Filed 12/23/13 In re C.G. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re C.G. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.S., Defendant and Appellant.	B246771 (Los Angeles County Super. Ct. No. CK95609)

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

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Stephen D. Watson, Associate County Counsel, for Plaintiff and Respondent.

R. S. (mother) appeals from the dependency court's judgment of January 4, 2013, declaring C., E., and L. dependents of the court under Welfare and Institutions Code section 360.[1] She contends: (1) the sustained allegations of the petition fail to state jurisdiction; (2) substantial evidence does not support the sustained allegations or the dispositional order removing the children from mother's custody; and (3) the dispositional order directing mother undergo a Regional Center mental health evaluation was an abuse of discretion. We affirm.

STATEMENT OF FACTS AND PROCEDURE

C., born in 1998, E., born in 2007, and L., born in 2010, were born to mother.[2] The children lived with mother.

Mother had a history of neglecting to provide the basic necessities, obtain important remedial services and financial support for E. and L., who had special needs, and supervise C. In October 2011, she agreed to a voluntary case plan drawn up by the Department of Children and Family Services (the Department) to ensure her family's needs were met. As it was difficult for her to understand, initiate, and follow up, she failed to obtain and maintain services she and her children needed, despite many months of support, direction, and active assistance by professionals and a parent partner.

A specialist in developmental delays stated mother "show[ed] signs of a person with 'limited cognitive abilities.' . . . [She] appeared to be 'mentally retarded.' . . . [She] forgot how to spell [L.'s] name. . . . [She] has a developmental mentality of a 7 year old and an IQ of approx. 67."[3] Her parent partner concluded mother "has a processing delay as she has a very hard time following through and does not know how to manage her

---

[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

[2] The dependency court found John G. to be the alleged father of the children.

[3] She did not know she was pregnant with E. or L. until six or seven months into each pregnancy. She failed to obtain prenatal care for L.

money." Mother appeared to be "paranoid, . . . a liar, [and] manipulative, and her reasoning appear[ed] abnormal. . . . [S]omeone with no mental health issues would [not] fail[, as mother failed] to ensure that their children receive[d] needed services."

The family was homeless and transient. They moved frequently, staying with friends, relatives, and strangers, and in shelters. Mother failed to apply for benefits that E. and L. were entitled to that would have enabled the family to obtain stable housing. The family lost its apartment for nonpayment of rent and could not afford the rent charged by shelters. She failed to obtain E.'s and L.'s birth certificates, without which she could not apply for housing assistance or Social Security Income benefits for E. and L. The family's hygiene was very poor, and, on one occasion, it was so substandard that it caused them to be evicted from the shelter where they resided.

Mother did not control or supervise C., who did her " 'own thing.' " C. did not regularly live in mother's home. Frequently, mother did not know where C. was and, as mother moved so frequently, C. did not know where mother was. C. would roam the street at night knocking on doors of different people she knew to find a place to spend the night. In June 2012, C. was stranded far from home for days at a time because she had no transportation and did not know where mother currently lived. Mother failed to ensure C. attended school, and C. had an excessive number of absences. C. sold candy until late at night in cities, such as Encino and Simi Valley, which were distant from Long Beach, where the family lived. She was too tired to go to school the next day. Diagnosed with oppositional defiant disorder, C. was enrolled in therapy, but mother failed to ensure C.'s attendance, and C.'s participation was very inconsistent.

E. was autistic and developmentally delayed. Mother did not understand autism or how to parent an autistic child. E. did not speak and was not toilet independent. He did not have to be nonverbal: his speech failed to develop because of mother's failure to get him appropriate services. Lacking services, E. remained unable to communicate his needs or wants. L. suffered from delays in communication and other developmental

delays, and she was eligible to receive Regional Center services.[4] Mother failed to follow through for the children to receive services, despite much encouragement and many explanations and reminders. She did not make, forgot, missed for other reasons, was late for, was not prepared for, or cancelled appointments. She would claim she had accomplished things that she really had not accomplished, and she promised to follow up but failed to. Mother did not enroll E. in school or begin Regional Center services for E. and L. When E. was enrolled in school, mother failed to ensure he attended, and, on at least several occasions, she failed to pick him up after school. L. and E. appeared to be small and undernourished; they ate ravenously when presented with food.

