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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.J., a Person Coming Under the Juvenile Court Law.	B269006 (Los Angeles County Super. Ct. No. DK07494)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Appellant, v. L.S., Defendant and Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Teresa T. Sullivan, Judge. Reversed.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Jacklyn K. Louie, Principal Deputy County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Appellant.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Respondent.

During proceedings in the juvenile court, it was undisputed that L.J., the daughter of mother L.S., was a commercially sexually exploited child. As L.J.'s mother knew, L.J. met a pimp going by the name of "Crush," and under his influence, she would run away from home and work as a prostitute. The question we answer is whether the juvenile court correctly dismissed a Department of Children and Family Services (DCFS) dependency petition based on the court's conclusion the petition had been brought under the wrong subdivision of the dependency jurisdiction statute, i.e., that DCFS's petition did not allege jurisdiction over L.J. was proper under Welfare and Institutions Code section 300, subdivision (b)(2)[1]—which was added to the code in June 2014 to protect commercially sexually exploited children.

I. BACKGROUND

A. L.J.'s Exploitation and the Resulting Dependency Petition

L.J., 14 years old at the time, wrote a suicide note to a friend at school in early September 2014 that said she was having problems at home and would not be at school the next day. L.J.'s friend gave the note to school officials, and they referred the matter to DCFS.

The DCFS social worker initially assigned to investigate the referral learned L.J. had been admitted to a mental health treatment center as the result of the suicide note. In an interview at that center, L.J. told the social worker that she wanted to end her life because she was feeling ashamed and didn't want to do "bad" anymore. As later recounted by the social worker, L.J. explained she had an "exploiter/pimp" using the

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[1] Undesignated statutory references that follow are to the Welfare & Institutions Code.

moniker "Crush" who was sexually exploiting her. According to L.J., Crush told her that if she didn't do what he asked, he would kill her and her family.[2]

After talking to L.J., the social worker interviewed her mother L.S. (Mother), who had her own prior history of prostitution. Mother confirmed she knew L.J. had "reconnected" with a pimp named Crush in June or July 2014 after DCFS closed a prior referral the agency had received concerning possible sexual abuse involving L.J.[3] Mother claimed she "tried everything she could" to stop L.J. from associating with Crush, including putting bars on the windows at her home and installing a new door lock to prevent L.J. from sneaking out at night, but L.J. still found a way to get out of the house to "do prostitution on PCH and Western." Mother's live-in boyfriend reported he and Mother were very concerned about L.J. but did not know what to do with the child anymore. He told the social worker that Crush, who had identified himself as a gang member, had been bold enough to come to the house looking for L.J. He also reported L.J. had changed dramatically in the last six months: losing a lot of weight, wearing provocative clothing, and using drugs.

DCFS filed a petition on September 24, 2014, alleging L.J. was a child that came within the jurisdiction of the juvenile court. DCFS filed its petition using the pre-printed Judicial Council form, and the agency set forth its jurisdictional allegations in three counts.

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[2] In a later interview with a different social worker, L.J. denied Crush was sexually exploiting her. L.J. did admit calling Crush from the mental health facility, however, and she said she saw Crush as a "father figure" because he "looked out for her."

[3] DCFS received this prior referral after L.J. and a 22-year-old woman went to the hospital together to seek treatment for a possible sexually transmitted disease. DCFS closed the sexual abuse referral as inconclusive but provided Mother with information on how to seek counseling services for L.J. Mother claimed she tried to get L.J. to attend counseling at that time but she refused.

The first count, labeled count b-1,[4] was included under a heading that cited "FAILURE TO PROTECT § 300(b)" as the statutory basis for jurisdiction. Underneath the heading, DCFS checked a box on the form to indicate L.J. "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, [¶] as a result of the failure or inability of his or her parent or legal guardian to supervise or protect the child adequately." In text added to the form petition to further describe the basis for jurisdiction, DCFS wrote: "On numerous prior occasions since 2014, the child [L.J.] engaged in commercial sexual activity as a result of exploitation by a pimp or sex trafficker. The child's mother, [L.S.] is unwilling and unable to supervise and/or protect the child because the child continues to run away from home and engage in unsafe behaviors. Such inability to provide appropriate parental supervision for the child by the mother endangers the child's physical health and safety placing the child at risk of physical harm, damage, and sexual abuse." The remaining two counts, labeled c-1 and d-1, were alleged under section 300, subdivisions (c) and (d), respectively.[5]

