Filed 10/24/18 In re C.L. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.L., a Person Coming Under the Juvenile Court Law.	B287956 (Los Angeles County Super. Ct. No. DK11102)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Margaret S. Henry, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and

Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court adjudicated then-four-year-old C.L. a dependent of the court and removed her from the custody of her mother K.S. (Mother) and father M.L. (Father). The court found (1) Mother's marijuana use rendered her incapable of taking care of C.L.; (2) Mother engaged in sexual intercourse in front of C.L., which at least in part caused C.L. to engage in various sexualized behaviors; and (3) Father sexually abused C.L. Mother appeals from the jurisdiction and removal determinations even though she pled no contest to the marijuana allegation and Father does not challenge the determinations as to him. We are asked to decide (1) whether the juvenile court's jurisdiction findings are justiciable notwithstanding the uncontested marijuana use finding against Mother (and the finding against Father), and (2) whether there is substantial evidence Mother endangered C.L.'s emotional well-being, which would justify the juvenile court's order removing C.L. from Mother's custody.

I. BACKGROUND

A. Pre-petition Facts

Mother was 15 and Father was 21 when C.L. was born. When C.L. was two years old, the juvenile court sustained a petition alleging Mother failed to properly supervise C.L. The court later terminated jurisdiction in June 2017, awarding Mother sole physical custody and Father visitation with C.L. three times a week. Mother is a former dependent of the juvenile court herself, and at the time of the proceedings in this case, she was a nonminor dependent.

In early July 2017, four-year-old C.L. was at the home of her maternal step-grandmother (MGM) playing with her four-year-old male cousin. C.L. and her cousin were in another room

at one point, and when MGM walked in she saw the cousin was sitting on the floor with his diaper pulled down and C.L. was on her knees straddling the cousin with her underwear pulled down partway while attempting to put the cousin's penis in her vagina. MGM pulled the children apart and asked C.L. "where she had seen this . . . ."[1] C.L. told MGM "[Mother] has sex."

Mother brought C.L. to the hospital and reported Father had a "history of sexually inappropriate behaviors" and C.L. would sometimes "reference something about her vagina" after returning from a visit with Father. A doctor found "no obvious bruising or tearing of [C.L.'s] vagina . . . ." The hospital made a referral to the Los Angeles County Department of Children and Family Services (the Department).

An emergency response social worker for the Department—social worker Coleman—visited Mother's home, where she "instantly noticed the smell of marijuana" and found Mother looking "disheveled." Mother admitted to smoking marijuana, but she said C.L. could not have seen her having sex because she always "put[ ] C.L. in the living room when she [had] men over." Mother admitted C.L. had watched "inappropriate" things on her phone but said she no longer let C.L. use the phone.

Social worker Coleman spoke with Father, who denied sexually abusing C.L. and accused Mother of acting inappropriately around their daughter. Father said C.L. talked

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[1] MGM said her "'first thought was that [C.L.] had seen [Mother] have sex. She probably woke up in the middle of the night [and] saw [Mother] because [C.L.'s] bed is in [Mother's] room.'"

about Mother's relationship with her boyfriend and would "'twerk[ ]'" and "kiss[ ] [Father] with an open mouth."

Social worker Coleman also spoke with Department social worker James-Scribner, who had been involved with C.L.'s earlier dependency case. Social worker James-Scribner said Mother was "really immature," C.L. "was overly friendly with adults," and he had seen C.L. "dancing provocatively." In a subsequent interview with a Department dependency investigator, social worker James-Scribner elaborated that when he asked C.L. "'where she learned to dance like that,'" C.L. responded, "'mommy.'"

At the end of July, the Department removed C.L from Mother's home. At that time, C.L. told social worker Coleman that Mother "told her to tell people that her daddy touches her" and C.L. further said Mother "hits her with a belt because she does not listen." C.L. also told the social worker "she did not like" Mother's boyfriend, "C."

B. Initial Section 300 Petition

The Department filed a petition alleging juvenile court jurisdiction over C.L. on the grounds that Mother "physically abused [C.L.] by striking [her] with a belt" (Welf. & Inst. Code,[2] § 300, subds. (a) & (b)(1)),[3] Mother was unable to provide regular

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[2] Undesignated statutory references that follow are to the Welfare and Institutions Code.

[3] Section 300, subdivision (a) provides for juvenile court jurisdiction over a child based on a finding "[t]he child has suffered, or there is a substantial risk that the child will suffer,

care for C.L. due to "mental and emotional problems" and being a "current abuser of marijuana" (§ 300, subd. (b)(1)), and Father failed to protect C.L. "by allowing [Mother] to have unlimited access to [C.L.]" despite knowing of Mother's substance abuse (§ 300, subd. (b)(1)). Both parents denied the allegations. The juvenile court ordered C.L. to undergo a mental health assessment and did not release her to either parent's custody.

