Filed 6/8/18 In re G.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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 G.G. et al., Persons Coming Under the Juvenile Court Law.	B284156
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. I.G. et al., Defendants and Appellants.	Los Angeles County Super. Ct. No. DK18135

APPEALS from orders of the Superior Court of Los Angeles County, Kristen Byrdsong, Juvenile Court Referee. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant K.C.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant I.G.

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

INTRODUCTION

K.C. (mother) and I.G. (father) appeal from the juvenile court's jurisdictional findings and dispositional orders declaring mother's four children (two of whom are father's) dependents of the court and removing three of the children from their parents' custody. Father challenges the sole jurisdictional finding against him, but he does not challenge any of the other jurisdictional findings based on mother's and her ex-boyfriend's conduct that establish independent bases for jurisdiction over father's two children. Father also challenges the court's decision to place his two children outside his custody. Mother challenges only the court's removal order, arguing the court should have placed all four children in her custody because the domestic violence shelter where she was living at the time of the disposition hearing had space to accommodate them. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Family's Background and the Start of Dependency Proceedings

Mother has four minor children: G.G. (born in 2007), S.G. (born in 2010), L.R. (born in 2014), and J.R. (born in 2017). Father is G.G's and S.G's father, and mother's ex-boyfriend, Nelson R.,[1] is L.R.'s and J.R.'s father. At the time the family came to the attention of the Department of Children and Family Services (Department), mother, S.G., G.G., and L.R. were living with Nelson. Father has been incarcerated since 2010, and he does not expect to be released from prison until 2024.

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[1] Nelson is not a party to these appeals.

The family came to the Department's attention in late May 2016, after Nelson threatened to kill mother during an argument in their home. Mother called the police, and Nelson was arrested on suspicion of making criminal threats. Nelson was released from custody a few days later and returned to mother's home. After Nelson told mother he was moving out, he grabbed L.R. and locked himself and the child in the bathroom. When Nelson walked out of the house with L.R. a few minutes later, mother tried to grab the child. As mother reached for L.R., Nelson kicked her.

The Department interviewed S.G. and G.G. a few days after the incident. G.G. and S.G. saw mother chase after Nelson and L.R., and G.G. saw Nelson kick mother. G.G. and S.G. had also heard Nelson call mother "bad words" and seen him strike her head and face several times in the past. The Department had also investigated prior reports that Nelson had choked mother and that mother had punched Nelson in his face.[2] Mother, however, denied that Nelson had ever been physically violent toward her prior to the May 2016 incident.

On June 23, 2016, the court ordered S.G., G.G., and L.R. removed from their parents' custody. On June 30, 2016, the Department filed a dependency petition under Welfare and Institutions Code[3] section 300, subdivisions (a) and (b), alleging mother and Nelson had engaged in domestic violence in front of

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[2] The family apparently was part of a "voluntary case" from March 2015 until November 2015. Mother did not complete her domestic violence counseling while that case was open.

[3] All undesignated statutory references are to the Welfare and Institutions Code.

the children in May 2016, and that the parents have a history of engaging in domestic violence, all of which place the children at risk of serious physical harm. On the day the petition was filed, the court issued a temporary restraining order protecting mother from Nelson, which it renewed several times throughout the underlying proceedings.

The Department interviewed mother in July 2016. She and Nelson have had a turbulent relationship since L.R. was born. Although mother denied that Nelson had ever hit her before the May 2016 incident, she reported that he has "major anger issues" and often yells at her. Mother told the Department that she was "done" with Nelson and did not plan to get back together with him.

In October 2016, mother moved into a domestic violence shelter. About one month after she arrived, mother was asked to leave the shelter because she did not get along with her roommate. Mother moved to a different shelter in early November 2016, which kicked her out after about a week because she disclosed the shelter's address when she got lost returning to it after visiting the children.

In early January 2017, mother gave birth to J.R. About a week after J.R. was born, mother moved into a new domestic violence shelter with the child. According to the shelter's case manager, mother had enrolled in domestic violence and parenting classes, and she was attending individual therapy sessions.

On February 16, 2017, the Department filed a dependency petition under section 300, subdivisions (a), (b), and (j) on J.R.'s behalf. Each allegation in J.R.'s petition was based on the same facts set forth in the other children's petition. At J.R.'s detention

hearing, the court released the child to mother's custody on the condition that mother remain in a domestic violence shelter.

