine, which in general terms requires an appeal to concern a present, concrete, and genuine dispute as to which the court can grant effective relief, is well explained in Wright and Miller's hornbook of federal practice: 'The central perception is that courts should not render decisions absent a genuine need to resolve a real dispute. Unnecessary decisions dissipate judicial energies better conserved for litigants who have a real need for official assistance.' " (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1490.) "An important requirement for justiciability is the availability of 'effective' relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status." (*Id.* at p. 1490.) "When the court cannot grant effective relief to the parties to an appeal, the appeal must be dismissed." (*Ibid.*; accord, *Mills v. Green* (1895) 159 U.S. 651, 653; *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 862-863.) The issue of mootness is to be decided on a case by case basis, especially when it is alleged that the initial finding of jurisdiction is in error. (*In re Kristin B.* (1986) 187 Cal.App.3d 596, 605.)

Applying these principles, DCFS argues that mother's appeal is moot based on the circumstance that these parents now have joint legal custody of Martha, mother has visitation rights, and jurisdiction has been terminated.

Mother points out that, even though as a general rule, an order terminating dependency court jurisdiction renders moot an appeal from a previous order (citing *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548), each motion to dismiss for mootness

must be decided on its particular facts and circumstances. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488-1489.)

The only adverse consequence upon which mother relies in support of her opposition to the motion to dismiss is that if she should seek a different custody order in the family law courts, she "would be collaterally estopped from challenging the jurisdictional aspects of the instant case, making it more difficult for Mother to gain more favorable custody orders."

Mother's argument is not sufficient. The juvenile custody order, which was the basis for the order terminating jurisdiction, and of which the parties stipulated we may take judicial notice, recites that both father and mother had notice and opportunity to be heard on the matters of which mother now complains, but neither father—nor mother—appeared to contest the arrangement that is the basis for mother's opposition to this motion; had she been concerned about the theoretical issue she now raises, she had the opportunity to raise it only four months ago when the order of which she now complains was entered based in significant part on her stipulation. Having not objected in January, mother has not explained why her objection only a few months later should be accorded any weight. Nor does mother explain why the uncontroverted evidence that she abandoned the family over two years ago, virtually never saw her children, and never addressed their significant problems of which she had been aware (and exacerbated) for over a decade, should not be considered in evaluating the merits of her belated contention. Also, Martha is already 17 years of age. In less than 12 months, she will be an adult and the custody order itself will be mooted. As a practical matter, any application by mother to modify the custody order would, even if granted, be effective for less than 12 months.

For all of these reasons, we find that the facts and circumstances in this case do not support mother's claimed adverse consequences and we dismiss the appeal insofar as it applies to Martha.[8]

II. The Appeal of the Placement of the Younger Children[9]

Mother contends the dependency court erred in not complying with the section 361.2, subdivision (c) requirement that she be evaluated as a suitable placement for the four younger children, as that section requires evaluating placement with her as the noncustodial parent who requested custody, and the dependency court's failure to make the findings required by this statute in the course of its placement determination was not harmless error; consequently, the custody determination must be reversed.[10] DCFS concedes the statute requires that such

---

[8] As DCFS points out, mother will remain an offending parent as to the other four children, even were her arguments as to Martha persuasive, and the jurisdictional finding as to them extends to her as well. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.)

[9] Mother's appellate argument with respect to the four younger children is inconsistent; in some places it is made on behalf of "the younger children" only, while in others, it is made on behalf of "all" of the children. In the conclusion of her opening brief on appeal, mother seeks relief only as to Martha. However, the orders as to Martha, on the one hand, and as to her four younger siblings, on the other, were made separately and, given the overall structure of mother's brief, we understand that she is making this argument as to the four younger children only.

[10] Mother also supports her contention by referencing the similar requirement for findings contained in section 361, subdivision (c) for a court making custody determinations with

findings be made but argues the dependency court's error in removing the four children from mother without making the required findings was harmless.[11]

a. Applicable statutes and case authority

Section 361, subdivision (c) provides that a dependent child may not be taken from the physical custody of a parent *with whom the child resides at the time the petition was initiated* unless the dependency court finds by clear and convincing evidence that at least one of five enumerated criteria is present. The first listed criterion is "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).)

---

respect to the parent who does have custody of the minors at the time of adjudication. We find that analogy to be interesting, but not persuasive.

