

Filed 10/9/18 In re Salvador C. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re SALVADOR C. et al.,
Persons Coming Under the
Juvenile Court Law.

B287361
(Los Angeles County
Super. Ct. No. DK24436)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARY P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Pete R. Navarro, Juvenile Court Referee. Dismissed.

Michelle Butler, under appointment of the Court of Appeal,
for Defendant and Appellant.

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

Mary P. (Mother) appeals from the juvenile court's jurisdictional findings under Welfare and Institutions Code¹ section 300, subdivision (b)(1). Mother contends there was insufficient evidence to support the jurisdictional findings that she failed to protect her three children from the domestic violence, mental and emotional problems, and drug use of Enrique C. (Father). However, Mother does not challenge the jurisdictional findings as to Father, and he has not appealed. We dismiss Mother's appeal because there is no justiciable controversy for which we can grant any effective relief.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Two Prior Referrals

On September 30, 2013 the Los Angeles County Department of Children and Family Services (the Department) received a referral after Father was arrested on a misdemeanor domestic violence charge. According to the responding officer, Father had been drinking when the parents argued over finances and Father's current job. Father pushed Mother against a door, punched her in the thigh while she was holding one of their children, and punched the maternal grandmother in the face.

¹ All statutory references are to the Welfare and Institutions Code.

Then 22-month-old Salvador C. and then nine-month-old Estrella C. were present and crying during the incident, but there was no evidence Father physically abused the children. The social worker could not assess the allegation of Father's emotional abuse of Salvador and Estrella because of their ages. The social worker concluded the allegation that Father physically abused the children was unfounded, and the emotional abuse allegation was inconclusive.

On January 7, 2017 the Department received another referral after Mother went to the police station with one-month-old Matteo C. to file a domestic violence report. Mother stated that earlier that day Father locked himself in the bathroom for 10 to 15 minutes before coming out and yelling at her. When Mother told Father she was going to call someone so he could get help, he went to the kitchen and grabbed a 12-inch steak knife. When Mother saw Father with the knife, she put down her cellphone and picked up Matteo. Father grabbed Mother's cellphone in one hand while holding the knife in the other. He pointed the knife to his stomach, and told Mother he would hurt himself if she did not leave. Then he returned Mother's cellphone, and she called the maternal grandmother. During the phone call, Father kicked Mother in the left shin and punched her left arm three times. Father threw Mother's belongings outside of the apartment. Father also grabbed the carseat with Matteo in it, and moved the carseat with Matteo outside the apartment.

Still holding the knife, Father told Mother he would stab her if she did not leave. Mother feared for her life and Matteo's safety. This was the first time Father had threatened her in this manner. Mother reported Father had cut his arms with a box

cutter in the past; the most recent incident occurred two months earlier.

Mother told the police officer she did not know whether drugs were a factor in Father's behavior that day. Mother reported the day before Father was taken to the hospital by an ambulance for a drug overdose. When the officer asked Mother what type of drugs Father used, she answered, "crystal meth." Father was treated and released that evening.

Mother said she did not want an emergency protective order. She stated her "main concern was to provide help for [Father]." The officer later discovered there was already a temporary protective order against Father, with Mother as the protected party.

Mother confirmed to the social worker that Father "had issues with meth," but denied he had used drugs in front of the children. Mother said she and Father were "not presently in a relationship." She reported Father had "asked her to give him time . . . to fix his substance abuse problem." The parents agreed Father could only visit when Mother's family members were home. Father had visited the children for 30 minutes every Tuesday for the past four weeks. Mother said she would never put her children at risk by exposing them to anyone under the influence of drugs, and she told Father he would have to get help before they got back together. Mother denied Father had ever been diagnosed with a mental illness. As for the restraining order, Mother said the maternal grandmother had requested it and later "cancelled" it at the last court date. Concluding Matteo was not at risk at the time, the social worker closed the referral.

B. *The Current Referral and Section 300 Petition*

On August 1, 2017 Mother contacted the police after Father used methamphetamine in their home. Mother provided a written statement to the sheriff's deputy: "I saw [Father] smoking meth in [the] bathroom next door to my kids. I called the police because I'm tired of him doing meth in the house." She told the deputy "this [was] not the first time [Father] has smoked methamphetamine in the house." Father told the deputy that he smoked "methamphetamine on a regular basis because [Mother] 'stresse[d]' him out." Five-year-old Salvador knew Father was "smoking something bad in the bathroom," and stated that "the police took [Father] out of the bathroom." Father was arrested and charged with child endangerment and possession of narcotics paraphernalia. On August 3, 2017 Father pleaded guilty to a misdemeanor, and the court granted deferred entry of judgment.

