Filed 8/14/18 In re N.R. 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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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

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| In re N.R., a Person Coming Under the Juvenile Court Law. | B287287 |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>RUBEN R.,<br><br>Defendant and Appellant. | (Los Angeles County Super. Ct. No. DK22483) |

APPEAL from orders of the Superior Court of Los Angeles County. Debra Losnick, Juvenile Court Referee. Dismissed in part and affirmed in part.

Linda Rehm, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

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Ruben R. (Father) appeals from the juvenile court's jurisdiction and removal orders, contending there was insufficient evidence to support them. Father's challenge to the jurisdiction order is non justiciable and he forfeited his challenge to the removal order. Accordingly, we dismiss the appeal of the jurisdiction order and affirm the removal order.

**FACTUAL SUMMARY**

In April 2017, the Los Angeles Department of Children and Family Services (DCFS) detained Father's 12-year-old daughter, N.R., after she reported being sexually and physically abused by her mother's companion, Jorge F. At the time, N.R. was living in California with her mother (Mother) and Jorge F. Father was living in South Dakota with his wife, Rosa. Father and N.R. communicated via telephone and social media, but had not had personal contact for several years. After learning of the abuse allegations, Father indicated he wanted N.R. to live with him in South Dakota. N.R., however, wanted to remain in California and reunify with Mother.

In June 2017, the juvenile court sustained a petition filed by DCFS and found N.R. is a person described by Welfare and Institutions Code section 300, subdivisions (b)(1) and (d).[1] Specifically, the court determined that Jorge F. sexually and physically abused N.R., and Mother failed to protect N.R. from such abuse. The court also found that Jorge F. was violent with Mother in N.R.'s presence, yet Mother allowed Jorge F. to continue living in the home and have unlimited access to N.R. The court ordered that N.R. remain detained, but authorized a visit with Father.

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[1] All future undesignated statutory references are to the Welfare and Institutions Code.

DCFS made arraignments for N.R. to visit Father in South Dakota during her summer break. Three days before the visit was scheduled to end, N.R. called her foster mother and told her Father had been drinking. The foster mother reported the phone call to a DCFS social worker, who contacted N.R.

N.R. told DCFS social workers that she smelled alcohol on Father when he recently drove her to the store. As he was driving, Father swerved between lanes, and at one point, was partially in the lane of oncoming traffic. At other points, Father drove between lanes on his side of traffic and was driving too slowly. N.R. asked Father to go back home, but he continued driving.

When they arrived at the store, Father had difficulty walking straight and swayed from side to side. Father was talking, but N.R. could not understand what he was saying, possibly because he was slurring his words. N.R. told Father she wanted to go home, and they left without going inside the store.

On the ride home, Father's driving got worse and he continued to swerve. N.R. was scared and called Father's wife, Rosa. This upset Father, and he grabbed the phone away from N.R. Father hit the phone on the compartment between the driver's and passenger's seats, which broke the phone's screen. Father continued swerving and almost crashed into another car.

When they arrived home, Father went to the living room and watched television. Rosa repeatedly called him on his cell phone, but Father ignored the calls. Later that night, Father cried and apologized to N.R.

Father admitted he drank one and a half or two beers an hour before driving N.R. to the store. He said he felt sober and was not swerving. Father denied becoming angry or knocking

the phone out of N.R.'s hand. Father believed Mother coached N.R. to lie about him drinking and driving.

Rosa confirmed that she was on a video call with N.R. while Father was driving. According to Rosa, N.R. was crying and said she wanted to return to California. Rosa stated that Father did not appear drunk, she did not see him swerving, and it did not seem as though Father took the phone from N.R. Rosa denied that in the three years she had been in a relationship with Father, he had ever driven while drunk or been as drunk as N.R. described.

In August 2017, DCFS filed a section 342 petition alleging N.R. is a person described by section 300, subdivision (b)(1).[2] Specifically, DCFS alleged Father placed N.R. in a detrimental and endangering situation when he "drove a vehicle while under the influence of alcohol with [N.R.] as a passenger."

On October 11, 2017, the juvenile court held a combined jurisdiction and disposition hearing on the section 342 petition, as well as a disposition hearing on the original section 300 petition.[3] DCFS, Mother, and N.R.'s counsel requested that the court sustain the section 342 petition. Father argued that the court should dismiss the petition. According to Father, although he drank some beer prior to driving N.R., he was not under the influence of alcohol at the time. Father suggested that N.R.

