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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re MATTHEW R. et al.,
Persons Coming Under the
Juvenile Court Law.

B291754

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP02282)

Plaintiff and Respondent,

v.

JOSE R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Nichelle Blackwell, Commissioner. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy Counsel, for Plaintiff and Respondent.

Jose R. (Father) asserts the trial court abused its discretion by making dispositional orders requiring him to submit to drug testing, a treatment program, parenting classes, and individual counseling because the juvenile court found him to be nonoffending. The Los Angeles County Department of Children and Family Services (DCFS) cross-appeals from the juvenile court's dismissal of the substance abuse allegations against Father. We affirm.

PROCEDURAL BACKGROUND

Father has three children with Betsy R. (Mother): eight-year-old Matthew, seven-year-old Noah, and four-year-old Jacob. Mother and Father have an informal custody arrangement under which the children spend half of the week with each of them. The family came to the attention of DCFS in January 2018 when it was reported that Mother had a violent altercation with her boyfriend in the presence of the children. A few weeks later, another caller reported that Father and the paternal uncle have substance abuse problems that pose a risk to the children's well-being. The caller also reported Jacob returned from Father's home in January 2018 with a circular burn mark on his left stomach area, which appeared to be from a cigarette. When he was asked about it, Jacob replied, "Tio [uncle] was mad."

The Dependency Petition

On April 10, 2018, DCFS filed a dependency petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).¹ It alleged the children were at risk of serious physical harm as a result of violent altercations between Mother and her boyfriend. It further alleged that on one such

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

occasion, Mother's boyfriend pushed her and she threw a plate at him. Mother then stabbed him in the upper right back area and the thumb. The one-inch long stab wound in the back required four to five staples to close.

The petition also alleged that Mother, Father, and paternal uncle, who lives with Father in paternal grandmother's house, all have a history of substance abuse and are currently abusing drugs or alcohol. Failure to protect allegations against Father were included in the allegations involving Mother and the paternal uncle. Relevant to this appeal and cross-appeal is the b-1 count, which states:

“[Father] has a history of illicit drug use including cocaine, heroin and methamphetamine [*sic*] is a current user of marijuana which renders the father incapable of providing regular care and supervision of the children. The child Jacob is of such young age requiring constant care and supervision and the father's substance abuse interferes with providing regular care and supervision of the child. On numerous occasions father has been under the influence of substances while the children were under the father's care and control. The father has criminal convictions for HS-User/Und Infl Contrid [*sic*] Substance and VC-DUI Alcohol. [Mother] failed to protect the children in that the mother knew of the father's illicit drug use and allowed the children to reside in the father's home. The father's illicit drug use and the mother's failure to protect the children endanger the children's physical health and safety and place the children at risk of serious physical harm, damage and failure to protect.”

DCFS Investigation of Father²

In an interview with a children's social worker, Father admitted he has a history of drug abuse and currently smokes marijuana daily. He related the following history: In 2005 or 2006, he was dishonorably discharged from the army after testing positive for cocaine. In September 2016, he overdosed on heroin after he became depressed as a result of his separation from Mother; Father claimed it was his first experience with heroin. He was convicted of a misdemeanor drug charge, and ordered to attend AA meetings and complete 15 hours of community service. He was twice convicted of driving under the influence, including a conviction in April 2017. He was ordered to attend one year of AA meetings and enroll in Mothers Against Drunk Driving classes. Father admitted he failed to comply with any of the treatment orders made by the court in the criminal convictions.

The social worker noted Father appeared overwhelmed and sweated excessively during his interview with her, despite the weather being a pleasant 70 degrees. In addition, Father excused himself several times to get a drink of water. Although Father agreed to drug testing, he only tested once, on April 13, 2018, and his results were positive for cannabinoids. Father failed to appear for testing on May 2 and 30, 2018.

Father admitted he currently smokes marijuana every day, but says he does so only when the children are asleep. Father claims that smoking marijuana is not detrimental to his parenting. Instead, he says it "enhances" him. Father stated, "It is like a green steroid for me. I am no longer tired or lazy, or no longer feeling tortured to play with my kids in general."

² Because Father alone appeals, we focus only on the facts and findings relevant to his case.

Father's criminal record shows a deferred judgment for possession of a controlled substance and paraphernalia in 2011 and a misdemeanor possession of a controlled substance in 2017.

Matthew denied any mistreatment by either parent or by the paternal uncle. He reported Father is very tired after work and often naps. During the weekend, he said Father wakes up in the morning, but is often back in bed by noon. Matthew reported he and his brothers are always supervised by either the paternal uncle or Father when the children are at Father's home. Noah also denied any abuse. Both children noted Father and the paternal uncle drink one or two beers a week, but denied seeing them intoxicated. They reported Mother did not drink alcohol because she was pregnant. Both children were aware Father and the paternal uncle vaped outside of the house. Matthew, who knew what drugs were, stated he had not observed Father acting strangely or differently.

