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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re C.W., Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

N.M.,

Defendant and Appellant,

B270165

(Los Angeles County
Super. Ct. No. DK13786)

APPEAL from an order of the Superior Court of Los Angeles County,
Nichelle L. Blackwell, Commissioner. Reversed.

Donna Balderston Kaiser, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County
Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and
Respondent.

The juvenile court asserted dependency jurisdiction over 14-year-old C.W. pursuant to Welfare and Institutions Code section 300, subdivision (b)(1),¹ as to N.M. (Mother).² Mother argues on appeal that there was insufficient evidence to support the jurisdictional findings and orders. We agree and reverse.

FACTS AND PROCEEDINGS BELOW

On September 11, 2015, the Department of Children and Family Services (DCFS) received a referral alleging physical and emotional abuse of C.W. by Mother. According to the referral, C.W. arrived at school with a bruise on her eye, which C.W. alleged was due to Mother striking her. C.W. gave her teacher a letter stating that she thought about killing herself due to Mother's alleged daily verbal abuse, which consisted of calling C.W. a "failure" and a "loser." In addition to running away from home and not wanting to live with her Mother, C.W. stated that she did not want to live with M.W. (Father) due to his favoritism towards her half-siblings. C.W. wanted to live with her maternal grandmother.

On September 11, 2015, DCFS interviewed C.W., who was accompanied by her maternal grandmother, at a police station. C.W. stated that she did not want to live with Mother because she did not feel safe with Mother, who hit and yelled at C.W. C.W. confirmed that, in the past, she had thoughts of harming herself and Mother and, she did not want to live with Father because his live-in girlfriend and step-siblings made her feel uncomfortable.

DCFS also interviewed C.W.'s maternal grandmother, who agreed to have C.W. live with her temporarily, but expressed concerns about C.W.'s runaway behavior, stating that C.W. had run away from Mother's home on numerous occasions. Ultimately the maternal grandmother wanted C.W. to live with Father once he returned from an out-of-town trip.

Mother came to the police station and signed a safety plan to allow for C.W. to remain at her maternal grandmother's home until Father returned to Los Angeles.

¹ Unless otherwise indicated, all statutory references are to Welfare and Institutions Code.

² M.W. (Father) is not party to this appeal.

On September 14, 2015, DCFS went to Mother's home to further investigate the referral. Mother confirmed hitting C.W. a week earlier but explained the circumstances more fully. According to Mother, Mother was driving and saw C.W. hanging out on a street corner wearing only high-waisted jeans and a bra. Mother stopped the car and demanded that C.W. get in with Mother and go home, but C.W. refused and started cursing at Mother and hit Mother in the lip. Mother hit C.W. "in return." C.W. then began screaming gang terminology at Mother, stating "I'm going to get the homies to [f]uck you up." Several people were surrounding C.W. and Mother, and Mother feared any further attempts to force C.W. in the car with Mother would lead to a larger altercation. Mother, therefore, left the scene without C.W.

According to Mother, she tried her best to parent C.W., but C.W. was a rebellious teenager, who habitually ran away from Mother's home to live with other people and then called Mother days later, begging to return. Mother reported that she was worried that C.W. was disturbed and sexually promiscuous. C.W. was pregnant in July 2015 but did not have the baby. When C.W. visited her aunt in Norwalk, she allegedly engaged in sexual activity with multiple people and was, therefore, no longer allowed in her aunt's home. C.W. also allegedly hid stolen goods at her paternal grandmother's house and, therefore, was no longer permitted there either. Mother stated that, in the past, when C.W. would runaway, Mother would call the police, but C.W.'s behavior had gotten out of control and Mother was embarrassed by it and tired of defending C.W.

Mother suggested that C.W. live with Father for a time to see if he could better discipline her, although C.W. did not want to live with him because of her step-siblings and C.W.'s desire to have his attention for herself.

Mother denied any history of substance abuse, child abuse, mental health issues, criminal history and prior involvement with DCFS. She denied any domestic violence in the home. She admitted to calling C.W. names when she was angry, but denied ever calling her a "loser" or "failure."

On September 28, 2015, the family met with the social worker and decided that C.W. would reside with Father, who agreed.

On October 14, 2015, DCFS filed a section 300, subdivision (b) petition in juvenile court, alleging that Mother was unable to provide appropriate parental care and supervision to C.W. due to C.W.'s behavioral issues. The trial court held a detention hearing the same day and released C.W. to Father's custody, ordered supervised visitation for Mother and ordered family services for C.W. and both parents.

On October 30, 2015, DCFS re-interviewed C.W. She admitted to previously running away for days at a time without informing her parents of her location. She also confirmed that she was sexually active. Although C.W. stated that she and Mother had an altercation, when Mother tried to get C.W. off the street corner and into Mother's car, C.W. recanted her prior statement that her Mother hit her prior to that occasion and habitually called her names. C.W. admitted that the letter she gave her teacher, discussing suicidal thoughts and maternal abuse, was fabricated because C.W. was angry at Mother "because she [did] not let me go out when I want[ed] to." C.W. stated that she spoke to Mother every day and wanted to return to Mother's home. C.W. agreed to have a mental health assessment and participate in counseling with Mother. She stated to the social worker that she was "sorry that [she] caused [her] mom problems."

On November 30, 2015, DCFS re-interviewed Mother. She maintained that she hit her daughter once, on September 8, 2015, in self-defense and had never hit C.W. in the past. Mother was concerned with C.W.'s sexual behavior and had filed several police reports in the past after C.W. ran away from home. Although Mother previously told a DCFS social worker that she wanted C.W. to live with Father, Mother now wanted C.W. to return home. Mother wanted C.W. to get a mental health assessment and believed they would both benefit from counseling. Mother stated that she loved C.W. and wanted what was best for her. Mother also noted that, although her visits with C.W. were supposed to be monitored, C.W. often came to Mother's house and asked that Mother let C.W. inside. Mother let C.W. inside but always took her back to Father's house because Mother did not want to violate the October 14, 2015 court order.