The Department contacted father in February 2017. Father was serving a 14-year prison sentence following an August 2010 conviction for felony assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), with a true finding that he committed the crime for the benefit of a criminal street gang (See Pen. Code, § 186.22, subd. (b)).

On March 10, 2017, the Department filed an amended petition in S.G.'s and G.G.'s case, adding an allegation under section 300, subdivision (b), based on father's and mother's history of domestic violence. The amended petition alleged that, on July 18, 2009, father ripped off mother's shirt and bra and punched her four times in the face. The petition further alleged that father has prior convictions for infliction of corporal injury on a spouse and assault with a deadly weapon, and that he is currently incarcerated and not expected to be released from prison until 2025.[4]

The Department's allegation against father was based in part on a police report issued after the July 2009 incident. Mother reported to the police that she and father got into an argument after they had been drinking. Because mother knew father became angry when he drinks, she took G.G. to a neighbor's house. When she returned to her home, father accused her of calling the police. He chased after her, yelling "you fuck[ing] bitch you went to call the police[,] didn't you?" He then

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[4] The parties later stipulated that father is expected to be released from custody in 2024.

grabbed mother, ripped her shirt and bra, and punched her four times in the head. Father was arrested for spousal battery.[5]

When interviewed by the Department, father denied that he ever hit mother before he went to prison. Mother, on the other hand, reported that father was abusive in their relationship. Mother told the Department that "there were so many incidents of domestic violence that [she doesn't] want to remember." She was scared of father "all the time" while they were together and felt relief when he was arrested. He would spit in her face, throw rocks at her head, and lock her inside their home.

Father asked the Department to place S.G. and G.G. with his maternal cousin, who agreed to take custody of the children until father is released from prison. Mother told the Department that she doesn't want G.G. and S.G. released to father because "he is a threat to them." G.G. and S.G. could not remember father because he was never around before he went to prison. Father has never met S.G.

Before the jurisdiction and disposition hearing, mother requested that S.G., G.G., and L.R. be placed in her custody because the domestic violence shelter where she was living had room to accommodate all four children. When the Department investigated mother's request, it discovered that J.R. had been injured in late March 2017 while in mother's custody. J.R. had fallen out of mother's bed one night, and mother did not immediately report the incident. It was not until four days after the incident that mother sought medical attention for J.R., after some of the other residents told the shelter's staff that J.R. had fallen out of mother's bed.

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[5] Father was not convicted of this offense.

The shelter's staff also informed the Department that mother had been dropped from her individual therapy because she had missed three sessions between March 21 and March 31, 2017. Mother was still participating in parenting and domestic violence classes.

2. Jurisdiction and Disposition Hearing

The court conducted a jurisdiction and disposition hearing on May 4, 2017. The case manager from mother's domestic violence shelter testified in support of mother's request to have S.G., G.G., and L.R. placed in her custody. As of the time of the hearing, the shelter had enough space to accommodate all four children, who would share a room with mother. According to the case manager, however, it was "hard to determine" whether the shelter would have enough space for the children in the future.

The case manager did not have any concerns about mother's ability to care for J.R. despite the March 2017 incident when the child fell out of mother's bed. The case manager had spoken to mother about the incident and stressed the importance of having J.R. sleep in a bassinet next to mother's bed, not in the bed with mother. Based on her conversations with mother, the case manager believed mother had "resolved" her issues that led to the incident. The case manager did not have any opinion about whether mother would be able to adequately care for the other children if they lived with her in the shelter. Mother continued to attend domestic violence and parenting classes, and the case manager hoped to get mother re-enrolled in individual therapy.

The court sustained both petitions in their entirety, declaring the children dependents of the court under section 300,

subdivisions (a), (b), and (j).[6] Before the court issued its dispositional orders, father requested the court place G.G. and S.G. in his custody under section 361.2, subdivision (a), and mother requested the children be placed with her at the domestic violence shelter.

The court ordered G.G., S.G., and L.R. removed from their parents' custody, finding by clear and convincing evidence that it would pose a substantial danger to their health, safety, and well-being if they were to remain in their parents' care. The court ordered J.R. to remain placed in mother's custody. In allowing J.R. to remain in mother's care, the court found she was differently situated than the other children because she had not been born by the time the underlying incidents of domestic violence took place and, as a result, had yet to be exposed to any violence between her parents.

