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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Timothy M., a Person Coming
Under the Juvenile Court Law.

B286225

(Los Angeles County
Super. Ct. No. DK23119)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Carla A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Steff R. Padilla, Juvenile Court Referee. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Carla A. (mother) appeals from the juvenile court's order exerting dependency jurisdiction over her 15-year-old son, Timothy M. She argues that the juvenile court's finding that she placed Timothy at substantial risk of serious bodily injury by allowing him to live with his drug-using father and by offering to have him move in with her despite her own drug use is not supported by substantial evidence. We decline to reach the merits of mother's challenge because a finding in mother's favor would not deprive the juvenile court of jurisdiction over Timothy (due to the unappealed findings involving father) and because mother articulates no further effect of letting stand the juvenile court's findings beyond asserting that the "findings could be prejudicial to [m]other if she happened to be involved in future child dependency or family law proceedings." Mother's challenge fails on the merits as well. For these reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Mother and Gilbert M. (father) have three children, the youngest of whom is Timothy (who is now 16 and a half).

Mother and father have used drugs, separately and then together, since they were teenagers; mother is now 42 and father is now 44. Both of them have multiple criminal convictions related to their drug use: Mother has five felony and misdemeanor drug-related convictions from 2004, and father has felony and misdemeanor drug-related convictions from 1994, 1998, 2005, 2008, 2013, and 2016. Mother and father both tested positive for multiple drugs in 2017—father for

methamphetamine, amphetamine, codeine, and morphine, and mother for methamphetamine, codeine, and morphine. Mother openly admits that, even now, she continues to ingest illegal narcotics on a regular basis. Father is also associated with a criminal street gang known as the “Dogpatch” gang.

Mother moved to Utah in 2011, and took her three children by father. Father split his time between California and Utah. In 2014, father returned to California for good, and Timothy elected to come with him rather than stay with mother. The two older children remained in Utah. Mother knew of father’s “extensive drug and gang history” and, indeed, had used drugs with father up to the point at which he left and was “relying on the paternal grandmother to ensure that Timothy [was] not exposed to any gang or drug activity.”

In February 2017, law enforcement conducted a probation compliance search at the home where father, Timothy, the paternal grandmother, and father’s brother (the probationer) were living.

II. Procedural Background

In June 2017, the Los Angeles County Department of Children and Family Services (the Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Timothy. In the operative first amended petition, the Department alleged: (1) father’s “extensive substance abuse history” and “current use[] of amphetamines, methamphetamines, opiates, and marijuana”—and mother’s failure to protect Timothy from the same—put Timothy at “substantial risk of serious physical harm”; (2) father’s “mental and emotional problems” put Timothy at such risk; and (3) mother’s “extensive substance abuse history” and “current

use[] of amphetamine, methamphetamine, and opiates” put Timothy at “substantial risk of serious physical harm.” If true, each allegation rendered dependency jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b)(1).¹

In July 2017, the juvenile court exerted dependency jurisdiction over Timothy after finding all three allegations to be true.²

In November 2017, the juvenile court removed Timothy from both parents, placed him with paternal grandmother, and ordered father to move out of her house. The court ordered reunification services for mother, but not for father.

Mother filed a timely notice of appeal.

DISCUSSION

Mother challenges the sufficiency of the evidence to support the jurisdictional findings against her. The Department argues that we should not reach the merits of mother’s challenge because any ruling we issue would have no effect on the juvenile court’s jurisdictional or dispositional orders.

I. Mootness

Juvenile dependency jurisdiction attaches *to the child*, not to the parent. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491

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

² The juvenile court also found Timothy to be an “Indian child” within the meaning of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.), and the tribal representative who intervened urged the juvenile court to exert jurisdiction over Timothy.

(*I.A.*.) Thus, if there is one valid basis for exerting dependency jurisdiction over a child, a challenge to any other basis for jurisdiction is likely to have no effect on the juvenile court's rulings and thus likely to be little more than an ““opinion[] upon [a] moot question[] or [an] abstract proposition[].”” (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *In re D.P.* (2014) 225 Cal.App.4th 898, 902 [“[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”]; *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*); *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 (*Joshua C.*); see generally *Epstein v. Superior Court* (2011) 193 Cal.App.4th 1405, 1408 [noting how appellate courts generally avoid “abstract or academic questions of law”].)

Appellate courts nevertheless retain the “discretion” to hear the merits of a challenge to a juvenile court's jurisdictional finding, even if overturning that finding will have no immediate effect on the juvenile court's assertion of jurisdiction. (*I.A.*, *supra*, 201 Cal.App.4th at pp. 1494-1495.) However, courts will generally exercise that discretion only upon a showing that (1) the challenged finding will have some further consequence in the case at issue, such as when the finding “serves as the basis for dispositional orders that are also challenged on appeal,” or (2) the challenged finding could have some further consequence in a future proceeding, most likely a future dependency or family law proceeding, such as when the finding declares the appealing parent to be an “offending” parent rather than a “non-offending” parent or when the finding itself is “pernicious” or “carries a particular stigma.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*); *M.W.*, *supra*, 238 Cal.App.4th at p. 1452.)

Although *Drake M.* articulated three types of showings justifying the exercise of discretion, those types fall into the two broader categories described above.

