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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re LILIANNA C., a Person Coming
Under the Juvenile Court Law.

B288646

(Los Angeles County
Super. Ct. No. 17CCJP00646A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

G.A., et al.,

Defendants and Appellants.

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

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

Pamela Deavours, under appointment by the Court of
Appeal, for Defendant and Appellant Genaro C.

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

The juvenile court assumed jurisdiction over four-year-old Lilianna (born 2012) after sustaining allegations that she was at risk of harm because her father Genaro (father) had a violent criminal history and possessed child pornography in the home; her mother G.A. (mother) knew or reasonably should have known of father's possession of child pornography and failed to protect her; and mother allowed the maternal grandfather to reside in the home after mother knew he had sexually molested another child relative.

Mother appeals from the juvenile court's jurisdictional findings that she failed to protect Lilianna because she knew or reasonably should have known that father possessed child pornography in the home, and that she created an endangering home environment by allowing the maternal grandfather to reside in the home. Mother also challenges the dispositional orders based on those findings.

Father appeals from the jurisdictional finding that his criminal history placed Lilliana at risk of harm. Father also challenges the juvenile court's order denying him reunification services under Welfare and Institutions Code section 361.5, subdivisions (b)(16) and (b)(17),¹ and contends the court should have ordered enhancement services for him pursuant to section 362. Father also joins in mother's jurisdictional challenge.

Neither father nor mother challenges the juvenile court's assumption of jurisdiction over Lilianna based on father's possession of child pornography. Accordingly, neither parent's challenge to the alternative reasons for the court's assumption of jurisdiction is justiciable. Substantial evidence, moreover, supports the juvenile court's jurisdictional finding that mother

¹ All further statutory provisions are to the Welfare and Institutions Code.

created an endangering environment by allowing the maternal grandfather to reside in the home after she knew he had molested another child.

Father was not entitled to reunification services under section 361.5, and the juvenile court's denial of services under the bypass provisions of that statute was proper. The juvenile court did not abuse its discretion by denying father enhancement services. We therefore affirm the juvenile court's findings and orders.

BACKGROUND

Referral regarding father

On June 6, 2017, the Los Angeles County Department of Children and Family Services (the Department) received a referral that father had been arrested for trading images of child pornography. Father had uploaded 340 images and video files depicting young girls, from infancy to age 17, engaging in sexual acts. Although Lilianna did not appear to be in any of the images, some of the children depicted resembled her. Father also had an extensive criminal history that included convictions for murder, kidnapping, and carjacking.

The Department's social workers responded to the family home and interviewed mother, Lilliana, her half-sibling Ricardo, and Angel, a minor maternal relative who lived in the family home. Ricardo and Angel both denied seeing any signs of sexual abuse or child pornography in the home.

Mother said she met father after corresponding with him while he was incarcerated from 2006 to 2012. She never asked father why he was incarcerated, and told the social worker that father's past did not concern her. Father was released from prison in 2012, mother became pregnant, and they were married in 2013. Mother denied any knowledge that father had possessed child pornography. She had voluntarily surrendered father's

computer to the investigating officers, and was divorcing father so she could obtain sole custody of Lilianna.

The social worker reported that Lilianna appeared clean and well groomed and had no visible marks, bruises, or outward signs of abuse or neglect. Lilianna said she felt safe with mother and father. A subsequent forensic examination of the child showed no indications of sexual abuse.

Referral regarding maternal grandfather

In July 2017, the Department investigated a second referral alleging that the maternal grandfather, who lived in the home with Lilianna and mother, had molested another minor grandchild when that child was four years old. The minor, now age 14, reported that the maternal grandfather had touched her breast and crotch area between five and ten times.

Mother told the social worker she was aware of the allegations regarding the maternal grandfather because she had been questioned by investigating officers. Mother said the maternal grandfather has been blind for seven years, keeps to himself, and does not have much contact with the children. She said she never leaves Lilianna unsupervised, and that the child does not like to be around the maternal grandfather because of the appearance of his eyes. Mother agreed to a voluntary safety plan never to leave Lilianna unsupervised with the maternal grandfather.

Lilianna told the social worker that she sometimes talks to the maternal grandfather but that he likes to be left alone. She denied being touched in her private area or on her breasts by anyone in the home.

The maternal grandfather initially denied touching the grandchild who accused him of molesting her, but later admitted doing so. Mother expressed shock when the social worker informed her of the maternal grandfather's admission, but said

she did not believe he was a danger to Lilianna because he was blind and kept to himself. Mother said she did not know where the maternal grandfather could go because no one else was willing to care for him.

At the September 28, 2017 detention hearing, the juvenile court ordered Lilianna detained from father and released to mother, under the Department's supervision.