The court explained that it decided to remove S.G., G.G., and L.R. from mother's custody even though mother's shelter had space to accommodate the children because mother had yet to show she had adequately addressed her issues with domestic violence. Although the court commended mother for remaining in her current shelter and continuing to participate in domestic violence and parenting classes, it expressed concern about mother's ability to provide a safe and stable home environment for G.G., S.G., and L.R. based on the fact that she had moved between three different shelters in a short period of time and had failed to remain in individual therapy.

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[6] As it made its jurisdictional findings, the court noted that mother and Nelson were shaking their heads in disagreement as the children's counsel recounted the evidence in support of sustaining the findings against the parents.

The court awarded mother and Nelson reunification services but did not award father any services. The court ordered mother and Nelson to participate in domestic violence and parenting classes and to attend individual therapy. The court awarded mother unmonitored visits with G.G., S.G., and L.R. on the condition that mother remain in a domestic violence shelter; otherwise, her visits must be monitored. The court awarded father and Nelson monitored visits with their children.

Mother and father timely appealed from the court's dispositional orders.

DISCUSSION

1. Father's challenge to the court's jurisdictional finding is not justiciable.

The court sustained three jurisdictional allegations concerning father's children, S.G. and G.G. Two of those allegations were based on mother's and Nelson's conduct (the (a)(1) and (b)(1) allegations in the sustained amended petition), and the third allegation was based on mother's and father's conduct (the (b)(2) allegation in the sustained amended petition). Father challenges only the court's finding as to the (b)(2) allegation, and neither mother nor Nelson challenge any of the court's findings sustaining the two other allegations.

A single jurisdictional finding against one parent is sufficient to maintain dependency jurisdiction over a child. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Thus, a juvenile court will maintain jurisdiction over the child as long as the court has sustained at least one valid jurisdictional finding against either parent, even if only one parent is offending or if a different jurisdictional finding

against the appealing parent is invalid. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491 (*I.A.*).) Accordingly, if a parent challenges a jurisdictional finding, a reviewing court generally cannot provide the parent effective relief if he challenges only some, but not all, of the findings concerning his children. (See *id.* at pp. 1489–1495; *In re Briana V.* (2015) 236 Cal.App.4th 297, 308–311 (*Briana V.*).) For this reason, a reviewing court may decline to address a parent's challenge to a jurisdictional finding if at least one other finding has been found to be supported by the evidence or if the parent does not challenge all of the other findings establishing jurisdiction over the child. (See *Briana V.*, *supra*, at pp. 310–311; *I.A.*, *supra*, at pp. 1492–1495.)

In *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*), this Division recognized an exception to the general rule that a reviewing court will not address the merits of a challenge to a jurisdictional finding that would not affect the child's status as a dependent of the court. (*Id.* at pp. 762–763.) Specifically, we held that an appellate court may exercise its discretion to address such a finding where 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]." (*Ibid.*)

The juvenile court in *Drake M.* sustained several jurisdictional findings against the mother and one finding against the father stemming from his use of medical marijuana. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 761–762.) On appeal, the father challenged only the finding against him; he did not challenge any of the findings against the mother. (*Id.* at p. 762.)

We exercised our discretion to address the father's claim because a favorable decision would have rendered the father a "nonoffending" parent, a change in the father's status that could have had "far-reaching implications with respect to future dependency proceedings in [the underlying] case and [the] father's parental rights." (*Id.* at p. 763.)

The Department urges us not to reach father's challenge to the court's jurisdictional finding against him and affirm jurisdiction based on the unchallenged findings sustained against mother and Nelson. Father acknowledges in his opening brief that the court will continue to retain jurisdiction over G.G. and S.G. regardless of the outcome of his challenge, but he asserts generally that the *Drake M.* exceptions should apply here. Father does not, however, explain why any of the exceptions should apply, nor does he identify any specific legal or practical consequence that may result from the jurisdictional finding sustained against him.[7] (See *I.A.*, *supra*, 201 Cal.App.4th at p. 1494 [declining to reach father's challenge to jurisdictional findings because he did not suggest "a single specific legal or practical consequence from [the] finding, either within or outside the dependency proceedings"].) We therefore decline to exercise our discretion to reach the merits of father's challenge to the jurisdictional finding. (See *In re J.C.* (2014) 233 Cal.App.4th 1, 3–4 [father waived any argument that his challenge to the court's jurisdictional findings was justiciable because he did not identify

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[7] Although father appears to challenge the court's dispositional order denying him reunification services, he does not provide any legal analysis as to why the order was erroneous. Accordingly, the court's order denying him reunification services does not provide a basis for reaching the merits of his challenge to the jurisdictional finding.

any specific legal or practical consequences that may flow from those findings].)