Filed concurrently with the petition were DCFS's detention and addendum reports. The face page of both reports noted in prominent type that L.J.'s case was a "CSEC CASE," using an abbreviation for Commercially Sexually Exploited Child/Children. The detention report elaborated, explaining it had involved its Multi-Agency Response Team in the case because the team "work[s] in collaboration with law enforcement to provide protective services to children identified in homes associated with commercial sexual exploitation/human trafficking" and certain other crimes. The detention report also detailed social workers' efforts to have Mother report the sexual exploitation of her daughter to the police, and Mother's statement that she had not had time to go to the

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[4] The count was labeled "b-1" pursuant to the directions on the pre-printed form, which instruct the person completing it to "[s]tate supporting facts concisely and number them b-1, b-2, b-3, etc."

[5] The c-1 and d-1 counts were dismissed by the juvenile court at the jurisdiction hearing, and DCFS does not challenge their dismissal in this appeal.

police station because she had been busy cooking and planning her other daughter's birthday party.

At the time of the detention hearing, L.J.'s whereabouts were unknown because she had run away from home days before. The juvenile court issued a protective custody warrant for L.J. and ordered L.J. released to Mother when she was located. The court's minute order for the detention hearing also noted "[m]inor is to be referred to the CSEC unit upon location."

DCFS thereafter prepared a jurisdiction and disposition report. In an interview on October 29, 2014, Mother told the social worker L.J. had been home briefly on October 14 but she left again shortly thereafter and Mother hadn't seen her since. When the social worker asked how L.J. acted when she came home, Mother said "[s]he comes home and she acts like nothing. And then she just leaves, she will tell me[,] your daughter is a mess but I am not going to change. Whatever is out there [] is keeping her out there." Mother said she had been calling L.J. on the phone but her daughter was not answering.

L.J. remained missing in the fall of 2014 and the juvenile court continued the protective custody warrant in full force and effect. Police in Marina del Rey eventually arrested L.J. for possession of drug paraphernalia on May 1, 2015. Later that same month, DCFS appeared in court and asked the court to recall the protective custody warrant. DCFS informed the court that L.J. had returned home to Mother and L.J. was willing to accept services through Saving Innocence, an advocacy program that works with Commercially Sexually Exploited Children. The court ordered the warrant recalled, and medical and mental health exams for L.J.

Later in July 2015, DCFS prepared an interim review report with updated information about L.J. A social worker had met with L.J. earlier in June and observed she appeared to be "healthy and happy." L.J. told the social worker she had been meeting with a representative from Saving Innocence, "working on her relationship with God," and "trying to stay away from the Sexual Exploitation and the Drugs." DCFS also reported a social worker had attended a meeting between L.J. and the District Attorney's

office, and L.J. agreed to participate in a diversion program to resolve her drug paraphernalia arrest.

In September, the parties appeared in court for the long-postponed jurisdiction hearing on the section 300 petition. Mother and L.J. asked to continue the matter to explore whether DCFS would agree to dismiss the petition in favor of informal supervision under section 301 because L.J. was doing well at home. L.J. told the juvenile court that "counseling stuff" through the Saving Innocence program had helped and she was getting her life back in order. The court continued the jurisdiction hearing to October 19.

On that date, DCFS submitted a last-minute information report for the juvenile court. DCFS reported that L.J. appeared to be doing well at home and that there had been no reported concerns with L.J. in the intervening period. However, the report also revealed there had been difficulties in getting L.J. enrolled in counseling services to address her commercial sexual exploitation and runaway issues. On September 28, 2015, the social worker asked Mother whether L.J. had been enrolled in counseling; Mother said no, but told the social worker she would enroll L.J. that same day. When the social worker followed up with a home visit about a week later, L.J. still had not been enrolled in counseling and Mother again told the social worker she would do so. However, as of the date of the report, October 19, L.J. still had not been enrolled in counseling. Because Mother had not followed through to get L.J. counseling, the report stated DCFS could not recommend dismissal of the petition and supervision under section 301. Instead, DCFS's recommendation that the court sustain the petition and order family maintenance services remained unchanged.