During an August 7, 2017 interview with a social worker, Mother reported Father had moved in with the family about three weeks before the August 1, 2017 incident. Mother claimed this was the first time Father had used drugs in the home, which was contrary to her statement to the sheriff's deputy.

On August 22, 2017 the Department filed a section 300 petition on behalf of five-year-old Salvador, four-year-old Estrella, and nine-month-old Matteo. Count b-1 alleged Father was under the influence of methamphetamine on August 1, 2017 and on prior occasions, including in January 2017.² On August 1, 2017 law enforcement arrested Father for child endangerment

² The petition alleged Father was under the influence of methamphetamine and was arrested on August 7, 2017. However, it is undisputed, as reflected in the police report, that the incident and arrest took place on August 1, 2017.

and possession of narcotics paraphernalia. Further, Mother knew of Father's illicit drug use and failed to protect the children. Count b-2 of the petition alleged Father had mental and emotional problems including bouts of depression, anxiety, and self-mutilating behavior.³ Further, Mother knew of Father's mental and emotional problems and failed to protect the children. Finally, count b-3 alleged the parents had a history of domestic violence in the presence of the children. The petition also alleged Father had criminal convictions for spousal battery. It alleged in January 2017 Father kicked Mother, punched her in the arm, and threatened to stab her with a knife, while Matteo was present. In 2013, Father pushed Mother. Further, Mother failed to protect the children by allowing Father to reside in the home.

At the August 22, 2017 detention hearing, the juvenile court ordered the children detained from Father and released to Mother. The children had been detained and placed with Mother since August 17, 2017.

C. *The Jurisdiction and Disposition Report*

The jurisdiction and disposition report included information from law enforcement regarding the September 30, 2013, January 7, 2017, and August 1, 2017 incidents and reports from the dependency investigator on interviews with family members. Father admitted he had mental and emotional problems. He reported before he used methamphetamine he had visual hallucinations, in which he saw shadows following him. Father indicated he now had visual and auditory hallucinations.

³ The petition was amended at the October 30, 2017 jurisdiction and disposition hearing to change the allegation, as to Father, from "depression" to "bouts of depression."

He believed he suffered from anxiety and depression, and stated he “perhaps use[d] methamphetamine because he had mental and emotional problems.” Mother stated, “I knew [Father] was emotional but I get it he was under a lot of pressure. [Father] lost his job, we were losing our apartment. [Father] became very quiet and he kept to himself. [Father] wouldn’t communicate with me. In January 2017, I thought he was going to hurt himself with the knife. I haven’t seen him cut himself but I have seen the old [scars].”

Father admitted he was arrested and convicted of domestic violence in 2013. Although Mother had previously stated that Father hit her and maternal grandmother, she told the dependency investigator that Father had hit the maternal grandmother on her lip, but did not hit Mother. Salvador stated, “[Father] does bad things, [Father] fights with my grandma. [Father] says bad words to my mom and he punches my mom like this. . . . [Father] yells and he hits. [Father] makes me sad and I cry.”

D. *The Jurisdiction and Disposition Hearing*

At the October 30, 2017 jurisdiction and disposition hearing, the juvenile court sustained the allegations in counts b-1, b-2 (as amended), and b-3 of the petition under section 300, subdivision (b)(1). The court removed the children from Father’s custody and placed them with Mother. The court ordered Father to participate in a drug and alcohol program with random or on demand drug testing. The juvenile court also ordered Father to undergo a mental health assessment and to comply with the terms of his criminal case, if any. In addition, the court ordered Mother and Father to attend parenting classes and individual

counseling to address domestic violence, childhood trauma, and case issues. The juvenile court granted monitored visits for Father and ordered that Mother could not be the monitor for his visits.

DISCUSSION

Mother concedes the juvenile court has jurisdiction over the children based on the unchallenged jurisdictional findings as to Father. “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773; accord, *In re M.R.* (2017) 7 Cal.App.5th 886, 896 [“[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”]; *In re Briana V.* (2015) 236 Cal.App.4th 297, 309 [“[W]e need not address jurisdictional findings involving one parent where there are unchallenged findings involving the other parent.”].) An appeal is not justiciable where “no effective relief could be granted . . . , as jurisdiction would be established regardless of the appellate court’s conclusions with respect to any such [challenged] additional jurisdictional grounds.” (*In re Madison S.* (2017) 15 Cal.App.5th 308, 329; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 [“An important requirement for justiciability is the availability of ‘effective’ relief—that is, the

prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status."].)

Nevertheless, "[c]ourts may exercise their 'discretion and reach the merits of a challenge to any jurisdictional finding when the 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 [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation].'" (*In re D.P.* (2015) 237 Cal.App.4th 911, 917, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; accord, *In re Madison S.*, *supra*, 15 Cal.App.5th at p. 329.)

