Filed 11/2/18 In re J.K. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.K., a Person Coming Under the Juvenile Court Law.	B286390 (Los Angeles County Super. Ct. No.DK15498/ DK15498A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Juvenile Court Referee. Dismissed.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Mother Elizabeth C. (mother) appeals from an order dismissing a juvenile dependency petition after a contested jurisdictional hearing. Mother contends the dismissal was not supported by the evidence and is contrary to her son J.K.'s welfare. We do not reach these arguments, however, because we conclude that mother lacks standing to challenge the juvenile court's decision and accordingly dismiss the appeal.

BACKGROUND

J.K., born in August 2010, is the only child of mother and father John K. (father). According to the jurisdiction and disposition report filed in this case, the family "has extensive and ongoing Family Law Court history in Los Angeles Superior Court." The family also has an extensive history of contacts with the Los Angeles County Department of Children and Family Services (DCFS) and similar agencies from other counties. All 13 of those previous referrals, which date back to December 2010, were either deemed inconclusive, evaluated out, or dismissed.

The instant matter arose in July 2017, when J.K., then six, told his family-court-ordered therapist that he was afraid to go home because he believed father was going to hit him. DCFS investigated and documented its findings in a detention report.

The report included a recitation of DCFS's immediately previous investigation, during which it interviewed J.K.'s older half-sister, I.C. She described father (who is not her biological father) as an "intimidating man" and said she had seen him hit

J.K. on the top of his head and pick him up and kick him. DCFS also interviewed mother's boyfriend, Kevin M., as part of the earlier investigation. Kevin M. told the social worker that he had seen father pick up J.K. by the arm to put him in his car seat. He also stated that J.K. was "terrified of his dad" and had reported that father hit him. A Beverly Hills police detective who was familiar with the family due to the 33 cases they had been involved in stated that he "has reservations about reports of child abuse and neglect due to the family's history with the Beverly Hills Police Department." The detective described J.K. as "well-rehearsed," but stated "he believes the child 'believes what he is saying.'" The report noted that a prior juvenile court judge had found that J.K. was not credible.

DCFS ultimately concluded J.K. was at high risk of abuse or neglect and filed a juvenile dependency petition under Welfare and Institutions Code section 300, subdivisions (a), (b), and (c).[1]

The petition alleged in counts a-1 and b-1 that father physically abused J.K. "by slapping the child's face and striking the child's head with the father's fist and knuckles" and on previous occasions had "kicked the child's body," "pulled the child's hair," and "stepped on the child's toe while forcefully pulling up by the child's arms." In counts b-2 and c-1, DCFS alleged that both mother and father "exposed the child to 43 filings in Family Law Court, 33 investigations relating to the parents' custody and criminal issues with one another, 2 forensic interviews, 15 calls to the Child Protective Hotline and 13 investigations by DCFS." Count b-2 alleged that this continuous exposure to parental acrimony constituted "a detrimental and an

---

[1]All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

endangering situation" and placed J.K. "at risk of serious physical harm, damage and danger." Count c-1 alleged that the acrimony caused J.K. to suffer from emotional distress and exhibit "aggressive and destructive behaviors towards peers in school and school authority," such that he had been diagnosed with "Opposition[al] Defiant Disorder" and needed "ongoing therapeutic counseling."

The juvenile court held a detention hearing on July 27, 2017. Both parents denied the allegations. The court found them supported by prima facie evidence and ordered J.K. detained from father and placed with mother. The court ordered DCFS to provide mother with family maintenance services and father with family reunification services and monitored visitation. The court set the adjudication hearing for August 21, 2017.

Prior to the adjudication hearing, DCFS filed a jurisdiction/disposition report.[2] The report documented interviews with numerous people. J.K. told dependency investigators that father "hits my face, he punches me, he kicks me, I don't do anything and he randomly hits me." He further stated that he did not have fun at father's house and wanted to stop going there. Mother told the investigators that she had seen father hit J.K. "on the head, with open hand and fist, he would knock on his head, jerks him by the arms, pulls his ears." She further reported that J.K. "had behavior problems since I can remember, since he was a toddler," and was "aggressive physically" with her and I.C. His behavioral problems also included lying; mother reported that "Lying is a big problem

---

[2]The adjudication hearing transcript indicates that DCFS also filed a last-minute information, but that filing is not in the appellate record.