Although many cases articulating the breadth of this discretion have urged that appellate courts are to examine, on a “case-by-case basis,” whether the parent attacking a jurisdictional finding that will have no effect on the juvenile court’s jurisdiction has nevertheless articulated a “specific legal or practical [further] consequence [of] the finding” (*I.A., supra*, 201 Cal.App.4th at p. 1493; *Joshua C., supra*, 24 Cal.App.4th at p. 1547; *In re Kristin B.* (1986) 187 Cal.App.3d 596, 605), other cases have seemingly dispensed with the need for any such showing and instead ruled as a categorical matter that erroneous jurisdictional findings might be prejudicial in future proceedings irrespective of whether such proceedings are in existence or are even likely (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716). We elect to exercise our discretion with greater circumspection. The general rule against issuing opinions on moot questions or abstract propositions is an old and venerable one. (E.g., *Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.) As between creating a wholesale “dependency exception” to this general rule or adopting a corollary to the general rule that requires litigants to articulate a specific further consequence of a challenged jurisdictional finding, we conclude that adopting the corollary is the better approach.

Mother has not articulated why the jurisdictional findings she challenges in this case could have any effect on this case or any future dependency or family law case. Mother does not challenge any of the juvenile court’s dispositional orders; to the

contrary, she told the Department that she prefers the very disposition the juvenile court ordered (that is, Timothy living with paternal grandmother). Nor has mother articulated a further consequence in any future proceeding. Although the findings against mother render her an offending parent rather than a non-offending parent, the findings deal with her own drug use and her failure to protect Timothy from father's drug use; neither of these findings are especially "pernicious" or carry with them a "particular stigma." Mother has also not explained how the findings in this case could be relevant to any future dependency or family law case. Of mother's other four children, three are adults and the remaining child is either 17 or 18; because their minority is over (or almost over), they are not likely to be involved in any future dependency proceedings. Mother has also not indicated that she has plans to have or adopt any more children. And mother has not explained whether she is or might be party to any family law proceedings. Instead, mother simply asserts that she "could be prejudic[ed] . . . if she happened to be involved in future child dependency or family law proceedings." This falls short of articulating a "specific legal or practical [further] consequence [of] the [jurisdictional] finding[s]" she attacks; consequently, we decline to exercise our jurisdiction to reach the merits of her appeal.

II. Merits

The two jurisdictional findings mother attacks are in any event supported by sufficient evidence. We evaluate the sufficiency of the evidence supporting a juvenile court's jurisdictional finding by asking whether there is enough evidence in the record that is reasonable, credible, and of solid value that a

reasonable trier of fact could reach the same conclusion as the juvenile court. (*In re K.B.* (2015) 239 Cal.App.4th 972, 979-980.)

A juvenile court may exercise jurisdiction under section 300, subdivision (b)(1) if “[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,” among other things, (1) the “failure or inability of his . . . parent . . . to adequately . . . protect the child,” or (2) “the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (§ 300, subd. (b)(1).) Risk to a child from substance abuse can be established either by (1) proof of “an *identified, specific hazard* in the child’s environment,” or (2) proof that the child is of “tender years,” in which case “the finding of substance abuse is *prima facie* evidence of the inability of [the] parent . . . to provide regular care resulting in a substantial risk of physical harm.” (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 766-767.)

In this case, substantial evidence supports both jurisdictional findings mother challenges on appeal.

With respect to mother’s failure to protect Timothy from father’s drug abuse, substantial evidence supports the juvenile court’s finding that mother knew of father’s drug abuse and nevertheless allowed Timothy to live with him because mother *admitted* to the Department that she knew of father’s “extensive drug and gang history” and was relying on paternal grandmother to protect Timothy. Although mother argues on appeal that she “could not have known” about father’s drug use because she was living in Utah and because father did not use drugs in front of Timothy, this argument ignores mother’s own admission to the Department and ignores the reasonable inference that she knew of father’s continued drug use from his long-standing drug habit

and from their mutual use of drugs up until the time when they split up. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 [“all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party”].) And whether Timothy *saw* father using drugs says nothing about whether mother *knew* father was using drugs. Substantial evidence also supports the finding that mother’s failure to protect Timothy placed him at substantial risk of serious physical harm. Unlike the domestic violence at issue in *M.W.*, *supra*, 238 Cal.App.4th at pages 1453 to 1456, father’s drug use was ongoing. Even though Timothy is no longer of “tender years,” there was proof of “an identified, specific hazard in the child’s environment”—namely, Timothy’s residence with two drug abusing adults whose criminal endeavors subjected the house and its residence to law enforcement searches. (Cf. *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [drug use leading only to student’s tardiness to school; insufficient evidence of risk].) Paternal grandmother’s presence did not ameliorate this danger, as the drug abuse continued under her roof. And although the juvenile court allowed Timothy to remain with paternal grandmother, it did so only on the condition that father (and father’s brother) move out, which reduced—but did not entirely eliminate—the risk of harm to Timothy.

With respect to mother’s own drug abuse, substantial evidence supports the juvenile court’s finding that mother was currently abusing drugs and that her abuse carried a substantial risk of serious physical harm to Timothy. Mother admitted her current drug use. Mother’s drug use contributed to her failure to protect Timothy from afar. And mother’s offer to have Timothy move in with her despite her ongoing drug use and while denying

it to the Department evinces a lack of self-awareness that places Timothy at risk if Timothy was placed in her custody.

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