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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.O., et al., Persons Coming
Under Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.O.,

Defendant and Appellant.

B294907

(Los Angeles County Super.
Ct. No. 18CCJP06691)

APPEAL from a judgment of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Keiter Appellate Law and Mitchell Keiter for Defendant and Appellant.

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

INTRODUCTION

Mother appeals the juvenile court's jurisdictional findings over her children and dispositional order requiring her to drug test. The court sustained three counts under Welfare and Institutions Code section 300, subdivision (b)(1) based on mother's physical abuse of the children -- hitting them with her hand and a sandal -- and father leaving a methamphetamine pipe within the children's reach.¹ Mother argues the physical abuse allegations are not supported by substantial evidence. She does not challenge the jurisdictional finding based on drug paraphernalia left by the father. She also argues the dispositional order requiring her to drug test was an abuse of discretion. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have four children, ages eleven, eight, seven, and five. The family was homeless at the time of Department of Children and Family Service's (DCFS) investigation. The family had previously received voluntary family maintenance services in 2011, due to substantiated allegations that the children were severely neglected.²

1. DCFS Investigation

On August 27, 2018, DCFS received a referral that the children were at risk of general neglect by their mother. The referral indicated staff at a shelter where the family had been living found a methamphetamine pipe while cleaning the family's room after the parents and children had moved out of the shelter.

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

² Father is not a party to this appeal.

Upon investigation, DCFS learned that the family did not have stable housing. The parents and two youngest children were temporarily staying at a hotel, and the two oldest children spent the night at their maternal grandmother's house. LA Housing Services was assisting the family with obtaining motel vouchers.

DCFS interviewed the children individually several times. When asked about the physical abuse, the 11-year-old stated mother "did it to all of us. She . . . hit us with her hand or with her sandal when we misbehave[d]." The child stated father told mother not to hit the children, but mother would do so nonetheless. Her eight-year-old brother confirmed that account. The seven-year-old daughter likewise stated she had previously been spanked with a sandal by mother. The girl recalled the spanking did not leave any marks or bruises. The four-year-old son told the social worker that mother used a "chancla" (a sandal) to hit him and his siblings, and she also hit him with a belt when he misbehaved.

The 11-year-old daughter reported that her father spent a great deal of time in the bathroom. She stated that when he eventually exited, his pupils were enlarged and abnormal, and he acted differently. The child reported that in June 2018, she found a pipe "behind the trash." She suspected her father was using drugs and wanted him to get help. The child also stated that mother engaged in similar behavior of locking herself in the bathroom for long periods of time. She suspected mother too used drugs.

Mother denied that she or father used drugs and stated she did not know about the methamphetamine pipe that was found in their room at the shelter. Mother speculated the pipe belonged to a friend. Mother submitted to three drug tests on September 6, 15, and 24, 2018. All were negative.

Mother admitted to hitting the seven and eight year old with a sandal, but pointed out she did not hit them hard. Mother stated she would hit the children with her hand most of the time. Father was aware of mother's physical discipline and told the dependency investigator that he would try to stop mother from hitting the children because there was no reason for her to do so. Father did not use physical discipline on the children.

Regarding the methamphetamine pipe, father explained that the pipe belonged to a friend who had stayed with them. Father admitted to having a history of using marijuana, methamphetamine, cocaine, and heroin, but denied current use. He disclosed priors arrests for domestic violence, driving under the influence, and drug possession, and subsequently was deported to El Salvador. Father's criminal record included a 2013 conviction for possession of methamphetamine; he failed to enroll in a drug treatment program required of his probation. The social worker asked father to submit to a drug test on three separate occasions, but father failed to appear.

DCFS interviewed the maternal grandmother and found her home to be appropriate for the children. She confirmed the children slept at her place because the parents did not have a stable residence. The children arrived at 7:00 p.m., when maternal grandmother came home from work. The parents did not appear to reside with the maternal grandmother because of historical conflicts between the parents and the grandmother and/or her landlord. The grandmother suspected both parents were using drugs and reported that they had a history of domestic violence. The maternal grandmother informed the dependency investigator that mother had no patience with her children. Mother yelled at and hit the children with her hands or a sandal. The maternal grandmother stated, "I would get very

upset with [mother] and I would tell her not to hit the children, but she always does whatever she wants.”