Mother reported she met Father in 2008, and they separated in 2016. During this time, Father struggled with illegal drugs, including heroin, cocaine, and methamphetamine. His drug use was a point of contention in their relationship. Father agreed to enter a residential treatment program in 2010 to address his substance abuse, but before he did so he was arrested for possession of "crack," for which he began to attend Narcotics Anonymous meetings. Mother did not know whether Father currently uses any drug other than marijuana.

Jurisdictional/Dispositional Proceedings

In the jurisdiction/disposition report, DCFS categorized the family's potential for future abuse to be "very high" and recommended court involvement to protect and monitor the children's safety. Both Father's and the children's counsel urged

the court to dismiss the substance abuse allegations against Father. The children's counsel noted Father's drug test showed his cannabinoid levels were very low.

The juvenile court sustained the allegations against Mother, and asserted jurisdiction over the children. It dismissed the substance abuse allegations against Father, reasoning:

“As to the B-1 count, while the father has been upfront about his drug use, the court must find that there is an on-going and continuing risk that he is using substances in order to sustain that count. [¶] I do not find that the Department has met the burden of showing this on-going and current risk of use of these hard drugs, other than marijuana. [¶] And in the State of California, marijuana is a legal substance. It does not mean it can be abused, it can only be used. [¶] But I am striking the b-1 count for failure of proof to show an on-going risk.”

The juvenile court also struck the failure to protect allegations against Father.

Although it found Father to be nonoffending, the juvenile court nevertheless ordered him to drug and alcohol treatment and testing, stating:

“The reason why I believe [Father] needs to complete a full drug and alcohol program, a 12-step program and weekly testing, as well as parenting and individual counseling, [is] because he himself admits that he has had a history with the hard substances, there's information . . . he's overdosed on a substance before, that he's come into police contact as a result of using the substance and was ordered into certain programs and that he never completed those programs. [¶] The Department

is not even asking to remove the children from the care of the parents. [¶] And I believe that the children can remain in the care of the parents so long as the parents are doing all the appropriate programs in order to provide and ensure that the children will remain safe. [¶] So just because I did not sustain the drug use count, and I didn't sustain it against the Father because there's no current risk that I see at this time that you placed the children under, I do believe that it's a possibility, without completing those services, that risk can resurface. [¶] So I'm going to order you into a drug program and a 12-step program to show that you can complete it, since you failed to complete it in the past through the criminal court orders. [¶] I'll order you into a parenting class and individual counseling to address these case issues."

Father timely appealed the juvenile court's dispositional orders. DCFS cross-appealed, challenging the court's jurisdictional findings.

DISCUSSION

I. The Juvenile Court Did Not Abuse Its Discretion When It Ordered Father to Drug Testing, Treatment and Counseling

Father asserts it was an abuse of discretion to order him to drug testing and treatment given the lack of jurisdictional findings against him. Father thus contends the challenged orders must be reversed because they do not address the issues leading to jurisdiction. We disagree.

The law does not confine the juvenile court's discretion to craft dispositional orders to only what is contained in the jurisdictional findings. Instead, it is well established the juvenile

court has discretion to “direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section” (§ 362, subd. (d).)

Therefore, “the juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion. [Citations.]” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 (*Christopher H.*)).

Generally, “a dispositional order may reach both parents, including a nonoffending parent.” (*In re D.M.* (2015) 242 Cal.App.4th 634, 639; *In re D.L.* (2018) 22 Cal.App.5th 1142, 1148 (*D.L.*)). The parents are “required to participate in child welfare services or services provided by an appropriate agency designated by the court.” (§ 362, subd. (b).) “ ‘The program in which a parent or guardian is required to participate, [however, must] be designed to eliminate those conditions that led to the court’s finding that the minor is a person described by Section 300.’ [Citations.]” (*Christopher H., supra*, 50 Cal.App.4th at p. 1006.)

We do not reverse the juvenile court’s dispositional orders absent a clear abuse of discretion. (*Christopher H., supra*, 50 Cal.App.4th at p. 1006.)

Christopher H., supra, 50 Cal.App.4th 1001, is instructive. There, the court affirmed a dispositional order requiring a father to submit to drug and alcohol testing despite the juvenile courts finding that DCFS failed to prove the father’s alcohol-related problems affected his ability to care for his infant son. (*Id.* at pp. 1006–1007.) The court reasoned, “when the court is aware of other deficiencies that impede the parent’s ability to reunify with his child, the court may address them in the reunification plan.

In this case, given appellant's repeated driving under the influence convictions and positive blood test for methamphetamine, the court would have been remiss if it failed to address appellant's substance abuse even though that problem had not yet affected his ability to care for Christopher." (*Id.* at p. 1008.)