[with J.K.]. He lies like he believes his own lies." J.K.'s kindergarten teacher also told DCFS that J.K. "seems to lie a lot," and she thought his lying was "almost a sociopathic coping mechanism." She said she had "never seen a five or six year old lie so easily" and "without remorse." The teacher reported, however, that J.K. seemed "very happy and loving to both parents." DCFS recommended that the court take jurisdiction over J.K., order wraparound services for him, and require both parents to undergo a psychological evaluation and participate in individual counseling.

The court held the adjudication hearing on August 21, 2017. DCFS submitted on the detention report, jurisdiction/disposition report, and the last-minute information. J.K.'s counsel called J.K. to testify in chambers. J.K. testified that father yelled at him, hit him on the head, kicked him in the back, and picked him up by his ear. J.K.'s counsel also called his therapist, Norma Duenas, who testified that she had seen J.K. seven times between May and July 2017. Duenas testified that she initially diagnosed J.K. with "adjustment disorder, mixed anxiety and depressed moods," but ultimately changed her diagnosis to "other specified anxiety disorder." She never diagnosed him with oppositional defiant disorder. Duenas did not focus on J.K.'s lying during treatment; her goals were for him to "decrease his anxiety" and "increase his expression of feelings."

J.K.'s counsel attempted to call I.C. as a witness. She made an offer of proof that I.C. "has observed the child's behavior prior to going on the visits with dad," but the court rejected the testimony as irrelevant. The court stated, "She wasn't a percipient [witness] of any of the alleged incidents that this child has claimed and the evidence regarding this child's activities and

his mental state is well documented in all the documents I have. Her testimony is just observable. It's not relevant."

After J.K.'s witnesses testified, father's counsel moved to dismiss the petition under section 350, subdivision (c).[3] Counsel for DCFS argued that the petition should be sustained as to the subdivision (b) and (c) counts. She argued that J.K. needed wraparound services and asserted, "[t]his child isn't going to get wrap or other services through family law." She asked, "who's going to do something for this child?" J.K.'s counsel asked the court to sustain at least the subdivision (b) counts. Like counsel for DCFS, she emphasized that J.K. "clearly has several behavioral issues that are concerning" and "needs help." She argued, "if we don't intervene, if the court does not take jurisdiction, then I can just see that, you know, a couple years down the road this child is just going to turn into someone who is going to be more troubled and possibly hurt himself or others." Mother's counsel also argued that J.K. "needs this court's oversight," because "without this court's oversight . . . the family

---

[3]Section 350, subdivision (c) provides: "At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review. If the motion is not granted, the parent or guardian may offer evidence without having first reserved that right."

law case is going to drag on and on and this child's behavioral issues will become worse." She further urged the court to accept the opinions of "independent doctors who have said that the child may be developing oppositional defiant disorder," "[e]ven if the court doesn't believe the minor."

The court determined that J.K. was not credible. It stated, "I don't think he told the truth. I don't believe a word he said. I think this child is really troubled and he's using all of these things as defense mechanisms." The court further stated, "I think he's lying about what he's saying here in court. It's tragic but it's not enough." The court also remarked that mother and father "are going to drive this kid into a 51/50 [*sic*] and he's going to be institutionalized very shortly I think." When mother's counsel asked the court to intervene rather than "wait until this minor is actually institutionalized because of the parent's [*sic*] behavior," the court clarified, "I used that figuratively. I don't think it's going to happen. But I think both of these parents are going to drive this child in terms of care and custody."

The court granted father's motion to dismiss the petition and stated that the matter was "[g]oing back to family court." The court denied J.K.'s counsel's request for a stay.

Mother timely appealed. DCFS filed a letter stating that it would not be submitting a respondent's brief because it "was aligned with the appellant" in juvenile court and therefore "is not a proper respondent."

DISCUSSION

In her brief, mother contends that the juvenile court's order was unsupported by substantial evidence and should be reversed. She argues that the trial court improperly ignored the "uncontradicted statements of two other witnesses," I.C. and

Kevin M., "who directly observed that [J.K.] suffered serious physical harm at his father's hands, justifying jurisdiction under section 300, subdivisions (a) and (b)(1)." She also argues that undisputed evidence from J.K.'s therapist and teacher, as well as the existence of "Parents' bitter war," supported sustaining the subdivision (c) allegations. Mother further argues that the court should have allowed I.C. to testify, and that its refusal to do so deprived J.K.'s counsel of the opportunity to present her case and failed to protect J.K.'s best interests. Finally, mother contends that J.K. "indisputably needed wraparound services and monitored visits with father—in other words, he needed the juvenile court's protection."

