Filed 3/26/13 In re Christina C. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re CHRISTINA C. et al., Persons Coming Under the Juvenile Court Law.	B240921
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CHRISTINA C., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK74439)

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Christina C. (mother) appeals from a juvenile court order asserting jurisdiction over her five children. In sustaining the dependency petition, the court amended the petition so that it included language regarding mother, despite previously accepting the parties' mediation agreement that removed all mention of mother's conduct or omissions from the petition. We conclude the juvenile court did not err in amending the petition's language and that the amended language was supported by substantial evidence.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2011, the Los Angeles County Department of Children and Family Services (DCFS) received a referral regarding mother's children: Christina C. (12 years old), M.C. (9 years old), N.C. (7 years old), Mark C., Jr. (5 years old), and Anthony S. (2 years old). The referral concerned sexual abuse of M.C., N.C., and Mark, Jr., physical abuse of M.C., and emotional abuse of all of the children. At the time, mother and the children had been sharing a home with mother's husband and the father of the four oldest children, Mark C., Sr. (Mark C.), and mother's boyfriend and the father of Anthony S., Matthew S. Mother and Mark C. were separated.[1]

In September 2011, mother became concerned that the children had been sexually abused. N.C. suffered several urinary tract infections, and mother discovered M.C., N.C., and Mark, Jr. in a closet; Mark, Jr. was naked, N.C. was wearing only underwear, and M.C. was telling Mark, Jr. "how to do it." Mother suspected Mark C. was abusing the children. She reported her concerns to law enforcement, but no action was taken. Mother also grew suspicious of Matthew S. and asked him to leave her home. Mother secured temporary restraining orders against both Mark C. and Matthew S.

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[1] The family had a prior history with the dependency system. In May 2009, the juvenile court sustained a dependency petition alleging Mark C. caused serious physical injury to his infant second cousin by throwing him on a bunk bed; mother had a history of substance abuse, including methamphetamine; mother had a history of emotional problems, was hospitalized in 2008, and had stopped taking psychotropic medications; and Mark C.'s marijuana use interfered with his ability to provide regular care for the children. Although the children were detained from mother, in February 2010 they were returned to mother's home. In December 2010, the "case was closed."

In an "upfront assessment" conducted in November 2011, mother described Matthew S. as "very disturbed." She noted he cut the heads off the children's toys and drew "perverted pictures" in their notebooks.[2] Mother said she had allowed Mark C. to move in with the family despite the incident that led to dependency jurisdiction in 2009 because he had nowhere else to stay. Mother and Matthew S. were together between 2008 and October 2011. Mother said Mark C. had lived with them for only three weeks or one month when the children told her they were being molested. Mother told the assessor Matthew S. had emotionally, physically, and sexually abused her. Matthew S. was physically violent with mother, including during the first two years of their relationship and when she was pregnant. Mother asserted she was "fairly certain" Matthew S. drugged her on one occasion, and he had recently threatened to kill her. Matthew S. told the children mother did not love them. The children witnessed mother and Matthew S. arguing and attempted to intervene. However, mother asserted the children did not witness any physical abuse.

DCFS interviewed the children several times. Christina C. denied being inappropriately touched by Mark C. or Matthew S. She also said she never saw Mark C. inappropriately touching her sisters, and her sisters never told her Mark C. touched them inappropriately. Although M.C. told DCFS she thought Christina and Matthew S. had a "relationship," and M.C. said mother found notes Christina and Matthew S. wrote to each other, Christina denied any such relationship.

M.C. initially denied sexual abuse. She admitted playing "house" with her siblings. In a first interview, she said she felt safe around Mark C. and Matthew S., and she wanted Mark C. (her father), to return home. In a second interview, M.C. reported feeling afraid of Matthew S. because of pictures mother said Matthew drew depicting a

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[2] On our own motion, we augment the record to include the "up front assessment" contained in the juvenile court file. (Cal. Rules of Court, rule 8.155(a)(1)(A).) Although the written assessment was not included in the clerk's transcript on appeal, it was part of the juvenile court record, and was referenced in the DCFS detention report.

child without a face and a dead child.[3] M.C. told the DCFS social worker: " 'Mom keeps asking if Matthew hurt us and I do not know.' Then child stated that at times it feels like (Matthew) touched her but at other times she feels that it did not happen and said, 'Sometimes I feel daddy did.' Then child stated that at times she feels that none of them touched her and said, 'I am not sure, I do not remember.' " At a third interview, M.C. reported Matthew S. had touched her vaginal area with his fingers when she was preparing to shower, the touching hurt, and Matthew threatened her so she did not tell anyone. In a later interview, M.C. told the social worker Mark C. had never touched her, only Matthew S. She reported that Mark, Jr. told her Matthew touched her while she was sleeping. M.C. said she had only recently told mother about the touching.