At the continued adjudication hearing, Mother asked the court to dismiss the petition for lack of a current risk to L.J. Mother's attorney argued L.J. had recently been doing very well in Mother's care, she was "enrolled in Saving Innocence," and she was doing well in school. Counsel for Mother additionally argued Mother "did everything she could to protect her daughter from being sexually commercially exploited" and contended

DCFS "did not plead the daughter's activity under the recent legislation that does not address parental fault as pled." The legislation to which counsel referred, which we shall discuss in greater detail, amended section 300 by adding a new subdivision (b)(2) that specifically addresses jurisdiction over commercially sexually exploited children. Because Mother believed DCFS only pled jurisdiction was proper under section 300, subdivision (b)(1) (the risk of physical harm provision), she argued the juvenile court should dismiss the petition under the rationale of a 2008 Court of Appeal case holding jurisdiction may be found only on a showing of parental fault or neglect, not an inability to protect a child despite good faith efforts. (*In re Precious D.* (2008) 189 Cal.App.4th 1251 (*Precious D.*).) Mother's attorney reminded the juvenile court, "again, [DCFS] did not plead under the new amended legislation that would remove any need for parental fault."

DCFS acknowledged Mother may have been willing to help L.J., but DCFS argued Mother lacked the wherewithal to do so, as demonstrated by Mother's failure to enroll L.J. in counseling and by an appointment L.J. had missed in connection with her diversion program. DCFS argued there was a current risk of harm because commercial sexual exploitation was an "entrenched issue" and L.J. needed significant services and significant support because she had been "engaging in that kind of activity so long." Apparently accepting Mother's argument regarding how the petition was pled, the juvenile court asked DCFS why the matter had not been pled under section 300, subdivision (b)(2). The attorney for DCFS responded, "[t]hat I can't speak to," but suggested the court conform the petition to proof or grant a continuance so DCFS could file an amended petition because "the evidence is there."

After taking the matter under submission, the juvenile court found DCFS "has correctly identified the child and the underlying issues in this case to be those of commercially sexually exploited children." The court, however, dismissed the b-1 allegation, finding "there is an available appropriate avenue to charge that is available to address these particular set of circumstances, and the Department has opted not to file

under that subsection." The court instead concluded, relying on the rationale in *Precious D.*, that jurisdiction was not warranted under section 300, subdivision (b)(1) because there was "no evidence that [Mother] was able to do anything more than [she] did" to stop L.J.'s exploitation.

II. DISCUSSION

The dependency law is intended "to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) "Fundamentally, . . . the focus of the system is on the child, not the parents." (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1129.)

Approximately three months before DCFS filed the dependency petition that began this case, the Legislature amended section 300 to provide additional protection to commercially sexually exploited children in California. (Stats. 2014, ch. 29, § 64 [effective June 20, 2014].) The June 2014 amendment split former subdivision (b) into two subdivisions: (b)(1) and (b)(2). Subdivision (b)(1) includes the original statutory text establishing juvenile court jurisdiction over a child subject to physical harm or the risk of the same. The new subdivision (b)(2) states as follows: "The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children."

DCFS, as appellant, contends the petition filed in this case adequately pled jurisdiction was proper under section 300, subdivision (b)(2), and even if not, the juvenile court should have amended the petition at the adjudication hearing to conform to proof or

permitted DCFS to file a first amended petition to cure any deficiency. Mother, on the other hand, believes the petition was pled only under subdivision (b)(1), and while she concedes a petition can be amended to conform to proof, she argues amendment would be inappropriate here because she had no notice DCFS intended to proceed on a subdivision (b)(2) theory of jurisdiction. We hold the petition sufficiently alleges both subdivision (b)(1) and (b)(2) as a statutory basis for jurisdiction over L.J., and we further hold, in any event, that it was error not to amend the petition to make specific reference to subdivision (b)(2) to the extent the juvenile court believed it necessary. We therefore reverse and remand to give the juvenile court the opportunity to consider in the first instance whether the evidence was sufficient to establish L.J. was within the jurisdiction of the court as a commercially sexually exploited child.

