Filed 3/3/17 In re Trinity A. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re TRINITY A., a Person Coming Under the Juvenile Court Law.	B271032 (Los Angeles County Super. Ct. No. DK15078)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Terry T. Truong, Commissioner. 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 Julia Roberson, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant J.A. (Father) appeals the juvenile court's jurisdictional order finding his daughter Trinity A. (Daughter) to be a person described by Welfare and Institutions Code section 300, subdivision (b) (subdivision (b)),[1] which requires, in relevant part, that the child is at substantial risk of suffering "serious physical harm." We construe Father's argument on appeal to be that the section 300 petition filed in this case was insufficient to support the court's finding of jurisdiction because, when the juvenile court amended the petition, the court deleted some instances of the words "serious" and "physical" from the petition.[2] Because Father failed to raise this issue below, we conclude he has forfeited the issue on appeal. In any event, we are not persuaded by his argument. Accordingly, we affirm.

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[1] Subsequent statutory references are to the Welfare and Institutions Code.

[2] For example, Father argues in his opening brief on appeal: "Jurisdiction requires a finding of either past or potential *serious physical* harm. The [juvenile] court expressly denied any existed." And, similarly, in his reply brief on appeal, Father contends: "There was no valid finding of jurisdiction below because the court expressly found there was *not* a substantial risk of serious physical harm as required by section 300, subdivision (b)."

BACKGROUND

Because Father does not argue the evidence was insufficient to support jurisdiction, we include only a brief overview of the facts of this case.

In December 2015, the Los Angeles County Department of Children and Family Services (Department) received a report that Father had recently driven while intoxicated with 11-year-old Daughter in the car. In response to the call, the Department interviewed family members and other people who knew Father, all of whom confirmed that Father had a drinking problem, often drove drunk, and had used cocaine in the past. The Department also interviewed Daughter, who explained that Father drank beer, but, according to her, it was not a lot. Father either refused, or was unable, to be interviewed. His criminal record includes multiple arrests for DUI. At the time of the report, Father had custody of Daughter, but she mostly lived with her paternal grandmother.

In January 2016, the Department filed a petition under subdivision (b), addressing Father's alcohol abuse and driving while intoxicated with Daughter in the car. At the detention hearing, the juvenile court removed Daughter from Father. Daughter was released to her mother and Father was given monitored visits.

On March 10, 2016, the juvenile court held a combined jurisdictional and dispositional hearing on the petition. After taking evidence and hearing argument, the juvenile court found Daughter to be a person described by subdivision (b). With respect to its jurisdictional findings, the court stated: "The court finds by preponderance of the evidence that counts (b)(1) and (b)(2) of the petition to be true as amended. [¶] (B)(1) is amended

to read: [¶] '[Daughter's] father, [Father], has an unresolved history of substance abuse including cocaine and alcohol use.' [¶] The rest of that sentence remains. [¶] Third line down—last sentence of (b)(1) is amended to read: 'The father's unresolved history of substance abuse endangers the child's physical health and safety, creates a detrimental home environment and places the child at risk of harm.' [¶] (B)(2), last line is amended to just keep the word 'harm,' period. [¶] The court finds [Daughter] to be a person described by Welfare and Institutions Code Section 300, subdivision (b). [¶] I feel bad for [Daughter], actually, in this case. I do understand and I do believe that she loves [Father]. However, that love can only go so far when I have to look at her best interest. And, at this point, I cannot find that it would be in her best interest for her to remain with her father. I do believe there are issues in this case. [¶] It would appear that [Father] is blaming everyone and not taking responsibility for the situation at hand. I do believe that the paternal grandmother was the one taking care of [Daughter] when [Daughter] resided with her father in this case. [¶] The court finds [Daughter] to be a person described by Welfare and Institutions Code Section 300, subdivision (b)."

Thus, the petition was amended by handwritten interlineation (shown here in boldface) and strikethrough to read as follows: "b-1 [¶] [Father] has ~~a~~ **an unresolved** history of substance abuse, including cocaine, and ~~is a current abuser of~~ alcohol **use**, which renders the father unable to provide regular care of the child. On numerous prior occasions, the father was under the influence of alcohol while the child was in the father's care and supervision. The father has a history of a criminal conviction of Driving Under the Influence of Alcohol. The father's

unresolved history of substance abuse endangers the child's physical health and safety, ~~and~~ creates a detrimental home environment, **and** plac**es**~~ing~~ the child at risk of ~~serious physical~~ harm**.** ~~and damage.~~ [¶] b-2 [¶] On prior occasions, the child, [Daughter's] father, [Father], placed the child in a detrimental and endangering situation in that the father drove a vehicle while under the influence of alcohol while the child was a passenger in the vehicle. Such a detrimental and endangering situation established for the child by the father endangers the child's physical health and safety, placing the child at risk of ~~serious physical~~ harm**.** ~~damage and danger.~~" The juvenile court did not amend the preprinted language of the petition, which included the statement that "there is a substantial risk that the child will suffer[ ] serious physical harm or illness."

