Filed 8/14/17 In re M.I. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.I. et al., a Person Coming Under the Juvenile Court Law.	B280600 (Los Angeles County Super. Ct. No. DK20456)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Dismissed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court sustained a dependency petition as to 8-year-old A.I. and 13-year-old M.I., finding years of domestic violence between their parents placed the children at substantial risk for serious physical and emotional harm (Welf. & Inst. Code, § 300, subds. (b), (c).[1]) Mother alone appeals, and she challenges only the section 300, subdivision (c) finding concerning serious emotional harm.

Mother concedes her appeal is moot, but nonetheless asks this court to exercise our discretion and reach the merits, contending this case presents a question of law or is one where the juvenile court's "decision could negatively affect [her] in a future dependency proceeding . . . ."

We disagree. Mother fails to present any arguments concerning prejudice, nor does she raise a question of law. As mother's appeal challenges the sufficiency of the evidence to support only one of the two sustained counts, resolution on the merits would have no practical effect and would not afford mother any effective relief. (*People v. Gregerson* (2011) 202 Cal.App.4th 306, 321.) Accordingly, we dismiss the appeal.

---

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

FACTUAL AND PROCEDURAL BACKGROUND

At the time dependency proceedings were initiated, M.G. (mother) and R.I. (father) had been married for more than 20 years. They had four daughters, ranging in ages from 20 to eight. The family came to the attention of the Department of Children and Family Services (DCFS) after the second eldest daughter, V.I., a month shy of her eighteenth birthday, was hospitalized for five days. She swallowed more than 20 Benadryl pills because her parents were arguing and when she attempted to intervene, she got into an arm-twisting, shoving match with father.

In interviews with the social worker, A.I. described constant verbal arguments and shouting between her parents that scared her. She said, "'I'm worried that my mom will go to sleep and my dad will do something to her.'"

M.I. cried throughout her initial interview with the social worker. Although she said her parents' verbal arguments had not escalated to physical abuse between them, her father breaks and throws items. He had broken several televisions and makes threats when he is angry.

Father admitted he engages in serious verbal arguments in front of the children and, rather than hit mother when he is angry, "he breaks things." He did not intend to continue to provide for his family or participate in court-ordered services.

Mother detailed a history of physical abuse by father and added that at some point she began hitting back. Since the birth of A.I., the physical abuse subsided, but the verbal arguments continued. On the night V.I. overdosed on pills, the teenager attempted to intervene in her parents' argument and became involved in a physical altercation with father.

By the time of the detention hearing, only M.I. and A.I. were still minors and father was no longer living in the family home. The juvenile court placed the children with mother and ordered monitored visits for father. Mental health evaluations were ordered for the children. They and mother began individual counseling and also participated in counseling together.

The jurisdiction/disposition hearing was held January 26, 2017. Only mother testified. She revealed V.I. was depressed and cutting herself in the months before she swallowed the pills. V.I. and the eldest daughter both had participated in therapy in the past to deal with the stresses of their home environment. Mother had seen signs of severe anxiety in M.I., primarily crying. According to mother, A.I. exhibited aggression towards her sisters and did not want to come to court. Mother had no intention of resuming a relationship with father.

The juvenile court sustained the allegations that the parents' verbal arguments placed the children at substantial risk for both serious physical and emotional harm (§ 300, subds. (b), (c)).[2] Addressing the latter count, the judge observed, "C counts are tricky. Emotional abuse can—in the abstract can be a very

---

[2] Section 300, subdivision (c) provides a child may be declared a dependent of the juvenile court if she "is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self of others , as a result of the conduct of the parent . . . ." A child need not have suffered serious emotional damage at the time a jurisdictional finding is made; subdivision (c) "extends both to a child who is suffering serious emotional damage, and a child who is at *substantial risk* of suffering serious emotional damage." (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104.)

vague concept. I think my interpretation is that is why the Legislature drafted [subdivision] (c) with this sort of heightened standard so you won't just have any time that there is an unhappy family, that there is some kind of conflict between children and their parents or the children are upset about something, then it will count as emotional abuse. [¶] So that is obviously not enough, but that is a far cry from what we have here. Given the long history of very severe conflict in the home, it would actually be surprising if the children had not been seriously emotionally harmed, and the evidence for all the reasons pointed to by [counsel for the children and DCFS] does show that they have been. [¶] So again, the statute requires either that they are suffering or that they are at substantial risk of suffering and—this kind of serious emotional damage, and I think that the evidence actually proves by a preponderance that both—that they are suffering and that are at substantial risk of suffering more. [¶] So I will just incorporate the arguments of minors' counsel and county counsel on that. I do think that the evidence is there for serious emotional harm and continuing risk."

The children were declared dependents of the juvenile court and permitted to remain with mother under a family maintenance plan. They were removed from father's physical custody and he was offered enhancement services.

DISCUSSION

Mother did not identify a pure question of law that should be addressed in this appeal. Nor did she explain why the finding that her actions placed A.I. and M.I. at substantial risk of serious emotional harm could negatively affect her in future proceedings when she is also burdened with the finding that her conduct placed the children at substantial risk of serious physical harm. Rather, this appears to be a case where "[c]ounsel appointed to represent an indigent parent on appeal . . . does not have an obligation to challenge the judgment if there is no colorable basis for such a challenge."[3] (*In re Phoenix H.* (2009) 47 Cal.4th 835, 845.)

The decisions mother relied on do not support her request for discretionary review. She cited, but then appropriately distinguished, *In re Drake M.* (2011) 211 Cal.App.4th 754.

In re D.P. (2015) 237 Cal.App.4th 911 involved an appealing parent who challenged only the section 300, subdivision (c) finding, even though jurisdiction was also asserted under other subdivisions. The Court of Appeal acknowledged review was discretionary, but reached the merits on the basis the section 300, subdivision (c) findings "could potentially affect future dependency proceedings." (*Id.* at p. 917.) We do not make

---

[3] Appellate counsel for mother additionally argues the interests of mother and father "are intertwined, thus giving rise to standing for Mother to include Father in her challenge. (*In re R.V.* (2012) 208 Cal.App.4th 837, 848-849.) Consequently, should Mother prevail, the count should also be dismissed as to Father for the same reasons." Suffice it to say, *In re R.V.* does not support the concept.

that finding here in light of the juvenile court's sustaining the petition as to the section 300, subdivision (b) allegations.[4]

In re Dakota J. (2015) 242 Cal.App.4th 619 did present a question of law—the interpretation of section 361. By contrast, this appeal challenges sufficiency of the evidence. There was one unassailed—and "unassailable[—]jurisdiction finding" in this case under section 300, subdivision (b). (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) That finding rendered mother's challenge to the section 300, subdivision (c) jurisdictional basis "immaterial." (*Ibid.;* see also *In re Mia Z.* (2016) 246 Cal.App.4th 883, 894; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

The appeal is dismissed.

---

[4] On the merits, the Court of Appeal affirmed the section 300, subdivision (c) findings in *In re D.P., supra,* 237 Cal.App.4th at pages 917-920.

DISPOSITION

The appeal is dismissed.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

---

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