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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff,

v.

J. C.,

Defendant and Appellant;

JOHN C.,

Defendant and Respondent.

B251967

(Los Angeles County
Super. Ct. No. CK91922)

APPEAL from an order of the Superior Court of Los Angeles County,
S. Patricia Spear, Judge. Appeal is dismissed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and
Appellant, J. C.

No appearance for Plaintiff.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and
Respondent, John C.

In this dependency action, the juvenile court dismissed the petition's allegation that John C. (father) had sexually abused his son, Joshua C., and sustained the allegation that father had improperly disciplined his son by hitting him with a belt. The child's mother, J. C., appeals the dismissal of the sexual abuse allegation after a contested jurisdictional hearing. We conclude that mother lacks standing to challenge the court's decision and dismiss the appeal. We also conclude that even if mother has standing to challenge the decision, the court did not err in striking the sexual abuse allegations in the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father had a troubled marriage. Joshua is their only child. In January 2012, father told mother he planned to move out of the house and wanted joint custody of Joshua. Joshua was seven years old at the time. On February 3, 2012, Joshua defecated on the floor and mother asked him "if [] father [had] touched [him] where the feces c[a]me from." Joshua did not answer "right away" but eventually said yes.

On February 7, 2012, mother reported to the police that father had sexually abused Joshua. A social worker from the Department of Children and Family Services (Department) interviewed the family later that day. Joshua told the social worker that he " '[u]sed to' " take baths with father, and they would play with toys in the bath. When asked if father ever touched him in the bath, Joshua said father touched him on the " 'wiener' " " 'four or less' " times and had "squeezed his butt." Joshua also said that both of his parents spanked him.

Father denied having touched Joshua's private parts in the bath, but acknowledged that he had spanked Joshua with a belt. Mother said she thought father had sexually abused Joshua based on two incidents: about two months prior, mother had observed father "cuddling" with Joshua on the couch and "rubbing" Joshua " 'all over' "; and, a year or two previously, mother saw father sitting on the toilet reading a newspaper while Joshua was in the bath and appeared "to be trying to put a finger in his [own] anus."

On February 22, 2012, the Department filed a petition under Welfare and Institutions Code section 300, subdivisions (a), (b) and (d).¹ Under subdivisions (a) and (b), the petition alleged that father had physically abused Joshua by striking him with a belt and mother had failed to protect him; and under subdivisions (b) and (d), the petition alleged that father had sexually abused Joshua by “fondling the child’s penis . . . and buttocks” and mother failed to protect Joshua. The court ordered Joshua detained from father and released to mother. By this point, father had already moved out of the house.

The court ordered Joshua to participate in a forensic interview. On March 1, 2014, Joshua told the interviewer that father “touch[ed] his privates,” but also that “[h]e didn’t touch the wiener. He squirt the water gun. . . . When I was in the bathtub, we were playing the game. Then he stuck the gun at my wienie” Joshua also said father “inserted his hand into his ‘butt hole’ ” and his “mom told [him] it got loose[] [a]nd then that’s why I got sick,” defecating on the floor.

After various continuances, the court held a jurisdictional hearing on February 27, 2013. The court received the Department’s reports into evidence as well as reports from Joshua’s therapist, father’s expert witness, and the psychologist who had conducted the forensic interview. The court also heard testimony from Joshua’s therapist, Joshua, mother, father, and father’s expert witness.

Joshua’s therapist testified that Joshua said father had sexually abused him on a daily basis. Joshua testified that father had touched him on his “ ‘weenie’ ” and “ ‘butt’ ” every few weeks when he was between three and six years old. Mother testified that she first suspected Joshua had been sexually abused when she discovered feces on the floor, and she believed Joshua’s anus had “become loose . . . and there must have been something to [] make the muscle loose.” Father testified that he had never touched Joshua’s penis or buttocks after Joshua was old enough to bathe himself. Father’s expert, a psychologist, testified that, based on her interview with father and

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

review of the other evidence before the court, she believed it was unlikely father had sexually abused Joshua.

On August 8, 2013, the court sustained the allegation of physical abuse against father under section 300, subdivision (b), amending the petition to provide that father had “used inappropriate physical discipline on” Joshua, and struck the allegations regarding sexual abuse. The court noted that Joshua’s “testimony was nonspecific, riddled with information that was not and has not been corroborated by adults involved, and just seemed not believable.”

At the disposition hearing, the court removed Joshua from father’s custody and placed him with mother. Father was provided with enhancement services, including counseling, and allowed monitored visits with Joshua which were to take place via Skype as father now resided in Sacramento. Mother timely appealed the jurisdictional order.

CONTENTIONS

Mother contends the court erred in striking the sexual abuse allegations because “Joshua’s statements established father sexually abused Joshua.” Father contends that mother does not have standing to appeal the dismissal of the sexual abuse allegations and, furthermore, that the trial court did not err.

DISCUSSION

1. Mother Does Not Have Standing

“A parent cannot raise issues on appeal which do not affect his or her own rights. [Citation.]” (*In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541.) In order to appeal from a dismissal of a dependency petition, a parent must be aggrieved by the court’s decision. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734 (*Carissa G.*)). “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. [Citations.]” (*Ibid.*) Here, mother argues that she was “injuriously affected” by the court’s striking of the sexual

abuse allegations because she has an interest in obtaining the state's protection for Joshua against future sexual abuse.