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[2] Per section 342, when a child has been declared a dependent of the juvenile court and DCFS alleges new facts or circumstances that are also sufficient to find the minor is a dependent, DCFS must file a subsequent petition alleging the new information.

[3] For purposes of this appeal, it is unnecessary to detail the portions of the hearing relevant only to Mother.

fabricated the accusations about him being drunk because she did not want to live with him.

The juvenile court amended the section 342 petition to read that Father drove a vehicle "after drinking two beers," rather than "while under the influence of alcohol." The court sustained the petition as amended.

The court then turned to disposition. DCFS submitted a proposed case plan, which recommended that Father be granted monitored visitation, participate in conjoint and individual counseling, submit to 10 alcohol screening tests, and participate in an alcohol awareness program. Father objected to participating in an alcohol awareness program and individual counseling. He noted that the court sustained the petition on the basis that he drank two beers, which is neither illegal nor inappropriate. Father also asked that he be required to test for alcohol only five times. Father did not object to monitored visitation.

The court declared N.R. a dependent of the juvenile court and found by clear and convincing evidence that N.R. should be removed from her parents' custody. It ordered N.R. placed in the care, custody, and control of DCFS, and granted Father monitored visits with discretion to liberalize. The court further ordered Father participate in conjoint counseling when appropriate, but did not order that he participate in individual counseling or an alcohol awareness program. The court noted that the "crux" of the case at this point was Father's lack of a relationship with N.R., and suggested individual counseling and an alcohol program were not necessary to address that issue. Nonetheless, the court ordered Father submit to 10 alcohol

screening tests in order to "remove all doubt" about his alcohol use.

After the court issued its disposition orders, Father requested unmonitored phone contact with N.R. The court denied the request, noting it is important that Father and N.R. reestablish and strengthen their relationship before they have unmonitored contact.

Father timely filed a notice of appeal.

## DISCUSSION

### I. Father's Challenge to the Jurisdiction Order is Non-Justiciable

Father argues there was insufficient evidence to sustain the section 342 petition. Specifically, he contends there was no evidence that he endangered N.R. by drinking two beers and then driving while she was a passenger in his vehicle. He also asserts there was no evidence of a current risk to N.R.'s safety as of the jurisdiction hearing. We do not address Father's contentions because his challenge to the court's jurisdiction order 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 (*I.A.*).) An important requirement for justiciability is the availability of effective relief. (*Ibid.*) Such relief may not be available where jurisdiction is taken as a result of both parents' conduct and only one parent challenges the ruling. This is because "[i]t is commonly said that the juvenile court takes jurisdiction over children, not parents." (*Id.* at p. 1491.) Thus, "a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either

parent bring [the minor] within one of the statutory definitions of a dependent. [Citations.]" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.)

For this reason, where there is no challenge to at least one finding that is sufficient to support jurisdiction, "an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings." (*I.A., supra*, 201 Cal.App.4th at p. 1492; see *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) However, the court may exercise its "discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation]." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 (*Drake M.*).)

Father appears to recognize that the juvenile court's findings in connection with the section 300 petition are sufficient to support jurisdiction over N.R., regardless of the outcome of this appeal. Although not entirely clear, he seems to suggest that we should nonetheless consider his arguments because the jurisdictional findings formed the basis for the court's subsequent removal order, which he also challenges on appeal. Ordinarily, this would constitute a sufficient reason to consider the merits of his challenge to the jurisdiction order. (See *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 ["As the jurisdictional findings are the basis for the restrictive visitation and custody orders, error in the former undermines the foundation for the latter."]; *Drake M., supra*, 211 Cal.App.4th at pp. 762–763.) However, for the reasons we discuss in the next section, Father forfeited his

challenge to the removal order. Therefore, no matter the outcome of Father's challenge to the jurisdictional findings, the removal order will stand. As a result, a reversal of the jurisdiction order would provide no practical relief; N.R. will remain a dependent of the juvenile court and under the care, custody, and control of DCFS.

Even if Father had not forfeited his challenge to the removal order, we would decline to consider his challenge to the jurisdictional findings. Contrary to Father's suggestions, it appears the drinking and driving incident—which was the entire basis for the jurisdiction order—was not the motivating factor behind the removal order. Indeed, during the disposition portion of the hearing, the court noted that Father's lack of a relationship with N.R. was the "crux" of the case at that point. The court echoed this sentiment when it denied Father's request for unmonitored phone calls, noting it was important that he first reestablish and strengthen his relationship with N.R. The court also declined DCFS's recommendation that Father participate in an alcohol awareness program and individual counseling, which suggests the court did not believe Father had significant ongoing issues with alcohol. Although the court required Father submit to alcohol testing, it did so only to "remove all doubt" about his alcohol use. This strongly suggests the court would have refused to place N.R. with Father, even if it had dismissed the section 342 petition.