Mother did not take responsibility for her circumstances or failure to follow through with services. She appeared not to understand what she was being asked to do and did not understand, or denied, her children's special needs. She explained why it was so difficult for her to be in compliance with her case plan: " 'I'm getting the children dress and letting them play, and I have appointment sometimes.' " Mother did not make herself available to her parent partner, the Regional Center worker, or the social workers who were trying to assist her with the tasks of the case plan. Mother agreed in her voluntary plan to participate in counseling. However, she believed there was nothing wrong with her and failed to participate in counseling.

A section 300 petition was filed on September 21, 2012. The children were not detained. On September 21, 2012, mother was ordered to advise the Department before changing her address. In October 2012, neither C. nor E. were enrolled in mental health services.

The children were ordered detained from mother's custody on November 20, 2012, following mother's failure to make herself and the children available to the social worker to ensure the children's wellbeing, ensure the children received services,

---

[4] Regional centers assist persons with developmental disabilities and their families "in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community." (§ 4640.7, subd. (a).)

supervise C., and advise the Department when she moved. E. and L. were detained, but C. could not be found for a month. C. missed school nearly every day between late October and mid-December 2012.

On January 4, 2013, the children were declared dependents of the court based on sustained allegations under section 300, subdivision (b) that the children suffered or were at substantial risk of suffering serious physical harm or illness as a result of mother's failure or inability to adequately supervise or protect and subdivision (j) that the child's sibling has been abused or neglected as defined in subdivision (b) and there is a substantial risk that the child will be abused or neglected as defined in subdivisions (a), (b), (e), or (i), in that "mother is exhibiting mental health behaviors and issues which impair mother's ability to ensure appropriate services for minors not limited to regional center developmental services/speech services and is not able to provide appropriate adult supervision for minors." The court stated: "As far as we know, the children have not been seriously injured yet, but they are certainly at substantial risk. I think mother has been depending on the kindness of strangers significantly to take care of the children. And so far, the people that she has turned to have not harmed the children, but they're at risk there. And . . . . they're not getting the basic things they need to grow and thrive. [¶] When we hear things like C. selling candy in middle of the night, . . . it's basically . . . a 14-year-old raising herself . . . at this point. And that's the danger because 14-year-olds do not have the ability to raise themselves. And the other kids, they are at a substantial risk of physical danger with the little care that mother can provide. [¶] . . . [Mother] is a very nice woman. . . . She just can't do it." Custody was taken from mother, reunification services were ordered, and mother was ordered to take a developmentally appropriate parenting class, participate in individual counseling, and undergo an evaluation by the Regional Center. Mother was granted visitation.

DISCUSSION

1. *Allegations of the amended petition.*

Mother contends the sustained allegations do not provide a basis for jurisdiction under section 300, subdivisions (b) or (j), because the petition did not identify what mental behaviors and issues mother exhibited and no facts were alleged demonstrating the children suffered, or were at substantial risk of suffering, serious physical harm or illness or serious emotional damage. The contention was waived by mother's failure to file a demurrer. In any event, the petition is not deficient, and, even if the petition is deficient, any deficiency was rendered harmless by the fact that a jurisdictional hearing was held and substantial evidence supports the finding of jurisdiction.

The Department amended the petition[5] at the jurisdiction hearing on November 9, 2012, the date the hearing began, and served it on all parties that day during a break. Mother did not file a demurrer to the petition as amended.[6] She did not object to the sufficiency of the allegations until the conclusion of the hearing, on January 4, 2013,[7] when, after all evidence was in and the parties had rested, she argued the petition should be dismissed because the allegations were not jurisdictional in that mother had no mental health diagnosis and there was no showing mother's mental state created a risk of harm.

To test the legal sufficiency of a petition, a demurrer must be filed, as provided in the Superior Court of Los Angeles, Local Rules, rule 7.16 [Dependency Procedure and Practice], which states: "(d) Demurrer and Motion to Strike. A party may file a demurrer to challenge the legal sufficiency of a dependency petition that alleges facts which, even

---

[5] The original section 300 petition alleged E. suffered from autism and mother failed to obtain Regional Services for him.