Mother contends we should address the merits of her appeal because her "offending parent" status may prejudice her in future dependency and family law proceedings. She argues that based on her status as an offending parent, the juvenile court may take custody of her children, order her to complete services, and if she does not make progress, make a permanent plan for her children, including adoption and termination of her parental rights. Mother further asserts a finding she is an offending parent could be a basis for the juvenile court to deny reunification services to her in subsequent dependency cases.

Mother's claimed prejudice is speculative. The children have been detained with Mother since August 17, 2017 and have remained in her custody during the dependency proceedings. Before the children can be removed from Mother's custody, the Department would have to file a supplemental section 387 petition to modify the dispositional order and prove by clear and convincing evidence that removal is necessary to protect the children pursuant to section 361, subdivision (c)(1). (§§ 361,

subd. (c)(1) [dependent child “shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence” that enumerated factors are met], 387, subd. (a) [“An order changing or modifying a previous order by removing a child from the physical custody of a parent . . . , shall be made only after noticed hearing upon a supplemental petition.”]; *In re Suhey G.* (2013) 221 Cal.App.4th 732, 741, fn. 20 [a section 387 hearing includes “a disposition hearing on the need for the removal of the [children] from [their] current level of placement”]; *In re Javier G.* (2006) 137 Cal.App.4th 453, 462 [where section 387 petition seeks removal of child from parent, juvenile court “must apply one of the applicable standards found in section 361, subdivision c”].)

Further, Mother does not appeal from the dispositional orders that require her to attend parenting classes and individual counseling to address domestic violence, childhood trauma, and case issues. There is no evidence Mother is not in compliance with her case plan, which might adversely impact her in future dependency proceedings. Moreover, any subsequent dependency case would need to be based on conditions existing at that time, and not on a past jurisdictional finding. (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1494-1495 [concluding father’s appeal of jurisdictional finding based on his prior domestic violence was not justiciable where father “fail[ed] to suggest any way in which this finding actually could affect a future dependency or family law proceeding,” which would need to be based on current conditions].)

Mother also contends an “offending parent” finding could affect her ability to obtain certain jobs, volunteer positions, and

licenses because she may be listed in the Child Abuse Central Index (CACI). But there is no evidence Mother has been reported to CACI based on her failure to protect the children.

Mother fails to identify any specific prejudice or adverse consequence resulting from the challenged jurisdictional findings. Even if we were to reverse the jurisdictional findings as to Mother, facts relating to her failure to protect the children from Father's conduct and the sustained allegations against Father for domestic violence, mental and emotional problems, and illicit drug use would still be available in future dependency proceedings. (See *In re Madison S.*, *supra*, 15 Cal.App.5th at p. 330 ["[T]he substance of the spanking allegation would almost certainly be available in any future dependency or family court proceeding, regardless of any determination on our part as to whether it formed an independent basis for juvenile court jurisdiction."]; *In re J.C.* (2014) 233 Cal.App.4th 1, 4 [jurisdictional findings that father failed to protect child from mother's drug abuse would not affect father in future proceedings because even without jurisdictional finding, father had sustained allegations as to other children for domestic violence, drug abuse, mental health issues, and general neglect]; see also *In re N.S.* (2016) 245 Cal.App.4th 53, 62 [mother's appeal was moot because appellate court could not grant effective relief where evidence supporting allegations in petition "would almost certainly be available in any future dependency proceedings"].)

In re Jonathan B. (2015) 235 Cal.App.4th 115, relied on by Mother, is distinguishable. There, the juvenile court sustained the jurisdictional findings based on domestic violence by the father and a finding of failure to protect by the mother. The father had pleaded no contest to the petition, but the mother

appealed. The Court of Appeal exercised its discretion to reach the merits of the mother’s appeal “[b]ecause the finding that mother intentionally hurt and neglected her children may be used against mother in future dependency proceedings” (*Id.* at p. 119.) In contrast to here, at the time of the domestic violence incident the mother and father had been living apart for 10 months and the last time the father had assaulted the mother was five years earlier. (*Id.* at pp. 119-120.) Thus, the mother’s failure to foresee that the father would assault her was “not unreasonable.” (*Id.* at p. 120.) Here, Father committed domestic violence against Mother in 2013 and January 2017, and suffered a drug overdose in January 2017, but Mother still allowed him to move back in with the family. These facts would remain in the record regardless of whether we were to reverse the jurisdictional finding as to Mother.

We conclude the appeal is not justiciable, and decline to exercise our discretion to review the challenged jurisdictional findings. (*In re Madison S.*, *supra*, 15 Cal.App.5th at pp. 328-330; *In re Briana V.*, *supra*, 236 Cal.App.4th at pp. 309-311; *In re J.C.*, *supra*, 233 Cal.App.4th at p. 4.)

DISPOSITION

The appeal is dismissed.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.