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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.M. et al., Persons Coming Under
the Juvenile Court Law.

B254729
(Los Angeles County
Super. Ct. No. CK97964)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSICA J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Juvenile Court Referee. Affirmed.

Joseph D. Mackenzie, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Appellant Jessica J. failed to attend a jurisdictional and dispositional hearing concerning a supplemental petition involving two of her children, E.M. and K.M. On appeal, she argues that the dispositional order must be reversed because the court did not bifurcate the dispositional hearing. Mother's argument is forfeited and is not a ground for reversal because she fails to show prejudice. Overwhelming evidence supported the juvenile court's disposition.

FACTS AND PROCEDURE

Mother has three children in the dependency system, J.B. (age 11), E.M. (age 6) and K.M. (age 4). Mother has a criminal history, having been convicted of first and second degree burglary. She also was arrested for spousal battery, the subject of the original petition in this case.

Mother pled no contest to a Welfare and Institutions Code section 300 petition—the original petition. She admitted that she and her male companion V.M. exposed the children to violent altercations.

Pursuant to a mediation agreement, J.B. was to remain in mother's custody and E.M. and K.M. were to remain in their father's custody. Mother was permitted to have unmonitored visits with E.M. and K.M.¹ Mother agreed to complete a parenting program, participate in individual counseling to address anger management and participate in a 52-week domestic violence program for perpetrators. Mother was homeless and made a plan for J.B. to reside with maternal great aunt.

On April 5, 2013, the juvenile court ordered mother to attend a domestic violence for perpetrators class and to attend individual counseling to address anger management. Mother failed to enroll in any court ordered programs. While in maternal great aunt's care, J.B. suffered from suicidal ideations and cut herself.

On December 27, 2013, Los Angeles County Department of Children and Family Services filed a supplemental petition with respect to E.M. and K.M., which as subsequently sustained alleged that mother failed to comply with court orders. It further

¹ Mother reported visiting E.M. and K.M. four to five times a week at the park, library and museums.

alleged that mother was found in possession of a glass narcotics pipe and methamphetamine. Police found the narcotics pipe and crystal substance resembling methamphetamine when they searched mother following her arrest for spousal battery.

Mother failed to attend the hearing on the supplemental petition. Mother's counsel argued the petition should be dismissed. Counsel argued mother's possession of a glass pipe and methamphetamine did not show she used the methamphetamine or glass pipe. Counsel further argued there was no evidence mother behaved inappropriately during her unmonitored visits or possessed the contraband in her children's presence. Therefore, according to mother's counsel, there was no evidence of any risk to E.M. or K.M.

The court rejected mother's counsel's arguments. It sustained the supplemental petition. Without holding a separate hearing, the court ordered mother's visits to be monitored, which was a change from the original disposition in which mother was granted unmonitored visitation. The court indicated the other dispositional orders previously made were in full force and effect.

DISCUSSION

Mother argues the juvenile court erred in failing to bifurcate the dispositional hearing. She waived this objection by failing to raise it in the juvenile court. (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 542; *In re A.O.* (2004) 120 Cal.App.4th 1054, 1061, fn. 4.)

In any event, mother fails to show that even if the court erred reversal is warranted. Mother appears to be arguing that had the dispositional hearing been bifurcated, she could have presented additional evidence at the dispositional hearing. According to mother she lacked "a meaningful opportunity to challenge" the court's conclusion that methamphetamine use poses a risk to the children and that she used the methamphetamine or glass pipe found in her purse. This argument is not persuasive because mother chose not to attend the hearing. Had she chosen to attend, she could have testified regarding the methamphetamine and glass pipe found in her purse. Mother's

failure to present additional evidence if it existed (which is not borne out by the record) was the result of her failure to appear at the hearing.

Even if the court should have held a separate dispositional hearing (see Cal. Rules of Court, rule 5.565(a); *In re Fred J.* (1979) 89 Cal.App.3d 168, 178), mother fails to show she suffered any prejudice from the juvenile court's failure to do so. The only dispositional change based on the modified petition was that mother's visits were ordered monitored. Mother offers no theory upon which unmonitored visits would be warranted given her failure to comply with any court ordered programs, her failure to address any of the concerns that led to the original dependency, and her possession of methamphetamine and methamphetamine paraphernalia. Additionally, the one child remaining in mother's custody cut herself, raising serious concerns of mother's ability to care for her. The juvenile court's conclusion that mother should be given only monitored visits was overwhelmingly supported and the record contains no evidence supporting a different disposition. Any assumed error in failing to bifurcate the dispositional hearing was harmless and therefore reversal of the dispositional order is unwarranted.² (*In re Miguel E.*, *supra*, 120 Cal.App.4th at p. 542.)

DISPOSITION

The juvenile court's dispositional order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

² We do not agree with the unsupported conclusion in *In re Fred J.*, *supra*, 89 Cal.App.3d at page 178 that reversal is required regardless of whether the error in failing to bifurcate a dispositional hearing is prejudicial. We follow the conclusion in *In re Miguel E.*, *supra*, 120 Cal.App.4th at page 542 that the appellant is required to show prejudice.