N.C. reported Mark C. had touched her private parts when she was visiting him before he moved into the family home. She denied that Matthew S. ever touched her inappropriately, although she said she was afraid of him because he asked her to do things in a "mean way." N.C. indicated she told mother Mark C. had touched her. When asked how mother responded, N.C. said: "I forgot."

In two interviews, Mark, Jr. denied that anyone had ever touched him inappropriately. He said he was afraid of Matthew S. because Matthew S. yelled and spanked him, and mother and Matthew S. argued a lot. Mark, Jr. admitted playing with his sisters and removing his clothes at his older sister's direction, but denied that he had played similarly with any adults. However, in a third interview, Mark, Jr. said Matthew touched his (Mark's) private parts when Mark, Jr. was sleeping. The worker stated: "Child reported that while he was sleeping Matthew pulled down his underwear and poked his penis with his 3 fingers. Child reported that Matthew discontinued touching him after his mother came into the room." In a subsequent interview, Mark, Jr. again

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[3] Regarding Matthew's drawings, the social worker also reported: "Mother indicated to this CSW that Matthew has been drawing things around the house to make mother look as though she is crazy. Mother tried to show some of the drawings to this CSW however, the CSW was not able to make out the images seen and/interpreted by mother. The children also reported not being able to see these drawings clearly and that they could only see after their mother describes them."

reported that Matthew S. had touched him, and Matthew S. "[pointed] his finger in my privates." Mark, Jr. said he had played the touching "game" with his siblings on several other occasions.

DCFS filed a petition alleging Matthew S. physically abused Mark, Jr., mother failed to protect him from the abuse, and the abuse and mother's failure to protect placed all of the children at risk of harm (counts a-1, b-6, j-5); Mark C. sexually abused N.C. and M.C. (counts b-1, b-2, d-1, d-2, j-1, j-2); Matthew S. sexually abused M.C. and Mark C. Jr. (counts b-3, b-4, d-3, d-4, j-3, j-4); and mother had mental and emotional problems that rendered her unable to provide regular care and supervision of the children, and she failed to take prescribed psychotropic medication (count b-5).

In March 2012, in advance of the jurisdiction and disposition hearing, mother, counsel for the children, and DCFS participated in a mediation. They reached an agreement that mother would submit on an amended dependency petition that did not name mother. The count regarding mother's mental or emotional problems was to be dismissed (count b-5), and the allegation that mother failed to protect Mark, Jr. from Matthew S.'s physical abuse was to be deleted (counts a-1, b-6, j-5). The children were to remain in mother's home, receiving family maintenance services under court supervision. Mother agreed to complete a parenting program, participate in individual counseling to address case issues, participate in a mental health evaluation, and follow treatment recommendations, including taking prescribed psychotropic medications.

Mother completed a written waiver of rights indicating she had read the petition, and submitted the matter on the basis of the social worker's report and any other documents as to counts a-1, b-6, j-5, and b-5 only. The form indicated mother acknowledged giving up certain rights by submitting on the petition, but written on the form was a note that she submitted the petition on the report "as to a-1, b-6, j-5, and b-5 only." At the March 2012 jurisdiction and disposition hearing, the juvenile court began the proceedings by taking mother's waiver of rights, including the following colloquy:

"THE COURT: [Are] you submitting the matter to the court based upon the paperwork that has been presented by the county and the mediation agreement?

"THE MOTHER: Yes.

"THE COURT: Okay. [¶] Do you have any questions for me or your lawyer at this time?

"THE MOTHER: No.

"THE COURT: All right. [¶] The court finds that [mother] has knowingly and intelligently waived her right to a trial on the issues by the court . . . . [¶] The court further finds . . . she understands the nature of the count alleged in petition and the possible consequences of her [admission]. [¶] [Mother's counsel], on behalf of your client.

"[MOTHER'S COUNSEL]: As to the count --

"THE COURT: Are there some other counts that are not at issue, that you're not joining?

"[MOTHER'S COUNSEL]: Those were the only ones that we agreed to in mediation, Your Honor.