Father was also re-interviewed. He was aware that C.W. had behavioral problems and frequently ran away from Mother's home, but he

had never been informed of any previous physical altercations between the two. He stated that C.W. ran away from his home and would stay away for entire weekends without communicating with him. He supported C.W.'s desire to resume living in Mother's home.

In DCFS's December 9, 2015 report, the social worker stated that there were no immediate child safety concerns if C.W. were to return to Mother's home. The report stated that C.W. was a "defiant teenager that did not want to follow her mother [*sic*] rules and curfew."

On January 28, 2016, the court held the jurisdiction hearing. Mother acknowledged that she and C.W. needed "some kind of help" but requested that the section 300 petition be dismissed because Mother was cooperative, non-offending and "government intervention" or court supervision was unwarranted. DCFS disagreed and argued that the family needed intensive services that could only be provided if the court sustained the section 300 petition.

In response to the arguments, the court stated, "I don't think that the mother has been abusing [C.W.]. I don't see this evidence. I see that we have a recalcitrant teenager that [*sic*] appears to want to do things her way, and that's not good. But . . . I don't see the mother as being at fault here." The court stated that it wanted to ensure services were provided, and it, therefore, sustained the section 300 petition, ordered C.W. released to parents and ordered counseling for C.W., Mother and joint counseling for C.W. and both parents.

Mother filed this appeal.³

³ After Mother appealed the case here, it proceeded in dependency court. On September 9, 2016, DCFS filed a motion, asking us to take judicial notice of various juvenile court orders issued after Mother filed her appeal. We granted the motion, and note that the court continued to assert jurisdiction over C.W. based on section 300, subdivision (b)(1) as to Mother. On December 1, 2016, Mother filed a request for judicial notice of the dependency court's minute order, dated November 28, 2016. We granted the motion. The November 28, 2016 dependency court order terminated its jurisdiction of the case based on its receipt of C.W.'s delinquency hearing outcome, finding that C.W. was a section 602 ward and would remain detained in Eastlake Juvenile Hall. Although the dependency court has

DISCUSSION

Mother argues that there was insufficient evidence to support the court's finding of jurisdiction under section 300, subdivision (b)(1). We agree.

Jurisdiction under section 300, subdivision (b)(1), requires a court to find that, due to parental fault, there is a substantial risk that the child would suffer serious physical harm or illness as a result of the failure or inability of the parent to adequately supervise or protect the child. (§ 300, subd. (b)(1).)

Here, there is not substantial evidence that C.W.'s behavior was due to Mother's fault. Indeed, the court explicitly found that Mother was not at fault. Moreover, at the time of the hearing, there was not a substantial risk of harm. The situation had stabilized: C.W. and Mother both agreed to counseling; C.W. wanted to live at home with Mother and they spoke on the phone daily; C.W. apologized to Mother for her behavior and told the court she would obey Mother's rules and understood that the rules were for her own safety. Despite the lack of requisite findings of parental fault or substantial risk of serious harm, the court asserted jurisdiction because the court wanted to provide the family with counseling.

Although the court's desire to ensure the family received counseling was undoubtedly well-intentioned, it erred in sustaining the petition under section 300, subsection (b)(1) because, as the court itself stated, there was no evidence of parental misconduct. Section 300, subdivision (b)(1), requires a finding of *parental* misconduct or neglect and cannot be based on the conduct of the child or a family's therapeutic needs. (See, e.g., *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1259 [holding that jurisdiction under section 300, subdivision (b)(1) must be based on parental neglect and not a teenager's "incorrigible behavior"].)

terminated its jurisdiction over C.W., the juvenile court's jurisdictional finding as to Mother, the issue she appeals here, is still of import as it remains an adverse finding against Mother and labels her the offending parent. This finding could have an adverse impact on Mother in future proceedings. The termination of the dependency court jurisdiction in the November 28, 2016 order, therefore, does not prevent us from considering the merits of this appeal.

Although DCFS acknowledges that under our case law section 300, subdivision (b)(1), requires a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect a child—a finding that was absent in this case—it urges us to reconsider *Precious D.* and hold that no such finding is required.⁴ Under DCFS’s interpretation, the dependency statute would create a new regime where devoted and loving parents could be faced with government intervention and the potential loss of their parental rights without any finding of culpability. And a defiant teenager, seeking freedom from parental discipline, could potentially dictate parental rights by behaving increasingly defiant or by putting themselves in dangerous situations.

As we explained in *Precious D.*, this reading of section 300, subdivision (b)(1), would deny natural parents their constitutional fundamental liberty interest in the care, custody, and management of their children, which guarantees that the state may not terminate a parent’s rights with respect to a child without first making a showing of parental unfitness or neglectful conduct. (*In re Precious D.*, *supra*, 189 Cal.App.4th at p. 1261.) Such a reading of the dependency statute would violate constitutional principles of due process and the “cardinal” rule that a statute should, where possible, be construed in a manner that avoids doubts about its constitutionality. (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373.) Accordingly, we reject DCFS’s argument to overturn *Precious D.*

⁴ The issue of whether section 300, subdivision (b)(1), authorizes dependency jurisdiction without a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect a child is currently pending before the California Supreme Court. (*In re R.T.* (2015) 235 Cal.App.4th 795 [review granted June 17, 2015, S226416].)

DISPOSITION

The jurisdictional findings and orders are reversed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.