[11] We determine this to be DCFS's contention based on the heading of its argument. As we noted, *ante*, DCFS has misperceived mother's claim as one based on section 361, subdivision (c) rather than 361.2, subdivision (c).

As on appeal, we affirm unless error (to the degree required in the particular case) is affirmatively shown, the burden is on mother to establish that error in this case, even though DCFS has not properly perceived mother's argument. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.)

Section 361.2, subdivision (a) provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, *with whom the child was not residing at the time that the events or conditions arose* that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. . . ." (Italics added.)

And, subdivision (c) of section 361.2 provides: "The court shall make a finding either in writing or on the record of the basis for its determination under subdivision[] (a) . . . ."

Thus, if a child is removed from the home of the custodial parent, the court is mandated to (a) decide whether the child can be placed with a parent with whom the child was not residing at the time of the events which resulted in the removal from the custodial parent and (b) affirmatively make findings of the basis for its determination. Section 361.2, subdivision (a) mandates that the dependent child be placed with the noncustodial parent absent properly and sufficiently articulated or recorded findings. Only if and when the court articulates and records findings that it would be detrimental to the child may the court place the child elsewhere. (§ 361.2, subd. (c).)

This statutory preference for placement of the child with the noncustodial parent in such circumstances is evident and is explained by our courts in the following manner:

"A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood."

(*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1828.) "[T]o comport with the requirements of the due process clause, a finding of detriment pursuant to section 361.2, subdivision (a) must be made by clear and convincing evidence." (*Id.* at p. 1829.) A nonoffending parent has both a constitutionally protected and statutory right to do so unless there is clear and convincing evidence that the nonoffending parent's custody of the child will be detrimental to the " 'safety, protection or physical or emotional well-being of the child.' " (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 697.)

When the record does not establish that the dependency court considered the requirements of section 361.2, subdivision (a) in determining whether to deny the noncustodial parent's request for physical custody, we cannot conclude that the doctrine of implied findings applies to validate the dependency court's decision. (See *In re Abram L.* (2013) 219 Cal.App.4th 452, 461 (*Abram L.*).) Also, the noncustodial parent does not necessarily forfeit the right to claim error by failing to make clear in the dependency court her or his right to custody. (*Id.* at pp. 461-462; *In re Marquis D., supra*, 38 Cal.App.4th at pp. 1824-1825.)

Instead, we must determine whether the dependency court's error was harmless, or, instead, constituted a miscarriage of justice. (*Abram L., supra*, 219 Cal.App.4th at p. 463.) As the *Abram L.* court points out, "[w]e cannot reverse the court's judgment unless its error was prejudicial, i.e., " 'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." ' " (*Ibid.*)

b. Facts relating to the dispositional order

In addition to the evidence set out, *ante*, concerning mother's relationship with her children, the

jurisdictional/disposition report filed for the August 1, 2017 hearing at which the dispositional orders were made states that mother "appears to have been aware of the condition the children were living in"; and that prior to her leaving the family over two years earlier, she had treated the children for lice "but stopped when she saw they would get it again." Based on the totality of its investigation, DCFS opined that "[g]iven their history, mother should've intervened right away but she stated she observed they were filthy and she let it go on for a year. While she claims she was waiting until the summer to file for full physical custody of the children, given what she was seeing, she should have acted immediately. Mother does not appear to have made any effort to follow through with the children's medical and educational needs. . . . While mother has an appropriate home where she can house the children[,] this is not sufficient to recommend the children to return to her care. Her inability to take responsibility and provide for the children for the past two years even after she has been involved with DCFS multiple times in the past 10 years and taken parenting and individual counseling to address her neglect of the children, brings into question her ability to do so now."

All of the DCFS reports were admitted into evidence at the dispositional hearing, and counsel for all parties presented their respective positions. With respect to the four younger children, mother's counsel asked three times that the court dismiss the petition in its entirety, arguing mother had only recently become aware of the children's lack of hygiene.[12] Having made these

---

[12] The same counsel, who also represented Martha, asked that the Petition be dismissed as to Martha, albeit for other reasons.

requests, mother's counsel concluded with "And that is all I have for now . . . ." Counsel did not then ask that custody be awarded to mother.