"THE COURT: Okay. . . .

"[MOTHER'S COUNSEL]: What was agreed to in the mediation agreement.

"THE COURT: Yes, all right. Thank you. [¶] . . . [¶] . . . Let me just provide for clarification as to mother, the court is sustaining the following . . . I am sustaining a-1 as amended, striking her name from that petition and any reference to her. B-6 is being sustained as amended, striking any reference to her. And j-5 is sustained as amended, striking any reference to her."

DCFS submitted documentary evidence to support the remaining portions of the petition. No other party submitted witnesses or evidence on the remaining issues, although the court gave each party the opportunity to do so. Counsel provided argument on the sexual abuse counts. While counsel for DCFS only explicitly referred to the fathers' conduct, he also asserted the "household environment was not one where the children were protected and given any kind of safe haven," and "[the children] deserve the protection of the court because it does not appear that they're going to get protection without the court and department's intervention." Mother's counsel noted the court had previously expressed concern that mother knew what was happening in the home, and argued mother was proactive and immediately responded when she suspected the children were being abused.

The court responded: "[The] court is considering sustaining a b-3 count and combining all of it into one and indicating an unknown person while under the care of their mother. My concern is there is too much going on and obviously there's a concern, I just have a concern that [mother] was not as blameless as her attorney argues it or the mediation agreement covers given all of the things going on. All of her responses on and she must have thought something was going on. And it does not appear that she did enough to protect the children." Ultimately, the court sustained count a-1 (Matthew S.'s physical abuse of Mark, Jr.), but struck any mention of mother, as the parties had agreed. The court dismissed counts b-1, b-2, b-4, b-5, b-6, and the d count. The court said it would sustain count b-3 as amended, and, "I'll get back to you what the amended language is." The court further indicated it would sustain an amended j-3 count. Mother's counsel objected to the to-be-amended b-3 and j-3 counts, arguing, "I know you're going to name the mother as failed to protect."

The court subsequently amended counts b-3 and j-3 to read: "On a prior occasion, the children, [M.C.], [N.C.] and [Mark, Jr.], were victims of inappropriate sexual touching by an unknown person, while under the care of their mother. . . . Such inappropriate sexual touching of these children by an unknown person, and the lack of appropriate support by the mother, endangers their physical health and safety and places the children and their siblings, Christina and Anthony, at risk of physical harm, damage, danger and sexual abuse." The children remained in mother's home, under court supervision. As the parties had agreed at the mediation, the court ordered DCFS to provide family preservation services to mother. The court ordered mother to participate in mental health counseling, including taking prescribed medications, and individual counseling to address case issues.

Mother filed an appeal in April 2012 challenging the court's jurisdictional findings naming her. In October 2012, the juvenile court terminated dependency jurisdiction over all five children. The court issued a custody order giving mother sole physical custody of Christina C., N.C., M.C., and Mark Jr., and joint legal custody of these children with

Mark C. The court ordered mother to have sole legal and physical custody of Anthony S.[4]

DISCUSSION

I. Mootness

Mother informed this court that the juvenile court terminated dependency jurisdiction after she filed her appeal, but she contends the appeal is not moot. In general, the termination of dependency jurisdiction moots an appeal of the court's jurisdictional order. (*In re Marquis H.* (2013) 212 Cal.App.4th 718, 724; *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488-1489 (*C.C.*).) "An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 (*Yvonne W.*).)

In addition, mother does not contend the juvenile court improperly asserted jurisdiction over the children based on the conduct of Mark C. and Matthew S. She challenges only the findings naming her in the petition. The juvenile court may declare a minor a dependent if either parent's actions provide a basis of jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762 (*Drake M.*); *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492 (*I.A.*); *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431 (*J.K.*); *In re Joshua G.* (2005) 129 Cal.App.4th 189, 202.) Some courts have therefore concluded that if the appealing parent does not challenge the juvenile court's findings based on the other parent's conduct, the appeal raises only academic questions of law since the appellate court "cannot render any relief . . . that would have a practical, tangible impact on [the appealing parent's] position in the dependency proceeding." (*I.A.*, *supra*, at p. 1492.) "[A]n 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." (*Ibid*.)

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[4] On our own motion we take judicial notice of the juvenile court's October 23, 2012 custody order. We previously granted mother's request that we take judicial notice of the juvenile court's October 18, 2012 order terminating dependency jurisdiction.

"However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding." (*Yvonne W., supra,* 165 Cal.App.4th at p. 1404.)