The court sustained the petition as amended. Father challenges the court's March 10, 2016 jurisdictional findings on appeal.

DISCUSSION

Father makes one argument on appeal. He contends that because the juvenile court "expressly denied that the harm here was either serious or physical," the juvenile court could not have found jurisdiction under subdivision (b), which requires that the child either has suffered, or is at substantial risk of suffering, "serious physical harm." (§ 300, subd. (b).) In other words, Father argues that by removing some instances of the words "serious" and "physical" from the petition, the juvenile court altered the petition such that it could not have supported, and did not support, a valid jurisdictional finding.

Importantly, Father does not argue that the allegations as pleaded by the Department were insufficient or that the evidence

was insufficient to support the petition. Rather, his sole argument on appeal concerns the alleged "procedural deficiency" with respect to the juvenile court's jurisdictional findings.

1. Forfeiture

The Department argues Father forfeited his argument on appeal because he failed to raise it below. We agree.

There is a split of authority with respect to whether a party may argue for the first time on appeal that a juvenile dependency petition failed to state a cause of action. (*In re Christopher C.* (2010) 182 Cal.App.4th 73.) Most courts addressing the issue, including our district, have concluded the issue is forfeited if not first raised before the juvenile court. (*E.g.*, *id.* at pp. 82–83 [Second District]; *In re David H.* (2008) 165 Cal.App.4th 1626, 1637–1640; *In re James C.* (2002) 104 Cal.App.4th 470, 480–481 [Second District]; *In re S. O.* (2002) 103 Cal.App.4th 453, 459–460; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328–329; *contra*, *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) We follow the majority of courts, including the Second District, and conclude Father has forfeited his argument on appeal.

Father contends he did not forfeit his argument because he is not challenging "the sufficiency of what the **Department alleged** but of what the **court found**." In other words, Father claims not to be challenging the petition's allegations, but rather the court's findings. We are not persuaded. Contrary to Father's position, the juvenile court neither "expressly found" that there was not a substantial risk of serious physical harm, nor did the court "specifically reject" or "expressly deny" that the harm here was serious or physical. Rather, the court amended the petition in part by deleting some instances of the words "serious" and "physical," while retaining those same words elsewhere in the

petition. Thus, despite Father's attempts to phrase it otherwise, his argument on appeal is in fact focused on the sufficiency of the petition as amended by the juvenile court. The cases relied on by Father, including two from this division, are not on point and do not compel a different conclusion. (See *In re Noe F.* (2013) 213 Cal.App.4th 358, 366 [reversing jurisdictional finding under subdivision (b) because the mother's incarceration alone was insufficient to find jurisdiction and the mother had provided two suitable placements for her child; forfeiture not at issue]; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717–718 [reversing jurisdictional finding under section 300, subdivisions (a) and (b) because the juvenile court found "emotional harm" rather than the required "physical harm"; forfeiture not at issue].)

In any event, whether phrased as a challenge to the petition's sufficiency or to the juvenile court's findings, Father raised neither point below. Accordingly, we conclude Father has forfeited his argument on appeal. (See, *e.g.*, *In re Christopher C.*, *supra*, 182 Cal.App.4th at p. 83.)

2. Mootness

Even if the issue were not forfeited, we still would reject it because it is moot. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1123.) " ' "[I]f the jurisdictional findings are supported by substantial evidence, the adequacy of the petition is irrelevant." ' " (*Ibid.*) " 'The only exception occurs when a parent claims a petition fails to provide actual notice of the factual allegations. Unless the alleged factual deficiencies result in a miscarriage of justice, the reversal of a jurisdictional order supported by substantial evidence is unwarranted.' " (*Ibid.*)

Here, Father does not argue that the jurisdictional findings are not supported by substantial evidence, and there is no

question Father was aware of the factual allegations against him. Thus, because it is undisputed the juvenile court's jurisdictional findings are supported by substantial evidence, any perceived inadequacies in the language of the petition are irrelevant and not grounds for reversal. (*In re John M.*, *supra*, 212 Cal.App.4th at p. 1123.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.