There is conflicting case law concerning whether a parent has standing to appeal an order dismissing a petition after a jurisdictional hearing. In *Lauren P.*, the Court of Appeal held that a mother had standing to appeal the dismissal of the petition because “[a]ny parent who takes the position that dependency jurisdiction is warranted is aggrieved by dismissal of the petition.” (*In re Lauren P.* (1996) 44 Cal.App.4th 763, 770 (*Lauren P.*)). The court concluded that “[d]ismissal of the petition injuriously affected” the mother’s interest in obtaining the state’s protection for her child against future sexual abuse. (*Id.* at p. 771.)

In contrast, the court in *Carissa G.* held that the mother did not have standing to appeal the dismissal of a petition after a jurisdictional hearing, rejecting the reasoning of *Lauren P.* (*Carissa G.*, *supra*, 76 Cal.App.4th at p. 733.) The *Carissa G.* court stated that “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.” (*Id.* at p. 736.) Although parents have a “natural interest in obtaining the state’s protection for [their children] against future sexual abuse,” (*id.* at p. 735) in a dependency proceeding that interest is vindicated by the state which initiates “the proceeding . . . under the theory of *parens patriae*, to protect a minor from abuse or neglect as defined by section 300.” (*Id.* at p. 736.) Furthermore, the court held that “the juvenile court’s dismissal of the petition did not impact” mother[’s] “fundamental right to parent minor.” (*Ibid.*) The court also noted that the mother had a remedy in family court: “[i]ssues concerning custody and visitation can also be dealt with in a family law proceeding.” (*Ibid.*)

We agree with the court’s reasoning in *Carissa G.* In her appeal, mother argues that she is aggrieved because even though the Department took jurisdiction over Joshua, father was not ordered to participate in services designed to directly address sexual abuse issues. While we acknowledge that mother has an interest in the “ ‘companionship, care, custody and management’ ” of Joshua, that interest is not

directly affected by the services father receives. (*In re K.C.* (2011) 52 Cal.4th 231, 236.) As for mother's interest in father's contact with Joshua, under the sustained allegation of improper discipline the juvenile court ordered that Joshua be removed from father's custody and the Department supervise father's visitation with the child. The Department's proposed case plan based on the sexual abuse allegations would not have altered Joshua's custody status or contact with father; that plan also provided for removal of Joshua from father's custody and supervised visitation. Furthermore, mother is not left without a remedy with respect to ongoing custody and visitation issues; those issues can be dealt with in a family law proceeding.

In addition, the present case is distinguishable from the facts in *Lauren P.* Here, the entire petition was not dismissed; the juvenile court sustained the allegations of improper physical discipline under section 300, subdivision (b), removed Joshua from father's care, provided the family with services, and ordered the Department to supervise visitation between father and Joshua. Importantly, not only was mother not aggrieved by the dismissal of the sexual abuse allegations, she benefited by the dismissal since the Department had alleged she failed to protect Joshua from father's sexual abuse.

For these reasons, we conclude mother lacks standing to appeal the court's striking of the sexual abuse allegations. However, even if mother has standing to pursue this appeal, she cannot prevail on the merits as addressed below.

2. *Substantial Evidence Supported the Juvenile Court's Finding*

"We review the decision of the juvenile court under the substantial evidence test, considering whether there is substantial evidence, whether contradicted or not, that supports the position of the trier of fact. We resolve conflicts in favor of the decision, and do not reweigh the evidence or determine the credibility of the witnesses. And '[a]bsent indisputable evidence of abuse—evidence no reasonable trier of fact could

have rejected—we must therefore affirm the juvenile court’s determination.’ [Citations.]”² (*In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1254.)

Mother contends that Joshua’s testimony was “uncontradicted,” and yet mother also acknowledges that father’s testimony contradicted that of Joshua. Mother appears to be arguing that the trial court should have disregarded father’s testimony and given Joshua’s testimony more weight. However, the juvenile court was entitled to weigh the evidence and assess the credibility of the witnesses. (*In re Roberto C.*, *supra*, 209 Cal.App.4th at p. 1252.) Accordingly, the court was entitled to find Joshua’s statements not credible, and conclude that his testimony was insufficient to show by the preponderance of the evidence that he had been sexually abused by father.

Mother’s argument that “Joshua’s statements were sufficiently corroborated” by mother and his therapist fails for the same reason: the trial court was within its discretion to attribute little weight to the testimony of those witnesses. In addition, those witnesses did *not* corroborate Joshua’s account of the sexual abuse. Mother never testified that she had observed the sexual abuse Joshua described. In addition, Joshua’s therapist’s testimony that Joshua had been sexually abused on a daily basis was at odds with Joshua’s statements that father had abused him “four times or less” or “every few weeks.”

Given there was only inconsistent testimony by Joshua that was disputed by father and his expert, and uncorroborated by mother, the juvenile court did not err in striking the allegations of sexual abuse.

² Other courts have held that “where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) “Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ [Citation].” (*Ibid.*) Under either standard of review, our conclusion is the same.

DISPOSITION

The appeal is dismissed.

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LAVIN, J.*

WE CONCUR:

KITCHING, Acting P. J.

ALDRICH, J.

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