Mother argues that she has standing to appeal the dismissal of the petition and advance these substantive arguments because she has an interest "in keeping her son safe." We disagree.

Parents generally are entitled to appeal orders and judgments issued in juvenile dependency cases. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734 (*Carissa G.*).) "But as in any appeal the parent must also establish that he or she is a 'party aggrieved' to obtain review of a ruling on its merits." (*Ibid.*) "To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision. A nominal interest or remote consequence of the ruling does not satisfy this requirement." (*Ibid.*)

There is a split of authority as to whether a parent has standing to appeal an order dismissing a juvenile dependency petition after a contested jurisdictional hearing. (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 734.) Mother urges us to follow *In re Lauren P.* (1996) 44 Cal.App.4th 763 (*Lauren P.*), which held that

a mother had standing to appeal the dismissal of a petition alleging that her husband sexually abused the couple's daughter and that she failed to protect the child from the abuse. (See *Lauren P.*, *supra*, 44 Cal.App.4th at pp. 766, 771-772.) The *Lauren P.* court concluded that the public agency that brought the petition was "not the only party whose interest is affected by the dismissal of a dependency petition. Any parent who takes the position that dependency jurisdiction is warranted is aggrieved by dismissal of the petition." (*Id.* at p. 770.) The court explained, "The state's exclusive power to initiate a dependency proceeding does not equate to an exclusive interest in the outcome of the proceeding. 'A parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights. [Citation.] . . . Here, [mother] had a natural interest in obtaining the state's protection for her daughter against future sexual abuse. Dismissal of the petition injuriously affected this interest." (*Id.* at pp. 770-771.)

Carissa G., decided after *Lauren P.*, reached the opposite conclusion. In *Carissa G.*, a three-year-old child told her mother that her father, the mother's ex-husband, touched her vagina. (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 733.) Mother contacted the county social services agency about the allegations after the family law court declined her request to limit father's visitation. The agency investigated and filed a dependency petition under section 300, subdivision (d). The juvenile court dismissed the petition after a contested adjudication hearing, and the mother appealed. (*Id.* at pp. 733-734.)

Carissa G. disagreed with *Lauren P.* and held that the mother lacked standing to appeal. Though it acknowledged that mother "concededly has a fundamental right to parent minor," it

concluded that "the juvenile court's dismissal of the petition did not impact that right." (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 736.) It explained: "While parents are entitled to appear and participate in a juvenile dependency action, the proceeding is initiated by the state, under the theory of *parens patriae*, to protect a minor from abuse or neglect as defined by section 300. [Citations.] Thus, the mere fact a parent takes a position on a matter at issue in a juvenile dependency case that affects his or her child does not alone constitute a sufficient reason to establish standing to challenge an adverse ruling on it." (*Ibid.*) The court further noted that the juvenile court's ruling did not alter the child's custody status, and that "[t]he dismissal in fact eliminated the necessity for mother to participate in counseling and parenting classes." (*Id.* at p. 736.) In addition, the court pointed out that mother, who contacted the social services agency only after her request to limit father's visitation was denied, was not left without a remedy: "Issues concerning custody and visitation can also be dealt with in a family law proceeding." (*Ibid.*)

We find the reasoning of *Carissa G.* more persuasive, particularly in light of the facts of this case. Mother's right to parent J.K. has not been impacted by dismissal of the petition. She is still subject to the custody orders put in place by the family law court, and she will not be obligated to submit to a psychological exam or participate in counseling.

Mother argues that she "cannot possibly obtain from the family law court the wraparound services that the Department, minor's counsel, and [J.K.'s] therapist maintained were necessary for [J.K.], the extensive reunification services that the Department recommended for father, including anger management and individual counseling, and the co-parenting

program the Department recommended for both mother and father." Mother does not provide any authority in support of this assertion, and it appears the assertion is not correct. The family law court has the "widest discretion to choose a parenting plan that is in the best interest of the child" (Family Code, § 3040, subd. (c)), and "[p]arenting plans frequently contain provisions ordering parent education, parenting or coparenting coaching, divorce or coparenting education, individual therapy, family therapy, coparenting counseling, domestic violence or anger management programs, substance abuse treatment, and various hybrid programs." (California Child Custody Litigation and Practice (Cal CEB 2018), § 4.81.) To the extent mother believes J.K. needs additional services, she can seek them independently or through the family law court.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

MANELLA, P. J.

MICON, J. *

---

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