In several cases, appellate courts have exercised their discretion to consider a parent's appeal even after the juvenile court has terminated dependency jurisdiction, because there were exit or custody orders still adversely affecting parental rights, or because of the potential for the juvenile court's orders to affect the parent's position in a subsequent proceeding. (See *In re J.S.* (2011) 199 Cal.App.4th 1291, 1295; *J.K., supra,* 174 Cal.App.4th at pp. 1431-1432; *C.C., supra,* 172 Cal.App.4th at p. 1489; *In re A.R.* (2009) 170 Cal.App.4th 733, 740; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547-1548; but see *I.A., supra,* 201 Cal.App.4th at pp. 1491-1492.)

Similarly, in some cases, courts have considered one parent's appeal of jurisdictional findings based on that parent's conduct alone—despite the lack of a challenge to findings based on the other parent's conduct—on the theory that the jurisdictional allegations rendering the appealing parent "offending" may have a significant effect on subsequent dependency proceedings, that parent's ability to have custody or visitation, or, when dependency jurisdiction has already been terminated, the parent may continue to be affected by exit orders or custody orders in family law court. (See, e.g., *Drake M., supra,* 211 Cal.App.4th at p. 763; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *J.K., supra,* 174 Cal.App.4th at p. 1432.)

Here, mother asserts her appeal is not moot because of the potential consequences of the sustained jurisdictional findings naming her. Mother contends there are potential adverse effects to her should there be a future dependency proceeding, and the findings may also allow her to be included in the child abuse central index, as set forth in Penal Code section 11170, subdivision (a). In *In re Joshua C., supra,* 24 Cal.App.4th at pages 1547-1548, the court reasoned: "The fact that the dependency action has been dismissed

should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant . . . . Moreover, refusal to address such jurisdictional errors on appeal by declaring the case moot has the undesirable result of insulating erroneous or arbitrary rulings from review."

The adverse collateral effects mother fears may be speculative at the moment.[5] But, in an abundance of caution we consider the merits of mother's argument on appeal. (See *C.C., supra,* 172 Cal.App.4th at p. 1489.)

II. The Juvenile Court Did Not Err in Adding an Amended Count to the Petition

Mother contends she waived her right to a contested hearing on the petition in reliance on the court's acceptance of the parties' mediation agreement. She argues when the juvenile court determined it would add language naming her in the petition, it was required to sua sponte provide her an opportunity to withdraw her previously entered waiver of rights. We disagree with mother's characterization of the proceedings.

The parties agreed at mediation that references to mother in counts a-1, b-6, and j-5 would be deleted. These counts concerned Matthew S.'s physical abuse of Mark, Jr. As to counts b-1 to b-4, d-1 to d-4, and j-1 to j-4 concerning the sexual abuse allegations, the agreement noted only that Mark C. and Matthew S. did not appear for the mediation. Count b-5, regarding mother's mental or emotional problems and her failure to take prescribed psychotropic medication, would be dismissed without prejudice. Mother's written waiver indicated she was submitting on the petition based on the social worker's report and waiving her trial rights only as to counts a-1, b-6, j-5, and b-5. Accordingly, when the juvenile court accepted the waiver, mother's counsel expressly noted there was agreement only as to specified counts. The hearing then proceeded as to the rest of the petition. The court gave each party the opportunity to offer witnesses or documentary

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[5] We have no evidence that mother has in fact been reported to the child abuse central index. (See, e.g., Pen. Code, § 11169, subd. (b); *In re C.F.* (2011) 198 Cal.App.4th 454, 462 [reporting agency must notify the known or suspected child abuser that he or she has been reported to the index].)

evidence, *including mother*. Only counsel for DCFS offered any evidence. We further note that the parties several times referred to a tentative order. Although the record does not include the content of that tentative, mother's counsel indicated the court had previously expressed a concern that mother knew about what was going on at home, and mother's counsel specifically argued mother had adequately protected the children.

The record does not support mother's claim that she submitted on the entire petition, and was then disadvantaged when the court decided to add an amended sexual abuse count. Before the hearing began, the court apparently signaled its inclination to name mother in an amended count relating to sexual abuse of the children. At the hearing, mother clearly indicated she was submitting only on the amended physical abuse counts. The court accordingly provided her an opportunity to offer testimony or other evidence relevant to the other counts of the petition. She offered no such evidence. Instead, mother's counsel simply argued mother did not fail to protect the children from sexual abuse. (See *In re Andrew L.* (2011) 192 Cal.App.4th 683, 689 [amendment to dependency petition did not violate due process where parent had explicit notice of issues being litigated and court conducted full hearing affording each party opportunity to be heard]; *In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1041-1042 [amendments to conform to proof should be allowed unless pleading as drafted prior to the proposed amendment would have misled party to its prejudice].)