Similarly, in *D.L.*, *supra*, 22 Cal.App.5th at page 1146, Division One of this district affirmed dispositional orders as to a mother it found to be nonoffending. There, the court reversed the jurisdictional findings as to the mother, finding insufficient evidence to support them. However, it rejected the mother's argument that a reversal of the jurisdictional findings as to her meant it also had to reverse the dispositional orders requiring her to participate in family maintenance services. The court held: "The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.] In fact, there 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; see *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 ['[a] jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established'].)" (*Id.* at p. 1148.)

As in *Christopher H.* and *D.L.*, we also conclude the juvenile court did not abuse its discretion when it ordered Father to submit to drug testing and attend treatment programs without making corresponding substance abuse findings. Father has a long history of drug use and abuse. He was dishonorably discharged from the army after testing positive for cocaine. Mother reported his substance abuse affected their relationship.

He overdosed on heroin in 2016 and was arrested for driving under the influence in 2017. Despite these incidents, he failed to address his substance abuse issues by attending the court-ordered treatment programs and classes. Father also admitted that he needs to smoke marijuana daily in order to parent his children.³ Most recently, Father tested positive for cannabinoids on April 13, 2018, and failed to appear for further testing. Although the juvenile court was not required to address Father's substance abuse, it had discretion to do so under *Christopher H. and D.L.* Indeed, we are persuaded by *Christopher H.* that the juvenile court would have been remiss to fail to address the issue even though it found Father's marijuana use did not currently affect his ability to care for the children.

In re Drake M. (2012) 211 Cal.App.4th 754 (*Drake M.*) and *In re Jasmin C.* (2003) 106 Cal.App.4th 177 (*Jasmin C.*) do not convince us to reverse the dispositional orders. In *Drake M.*, there was no evidence that the father had a substance abuse problem aside from his use of medicinal marijuana. (*Drake M.*, *supra*, at p. 771.) In *Jasmin C.*, “nothing in the record supported the [parenting class] order, which apparently was based on a rote assumption that [the mother] could not be an effective single parent without parenting classes, something belied by common sense and experience in 21st-century America.” (*Jasmin C.*,

³ Father also challenges the court's order requiring him to complete a parenting class. This issue is moot given that Father has already completed the parenting class. (*In re N.S.* (2016) 245 Cal.App.4th 53, 58–63.) We previously took judicial notice of Father's completion certificate, which was submitted to this court by DCFS. Even if it were not moot, we find Father's admitted inability to parent his children without the help of marijuana justifies the parenting class order.

supra, at pp. 181–182.) Unlike *Drake M.* and *Jasmin C.*, the juvenile court expressly identified Father’s substance abuse as a potential risk to the children. In addition, Father’s history of substance abuse and current reliance on marijuana is well documented.

We also find it was not an abuse of discretion to order Father to individual counseling. Father admits he was depressed after his separation from Mother. Indeed, his depression was so severe that he turned to heroin and overdosed. Despite this, Father has failed to address his depression or his drug use by complying with the court-ordered treatment programs. Instead, Father smokes marijuana daily to cope with stress, including the difficulties of parenting three young children, and then denies it has any negative effects on his ability to care for them.

Given these facts, the record supports the counseling order.

(See, *Christopher H.*, *supra*, 50 Cal.App.4th at p. 1007.)

II. The Issue Raised In the Cross-Appeal Is Not Justiciable

In its cross-appeal, DCFS challenges the juvenile court’s dismissal of the substance abuse allegations against Father. DCFS contends overwhelming evidence “mandated” that the juvenile court sustain the allegations.

As an initial matter, we find the issue is not justiciable. The juvenile court retains jurisdiction over the children due to the sustained allegations against Mother regardless of the outcome of this cross-appeal. (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492 [“an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.”].)

DCFS acknowledges justiciability is an issue, but urges us to exercise our discretion to reach the merits because Father's appeal implicates the juvenile court's dismissal of the substance abuse allegations against him. We are not persuaded. As discussed above, the dispositional orders as to Father are not dependent on corresponding jurisdictional findings against him.

Neither are we persuaded by DCFS's argument that the dismissal of the substance abuse allegations against Father has "significantly" altered its evidentiary burden under section 364, subdivision (c), as it relates to the children's dependency status. Section 364, subdivision (c), provides, "The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary."

DCFS fails to specify how its evidentiary burden has been altered. So far as we can tell, its burden remains the same: to establish by a preponderance of the evidence that conditions still exist to justify jurisdiction. If DCFS means to argue that it is limited to only proving Mother's, and not Father's, conduct to justify continued jurisdiction, that argument is belied by the express terms of section 364, subdivision (c). Under that provision, either parent's failure to participate regularly in court ordered treatment is sufficient to justify continued supervision.

In sum, DCFS has set forth no grounds for us to exercise our discretion to consider the merits of its cross-appeal.

DISPOSITION

The challenged jurisdictional findings and dispositional orders are affirmed.

BIGELOW, P. J.

We Concur:

STRATTON, J.

WILEY, J.