In October, the social worker attempted to follow up with the parents, but they were no longer living at the same hotel and did not answer telephone calls. When the social worker contacted the maternal grandmother on October 12, 2018, to inquire about the parents’ whereabouts, the maternal grandmother stated the parents were kicked out of that hotel and that they “get kicked out of wherever they go.” She also reported mother was no longer picking the children up from school.

That same day, the social worker contacted LA Housing Services and learned the parents had not been in contact for two months. LA Housing Services was going to close the parents’ case. The LA Housing Services representative explained to the social worker that shelter residents are supervised and the parents were not allowed to have anyone stay with them at the shelter. The representative stated that any drug items found in their room could not have belonged to anyone else, and the “paraphernalia of methamphetamine found by the staff while cleaning the room in parents’s [sic] belonging was theirs.”

2. Section 300 Petition

On October 16, 2018, DCFS filed a section 300 petition alleging jurisdiction over the four children pursuant to subdivisions (a), (b)(1), and (j) based on mother striking two of the children with a sandal and the youngest with a belt, and father’s failing to protect each child from such contact. The petition further alleged jurisdiction under subdivision (b)(1) based on father’s leaving a drug pipe within reach of the children.

3. Detention Hearing

At the October 17 detention hearing, the court found a prima facie case that all four children were described by section 300. The court ordered the children released to their parents’

custody with an understanding that the two older children spend every night in the maternal grandmother's home. The older children were primarily in the grandmother's care because they attended school and the grandmother was authorized to make educational decisions on their behalf. The court ordered housing and transportation assistance for the family, prohibited corporal punishment of the children, and required drug testing for both parents.

4. Jurisdiction Hearing

Just prior to the December jurisdiction hearing, DCFS reported that the parents continued to live in a motel with the two youngest children, while the two oldest children slept at the maternal grandmother's home. During a meeting with DCFS, father told the dependency investigator that he would not participate in any services unless they were court-ordered. As a result, DCFS determined the family did not meet the criteria to participate in a section 301 contract.³ Meanwhile, mother's two drug tests and father's single test were all negative. Recent interviews with the children suggested mother was no longer using physical discipline.

At the December 14, 2018, hearing, the juvenile court received evidence and heard argument from counsel. Father's counsel asked the court to dismiss the failure to protect and drug

³ Section 301 states: "In any case in which a social worker, after investigation of an application for petition or other investigation he or she is authorized to make, determines that a child is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the social worker may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the child's parent or guardian, undertake a program of supervision of the child." (§ 301, subd. (a).)

pipe allegations against him. Mother's counsel requested the court to dismiss the abuse allegations against mother, asserting that the children denied mother used a belt on them and confirmed mother used only her hand or occasionally a sandal in disciplining the children when they misbehaved. Mother's counsel argued the physical contact was "only for the purposes of discipline Not in any abusive way, so these allegations cannot be sustained. It is clear that the discipline was not excessive. None of the children had any marks or bruises, and she has since stopped." Counsel stated mother had already enrolled in parenting classes. Father's counsel asked the juvenile court to dismiss the failure to protect and pipe counts against father.

Minors' counsel asked the court to dismiss the subdivision (a) and (j), and drug pipe allegations. Counsel asked the court to sustain the two subdivision (b) allegations about sandal use, but not the one alleging belt use, against both parents. Minors' counsel argued mother did not deny using a sandal or her hand to discipline the children, and the children's misbehavior "can be appropriately misdirected with things other than physical discipline."

DCFS submitted on the subdivision (a) allegations and asked the court to sustain the subdivision (b) allegations. DCFS contended the drug pipe allegation was supported not just by father's possession of the pipe but his physical symptoms, suggesting use as well.

The court sustained the drug pipe allegation against father, and sustained the subdivision (b)(1) allegations concerning discipline involving a sandal or open hand against mother. The court dismissed the subdivision (a) and subdivision (j) allegations, the subdivision (b)(1) allegation concerning a belt, and the failure to protect allegations against father.

