Filed 8/30/12 In re S.R. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.R., A Person Coming Under the Juvenile Court Law.	B237620
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.R. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK36879)

APPEAL from an order of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Dismissed.

Marissa Coffey, under appointment by the Court of Appeal, for Appellant Minor, S.R.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Appellant Enrique R.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Melinda White Svec, Deputy County Counsel, for Respondent.

Father E.R. and his daughter S.R. appeal from the dependency court order taking jurisdiction of S.R. in part because father's incarceration left him unable to provide for the girl's care and protection. Because jurisdiction over S.R. was properly taken based on the conduct of her mother, we are unable to afford father any effective relief. We therefore dismiss the appeal.

FACTS AND PROCEDURAL HISTORY[1]

In November 2011, mother S.O. waived her rights and pleaded no contest to the amended allegations of a petition brought by the Los Angeles County Department of Children and Family Services alleging that mother engaged in various forms of conduct that placed three of her children at substantial risk of harm. The children were: daughter S.R., then age 17; son C.O., then age 13; and daughter and appellant S.R., then age 7.[2]

The sustained allegations against mother alleged that sister S.R. had been hospitalized and evaluated for mental health issues on two occasions from attempts to injure herself, and that mother demonstrated a limited ability to provide sufficient care, protection and supervision of sister's condition. These facts led the court to assume jurisdiction under two statutory provisions: (1) that mother's conduct harmed sister and created a risk of similar harm to daughter and her brother C.O. (Welf. & Inst. Code, § 300, subd. (b)); and (2) that the abuse of sister created a substantial risk that daughter and C.O. would also suffer harm (Welf. & Inst. Code, § 300, subd. (j)).[3]

E.R. is the father of daughter and sister and had a lengthy criminal history: a 1996 conviction for assault with a deadly weapon; a 2001 conviction for robbery and attempted

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[1] As with most such cases, the factual and procedural history are lengthy and detailed. We have tailored our statement of the facts to meet the issues raised on appeal.

[2] Both appellant and her older sister share the same initials. In order to avoid confusion, we will refer to the appellant S.R. as daughter, and to the non-appellant S.R. as sister. The petition was also brought as to the father of certain other children, but he is not a party to this appeal.

[3] All further section references are to the Welfare and Institutions Code.

robbery; a 2003 misdemeanor conviction for disorderly conduct; and a 2006 conviction for evading a peace officer, drug possession, car theft, and inflicting corporal injury on a spouse or cohabitant. Father was arrested again in 2008 for what daughter describes as a parole violation, and he is set to be released from prison in November 2012.

The family has a prior history with the Department: a 1999 petition based on mother's failure to care for her children, and on E.R's inability to do so because he was in prison. E.R. pled no contest to that allegation.

The petition in this case was sustained as to E.R. on the ground that he placed the children at risk of harm because he was in jail and was therefore unable to provide care, custody, supervision, or protection of the children. Both E.R. and daughter objected to this finding because even though E.R. had been in prison for most of daughter's life, he at one time provided some support for the family and played no part in any of the conduct that led the Department to file its petition. By the time of the adjudication and disposition hearing in November 2011, mother had been having regular and positive visitation with her children. She was now living in an appropriate home and had enrolled in parenting education and counseling programs. Daughter was placed in mother's home under the Department's supervision. E.R. was given monitored visitation and was ordered to take part in something called Wraparound services after his release from prison.

E.R. and daughter appeal from the order insofar as it bases jurisdiction on the allegation that father's incarceration posed a risk of harm to daughter.[4]

DISCUSSION

Because the dependency court's primary concern is the protection of the child, a jurisdictional finding based on the conduct of one parent is sufficient regardless of the conduct of the other parent. As a result, we may decline to address the evidentiary basis

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[4] E.R. has made no independent arguments in his appellate brief, and instead joins in the arguments made by daughter. We will sometimes refer to E.R. and daughter collectively as appellants.

for any other jurisdictional findings. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.)

Appellants contend we should depart from this rule based on the holdings of *In re Anthony G.* (2011) 194 Cal.App.4th 1060 and *In re X.S.* (2010) 190 Cal.App.4th 1154. We decline to do so. First, neither decision involved an incarcerated parent such as E.R., as to whom jurisdiction may be appropriate based on a finding of the inability to provide care. (*In re Alexis H., supra*, 132 Cal.App.4th at p. 16.) Instead, the appellate records in those decisions clearly demonstrated no evidentiary basis for the dependency court's jurisdictional finding as to the fathers. (*Anthony G.* at pp. 661-662 [father had been unaware the child was his until after dependency proceedings were initiated, and because the child had been living with mother and grandmother, who provided adequate care, there was no evidence father failed to provide care]; *X.S.* at pp. 1160-1161 [father began contributing to child's care after learning he was the father, and before then, the child was being provided care by the mother].) Unlike the fathers in those cases, E.R. left daughter with mother, whose conduct in fact placed the child at risk of harm.

Second, neither *Anthony G.* nor *X.S.* explained why they reached the merits of a parent's evidentiary challenge to a jurisdictional finding based on their conduct when jurisdiction was proper based on the other parent's conduct. (See *I.A., supra*, 201 Cal.App.4th at p. 1493 [criticizing *Anthony G.* for failure to explain its ruling].) Here there is no doubt that E.R. is incarcerated, so that part of the dependency court's order cannot be detrimental to him.

As the *I.A.* court pointed out, those decisions which have addressed the issue and decided to depart from the rule have done so because the appellate courts concluded that the parent challenging the jurisdictional finding as to his conduct might suffer some negative future consequence should that finding stand. (*I.A., supra,* 201 Cal.App.4th at p. 1494, citing *In re C.C.* (2009) 172 Cal.App.4th 1481, 1489, and *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.)

As the *I.A.* court also observed, neither the *C.C.* or *D.C.* courts identified any specific and concrete threatened future effect. (*I.A., supra,* 201 Cal.App.4th at p. 1494.)

So too here. E.R. does not address this issue at all. Daughter does no more than state that she "does not want a legal finding that her Father's incarceration caused her physical harm or a future risk of physical harm, when it did not. Therefore, [her appeal] presents a genuine challenge to the court's assumption of dependency jurisdiction and will have a practical impact on the pending dependency proceeding." This is insufficient and we therefore decline to address the evidentiary challenge to the finding based on E.R.'s incarceration.

DISPOSITION

The appeal is dismissed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.