Mother concedes the juvenile court was not required to accept the parties' mediation agreement. (*In re Lance V.* (2001) 90 Cal.App.4th 668, 675; *In re Jason E.* (1997) 53 Cal.App.4th 1540, 1547.) Thus, even to the extent the parties agreed there would be no mention of mother in the sustained petition, the court was not required to accept that part of the agreement. In accepting mother's submission and waiver, the court did not represent or in any way indicate it was adopting the parties' agreement on any counts except those mother specifically identified on her written waiver. Mother's rights to a contested evidentiary hearing remained intact as to the remaining counts.

In sum, the record does not support mother's claim that she submitted on the entire petition and waived her right to a contested hearing on all counts. Even if the court's amendment to the petition contradicted the letter or spirit of the parties' mediation agreement, mother's rights as to the amended count were unaffected by her submission on the physical abuse counts. The court had no reason to sua sponte offer mother the opportunity to withdraw her submission on counts a-1, b-6, j-5, and b-5, since the court accepted the parties' mediation agreement on those counts. There was no error.

III. The Juvenile Court's Jurisdictional Findings as to Mother Were Supported By Substantial Evidence

Mother argues there was insufficient evidence to support the juvenile court's amended allegation that, in addition to the actions of an unknown perpetrator, mother's "lack of appropriate support" placed the children at risk of physical harm, damage, danger and sexual abuse. We disagree.

" 'We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.]' [Citation.] ' " 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" [Citation.]' [Citation.]" (*In re V.M.* (2010) 191 Cal.App.4th 245, 252.)

"The three elements for jurisdiction under section 300, subdivision (b) are: ' "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the [child], or a 'substantial risk' of such harm or illness." ' [Citations.]" (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.) The issue in this case was whether mother engaged in any neglectful conduct, which the court phrased as "lack of appropriate support," that placed the children at substantial risk of serious physical harm or illness. Although the evidence in the record largely indicated mother acted promptly upon suspecting the children had been subjected to some form of sexual

abuse, there was also evidence from which the juvenile court could infer mother should have suspected abuse earlier or taken action to protect the children from harm.

Mother admitted to the "up front" assessor that Matthew S. engaged in inappropriate and questionable behavior with the children. Mother said Matthew S. not only mutilated the children's toys, but also drew "perverted" drawings in their notebooks. This was the context in which the court could consider Mark, Jr.'s statement that Matthew S. touched him while he was "sleeping," but stopped when mother came into the room. Mother also described significant physical abuse. According to mother, Matthew S. physically abused her while she was pregnant. Although this happened years before any allegations of sexual abuse, mother took no action to remove herself or the children from Matthew S. until after the DCFS investigation in the instant case was underway. While the evidence was consistent that the children did not witness physical violence between mother and Matthew S., M.C. said mother admitted Matthew S. had given her bruises, Mark, Jr. said Matthew S. spanked him "really hard," and he heard Matthew S. and mother arguing a lot. DCFS reported mother had previously learned from a friend that the children were touching each other's private parts while under a blanket; the DCFS report did not state when the friend gave mother this information. Mark, Jr. told a DCFS social worker he had played the touching game with his siblings on multiple occasions. Mother also allowed Mark C. to move in with the family, despite the fact that he had caused serious physical harm to another child in 2009, leading to a sustained dependency petition as to mother's children.

It is undisputed that once mother concretely suspected sexual abuse, she acted promptly to address the situation. Yet, mother's inaction in response to Matthew S.'s behavior with the children short of inappropriate touching provided evidence that mother's "lack of appropriate support" placed the children at risk of substantial harm. We also disagree that the jurisdictional findings regarding mother were inconsistent. The juvenile court accepted the parties' mediation agreement as to the physical abuse counts and removed references to mother from those counts. However, the court's acceptance of this negotiated resolution of one set of counts was not the legal equivalent of a finding

that mother did not engage in neglectful conduct as required for a finding under Welfare and Institutions Code section 300, subdivision (b) related to the sexual abuse allegations or neglect in general.

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.