[6] Prior to County Counsel drafting specific language amending the petition, counsel objected that "some sort of mental health allegations" and an allegation mother was unable to provide housing were "not jurisdictional."

[7] The adjudication hearing took place on November 9, December 13 and 20, 2012, and January 4, 2013.

if determined to be true, (a) are not sufficient to state a cause of action, or (b) are not sufficiently clear or precise for the party to prepare a defense. . . . [¶] Unless otherwise agreed upon, a demurrer must be made in writing and shall be before the entry of a denial or admission or plea of 'no contest.' Notice must be given at the detention hearing or first appearance after the petition or amended petition is filed. [¶] A hearing on a demurrer shall be set on the calendar no later than ten calendar days following the notice of the demurrer. Counsel must file and serve personally or by facsimile the supporting memorandum of points and authorities no later than three court days prior to the hearing. The responding party must file and serve personally or by facsimile an opposing points and authorities no later than one day before the hearing."

"It is well settled that attacks on the legal sufficiency of a petition cannot be made for the first time on appeal." (*In re N.M.* (2011) 197 Cal.App.4th 159, 166; accord, *In re John M.* (2012) 212 Cal.App.4th 1117, 1123.) Failure to timely challenge the sufficiency of the allegations in the trial court forfeits the challenge at the appellate level. (See *In re N.M.*, at p. 166.)

As mother failed to test the legal sufficiency of the amended petition by filing a demurrer, she forfeited her challenge in the appeal. Even if an oral objection may suffice, counsel's objection in this case, made at the conclusion of the hearing, was untimely, and did not preserve the issue for appeal, as it was made too late for the Department to present whatever other evidence might be required to make the factual allegations sufficient. (Compare *In re Janet T.* (2001) 93 Cal.App.4th 377, 386, fn. 4 [an objection, made prior to the jurisdiction hearing, to the legal sufficiency of the supporting factual allegations, was sufficient to preserve the issue for appellate review]; *In re John M., supra,* 212 Cal.App.4th at p. 1123 [the court of appeal assumed, without deciding, that an objection to the legal sufficiency of the amended petition made at the beginning of the jurisdiction hearing preserved the issue].) (But see *In re Alysha S.* (1996) 51 Cal.App.4th

393, 397 [objection that the petition fails to state a cause of action is not forfeited by failure to demur in the trial court].)[8]

Were we to review the legal sufficiency of the amended petition, we would conclude the amended petition sufficiently states grounds for dependency jurisdiction. "A petition, in a manner similar to a civil complaint, must contain 'A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.' [Citation.]" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 396.) Well pleaded facts are construed in favor of the petition. (*Id.* at p. 397.) "It has been held specifically that '[notice] of the allegations upon which the deprivation of custody is predicated is fundamental to due process. . . . Accordingly, a parent must be given notice of the *specific factual allegations* against him or her with sufficient particularity to permit him or her to properly meet the charge.' [Citation.]" (*In re Fred J.* (1979) 89 Cal.App.3d 168, 175.) The Department "is not required 'to regurgitate the contents of the social worker's report into a petition.' However, a facially sufficient pleading is nevertheless necessary. The petition should present essential facts necessary to establish at least one valid ground for asserting juvenile court jurisdiction." (*In re Janet T., supra,* 93 Cal.App.4th at p. 389, fn. omitted.)

Section 300, subdivision (b) requires proof "the 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 . . . ."