C.L. underwent a forensic interview in the presence of social worker Coleman and one or more police detectives.[4] During the interview, C.L. initially denied having a mother or father. She later admitted to having a father and said he "pee[d] on [her]" and "put slime on [her]," but would not elaborate further. At one point, C.L. climbed on top of a table and began

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serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian."

Section 300, subdivision (b)(1) provides for dependency jurisdiction if the juvenile court finds, in relevant part, "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care of the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

[4] According to a detective who was present, C.L. was "'very aggressive,'" would "'act out'" every time the interviewer asked a question, and even threw a coffee cup at the detective. That same or another detective who was also present said C.L.'s "'behavior was unlike anything [she had] ever seen'" and "'at one point while [they] were waiting, [C.L.] made out with [a] pillow.'"

"dancing and shaking her buttocks." When the interviewer asked C.L. what she was doing, C.L. responded, "[g]irl dancing."[5] C.L. told the interviewer Father licked tables and C.L. herself licked the table with "her head moving up and down in a sexual manner." C.L. then spit on the table and when the interviewer asked who did that, C.L. said Father. The interviewer asked C.L. whether Father "do[es] it to a table like you" and C.L. responded, "[u]h-huh."

Department dependency investigator Giuliano thereafter interviewed C.L., and C.L. told the investigator that "'Daddy touched Mommy's private'" and her cousin "'touched my private and I touched his.'" When the investigator asked C.L. whose idea that was, she answered "'mine.'" Investigator Giuliano asked C.L. if she had "seen that somewhere," and C.L. responded: "'I saw [Mother] touch [her boyfriend] C's private and she touched his private . . . .'" The investigator asked if C.L. had "'seen people touching privates on the phone.'" C.L. nodded yes but did not elaborate.

Investigator Giuliano also spoke to Department social worker Dorsey, who had been the assigned social worker in earlier dependency proceedings involving Mother and C.L. Social worker Dorsey said Mother always had "'some man there at the home . . . or would be talking about meeting this man or that'" when the social worker stopped by on announced visits. Social worker Dorsey said she once stopped by Mother's home early in the morning and found Mother wearing only "'a t-shirt and underwear'"; "'there was some random man in [Mother's] bed

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[5] There was conflicting evidence as to whether C.L. was dancing provocatively.

under the blankets'"; and C.L. "'was also in the [same] room dressed only in a shirt and underwear.'" The living room contained no blankets or other indications C.L. had slept there.

C. First Amended Petition

The Department filed an amended petition alleging, as additional grounds for juvenile court jurisdiction pursuant to section 300, subdivisions (b)(1) and (d),[6] that Mother "placed [C.L.] in a detrimental and endangering situation" by "engag[ing] in sexual intercourse in the presence of [C.L.]" and Father failed to protect C.L. despite being aware of her exposure to Mother's sexual activity.

The juvenile court held a contested jurisdiction hearing on the allegations of the first amended petition. On the second day of the hearing, Father submitted to a lie detector test conducted by the Long Beach Police Department. On the third day of the hearing, the Department filed a last minute information report describing the results of Father's lie detector test.

According to a police detective who was present during the test, Father "'failed the polygraph miserably.'" The detective said Father admitted to sexually abusing a younger sister and an

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[6] Section 300, subdivision (d) provides for dependency jurisdiction if the court finds "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

older stepsister. He also admitted to "'look[ing] up girls[']' skirts'" with a flashlight when he was in school. The detective reported that although Father did not confess to abusing C.L., he made statements suggesting he felt guilty ("'You might as well take me to jail because my life is over'"), he "'repeatedly confused his sister with [C.L.],'" and he "'talked a lot about younger girls.'"

After the juvenile court received the last minute information report concerning Father's lie detector test, the attorneys for Mother and C.L. asked the court to return C.L. to Mother. The attorneys argued the evidence showed Mother had been testing clean for drugs, she had no mental problems affecting her care for C.L., C.L. had no marks demonstrating physical abuse, and C.L.'s sexualized behavior was most likely attributable to Father's abuse. The court declined to release C.L. to Mother, and it continued the date for further court proceedings.