2. Any error in refusing to place G.G. and S.G. in father's custody was harmless.

Father next contends the court failed to consider his request for custody of G.G. and S.G. under section 361.2, subdivision (a). As we explain below, any error was harmless.

Section 361.2, subdivision (a), requires the juvenile court to place a dependent child with a previously noncustodial parent who requests custody unless the placement would be detrimental to the child's safety, protection, or physical or emotional well-being. A noncustodial parent is eligible for placement under this statute whether he is offending or nonoffending. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 302–303 (*D'Anthony D.*); see also *In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1503–1506.) In addition, the "court may consider placing a child with a noncustodial, incarcerated parent under section 361.2 if that parent seeks custody of the child, the parent is able to make appropriate arrangements for the child's care during the parent's incarceration, and placement with the parent is not otherwise detrimental to the child." (*In re Noe F.* (2013) 213 Cal.App.4th 358, 368–369.) "[T]he juvenile dependency system has no jurisdiction to intervene 'when an incarcerated parent delegates the care of his or her child to a suitable caretaker' and there is no other basis for jurisdiction under section 300." (*Id.* at p. 369.)

Under section 361.2, subdivision (c), the court must "make a finding either in writing or on the record of the basis for its determination under subdivision[] (a)." (*D'Anthony D.*, *supra*, 230 Cal.App.4th at pp. 298–299.) Any failure to make such a finding, however, is subject to harmless error analysis. (*Id.* at pp. 303–

304.) Thus, we will not reverse a court's dispositional orders for failure to make an express finding under section 361.2, subdivision (c), unless the appealing parent can show " ' " 'it is reasonably probable that a result more favorable to the [parent] would have been reached in the absence of the error.' " ' [Citation.]" (*Id*. at p. 303; see also Cal. Const., art. VI, § 13 ["No judgment shall be set aside . . . for any error as to any matter of procedure, 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"].)

At the disposition hearing, father made a request that the court place G.G. and S.G. in his custody under section 361.2, subdivision (a), because he had made arrangements for the children to live with a relative until he is released from prison. The court never expressly addressed father's request. This was error under section 361.2, subdivision (c). (See *D'Anthony D.*, *supra*, 230 Cal.App.4th at p. 303.) But that error was harmless.

In issuing its removal order, the court found under section 361, subdivision (c), that there was clear and convincing evidence that it would pose a "substantial danger" to G.G's and S.G's "physical health, safety, protection, and emotional well-being" if they were to remain in their *parents*' custody. Although a detriment finding under section 361, subdivision (c) does not technically comport with the requirements of section 361.2, subdivision (a), since a child cannot be removed from a noncustodial parent's custody, both statutes mandate similar findings. (See *D'Anthony D.*, *supra*, 230 Cal.App.4th at p. 303.) The court's finding that it would be detrimental for G.G. and S.G. to remain in both their parents' custody under section 361, subdivision (c), can, therefore, inform our analysis of whether the

court's failure to expressly consider a custody request under section 361.2, subdivision (a) was harmless. (See *ibid*.)

There is ample evidence in the record to support a finding that placing G.G. and S.G. in father's custody would have been detrimental to their safety and well-being. As noted above, the Department presented evidence that father engaged in serious and repeated violence during his relationship with mother. Specifically, during an incident in July 2009, father ripped mother's clothes and punched her four times in the head. Mother described her relationship with father as "abusive," with "many incidents of domestic violence." She told the Department that she was scared of father "all the time" while they were together and was relieved when he was arrested. Although the July 2009 incident occurred about seven years before the court issued its dispositional orders, father had engaged in a pattern of violent behavior up until the time he was arrested for his current offense, has been in custody since his August 2010 conviction, and has not shown that he has taken any steps to address his issues with violence during his incarceration. (See *In re E.B.* (2010) 184 Cal.App.4th 568, 576 [" '[P]ast violent behavior [between parents] in a relationship is "the best predictor of future violence" ' " and an indicator that violence will recur].)