The pleading sufficiently states a basis for dependency court jurisdiction. Mother was alleged to have exhibited mental health behaviors and problems which impaired her ability to obtain the developmental and speech services her children needed and to be unable to provide appropriate supervision. The petition did not need to repeat the

---

[8] Numerous opinions have disagreed with the holding in *In re Alysha S.* (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 82-83.)

contents of the reports and Title XX's[9] that were attached to the reports. These documents were replete with examples of mother's problematic mental health behaviors that impaired her ability to adequately parent the children and of the risks the children faced as a result of her failure to obtain services and supervise.[10] (*In re Janet T.*, *supra*, 93 Cal.App.4th at p. 388.) Children cannot supervise themselves. Nonverbal and developmentally delayed children and unsupervised children are vulnerable and at substantial risk of harm. We conclude the allegations of the petition state a basis for dependency jurisdiction. (Compare *In re Janet T.*, at p. 389 [petition alleged parent exhibited mental problems but contained no allegation suggesting how these problems created a substantial risk of harm].)

In any event, any deficiency in the adequacy of the petition is harmless, because, as we conclude in the next section, the jurisdictional findings are supported by substantial evidence. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628 ["if the evidence was sufficient to support the juvenile court's findings, any failure of the petition to state a cause of action became harmless error"]; Cal. Const., art. VI, § 13 ["No judgment shall be set aside . . . for any error as to any matter of pleading . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."].) (See also *In re N.M.*, *supra*, 197 Cal.App.4th at p. 166 ["even if [the appellant] had not forfeited his right to challenge the sufficiency of the amended petition on appeal, such a challenge before us would be moot. '[I]f the jurisdictional findings are supported by substantial evidence, the adequacy of the petition is irrelevant.' [Citation.]"].)

---

[9] Title XX's refer to "Delivered Service Log[s,]" prepared by Department staff, which set forth "all contacts, services and visits."

[10] Mother does not contend she had no notice of the facts underlying the allegations.

2. *Substantial evidence supports jurisdiction.*

Mother contends the jurisdictional findings were not supported by substantial evidence. We disagree with the contention.

In determining whether an order is supported by substantial evidence, "we look to see if substantial evidence, contradicted or uncontradicted, supports [it]. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]" (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court." (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) Thus, the pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Concerning jurisdiction under section 300, subdivision (b), there must be evidence that, as a result of the parent's failure or inability to supervise or protect the child, the "child is exposed to a *substantial* risk of serious *physical* harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 819-820, 823.)

The finding under section 300, subdivision (b), that the children were at substantial risk of suffering serious physical harm or illness as a result of mother's failure or inability to adequately supervise him, is supported by substantial evidence. There was evidence mother had limited cognitive abilities. She did not understand, or denied, the children's and her own special needs. E. and L. required Regional Center services for their developmental delays. E. did not talk, and L.'s language was delayed. C. required therapy to address her diagnosis of oppositional defiant disorder. Inability to communicate one's needs and wants, and untreated oppositional defiant disorder, create a substantial risk of suffering harm or illness. There was evidence mother was not able to ensure, and did not ensure, the children received the services they needed, either on her own or with the assistance of others. She appeared to not understand what was being

asked of her. Her failure to make herself available for help, make or keep appointments, and take the steps she was directed to take, while falsely stating she had accomplished her tasks, was evidence she exhibited "mental health behaviors and issues which impair[ed] [her] ability to ensure appropriate services for minors not limited to regional center developmental services/speech services . . . ." There was evidence mother was not able to supervise C.: C. did not regularly attend therapy or school or sleep at home; and mother often did not know where C. was. There was evidence C. fended for herself, roaming the streets at night far from home and finding shelter with friends, family, or strangers. This situation created a grave risk C. would suffer serious harm. We conclude ample sufficient evidence supports the finding of jurisdiction under section 300, subdivision (b) of risk of harm to all three children.[11]

3. *Abuse of discretion.*

Mother contends substantial evidence does not support the dispositional orders removing the children from mother's custody and ordering her to undergo a Regional Center mental health evaluation. We disagree with the contentions.

" 'The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court's determination in this regard will not be reversed absent a clear abuse of discretion.' [Citation.]" (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) We review custody determinations for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Custody rulings are not disturbed in a dependency proceeding unless they are arbitrary, capricious, or patently absurd. (*Ibid.*) " 'When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citations.]" (*Ibid.*)

---

[11] To the extent mother contends substantial evidence does not support jurisdiction under section 300, subdivision (j), she makes no argument separate from her argument challenging the sufficiency of the evidence of jurisdiction under subdivision (b).

