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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B285331
(Super. Ct. No. 17JD-00213)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

JO.C.,

Defendant and Appellant.

Jo.C. (Father) appeals the juvenile court's jurisdictional findings and dispositional orders regarding his two sons, O.J. and C.J. (Welf. & Inst. Code,¹ § 395, subd. (a)(1)

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

[dispositional orders appealable]; *In re M.C.* (2011) 199 Cal.App.4th 784, 801 [jurisdictional findings reviewable on appeal from dispositional orders].) He contends insufficient evidence supports the court's jurisdictional findings. We dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

In June 2017, the Santa Barbara County Child Welfare Services (CWS) filed a petition recommending the removal of O.J. and C.J. from their parents' care. Both boys have special needs. Mother was on a psychiatric hold, and the whereabouts of Father were unknown.² The family was recently evicted from their home.

Mother and Father came to CWS's attention after the department received a referral that Mother had committed domestic violence against Father. CWS also documented an incident where Father left O.J. and C.J. at home with Mother despite her intoxication. When CWS investigated these incidents, the children were residing with relatives in Utah.

During the investigative visit, Mother claimed Father used marijuana heavily, was physically abusive, and did not awake in the mornings to assist with childcare. Father denied he was abusive, but admitted he and Mother argued in the home. He could not explain why he was asleep when investigators arrived for their scheduled visit. Mother also reported that she had previously left her sons with Father despite her inability to wake him. CWS referred Mother and Father to substance abuse and domestic violence counseling.

² Je.C. (Mother) does not appeal.

When C.J. returned home, CWS made an unannounced visit. The house smelled of marijuana. Mother was intoxicated. Father was not present.

Mother subsequently checked into a treatment program. O.J. and C.J. joined her there. They were removed after Mother threatened to kill herself in front of them. The boys were placed in a licensed foster home.

At the jurisdictional hearing, Mother submitted to the juvenile court's jurisdiction. The court made six jurisdictional findings. Four of them related to Mother's inability to protect her sons: In April 2017 she committed domestic violence against Father while she was intoxicated. In May she again committed domestic violence against Father, this time in front of O.J. and C.J. Later that month she failed to provide adequate supervision for her sons while she was in the treatment program. And in June she threatened suicide in front of her sons and was placed on a psychiatric hold.

One finding related to Father's inability to protect his sons: In April 2017 he left home to deescalate a domestic violence situation with Mother. He left O.J. and C.J. with her despite her intoxicated state and inability to care for them.

One finding pertained to both Mother and Father's inability to protect their sons: In May 2017 Mother reported she felt overwhelmed because Father smoked marijuana, stayed up late at night, and was unable to wake up in the morning to help care for his sons. On several occasions, Mother left O.J. and C.J. at the house when she went to work despite her inability to wake Father.

After taking jurisdiction over O.J. and C.J., the juvenile court transferred the case to San Luis Obispo County,

where Mother and Father then resided. The San Luis Obispo County Department of Social Services (DSS) filed a disposition report that recommended the court declare O.J. and C.J. dependents and offer reunification services to Mother and Father. The report detailed the children's medical, developmental, and educational needs. It highlighted Mother's substance abuse problems.

Mother agreed to participate in services, but Father was minimally communicative and denied responsibility for the children's removal. Both parents submitted to DSS's recommendation for reunification services. The court declared O.J. and C.J. dependents, and ordered Mother and Father to participate in treatment and services.

DISCUSSION

Father contends there is insufficient evidence to support the juvenile court's jurisdictional findings against him. DSS argues Father's contention is nonjusticiable because the court's jurisdiction over O.J. and C.J. was independently based on unchallenged findings related to Mother. We conclude that Father's contention is nonjusticiable.

"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—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.*, italics omitted.)

“[T]he juvenile court takes jurisdiction over children, not parents.” (*I.A.*, *supra*, 201 Cal.App.4th at p. 1491.) To take jurisdiction, “it is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300.” (*Ibid.*) “[I]t is irrelevant which parent created those circumstances.” (*Id.* at p. 1492.)

So long as substantial evidence supports at least one statutory basis for the assertion of jurisdiction, we will affirm the court’s finding. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) “In such a case, [we] need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*Ibid.*) We will exercise our discretion to do so only if the jurisdictional 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.*), alterations omitted.)

The *Drake M.* exceptions do not apply here. Father does not claim the jurisdictional findings related to him were the bases for the dispositional orders challenged on appeal. Instead, he claims the jurisdictional findings may prejudice him during dependency proceedings or have consequences beyond jurisdiction. But he has not identified what this prejudice or these adverse legal or practical consequences might be. The issue is therefore forfeited. (*In re J.C.* (2014) 233 Cal.App.4th 1, 4.)

But even if it were not, we would not exercise our discretion to reach the merits of the jurisdictional findings related to Father. The court’s findings fall under the “failure to

protect” category set forth in section 300, subdivision (b)(1). “Failure to protect” findings create no legal impediment to the receipt of reunification services. (See § 361.5, subd. (b).) Indeed, Father is receiving such services presently. And the findings have no impact on custody: While section 361, subdivision (c)(1), distinguishes between “offending” and “nonoffending” parents for purposes of custody, it is inapplicable here since Father and Mother live together and the findings related to Mother, without more, would be sufficient to remove O.J. and C.J. from the home.

Moreover, any impact of the findings on Father’s future visitation is “highly speculative.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1489.) And they are unlikely to be relevant in the future: “In any future dependency proceeding, a finding of jurisdiction must be based on current conditions. [Citation.] A past jurisdictional finding, particularly one based largely on a single instance . . . already [more than one] year[] old, would be entitled to no weight in establishing jurisdiction. . . . Instead, the agency will be required to demonstrate jurisdiction by presenting evidence of then current circumstances placing [O.J. and C.J.] at risk. Other relevant dependency findings similarly would require evidence of present detriment, based on the then prevailing circumstances of [Father and his children]. The prospect of an impact on a family law proceeding is even more speculative.” (*I.A.*, *supra*, 201 Cal.App.4th at p. 1495.)

Father’s reliance on *In re Quentin H.* (2014) 230 Cal.App.4th 608 is misplaced. The *Quentin H.* court reached the jurisdictional finding against the father there because it involved a prior sexual abuse conviction, which created a presumption that he posed a risk to his children. (*Id.* at pp. 610-613; see § 355.1, subd. (d).) No such presumption is at issue here.

“We will not reverse for error unless it appears reasonably probable that, absent the error, [Father] would have obtained a more favorable result.” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) “Because jurisdiction was proper on other grounds, [Father] cannot expect a more favorable result, and we need not consider [his] appeal.” (*Ibid.*)

DISPOSITION

The appeal is dismissed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

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