D. Second Amended Petition

The Department filed a second amended petition in which it added allegations, pursuant to section 300, subdivisions (b)(1) and (d), that Father sexually abused C.L. by "orally copulating . . . and ejaculating on [her]."[7] In January 2018, the juvenile court heard argument from the parties regarding jurisdiction and disposition.[8] Mother pled no contest to the

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[7] The Long Beach Police Department pursued criminal charges against Father, but the district attorney declined to pursue a prosecution for lack of sufficient evidence.

[8] Father was not present at the hearing.

allegation that her marijuana use "render[ed] [her] incapable of providing care for [C.L.]"

Mother's attorney argued the evidence otherwise failed to show Mother's conduct subjected C.L. to past serious physical harm or a substantial risk of future serious physical harm. Her attorney argued, in particular, that in contrast to ample evidence that Father sexually abused C.L.—his history of incest, his sexual relationship with Mother when she was just 14, and statements by C.L. during the forensic interview—the allegation Mother had sex in front of C.L. was "not supported by the facts." Mother's attorney asserted that much of the Department's evidence against Mother came from statements by Father, who had "great motivation to lie." Mother's attorney also maintained C.L. was not entirely reliable, noting she had made certain statements that were clearly untrue. Mother's attorney further argued that even if C.L. accidentally saw Mother having sex, it was not reasonable to infer that exposure caused her to behave in such a sexualized manner.[9]

The attorney for the Department contended evidence of sexual misconduct by Father toward C.L. did not bar a finding that Mother also had sex in front of C.L. The Department highlighted several facts described in its reports that supported a finding that Mother had engaged in sexual intercourse and other sexual behavior in C.L.'s presence: C.L. said her Mother "had sex" when asked where she had seen what she was attempting to do with her cousin, C.L. said she had seen Mother and Mother's

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[9] C.L.'s attorney argued the same point—that Mother's alleged exposure of C.L. to sexual activity would not have caused C.L.'s "full on attempt at sexual intercourse."

boyfriend touch each other's "privates," MGM and Father both believed C.L. had seen Mother having sex, and social worker Dorsey had seen C.L. apparently sleeping in Mother's room at the same time that a man was in Mother's bed.

The juvenile court sustained (1) the uncontested marijuana use allegation against Mother under section 300, subdivision (b)(1), (2) the (contested) allegation under section 300, subdivision (b)(1) that Mother had sexual intercourse in front of C.L., and (3) the allegations, pursuant to subdivisions (b)(1) and (d), that Father sexually abused C.L.[10] The court agreed with the Department that evidence of Father's misconduct did not preclude a finding that Mother was also responsible for her daughter's sexualized behavior. In particular, the court noted there was no evidence Father had intercourse with C.L. and the court reasoned C.L.'s attempt at intercourse with her cousin was likely to have arisen from her having seen Mother engaged in similar activity.

When the juvenile court turned to disposition issues, counsel for Mother and C.L. argued the evidence was insufficient to warrant removing C.L. from Mother's custody. The Department, on the other hand, opposed placing C.L. with Mother before Mother underwent counseling to address her sexual conduct in front of C.L. (The Department was amenable, however, to revisiting the custody issue in one month's time.)

The juvenile court found by clear and convincing evidence that removal was necessary but scheduled a progress hearing in

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[10] The court struck the allegations that Mother physically abused C.L., sexually abused C.L., and suffered from mental and emotional problems.

less than one month and directed the Department "to immediately try to get family preservation in place for [Mother]." The court ordered Mother to submit to weekly random drug and alcohol testing and to attend individual counseling that would address the "case issues, including sexual activities in front of [C.L.]" The court allowed Mother to have unmonitored visits with C.L. in her home provided that "[n]o men, other than social workers assigned to this case" were present. The court also granted Mother overnight visits at MGM's home—where C.L. was then placed.

II. DISCUSSION

Mother acknowledges reversal of the sexual exposure finding against her will not affect C.L.'s status as a dependent in light of the uncontested marijuana abuse finding against Mother and the juvenile court's sexual abuse finding against Father. Mother nevertheless asks us to assess the propriety of the sexual exposure finding, but we see no convincing reason why we should exercise our discretion to do so. Mother also challenges the court's removal order, however, which was premised at least in part on the sexual exposure finding against her, so we will review that finding in that context, i.e., as a basis for removal. For reasons we will describe in more detail, the juvenile court's determination that C.L.'s emotional well-being was in substantial danger from Mother's sexual activity is supported by the requisite substantial evidence.

A. Mother Has Not Justified Review of the Sexual Exposure Finding against Her

"As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings." (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*); accord, *In re I.J.* (2013) 56 Cal.4th 766, 773.) Some courts have nevertheless exercised their discretion to review a juvenile court finding that is not essential for jurisdiction over a dependent child when the challenged finding "(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citation]; or (3) 'could have other consequences for [the appellant] beyond jurisdiction' [citation]." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*).)