In addition to father's issues with violence, he has never had a relationship with G.G. and S.G. Mother told the Department that S.G. had never met father, and G.G. stated she had no recollection of him because he was never around before he went to prison. The court considered all of this evidence in issuing its dispositional orders, since it cited the evidence as support for its decision to deny father reunification services. Based on the court's finding under section 361, subdivision (c),

and the evidence showing that placing G.G. and S.G. in father's custody would pose a substantial danger to the children's health, safety, and well-being, we cannot say there is a reasonable probability that the court would have issued a different custody order had it expressly addressed father's request for custody of G.G. and S.G. under section 361.2, subdivision (a).

3. Substantial evidence supports the court's order removing G.G., S.G., and L.R. from mother's custody.

Mother contends the court erred when it removed G.G., S.G., and L.R. from her custody because she presented evidence that the children could safely reside with her at the domestic violence shelter. As we explain below, substantial evidence supports the court's removal order.

3.1. Applicable Law and Standard of Review

Before the juvenile court may remove a dependent child from a parent's physical custody, section 361, subdivision (c)(1) requires the court to find "clear and convincing evidence" of "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 [parent's] physical custody." (§ 361, subd. (c)(1).)

To warrant removing a child from her parent's custody, "[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re T.V.* (2013) 217 Cal.App.4th 126, 135–136.) When deciding whether to remove a child, "the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174

Cal.App.4th 900, 917 (*Cole C.*).) " 'A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.' " (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 83.)

Although the statute requires a finding by "clear and convincing evidence," this burden of proof applies to the trial court and is not a standard for appellate review. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.) " ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' " (*Id.* at pp. 880–881.) Our task, therefore, is to determine whether there is substantial evidence in the record, contradicted or uncontradicted, which supports the court's removal order. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.)

3.2. Analysis

There is substantial evidence in the record to support the court's finding that it would be detrimental to S.G.'s, G.G.'s, and L.R.'s health, safety, and well-being for them to remain in mother's custody. First, there is evidence that mother may not be able to provide the three children a stable living environment if they were returned to her custody. Although the case manager at

mother's domestic violence shelter testified that the shelter had enough space to accommodate the children as of the date of the disposition hearing, she was unsure whether the shelter would continue to have space for the three children in the future. There is nothing in the record showing mother had arranged suitable alternative living arrangements for her and the children should the shelter no longer be able to accommodate the family. But even assuming the shelter could continue to accommodate mother and all four children, mother had yet to show she was capable of maintaining a stable living environment for the children. Although mother had been residing in the same shelter for about four months at the time of the disposition hearing, she had been kicked out of two other shelters shortly before moving into her current shelter.

There was also evidence that mother could not safely care for G.G., S.G., and L.R. since she had trouble caring for J.R., the one child in her custody. As discussed before, mother neglected to tell anyone at the shelter that J.R. had fallen out of her bed and waited four days to seek medical attention for the child.

Finally, the court reasonably could have concluded mother had not sufficiently addressed her issues with domestic violence that caused S.G., G.G., and L.R. to become dependents of the court. To be sure, mother had regularly attended domestic violence and parenting classes while she was living at her current shelter and had not voluntarily contacted Nelson throughout the proceedings. But mother had also been dropped from her individual therapy program after missing consecutive classes, and she had yet to re-enroll in that program as of the date of the disposition hearing. In addition, mother demonstrated an unwillingness to acknowledge the seriousness of the allegations

of domestic violence between herself and Nelson that led to her children becoming dependents of the court. For example, mother minimized the extent of violence between her and Nelson throughout the children's dependency proceedings, and the court observed during the jurisdiction hearing that mother was shaking her head in disagreement as the court explained why it was sustaining the allegations against mother. (See *Cole C.*, *supra*, 174 Cal.App.4th at p. 918 [parent's refusal to acknowledge seriousness of conduct that led to dependency jurisdiction supports a finding that there were no reasonable means to protect the child absent removal from the parent's custody].)

In short, based on all of the evidence discussed above, the court reasonably could have concluded it would have been detrimental to S.G., G.G., and L.R. to remain in mother's custody.

DISPOSITION

The juvenile court's dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

KALRA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.