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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Mary M.,

Defendant and Appellant.

B279720

(Los Angeles County  
Super. Ct. No. DK20230)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robin Kesler, Juvenile Referee. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Peter Ferrera, Deputy County Counsel for Plaintiff and Respondent.

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Four of appellant Mary M.'s children were adjudicated dependents, based on her history of alcohol abuse and her willingness to continue to allow her abusive and neglectful boyfriend to have unlimited access to the children. At the disposition hearing, the court imposed, among other conditions for reunification, the requirement that mother clear up an existing warrant for selling liquor to a minor. Mother appeals only that portion of the court's disposition order. We conclude the court did not abuse its discretion in requiring mother to stop living as a fugitive, and therefore affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

Mother has six children; the eldest two are adults. The younger four children, whose ages, at the time of detention, ranged from 8 to 17, are at issue in this proceeding. Their father was killed before the birth of the youngest child. After the father's death, mother, for some time, had an "on and off" relationship with a man named Paul.

Because mother does not challenge the bases for dependency court jurisdiction, we need not discuss the underlying facts in great detail. Mother has a lengthy history of drug abuse – including multiple arrests, a conviction, and a dependency referral alleging her second-youngest child was born testing positive for marijuana and amphetamines.<sup>1</sup> In November 2015, Paul punched mother in the eye during an argument. Two days later, when one of the minor children attempted to intervene in

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<sup>1</sup> Mother claimed that the child had tested clean at birth, but that she herself had tested positive for methamphetamine – because her friend had made her a drink and must have put drugs in it. Neglect allegations were substantiated in that case; the child was released to his father, and the father refused family maintenance services.

another argument, Paul shoved the boy into a table. When mother later spoke to police, she smelled of alcohol. She admitted to drinking approximately six drinks four times per week. The children were not considered at risk because they were not living with mother and Paul at the time; instead, they lived with their adult sibling, Jessica. Paul was criminally prosecuted for misdemeanor domestic violence. The record is not entirely clear as to how those proceedings were resolved. At some point, Paul failed to appear and a bench warrant was issued in May 2016. Law enforcement subsequently told the Department of Children and Family Services (DCFS) that Paul was avoiding arrest on an outstanding warrant; it may have been this one. However, when Paul eventually spoke to DCFS, he told them he had been ordered by the criminal court to complete some treatment programs, but he had never enrolled. He also stated that mother had obtained a restraining order against him.

The current petition arose because, in September 2016, the minor children apparently were no longer living with Jessica, but instead sharing the house with mother, Paul, and Paul's mother. A referral alleging drug use and general neglect was made, and DCFS sent a social worker to investigate. The family was not cooperative and refused the social worker entry until she returned with law enforcement. Mother said she did not know where Paul was and refused to answer questions about him. Mother appeared to be under the influence; she smelled of alcohol but denied drinking. Paul's mother admitted that Paul lived in the house, and, in fact, took the children to school daily.

DCFS obtained a removal warrant on October 26, 2016. The children were detained on November 2, 2016. At detention, the 15-year-old boy appeared to be under the influence.

The petition was filed November 7, 2016, alleging the four minor children were described by Welfare and Institutions Code section 300, subdivision (b), based on mother's failure or inability to provide regular care for them due to (1) her substance abuse; and (2) her decision to allow Paul to reside in their home with unlimited access.<sup>2</sup>

The detention hearing was held on November 7, 2016. Mother was ordered to drug test that day, on demand. She did, and tested negative. The two older children were eventually placed with sister Jessica, so they could continue to attend their high school. The younger children were placed in foster homes. Mother was to be referred for weekly random drug testing.

Mother continued to avoid the social worker, and appeared to be hiding the fact that Paul was still living in the house. On November 14, the social worker came to the house and spoke to Paul's mother, who said she lived alone in the three-bedroom house, although two of the bedrooms were locked and she did not have the keys. Paul's mother said she would talk to mother and Paul about the locked bedrooms. When Paul's mother took the social worker to see the backyard, the social worker spotted mother in the yard with a dog. The social worker asked to speak with mother; mother said she would put the dog away and be right inside. Paul's mother yelled to mother to hurry because that the social worker wanted to " 'talk to us and to see your bedroom.' " Paul's mother then admitted that mother lived in the house. In the meantime, mother disappeared and did not come in to talk with the social worker. Mother did participate in an interview later.