Later in the hearing, counsel for these minors did ask that the hearing be continued, arguing that there had not been a proper assessment of mother's living arrangements or of the progress made "by the parents." Although the DCFS report had concluded that mother's home was appropriate, in response to a question posed to mother's counsel by the court on why mother wanted a continuance if the home had been cleared, her counsel stated: ". . . I don't believe there has been a full assessment regarding the children and whether or not they would, in fact, want to return to the mother. [¶] Also, given the fact that there are things that mother is working on right now[,] I would like that to be a part of the disposition hearing, your Honor. I know that she is currently enrolled in programs, and so I would like that to be reflected."

Following a suggestion by counsel for DCFS that the matter be adjudicated that day and that the court set a progress hearing date within 90 days to address the possible return of the younger children to either parent, the court denied mother's request for a continuance and heard additional arguments. At that point, mother's counsel stated there was no evidence that there would be substantial risk if the children were returned to her, and "there are reasonable means to protect in this situation. [¶] . . . [S]he will be able to keep an eye on them and make sure the children have proper hygiene." Mother's counsel then advised the court that if it were not going to order "home of parent, mother," that it consider ordering that the children be ordered to reside with a family friend whose information could be assessed by DCFS (to determine if that placement were appropriate).

In declining this last request, and in making its order with respect to the four younger children, the court stated: "So all of the children but Martha are to be placed under the supervision of [DCFS] for placement. [¶] And the court finds by clear and convincing evidence that [DCFS] has complied with the case plan by making reasonable efforts to prevent or eliminate the need for the children's removal from their home. [¶] And the court is ordering that they be—those children be suitably placed. The evidence is, quite frankly, overwhelming, and I don't mean that in a derogatory manner to anybody, but it is just a very difficult situation."

c. Discussion

Mother argues that "[a]bdication of a parental role does not equate to an inability to care for the children," yet, in this case there is an abundance of evidence requiring affirmance of the order made. With knowledge of her children's squalid living conditions, of significant medical issues with certain of the children, and of their lack of basic hygiene, mother took no action to remediate any of these conditions, only visiting with them in the accidental and infrequent encounters of them in a public park. Having abandoned her children for over two years, when she did encounter them, there is no evidence she ever took any steps to ameliorate their living conditions or secure medical care for their scabies. Nor did she make any effort to contact their school to arrange for an updated IEP for Olivia or to arrange for Olivia to be seen by a physician to address the enuresis of this 11-year-old child, notwithstanding that the condition was well-known to mother. In all of these circumstances, mother was aware of father's limited ability to care for the children.

This was not mother's first contact (or that of the family) with DCFS. Over the prior 10 years there had been 24 investigations by DCFS and two cases filed. In each case, DCFS had found mother and father to be at best struggling with basic care issues for their children. DCFS had provided extensive services to the family in the past, exhausting allocable funds.

As discussed, *ante*, we may reverse the order in this case only if it is reasonably probable a more favorable result to mother would be reached in absence of the dependency court's failure to articulate findings in support of its determination as required by section 361.2. (See *Abram L., supra*, 219 Cal.App.4th at p. 463.) The evidence does not warrant such a determination. Rather, there is overwhelming evidence of mother's sustained abdication of any responsibility for the welfare of her children over more than a 10-year period. There is no dispute—and mother admitted—that she left the family over two years ago, then knowing of the squalor in which the family was living. Nor is there any dispute that during those 10 or more years that she did anything to ameliorate those conditions, even after DCFS interventions and her own attendance at various parenting programs. It is also undisputed that she sold the WIC program vouchers rather than use them to purchase the food for the family for which they were provided. The only times she had seen her children in the two years since she left them in the custody of their father (whom she knew had his own psychological issues) was on a few occasions when the family would encounter her in a public park.

Based on these and the other facts referenced above, it is not reasonably probable that a different result would have been reached had the dependency court met the requirements of

section 361.2.[13] As DCFS points out, "mother in this matter has failed to protect the children and effectively abandoned them in a neglectful home where they were generally and medically neglected by father." The children's situation was egregious, and their circumstances were well known to mother, yet she took no action to help her children. On these facts, we conclude the failure of the dependency court to make the findings required by section 361.2 was harmless.

DISPOSTION

The appeal as to Martha is dismissed and the dependency court's order of August 1, 2016, is affirmed in all other respects.

GOODMAN, J.*

WE CONCUR:

BIGELOW, P. J. GRIMES, J.

---

[13] In stating that "the evidence is, quite frankly, overwhelming . . ." (which the dependency judge uttered right after it ordered that the four younger children be suitably placed), the dependency court may have intended to comply with section 361.2. We need not speculate based on the conclusion we reach in the text of this opinion.

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