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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re OLIVIA R., a Person Coming Under
the Juvenile Court Law.

B242428
(Los Angeles County
Super. Ct. No. CK90370)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MANUEL R.,

Defendant and Appellant.

APPEAL from a orders of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Dismissed.

Manuel R., in pro. per.; and Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The father of a minor child appeals from a juvenile court's disposition order. We appointed counsel for the father. Father's counsel filed an opening brief informing us he was unable to find an arguable issues, and requested that we exercise our discretion to permit father personally to submit a supplemental brief, which we did. Neither father's supplemental brief, nor our independent review of the record have revealed any arguable issues. Accordingly, the appeal will be dismissed.

BACKGROUND

Manuel R. (father) appeals from orders entered at the jurisdiction and disposition hearings in this case upholding allegations of a Welfare and Institutions Code section 300 petition filed in October 2011. The subject of that petition is Olivia R., (born in March 2006), who is the daughter of father and Mary E. (mother). Mother and father are separated but shared legal and physical custody of Olivia, although Olivia lived primarily with mother, and father had substantial visitation rights. Mother and father each had children by prior relationships, two of whom played a role here. One of those children was father's then 16-year-old son Robert, and the other was mother's adult daughter Samantha.

The petition alleged that Robert made numerous inappropriate sexual remarks to or advances toward Olivia. Olivia complained about the comments and advances to father, who dismissed them and accused her of lying. Olivia told her mother about Robert's inappropriate behavior. Mother contacted the police immediately, and these proceedings ensued soon thereafter.

When contacted by respondent Department of Children and Family Services (DCFS), father said he and mother were involved in a bitter custody dispute, and that mother had put Olivia up to making the accusations against Robert. He said Robert had been investigated for possible sexual abuse of Olivia two years earlier (for allegedly rubbing Olivia too hard on her vagina while bathing her), and noted those allegations had been deemed unfounded.

In an interview in early October 2011, Olivia recounted several instances during which Robert had not touched her, but had urged her to touch herself in an inappropriate

manner. He had gestured to his genitalia demonstrating how she should manipulate her own genitalia. Olivia consistently refused to do what Robert told her to do.

As a result of this investigation, a petition was filed alleging that Robert made sexually explicit comments to his sister, that he had touched her, and that father knew about these events but did nothing to prevent them. (Welf. & Inst. Code, § 300, subds. (b), (d).) Olivia was detained and released to mother's care; father was given monitored visitation.

The jurisdiction hearing began in mid-March 2012. During an in camera hearing Olivia testified that, on three occasions, Robert told her to touch herself in ways that made her uncomfortable. On the first occasion, she had been playing with the family's dog when Robert told her how she could touch herself. She refused to do so in the way he described, and Robert demonstrated the touching by rubbing his genitals through his clothes. Olivia told father about the incident but he said he did not believe her. The second time Olivia was in the bathroom when Robert came in and told her to touch herself; she told him to leave her alone. Again, Olivia told father, who said he did not believe her. The third time was at a park. Robert followed Olivia into a restroom and told her to touch herself and also to touch him. She refused. Again Olivia told father. Again father told Olivia he did not believe her. Olivia also testified that Robert touched her chest four times; she did not like it. Olivia denied having said that Samantha prodded her to lie about Robert.

On April 5, 2012, DCFS filed a report regarding a monitored visit between father and Olivia on February 6, 2012. The visitation monitor observed the following:

(1) father and Olivia were engaged in routine activities when Olivia told father that Samantha sometimes made her watch "scary and nasty" movies. Father told Olivia she did not have to watch those movies if she did not want to, but Olivia said Samantha would hit her with a belt if she didn't. Olivia then told the monitor her ""sister made [her] say those things about Robert"" and touched her upper chest with her hands. Concerned about Olivia's comments, the monitor asked a social worker to speak to Olivia, who repeated that Samantha had told her to say those things about Robert. Olivia

also repeated an allegation that Samantha had hit her with a belt and/or an open hand. At that visit, father also told the social worker he wanted to discuss Olivia's claim that Samantha encouraged Olivia to claim Robert touched her or urged her to touch herself in an inappropriate manner, but the social worker refused to address that issue which had "already been substantiated." Olivia was checked for signs of bruising, but none were found.

The monitor from the February 6 visit between Olivia and father was the first witness to testify when the jurisdictional hearing resumed on April 14, 2012. The monitor testified that Olivia had, on multiple occasions, said that Samantha encouraged her to levy allegations against Robert. The monitor contacted the social workers about what Olivia told, but the social workers said no additional investigations would be done undertaken because the allegations against Robert had been substantiated. The monitor believed that the supervising social worker was most interested in Olivia's allegation that Samantha had struck her, not in any recantation. The monitor was unsure whether Olivia meant Samantha had told her to make up allegations against Robert, or whether she merely encouraged Olivia to tell the truth.

Samantha denied telling Olivia to lie about Robert touching her, and claimed she had had a decent relationship with Robert prior to Olivia's disclosure of these events. Samantha also denied hitting Olivia with a belt. She did talk to Olivia about the allegations in February, and told her sister to tell the truth.

Anna M., Olivia's maternal aunt, spoke with mother and Olivia the day Olivia first disclosed the allegations against Robert. They had come over to Anna's house. Mother had been crying and Olivia told Anna what happened. Anna stressed to Olivia the importance of being truthful as many people could get into trouble. Olivia said, "Auntie, I'm not lying to you." Olivia also said she told father what Robert did, but he did not believe her. Mother had taken Olivia to the police station to make a report and returned several hours later, after midnight. When they returned to Anna's house, they called father who was upset and said it was all lies. Olivia spoke to father on the phone. Anna heard father tell Olivia to stop lying or he would not take her to Sea World.

Father acknowledged receiving a call from mother about Olivia's accusations against Robert. At first he thought the call was about the incident DCFS had deemed unfounded the previous year, in which Robert was alleged to have molested Olivia while bathing her. Father believed that "incident" and the current one were part of a campaign by mother to gain an advantage in the parents' custody dispute. He acknowledged he was upset when he received a call accusing Robert of inappropriate behavior, but denied calling Olivia a liar. He believed Olivia was coached to levy the accusations, and said she had told him just before this trial began that she made the story up.

Robert denied ever touching Olivia in an inappropriate manner, or ever having been alone with her at father's house. He never told Olivia it was okay to touch herself in a sexual manner, nor did he demonstrate on himself how she should do so.

At the conclusion of the hearing the court found the allegations of the petition true. The court found Olivia a more credible witness than her half-brother Robert, whom the court said had been "slightly lacking" in his testimony.

The disposition hearing was conducted on June 21, 2012. DCFS recommended the matter be closed with exit orders granting sole physical custody to mother, joint legal custody to both parents and monitored visits for father. The court agreed with father's counsel that there was a need for joint therapy, which it ordered and set the matter for further review. Father filed a timely notice of appeal.

We appointed appellate counsel to represent father. On September 11, 2012, father's counsel filed an opening brief, pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 and *In re Sade C.* (1996) 13 Cal.4th 952, informing us that he had found no arguable issues, and requesting us to exercise our discretion to permit father to submit his own brief. On September 11, 2012, we notified father that he had 30 days with which to submit a letter or brief stating any contentions or arguments he wished us to consider. Father submitted a supplemental brief in pro. per., on October 9, 2012. (*In re Phoenix H.*, at p. 844.)

We have reviewed father's supplemental brief. Out of an abundance of caution, we have also independently reviewed the record. Our review has confirmed what father's

counsel determined, i.e., nothing in the record indicates that an arguable issue exists for our consideration, and nothing in father's supplemental brief changes that result.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.