There is no abuse of discretion where substantial evidence supports the order. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839.)

Section 361 provides in pertinent part: "(c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [¶] (1) There 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."

Section 362 provides in pertinent part: "(a) If a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . . [¶] . . . [¶] (d) The juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section . . . . That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated . . . . The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300."

a. *Removal order.*

There was evidence C. roamed the streets at night, at times far from home and not knowing where mother was. She had to find her own shelter, including shelter with strangers. Often, mother was ignorant of C.'s whereabouts. Mother did not ensure C. participated in counseling services for her diagnosis of oppositional defiance disorder. Mother also failed to obtain the services E. and L. needed from the Regional Center to address their language and other developmental delays. Autistic and nonverbal, E. was unable to express his needs or wants. On several occasions, mother failed to pick him up

after school. These are special needs children. They could not supervise and protect themselves. The family was extremely transient, due in large part to mother's failure to follow up with applying for funding which could have been used to secure stable housing. This is substantial evidence the children were at risk of harm if left in mother's custody. (§ 361, subd. (c).) Despite 15 months of extensive support, direction, and active assistance provided to mother and the family by many people and agencies in an effort to keep the family safely together, mother failed to obtain and maintain the services she and her children needed or to supervise C. The family was still transient. This is substantial evidence there were no reasonable means to protect the children without removal from mother's custody. (§ 361, subd. (c).) As substantial evidence supports the findings under section 361, subdivision (c) upon which removal was based, the order was not an abuse of discretion.

b. *Regional Center evaluation.*

Mother forfeited her contention that it was an abuse of discretion to order her to undergo an assessment by failing to object on this ground in the court below.

Mother mischaracterizes the order. The court ordered mother to participate in a "Regional Center evaluation," not, as mother calls it, a "Regional Center mental health evaluation" or a "mental health evaluation." Regional Centers assist persons with developmental disabilities, not mental illness. (See *Samantha C. v. State Dept. of Developmental Services* (2010) 185 Cal.App.4th 1462, 1485-1485.) The term developmental disability "include[s] mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions closely related to mental retardation or to require similar treatment, but not handicapping conditions that are solely physical." (*Id.* at p. 1486.) Excluded from the term are " '[s]olely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder' [citation omitted]. . . ." (*Id.* at p. 1485.)

Mother did not object to the Regional Center evaluation ordered by the court. When the court proposed referring mother to the Regional Center for an evaluation,

mother objected to "any mental health related orders"[12] and asked the court to specify the evaluation would be a Regional Center evaluation. The court specifically ordered a "Regional Center evaluation." Normally, objections not made in the trial court are forfeited. (E.g., *In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted ["a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected."].) Moreover, " ' "[i]t is an elementary and fundamental rule of appellate procedure that a judgment or order will not be disturbed on an appeal prosecuted by a party who consented to it." ' " (*Zinke v. Zinke Rebottoming Shoe Co., Inc.* (1962) 208 Cal.App.2d 690, 694-695.) In dependency cases, discretion to consider forfeited claims "must be exercised with special care." (*In re S.B., supra,* 32 Cal.4th at p. 1293.) "[T]he appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*Ibid.* [the forfeited issue involved interpretation of a statute and had divided the courts of appeal]; *In re M.R.* (2005) 132 Cal.App.4th 269, 272 [the forfeiture was excused in order to clarify a recent statutory amendment].) This is not the rare case involving the type of legal issue that compels overlooking the forfeiture.

In any event, there was evidence mother's developmental mentality was at the level of a seven year old and she had great difficulty understanding her children's needs and accomplishing the tasks necessary to obtain the services they needed, even with extensive support. A Regional Center evaluation could identify the services for mother that would assist her functioning in her parental role as the parent of special needs children. This is substantial evidence supporting the order for a Regional Center evaluation. It was not an abuse of discretion for the court to conclude the order would contribute to eliminating the conditions that led to the dependency. (§ 362.)

---

[12] While the court ordered mother to participate in individual counseling, mother raises no appellate contention concerning the counseling order.

DISPOSITION

The judgment and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.