We also do not think the jurisdictional findings will have a significant effect on future dependency proceedings. Father essentially admitted he drank two beers prior to driving a vehicle with N.R. as a passenger, which was the core factual allegation sustained by the court. His points of contention are with the

court's findings that such conduct created a substantial risk that N.R. would suffer serious physical harm, and that there was a risk to N.R. at the time of the jurisdiction hearing. Those findings, however, will have little, if any, impact on future dependency proceedings. As the court explained in *I.A.*, "[a] past jurisdictional finding . . . would be entitled to no weight in establishing jurisdiction, even assuming it was admissible for that purpose. Instead, the agency will be required to demonstrate jurisdiction by presenting evidence of then current circumstances placing the minor at risk. Other relevant dependency findings similarly would require evidence of present detriment, based on the then prevailing circumstances of parent and child." (*In re I.A., supra*, 201 Cal.App.4th at p. 1495.)

We also find no merit to Father's brief suggestion that we should review the jurisdictional findings because they could conceivably impact future family law proceedings. Initially, there is no indication in the record that family law proceedings are impending, or even likely. Father also fails to specifically explain how the jurisdictional findings would impact such proceedings were they to occur at some point in the future. As such, any potential impact is far too speculative. Under these circumstances, we decline to consider Father's challenge to the jurisdiction order.

## II. Father Forfeited His Challenge to the Removal Order

Father contends the juvenile court erred in removing N.R. from his care because there were reasonable means available to protect her, such as random home visits by local service providers. He further suggests removal was improper because the single incident of drinking and driving was not sufficient to

show he posed any risk to N.R.'s health or safety at the time of the disposition hearing. DCFS contends that Father forfeited his right to challenge the removal order by failing to assert an objection below. We agree and decline to consider Father's arguments.

"A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court. [Citations.] Forfeiture, also referred to as 'waiver,' applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221–222.) "[T]he failure to object to a disposition order on a specific ground generally forfeits a parent's right to pursue that issue on appeal." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345.) Although application of the forfeiture rule is not automatic, a reviewing court should exercise its discretion to excuse forfeiture rarely and only in cases presenting an important legal issue. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The discretion must be exercised with special care in dependency cases given they involve the well-being of children, and considerations of permanency and stability are of paramount importance. (*Ibid.*)

Here, Father forfeited his right to challenge the removal order by failing to object to it in the juvenile court. In connection with the disposition hearing, DCFS submitted a proposed case plan recommending that Father be granted monitored visits with N.R. Implicit in this recommendation was that Father would not have custody of N.R. Father, however, did not object to that aspect of the proposed case plan or express any desire for N.R. to live in his home. Instead, he objected only to the recommendations that he participate in a drug awareness

program and individual counseling, and submit to 10 alcohol screening tests. Father's failure to object in the juvenile court forfeited his right to challenge the removal order on appeal.

Father insists that his objection to jurisdiction constituted an implicit objection to removal. Father, however, cites no authority for this proposition. Moreover, as discussed above, the juvenile court indicated that its removal order was not premised entirely on its jurisdictional findings. Therefore, it was incumbent upon Father to assert a new objection to preserve the issue for appeal.

We also decline to exercise our discretion to excuse Father's forfeiture. Father's appeal does not present an important legal issue, and reversal at this stage would cause further disruption and uncertainty in N.R.'s life. This case does not present the sort of rare circumstances warranting excusal of a parent's forfeiture.[4]

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[4] We do not consider Father's brief argument, made for the first time in his reply brief, that the juvenile court should have considered placing N.R. with him pursuant to section 361.2, rather than removing N.R. pursuant to section 361. Father forfeited this argument by failing to raise it before the juvenile court or in his opening brief. (See *In re Luke H.* (2013) 221 Cal.App.4th 1082, 1090; *In re Tiffany Y.* (1990) 223 Cal.App.3d 298, 302.)

## DISPOSITION

We dismiss Father's appeal of the jurisdiction order. We affirm the removal order.

BIGELOW, P.J.

We concur:

GRIMES, J.

GOODMAN, J.*

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