A. The Juvenile Court Should Have Considered Whether Jurisdiction Was Proper Under Section 300, Subdivision (b)(2)

Section 332 governs what a petition to commence proceedings in a juvenile court must contain. As relevant here, section 332, subdivision (c) states a petition must include "[t]he code section and the subdivision under which the proceedings are instituted," and subdivision (f) requires "[a] concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted." These requirements do "'not require the pleader to regurgitate the contents of the social worker's report into a petition, [they] merely require[] the pleading of essential facts establishing at least one ground of juvenile court jurisdiction.' [Citation]." (*In re S.C.* (2006) 138 Cal.App.4th 396, 410.)

Parsing the text of the petition, it is fairly read to allege jurisdiction was proper under subdivision (b)(1) *and* subdivision (b)(2). The statutory citation that heads the relevant page of the petition states "§ 300(b)," but does not differentiate between the two further subdivisions within subdivision (b) after the Legislature's June 2014 amendment.

The text that appears beneath the "§ 300(b)" heading, however, sufficiently invokes the juvenile court's jurisdiction on both a (b)(1) and a (b)(2) theory. The pre-printed petition text alleges L.J. "has suffered, or there is a substantial risk [she] will suffer, serious physical harm or illness" as a result of a failure or inability of a parent to supervise or protect the child. That tracks the language of subdivision (b)(1). In addition, the "§ 300(b)" count in the petition alleges L.J. "engaged in commercial sexual activity as a result of exploitation by a pimp or sex trafficker" and that Mother was "unwilling and unable to supervise and/or protect the child." That unmistakably tracks the language of subdivision (b)(2).

DCFS's use of the pre-existing Judicial Council form without alteration may not have been the ideal manner in which to present the allegations. But the language in the petition tracking subdivision (b)(2), in particular the references to "commercial sexual activity," exploitation by a sex trafficker, and Mother's inability to protect L.J. were sufficient to put Mother on notice that DCFS would pursue jurisdiction under that subdivision. That the petition did not make specific reference to subdivision (b)(2) is not reason to find it defective—indeed, it included no reference to subdivision (b)(1) either, but the juvenile court found no pleading defect on that score. Nor do we find it was impermissible to allege both bases for jurisdiction under one "§ 300(b)" heading; the factual allegations supporting both subdivisions (b)(1) and (b)(2) were identical.[6]

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[6] It is unsurprising the factual allegations were the same for both because subdivision (b)(2) is best read in tandem with the provisions of former subdivision (b), now subdivision (b)(1). That is, when adding subdivision (b)(2) to the code, the Legislature intended to remove any doubt as to whether a commercially sexually exploited child is a child suffering serious physical harm or at risk of suffering such harm. By adding subdivision (b)(2), the Legislature directed courts to find dependency jurisdiction exists over a commercially sexually exploited child so long as the child's parent failed or was unable to protect the child from sex trafficking.

Reading subdivision (b)(2) in tandem with subdivision (b)(1) makes sense for two reasons. First, recall that subdivision (b)(2) states, "The Legislature finds and declares that a child who is sexually trafficked . . . is within the description of this subdivision, and that this finding is declaratory of existing law." The "within the description of this

Mother's contention the petition deprived her of adequate notice is not convincing. We of course agree the function of a petition is to give the parties notice of the allegations against them consistent with due process. (*In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397.) In our view, the allegations in the petition were sufficient to put Mother on notice DCFS would rely on a subdivision (b)(2) theory of jurisdiction, and that is especially true in light of the DCFS reports and prior proceedings in the case, which frequently and prominently included references to L.J. as a commercially sexually exploited child. Throughout the proceedings prior to the jurisdiction hearing, Mother never objected the petition was vague, unclear, or failed to state a proper basis for jurisdiction.