Section 300 petition and adjudication

On September 27, 2017, the Department filed a petition on behalf of Lilianna under section 300, subdivisions (b) and (d), alleging that father's criminal history and possession of child pornography placed the child at risk of harm, that mother knew or reasonably should have known of father's possession of child pornography and failed to protect Lilianna, and that mother created a detrimental and endangering home environment by allowing the maternal grandfather to reside in the home when she knew he had sexually abused the child's maternal cousin.

In a December 14, 2017 jurisdiction/disposition report, the Department reported that it had explained to mother that Lilianna was at risk of being detained from her so long as they continued to reside in the same home as the maternal grandfather. Mother said the home was owned by her sister, and she did not have the right to ask the maternal grandfather to leave. Mother further stated she was exploring alternate housing for herself or for the maternal grandfather but the options were limited because she was undocumented and lacked financial resources. Her sole source of income was helping her sister prepare food for sale. Mother said Lilianna is never left alone and that she did not believe the maternal grandfather was a current threat because he is blind and has difficulty walking.

The Department further reported that father had been sentenced to a two-year prison term, was given credit for time

served, and was scheduled to be released on September 1, 2018. He was ordered to register as a sex offender.

At the February 22, 2018 adjudication hearing, the juvenile court sustained the allegations of the section 300 petition, declared Lilianna a dependent of the court, and ordered her removed from father's custody and placed in mother's home under the Department's supervision. Mother's court-ordered case plan required her to participate in parenting classes, sex abuse awareness counseling, and individual counseling to address case issues. The case plan prohibited the maternal grandfather from residing in the same home as Lilianna.

The court denied father reunification services pursuant to section 361.5, subdivisions (b)(16) and (b)(17), accorded him monitored visitation upon his release from prison, and ordered mother not to monitor the visits.

Mother and father thereafter filed their respective appeals.

DISCUSSION

I. Neither parent's jurisdictional challenge is justiciable

The juvenile court sustained allegations against father under section 300 subdivisions (b) and (d) for possession of child pornography. Neither parent challenges the juvenile court's jurisdictional findings in this regard, or the court's overarching decision to assume jurisdiction over Lilianna. We therefore need not address their evidentiary challenges to the alternative reasons for the court's assumption of jurisdiction -- father's violent criminal history, mother's failure to protect because she knew or reasonably should have known of father's possession of child pornography, and mother's creation of a detrimental and endangering environment by allowing the maternal grandfather to remain in the home with Lilianna after he admitted molesting another child. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493 (*I.A.*)). Any decision we might render on the allegations against

mother regarding the child pornography or the maternal grandfather, or against father with regard to his criminal history “will not result in a reversal of the court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations.” (*Id.* at p. 1492.) Further, the juvenile court will still be able to retain jurisdiction over mother and father and adjudicate their parental rights. (*Ibid.*) As the court in *I.A.* noted:

“Under these circumstances, the issues [mother’s] appeal raises are “abstract or academic questions of law” [citation], since we cannot render any relief to [mother] that would have a practical, tangible impact on [her] position in the dependency proceeding. Even if we found no adequate evidentiary support for the juvenile court’s findings with respect to [her] conduct, we would not reverse the court’s jurisdictional and dispositional orders nor vacate the court’s assertion of personal jurisdiction over [her] parental rights.”

(*I.A.*, *supra*, 201 Cal.App.4th at p. 1492.)

The rule stated in *I.A.* is in accord with article VI, section 13 California Constitution, which provides that no judgment shall be set aside unless “the error complained of has resulted in a miscarriage of justice.” Our Supreme Court has interpreted this language to permit reversal “only if the reviewing court finds it reasonably probable that the result would have been more favorable to the appealing party but for the error. [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60 (*Celine R.*)). The doctrine applies in juvenile dependency matters. (*Ibid.*)

Because the juvenile court’s jurisdiction over Lilianna is justified based on father’s possession of child pornography, mother’s appeal of the findings as to whether she failed to protect

Lilianna because she reasonably should have known of the child pornography, or whether she created a detrimental and endangering environment by allowing the maternal grandfather to reside in the home, and father's appeal of the findings regarding his criminal history, are not justiciable.

II. The statutory exception does not apply

An appellate court may address the merits of the jurisdictional findings against one parent where “the finding (1) serves as a 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 consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*)). The court in *Drake M.* decided to consider the merits of the parent's appeal, because at issue was a single jurisdictional finding regarding the father's use of medical marijuana. Because the single jurisdictional finding was the difference between the father being an “offending” or a “nonoffending” parent, the appellate court addressed the merits of the appeal. (*Id.* at pp. 762-763.)² There was no evidence that the father had a substance abuse problem or that the father was unable to supervise or protect his child. (*Id.* at pp. 767-769.) The jurisdictional finding regarding the father was therefore reversed.³ (*Id.* at p. 771.)