The court explained that it did not find credible the parents' statements that the pipe found in the room belonged to someone else, given the evidence and father's history. The court found that mother had used her hands and sandals to inappropriately discipline two children, but had not hit the children with a belt. The juvenile court declared the children dependents of the court.

The court then addressed disposition and denied mother's request for informal supervision under section 360, subdivision (b). Mother's counsel asked the court not to require drug testing from mother based on her enrollment in services and several clean tests. The court ordered both parents to participate in six more drug tests, because it "very much want[ed] to see these consecutive tests so we can be sure there is no issue[] with substantive use." The court ordered the parents to enter a full drug program if they had a missed or dirty test. The court ordered family maintenance services for the parents, which included parenting classes and individual counseling. The court also ordered housing and transportation assistance for the family.

Mother timely appealed.

DISCUSSION

Mother argues that the court erred in finding jurisdiction over her children pursuant to section 300, subdivision (b), based on physical abuse. She also challenges the dispositional order that required her to drug test.

1. The Jurisdictional Challenge is Not Justiciable

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) In dependency cases, the court asserts jurisdiction with respect to a child when one parent's conduct has triggered the statutory

prerequisites listed in section 300. (*Id.* at p. 1491.) Thus, “a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) This is because the appellate court generally “cannot render any relief to [the parent] that would have a practical, tangible impact on his position in the dependency proceeding.” (*In re I.A.*, at p. 1492.) Under such circumstances, the appeal is considered not justiciable, and must be dismissed. (*Id.* at pp. 1489-1490.)

Here, mother contests only two of three jurisdictional findings. Even if we reversed the physical abuse finding, we are unable to offer mother any tangible relief because the sustained jurisdictional finding about leaving drug paraphernalia in reach of the children would stand. DCFS argued this point on appeal, and mother did not respond to it in her reply brief. We therefore decline to address this portion of mother’s appeal.

2. The Disposition Order Was Supported by Substantial Evidence

Mother argues the court abused its discretion in ordering drug testing for mother. The juvenile court has broad discretion to make dispositional orders that would best serve a child’s interest. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 454 (*Alexis E.*).) Pursuant to section 362, subdivision (d), “The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the minor is a person described by Section 300.” “[T]here need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) The dispositional order need only be reasonable and supported by the record before

the court. (*Ibid.*) We do not reverse the court's dispositional order absent a clear abuse of discretion. (*Alexis E.*, at p. 454.)

Here, the presence of drug paraphernalia in the room the parents shared with their children was one of the grounds for jurisdiction. Both parents asserted the drug pipe found in their room belonged to a friend. Yet, the evidence indicated that the parents were monitored at the shelter and could not have had a guest in the room. There was also evidence that father had a history of drug use and had been under the influence of drugs in the presence of the oldest child. The court reasonably found the parents not credible about the drug pipe's origins and determined that the drug pipe belonged to father. It also could be reasonably inferred that, given father's intoxicated state and drug paraphernalia, mother was aware of, if not participating, in the drug use. The record supported the court's conclusion that six clean drug tests from both parents were necessary to ensure the children's safety.

Mother likens her case to *In re Drake M.* (2012) 211 Cal.App.4th 754, in arguing that the court abused its discretion in ordering her to drug test. In *Drake M.*, the mother's substance abuse supported jurisdiction; the father's drug use did not. The juvenile court ordered both parents into random drug testing and drug counseling. The appellate court held the juvenile court abused its discretion in ordering the father to submit to the drug testing and counseling because nothing in the record showed he had a substance abuse problem. (*Id.* at pp. 769–770.)

Drake M. is not on point. The jurisdictional findings here were based in part on drug paraphernalia in the presence of the children. The evidence submitted by DCFS identified mother as one of the two adults residing in the room where the drug pipe was discovered. The maternal grandmother reported that she

suspected mother used drugs based on mother spending much of the day asleep. The 11-year-old daughter also suspected mother was involved in drug use because both mother and father locked themselves in the bathroom for long periods of time. The daughter indicated that this behavior stopped when DCFS became involved with the family. This evidence was sufficient to support the juvenile court's disposition.

DISPOSITION

The judgment is affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.