The *Drake M.* and other courts engaged in such review where "the outcome of [the] appeal [was] the difference between [the appellant's] being an 'offending' parent versus a 'non-offending' parent," which could "have far-reaching implications with respect to future dependency proceedings . . . and [the appellant's] parental rights." (*Drake M.*, *supra*, 211 Cal.App.4th at p. 763; see also *In re Andrew S.* (2016) 2 Cal.App.5th 536, 542, fn. 2; *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613; *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316-1317.) On occasion, courts have also reviewed a single finding against one parent even though that parent did not challenge other findings against him or her. (See, e.g., *M.W.*, *supra*, 238 Cal.App.4th at pp. 1446, 1452 [even though mother conceded jurisdiction on account of her substance abuse, court exercised discretion to review other findings against her because they "carrie[d] a

particular stigma," "appear[ed] to have motivated" a dispositional order, and "could potentially impact the current or future dependency proceedings"].)

On the facts here, we see no reason to exercise our discretion to review the sexual exposure jurisdiction finding against Mother. Because she conceded jurisdiction was appropriate based on her marijuana abuse, our review of the sexual exposure finding has no bearing on whether Mother is considered an offending or nonoffending parent. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 763.) Nor does Mother contend the finding presents a "particular stigma" (*M.W.*, *supra*, 238 Cal.App.4th at p. 1452) or "has the potential to impact future dependency proceedings" (*In re D.P.* (2014) 225 Cal.App.4th 898, 902). Insofar as Mother contends the finding prejudiced her with respect to the court's removal order, we discuss that claim in the following section.

B. Substantial Evidence Supports the Removal Order

At a disposition hearing following the adjudication of a minor as a dependent, the juvenile court may remove the child from the custody of a parent with whom the child was living at the time the dependency petition was filed if the court "finds clear and convincing evidence" that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) The court's ""'jurisdictional findings are prima facie evidence that the child cannot safely remain in the home.'"" (*In*

re A.F. (2016) 3 Cal.App.5th 283, 292, citations omitted.) Removal may be ordered without evidence the child has already suffered harm, and "'[t]he court may consider a parent's past conduct as well as present circumstances'" in making its decision. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451, citations omitted (*Alexzander C.*).)

We review a removal order for substantial evidence. (*Alexzander C.*, *supra*, 18 Cal.App.5th at p. 451; *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492-1493 (*J.S.*).)

The juvenile court found removal of C.L. from Mother's custody was necessary based at least in part on its finding that Mother exposed C.L. to sexual activity. Substantial evidence in the record supports the court's determination. Specifically, C.L. made three statements suggesting she had seen her Mother engaged in sexual activity; investigator Giuliano testified she believed C.L. knew the difference between a truth and a lie; one of Mother's former caseworkers had seen a man in Mother's bed while C.L. was in the room; and the court had a sound basis to conclude C.L.'s sexual behavior with her cousin was at least partially attributable to the child's exposure to Mother's sexual activity given C.L.'s response (Mother has sex) when asked by MGM "where she had seen this," i.e., placing herself in a position straddling her cousin and attempting to insert his penis in her.

Mother contends, however, that removal is improper without clear and convincing evidence parental custody will place the child in *physical* danger, and she contends accidentally exposing a child to sexual activity does not place the child at risk of physical harm. Mother's position lacks merit. The juvenile court may remove a minor upon sufficient evidence of "a substantial danger to the physical health, safety, protection, or

physical *or emotional well-being* of the minor . . . ." (§ 361, subd. (c)(1), emphasis added; *J.S.*, *supra*, 228 Cal.App.4th at pp. 1493-1494; see also *In re H.E.* (2008) 169 Cal.App.4th 710, 719-721 [construing section 361, subdivision (c) as "allow[ing] removal for substantial risk of emotional harm alone"].)

Here, there was ample evidence of such a danger to C.L.'s emotional well-being: four-year-old C.L. attempted to have sexual intercourse and engaged in other sexually charged conduct—including with and around adults—after being exposed to Mother's sexual activity. Indeed, the juvenile court could reasonably infer that, unaddressed, C.L.'s behavior exposed her to a heightened risk of sexual abuse, which threatens not only C.L.'s emotional well-being but her physical welfare as well. (*Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 405 ["The significant emotional trauma caused by childhood sexual abuse . . . is well documented"]; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1217 [reference in former version of section 361 to "'substantial danger to the physical health of the minor' includes sexual abuse"].)

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

SEIGLE, J.*

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