² We note that in *In re R.T.* (2017) 3 Cal.5th 622, the Supreme Court determined that section 300, subdivision (b) does not require a determination of parental fault. Thus, the question of whether a parent is offending or nonoffending is not relevant to a court's decision to assert jurisdiction over a child.

³ Similarly, in *In re Anthony G.* (2011) 194 Cal.App.4th 1060, the contested finding under section 300, subdivision (g) for

Mother argues that the exception articulated in *Drake M.* should be applied here because the juvenile court's findings with regard to child pornography and the maternal grandfather could impact future proceedings in this matter as well as possible future family law proceedings. Mother fails to articulate with any specificity how the challenged jurisdictional findings could have an effect on such proceedings. Mother's vague assertions that putting Lilianna at risk of sexual abuse is "very serious," are unpersuasive. The serious nature of the allegations is not a factor that a court may consider in the absence of specific information as to how the findings could cause prejudice. (*I.A., supra*, 201 Cal.App.4th at p. 1493.)

We are unpersuaded by the cases mother cites in support of her position. The appellant parent in *In re M.W.* (2015) 238 Cal.App.4th 1444 (*M.W.*)), like mother in this case, did not challenge all the jurisdictional findings against her, but only challenged the finding that she knowingly exposed her children to a substantial risk of physical and sexual abuse. That finding stemmed from allegations that the mother knew or should have known about the father's criminal conduct, including the father's status as a registered sex offender due to convictions for forcible rape and oral copulation. The *M.W.* court chose to address the allegation because the notion that mother subjected her children to a risk of sexual abuse was "pernicious" and carried "a particular stigma." (*Id.* at p. 1452.) The court further reasoned that the findings appeared to have motivated part of the juvenile court's dispositional order, and "could potentially impact the current or future dependency proceedings." (*Ibid.*)

leaving a child without any provision for support was the sole count alleged against the father, who appealed and prevailed because the evidence did not support a finding under section 300, subdivision (g).

We disagree with the *M.W.* court to the extent that it held that the nature of the charges alone are relevant in applying the exception set forth under *Drake M.* Further, we find the case unpersuasive in that it failed to articulate any specific way in which the findings at issue might affect the current or future proceedings.

Mother also relies on *In re D.C.* (2011) 195 Cal.App.4th 1010 (*D.C.*), in which the Court of Appeal considered a challenge to a jurisdictional finding under section 300, subdivision (i), which permits jurisdiction where a parent has directly subjected the child to acts of cruelty. The court found that the appeal was not moot, despite mother's failure to challenge other bases for jurisdiction. Like *M.W.*, we find the *D.C.* case unpersuasive due to its superficial treatment of the issue. In agreeing with mother's position that the ruling could be prejudicial to her if she is involved in future dependency proceedings, the *D.C.* court stated simply: "We agree that the ruling, if it is erroneous, has the potential mother cites and, therefore, shall consider the merits of her appeal. [Citation.]" (*D.C.*, *supra*, at p. 1015.) In the absence of reasoning that can be applied in mother's situation, the case does not assist mother's position in this matter.

In order to meet the standard set forth under *Drake M.*, an appellant must articulate the way in which the finding is prejudicial or could create consequences for the appellant beyond jurisdiction. Mother has failed to meet that standard.

III. Substantial evidence supports the jurisdictional findings regarding the maternal grandfather

Even if mother's challenge to the jurisdictional findings regarding the maternal grandfather were justiciable, substantial evidence supports those findings. Mother learned in August 2017 that the maternal grandfather had admitted molesting another

grandchild when that child was the same age as Lilianna. Although mother was advised that Lilianna could be detained from her if the maternal grandfather continued to reside in the home with them, he remained in the home at the time of the January 2018 adjudication hearing. Mother minimized the potential danger, telling the social worker that she did not believe the maternal grandfather was a threat to Lilianna and that she did not see the harm in having him remain in the home. Substantial evidence supports the juvenile court's jurisdictional findings that mother created a detrimental and endangering home environment by allowing the maternal grandfather to reside in the home with Lilianna.

In re B.T. (2011) 193 Cal.App.4th 685, on which mother relies as a basis for challenging the jurisdictional finding as to the maternal grandfather, is distinguishable. In that case, the mother gave birth to an infant daughter, B.T., after engaging in a consensual sexual relationship with a then 15-year-old minor named Miguel. Mother had three other children with her husband, Jesse, from whom she was separated. After mother was arrested and charged with unlawful sexual intercourse with a minor, Jesse moved back to the family home to help care for the children. The juvenile court sustained allegations in a petition filed by the social services agency on behalf of B.T. and the older children, that the children were at risk of sexual abuse by mother, and that Jesse had failed to protect the children by allowing mother to live in the home after knowing about her misconduct with Miguel. (*Id.* at pp. 688-689.)