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<sup>2</sup> Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

The jurisdiction/disposition hearing was set for December 8, 2016. Prior to that hearing, mother had been required to drug test four more times: November 9, 14, 23, and 28. She missed all four tests, although the Department excused the last one because of a late change in the testing location. Mother's only clean test was on the day of the detention hearing.

In the Department's report for the jurisdiction/disposition hearing, the Department noted mother had an outstanding warrant, which had not been previously revealed by her criminal records check. DCFS explained, "On 12/05/2016, Probation Information Center reported [mother] has a warrant for her arrest, case number [number]. On 12/06/2016 CSAIII Miguel from East Los Angeles Court reported, a warrant was issued on 04/17/2015 for [mother]. Arraignment was held on 05/28/2013, charges are: selling etc. liquor to a minor. On 04/17/15, a warrant was issued due to failure to appear. Court matter is being heard in Downtown Los Angeles Superior Court, 210 West Temple Los Angeles." When mother was interviewed by DCFS on December 5, she admitted the warrant, but said she was afraid to go to court because she was not sure if she would have to serve time.<sup>3</sup>

DCFS recommended reunification services including parenting, counseling, a substance abuse program, and drug testing. DCFS also recommended, "Mother to comply with Criminal Court orders."

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<sup>3</sup> Furnishing alcohol for a minor is a misdemeanor usually punishable by only a fine but in some circumstances may subject the defendant to incarceration. (Bus. & Prof Code, § 25658.) The record does not reveal whether the jail preconditions were present here.

At the jurisdiction hearing, the court amended the petition so that the allegation relating to mother's substance abuse was changed to her "history of alcohol abuse." As amended, the petition was found true and the children adjudicated dependent. Mother was granted reunification services, including a drug/alcohol program with random or on-demand weekly testing, parenting classes, individual counseling, and visitation (monitored for the two younger children, unmonitored for the two older ones). The court also offered mother two options for being able to reside with her children as soon as possible. Both options required mother to have four consecutive clean drug tests and to clear her existing warrant. One option allowed her to reside with Jessica; the other required her to obtain a restraining order against Paul and to move out of the house. Mother objected to having to clear her warrant; the court made the order over her objection, stating, "I am concerned if she was stopped alongside the road with this type of warrant, that any time the police are involved, puts everybody at risk."

The court explained that its proposed release of the children to mother was not self-executing, but volunteered the opinion that if mother completed one of the two options the court provided, and DCFS did not release the children to her, she should file an immediate petition for modification under section 388.

Mother filed a notice of appeal.

DCFS requested we take judicial notice of subsequent proceedings in the case. Mother did not object and we grant the request. It appears that, as late as June 2017, mother was still not residing with the children. Moreover, there may be problems with the placement of the older children with Jessica. Jessica

was arrested in February 2017, on unknown charges. The eldest of the minor children, who apparently was earning A's and B's before detention, was failing almost all her classes and skipping school. The second eldest wanted to move from Jessica's home to either a foster home or his other adult sister's home, even if it meant switching schools.

### DISCUSSION

On appeal, mother contends the dependency court erred in requiring her to clear up her warrant in order to reunify with her children. She also argues the court did not fully comply with the Indian Child Welfare Act (ICWA).

1. *The Court Did Not Abuse Its Discretion In Requiring Mother to Clear her Warrant*

At a disposition hearing, the court shall order reunification services for the parents. (§ 361.5.) “At the dispositional hearing, the juvenile court must order child welfare services for the minor and the minor’s parents to facilitate reunification of the family. [Citations.] The court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court’s determination in this regard absent a clear abuse of discretion. [Citation.]” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

The reunification plan must be appropriate for each family and be based on the unique facts relating to that family. The program shall be designed to eliminate the conditions that led to dependency. “The department must offer services designed to remedy the problems leading to the loss of custody. [Citation.]” (*In re Christopher H., supra*, 50 Cal.App.4th at pp. 1006-1007.) “[W]hen the court is aware of other deficiencies that impede the

parent's ability to reunify with his child, the court may address them in the reunification plan." (*Id.* at p. 1008.) This is true even if the problem had not yet affected the parent's ability to care for the child. (*Ibid.*)

Here, mother was ordered to clear up her outstanding warrant for selling alcohol to a minor. This was related to one of the conditions which led to dependency – mother's ongoing alcohol problem. We note that mother's 15-year-old son appeared to be under the influence at the time of detention; if mother has had a history of providing alcohol to minors, it must be addressed. But, regardless of the charge underlying the warrant, the simple fact that mother had an outstanding misdemeanor bench warrant impeded her ability to provide a stable home for her children. Mother could be arrested at any time; she thought it possible that she might be incarcerated in connection with the charges. Moreover, mother's apparent response to Paul's outstanding warrant – denying DCFS and law enforcement entry into the home, while hiding Paul from authorities – gives little confidence that she will comply with other reunification services when it is now known that she has an unresolved warrant of her own. The court did not abuse its discretion in requiring mother to clear her existing warrant.

On appeal, mother does not argue that the court abused its discretion. Instead, reasoning backwards from the court's statement that she could reside with her children as soon as she completed four clean drug tests, obtained a safe home, and cleared her warrant, mother argues that the children were actually removed from her custody for her failure to clear her warrant. This is simply untrue; the children were removed because they were adjudicated dependent and, at the time,



mother had done nothing to resolve the issues leading to dependency. She still lived in the house with Paul and had three unexcused missed drug/alcohol tests. The issue presented to us is a simple one: did the court abuse its discretion in ordering mother to clear her warrant, once the children were removed. We found the trial court's ruling was reasonable.

Mother's mischaracterization of the procedural posture of this case resolves her secondary argument. She suggests, relying on *In re Rodger H.* (1991) 228 Cal.App.3d 1174, that she did not have adequate notice that her failure to resolve the warrant would be at issue, so the Department should have filed an amended petition alleging it. But the argument in *Rodger H.* was that the child was "removed from [the mother's] home for reasons that were unrelated to the grounds pleaded in the petition and sustained at the jurisdiction hearing." (*Id.* at p. 1181.) *Rodger H.* recognized that a subsequent petition is required "where a dispositional order removing a child from parental custody may be premised upon 'completely new' conduct or circumstances that are wholly unrelated to the conduct or circumstances alleged in the sustained petition." (*Id.* at p. 1183.) But that governs the basis for removal; we are here concerned with the components of the reunification plan, which, as we have discussed, may address problematic issues even if they were not bases for the adjudication of dependency.

2. *No ICWA Remand is Necessary*

Mother also argues we must remand "to insure ICWA compliance." Under ICWA, there is a continuing duty on the court and DCFS to inquire whether the child is an Indian child. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1466.) "When it is shown that the court or department knew or had reason to know

the child was an Indian child but failed to make an inquiry, we remand with instructions to ensure compliance with ICWA . . . .” (*Id.* at p. 1467.)

Here, mother initially denied Indian heritage. Thereafter, she claimed that she may have Indian ancestry, but did not know the details. She identified, by name, her father, as the possible source. At the detention hearing, the court questioned her on this. Mother’s counsel explained that mother thought there may be American Indian heritage through her father, but that she knows little beyond that the tribe name starts with a “P,” but she cannot pronounce it. Mother added that her father is deceased and that she does not speak with anyone in his family. When asked if she had her birth certificate which might have her father’s full name on it, she replied, “Not on me, I don’t.” The court deferred any findings on ICWA.

Mother contends that leaving the matter there was insufficient, and that we must remand for a more meaningful investigation. Mother’s argument is premature. The court made no ICWA findings based on the then-existing investigation. The subsequent information submitted in connection with the Department’s request for judicial notice reveals that the Department continued to inquire of mother regarding her father’s possible Indian heritage. The court has not yet determined whether ICWA notice is required, nor has it ruled that the Department’s inquiry – which is apparently still ongoing – was sufficient. The issue is therefore not ripe for our resolution.

**DISPOSITION**

The disposition order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.