Moreover, even assuming the juvenile court were correct to conclude the petition was not sufficient as alleged to invoke its jurisdiction under subdivision (b)(2), it was error not to amend the petition to conform to proof. (§ 348; Code Civ. Proc., § 470; *In re Jessica C.* (2001) 93 Cal. App. 4th 1027, 1042 ["[A]mendments to conform to proof are favored, and should not be denied unless the pleading as drafted prior to the proposed amendment would have misled the adversarial party to its prejudice"].) Even on Mother's understanding, an express reference to subdivision (b)(2) was the only thing missing to enable a determination of whether jurisdiction was proper under that subdivision. The facts on which the parties would litigate whether jurisdiction was proper would be the same either way, i.e., whether the statutory reference was subdivision (b)(1) or subdivision (b)(2). Where the only thing arguably missing from the petition was a "(2)"

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subdivision" language makes little sense if "this subdivision" means subdivision (b)(2)—that would essentially amount to a tautology, namely, what the Legislature finds and declares in subdivision (b)(2) is within the description of subdivision (b)(2). On the other hand, it does make sense if it functions as a cross-reference of sorts to subdivision (b)(1)—it explains commercial sexual exploitation is equivalent to physical harm or a risk thereof. Second, the "this finding is declaratory of existing law" language in subdivision (b)(2) also makes sense only as a reference to subdivision (b)(1); the text that appears in subdivision (b)(1) was the relevant law that existed before the Legislature added subdivision (b)(2) to section 300.

following the "§ 300(b)" heading on the relevant page of the petition, the appropriate course would have been to amend the petition to conform to proof.

Mother, however, argues amendment of the petition to conform to proof would have been improper, relying on *In re V.M.* (2010) 191 Cal.App.4th 245. In that case, the juvenile court sustained a petition count under section 300, subdivision (b) but the Court of Appeal reversed because there was no evidence the child was exposed to a substantial risk of serious physical harm. (*Id.* at pp. 252-253.) The appellate court also rejected DCFS's request that it nevertheless find jurisdiction was proper under a different jurisdictional provision, subdivision (c) of section 300, reasoning it was not appropriate for a reviewing court to affirm a jurisdictional finding that was never made by the juvenile court because it would deprive a parent of notice and an opportunity to be heard. (*Id*. at p. 253.) Of course, that is not the situation we confront here. DCFS made its request the petition be amended according to proof in the juvenile court, not later in this appeal. If DCFS's request to amend according to proof had been granted, it could not have prejudiced Mother's defense because the underlying jurisdictional facts were the same—indeed, it was undisputed L.J. was a commercially sexually exploited child. Mother would have been required to contest (or concede) jurisdiction under subdivision (b)(2), but that is not prejudice that prevents an amendment according to proof.

B. A Remand to the Juvenile Court is Appropriate Under the Circumstances

Mother argues we should affirm dismissal of the petition because any error in dismissing the petition was harmless. She urges us to conclude the juvenile court would dismiss the petition even if it considered asserting jurisdiction under subdivision (b)(2) because parental fault or neglect is a prerequisite for a jurisdictional finding under that subdivision just as it is—in her view—for subdivision (b)(1). Alternatively, Mother argues we should remand because any error was "procedural," i.e., a dismissal by the juvenile court without considering whether jurisdiction was proper under subdivision (b)(2). Mother contends the juvenile court should have the opportunity in the first

instance to determine whether jurisdiction was proper under that subdivision, including whether there is a current risk of harm to L.J.

Under circumstances presented here, where the transcript of the jurisdiction hearing reveals the juvenile court likely believed there was a sufficient basis for jurisdiction under subdivision (b)(2) but dismissed solely because it believed that statutory basis was not pled, we cannot say there is no reasonable possibility the error affected the outcome of the proceeding. (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60 [assessing prejudice under the test in *People v. Watson* (1956) 46 Cal.2d 818, i.e. whether there is a reasonable probability the outcome would have been different but for the error].) We instead accept Mother's alternative argument and remand the matter to give the juvenile court the opportunity to determine whether jurisdiction in fact exists under section 300, subdivision (b)(2). (*In re Nicholas E.* (2015) 236 Cal.App.4th 458, 464, 466; *In re Quentin H.* (2014) 230 Cal.App.4th 608, 620-621.)

DISPOSITION

The superior court's jurisdictional order dismissing count b-1 of the petition is reversed and the matter is remanded for a determination of whether the court should assume jurisdiction over L.J. under section 300, subdivision (b)(2).

BAKER, J.

We Concur:

TURNER, P.J.

RAPHAEL, 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.