The Court of Appeal reversed the jurisdictional findings, including the finding as to Jesse, because there was no evidence that mother's sexual relationship with an unrelated 15-year-old boy placed her infant daughter or her three older children at risk of sexual abuse. There was no evidence that mother had been

accused of molesting another child in the past; all three older children denied ever being abused, sexually or otherwise; and no evidence contradicted their denials. (*In re B.T.*, *supra*, 193 Cal.App.4th at pp. 694-696.)

Here, in contrast, the maternal grandfather's past sexual molestation was of a four-year-old grandchild. The maternal grandfather, although blind, was not immobile, and Lilianna stated that she spoke with him on occasion. Substantial evidence supports the finding that four-year-old Lilianna was at risk of harm as the result of the maternal grandfather's presence in the home, and that mother created a detrimental home environment by allowing him to remain in the home after he had admitted abusing another grandchild.

IV. Mother's challenge to dispositional orders

Mother's jurisdictional challenge is the sole basis for her appeal of the juvenile court's dispositional orders as to her. For reasons discussed, substantial evidence supports mother's court-ordered case plan.

V. The court did not err by denying father services

Section 361.5, subdivision (a), provides that unless certain exceptions apply, "whenever a child is removed from a parent's . . . custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." "[C]hild welfare services" includes both reunification as well as maintenance services. [Citation.] (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19-20 (*Pedro Z.*)). The statute applies only when a child has been removed and placed in out-of-home care, not when the child is placed with a parent. (*Id.* at p. 19 [§ 361.5's provision for family reunification "does not apply when, at the disposition hearing, a child does not enter foster care, but is returned to a parent"]; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303

[when a child remains in the home of a parent, the proper form of child welfare services is family maintenance services, not reunification services].) This is because, when a child is safely in the custody of one parent, “the court is not concerned with reunification, but with determining whether continued supervision is necessary in the family home. [Citations.]” (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 650.)

When a child is adjudged a dependent but is placed in the custody of a parent, the applicable statutory provision is section 362, subdivision (c), which provides: “If a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300, and the court orders that a parent . . . shall retain custody of the child subject to the supervision of the social worker, the parents . . . shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.” The services referred to in section 362 are not reunification services, but family maintenance services, which are provided “in order to maintain the child in his or her own home.” (§ 16506; *Pedro Z.*, *supra*, 190 Cal.App.4th at pp. 19-20.) Section 362, by its terms, vests the juvenile court with discretion to order whatever family maintenance services it deems “necessary and proper,” including counseling and education programs. (§ 362, subd. (d).) This language affords the court “broad discretion to determine what would best serve and protect the child’s interests and to fashion its dispositional order accordingly.” (*In re A.E.* (2008) 168 Cal.App.4th 1, 4; *In re A.L.* (2010) 188 Cal.App.4th 138, 145.) In reviewing an order for abuse of this broad discretion, we view all the evidence and draw all reasonable inferences in favor of the court’s ruling. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 186-187.) We affirm the order unless no rational trier of fact could

determine that the juvenile court's order advanced the best interests of the child. (*Ibid.*)

The juvenile court improperly stated it was denying father services under section 361.5, subdivisions (b)(16) and (b)(17).⁴ Section 361.5 does not apply because Lilianna was not placed in foster care but remained in mother's custody. The error, however, was harmless as the record supports the conclusion that ordering services for father would not be in Lilianna's best interests. (See *Celine R.*, *supra*, 31 Cal.4th at p. 50 [an error is harmless when "it is not reasonably probable the result would have been different had the court [not erred]"].) The court considered arguments by father's counsel regarding the existence of a bond between father and Lilianna, as well as arguments concerning father's conviction for possessing child pornography and his subsequent incarceration. During argument, the parties addressed whether providing services to father would be in Lilianna's best interests. The record shows that the juvenile court considered these arguments before denying services to father. It is accordingly not reasonably probable that the result would have been different had the juvenile court exercised its broad discretion under section 362 instead of section 361.5. (*Celine R.*, at p. 50.)

⁴ Section 361.5, subdivision (b)(16) provides that reunification services need not be provided to a parent when a court finds, by clear and convincing evidence, that the parent has been required to be registered as a sex offender. Subdivision (b)(17) of the statute provides that reunification services need not be provided if the court finds that the parent knowingly participated in or permitted the sexual exploitation, as described in Penal Code sections 11165.1 or 263.1, subdivision (c), of the child. (§ 361.5, subd. (b)(16), (b)(17).)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT