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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re NATHAN N., a Person Coming
Under the Juvenile Court Law.

B234959
(Los Angeles County
Super. Ct. No. CK87645)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CESAR N.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Jacqueline H. Lewis, Juvenile Court Referee. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant
County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff
and Respondent.

INTRODUCTION

In this dependency appeal, appellant Cesar N. (“Father”), appeals from the juvenile court’s jurisdictional findings and disposition orders pursuant to Welfare & Institutions Code¹ section 395, contending that the orders removing his minor son Nathan N. (“Minor”), from his custody were not supported by substantial evidence. As we explain hereafter, the jurisdictional order is affirmed and the appeal from the dispositional order is dismissed as moot.

FACTUAL AND PROCEDURAL SYNOPSIS

Background leading to detention order.

Nathan N. is the child subject to this appeal. The minor is four years old. The family consists of Father, Minor’s mother Martha N., Minor, and two maternal half-sisters. The half-sisters are 17-year-old Briana L. and 11-year-old Samantha L.² Father and M.N. married in 2005 after having a relationship that commenced in 2003. Father had been in the half siblings’ lives from the time that Briana L. was nine and Samantha L. was three years old. The reason for detaining Minor originated in a report by Briana L. to her school counselor that Father made a sexual advance on her. Following an interview by the social worker, during which Briana L. said that Father had sexually abused her on and off starting when she was 12 years old, the Los Angeles County Department of Children and Family Services (“Department”) detained Minor from Father.

Evidence considered at the detention hearing.

In addition to evidence considered by the juvenile court set forth above as “background,” further evidence was as follows: Samantha L. denied ever being sexually abused or inappropriately touched by Father. Samantha L. further denied that she ever

¹ All statutory references are to the Welfare & Institutions Code unless otherwise indicated.

² Father was found at the detention hearing to be the presumed father of Minor. Rubio L. was found to be the presumed father of the half siblings of Minor. Only Father is the appellant in this appeal.

saw Father sexually abuse her sister. Briana L. was safe at home and she recently was getting into trouble because she was skipping school and going out on dates with boys.

Father denied the allegations. Mother denied having any knowledge of or witnessing Father sexually abuse Briana L. Mother acted appropriately and cooperated with Department. Father was arrested on grounds of child annoyance and solicitation of child pornography based on allegations made by Briana L. that Father sent her many text messages. Further, that Father on one occasion asked her to text him a nude photo of herself. Father was released on bail. The children were to remain in the care of Mother.

The evidence considered at the detention hearing related to section 300 subdivisions (b), (d), and (j). The allegations contained in the petitions stated that Father had sexually abused Briana L., Mother had failed to protect Briana L., and that half-siblings Samantha L. and Nathan B. were at risk of similar harm.

Detention hearing on May 3, 2011.

The parents were present. Father was found to be the presumed father of the minor. Ricardo L. was found to be the presumed father of Briana L. and Samantha L. Indian heritage was not an issue as conceded by parents. Separate counsel was appointed for Minor and the court found prima facie evidence supported the petition. The children were ordered detained in the custody of Mother. The court ordered that at least weekly monitored visitation for Father with the Minor was to occur.

The Department filed a jurisdiction and disposition report. In the report it stated that Briana L. had recanted her allegations of sexual abuse. She explained the allegations were made up because Father was too strict with her. Briana L. had written a letter to the police detective investigating the matter apologizing for lying about her statements about sexual abuse. In the letter Briana L. explained that she wanted Father out of the home to give her freedom to do whatever she pleased. Samantha L. continued to deny that she had been sexually abused by Father and she further denied that she had observed Father sexually abusing her sister. Minor was too young to be interviewed. The paternal grandparents could not believe the allegations were true. Briana L.'s father, Ricardo L., opined that Briana L. recanted under pressure and the allegations were true.

Father continued to deny any sexual abuse of Briana L. Father believed that Briana L. was retaliating against him for disciplining her for skipping school and drinking alcohol. Father further maintained that Briana L. wanted her parents to get back together. Father was found to be employed full time and was living in the home of the paternal grandparents following his release from jail. Father was supporting Mother and the children who continued to reside in the family home. The family would cooperate and would be willing to comply with ordered services in order to resolve issues presented in the case.

Father's visits with Minor were found to be appropriate and Minor cried for his father at the end of the visits and wanted Father to come home. The sisters also wanted to have visits with Father.

In its assessment, Department found the family to be at moderate risk for future abuse and/or neglect. The Department's recommendation was that Minor be removed from Father's custody and that Father be offered family reunification services with the minor. A recommended case plan for Father included parenting classes and individual counseling service with emphasis on sexual abuse awareness. The Department further recommended that all the children remain in the custody of Mother and further that family maintenance services be provided to Mother.

Jurisdiction hearing on July 7, 2011.

Father was present, but the matter was twice continued.

Jurisdiction hearing on July 12, 2011.

Father was again present and was represented by counsel. The court admitted into evidence the report of the Department prepared for the hearing, the medical records of Briana L. from Kaiser Permanente and the police records from the police department for the City of Bell. A supplemental report of the Department dated June 30, 2011, was also admitted into evidence. However, it is missing from the record and the clerk of the superior court certified in response to an augmentation request that the report is missing from the juvenile file.

Also admitted into evidence was Briana L.'s apology letter written a day earlier and addressed to the court, in which Briana L. apologized for lying about the sexual abuse allegations. Briana L. further explained that she was tired of all of the rules laid down by her father and she wanted the freedom to do as she pleased as she had only two months left in high school. Briana L. further maintained that she felt guilty and horrible for what she had done.

During testimony taken in chambers, Briana L. testified that the social worker was insistent on taking her to the hospital for a mental evaluation because it was believed she might hurt herself in the face of the allegations she had made. Briana L. denied Father came into her room at night while she was sleeping and further denied that Father had touched her in an inappropriate manner. Briana L. further testified that she had never seen Father without clothes on nor was she asked by Father to take her clothes off. She testified she was upset with her mother and father, especially Father, for not letting her go out and particularly for not wanting to take her on their planned trip to Las Vegas. Briana L. denied that anyone had asked her to recant her story.

Briana L. testified that prior to her recent false allegations, she had not told her mother that Father was abusing her. Briana L. said that since that time Mother had not allowed her to have any contact with Father and furthermore she felt safe with her mother.

Court's ruling.

Following arguments after completion of the evidentiary stage of the proceedings the court stated that it did not believe Briana L.'s recantation and sustained the petition with an amendment to the effect that Mother "should have known" and striking that portion which stated that "mother knew" of the sexual abuse. The court declared Briana L., Samantha L. and Minor to be dependents of the court, ordered Minor removed from Father's custody, and ordered the Department to provide reunification services and monitored visits by Father with Minor. The court ordered family maintenance services to Mother and allowed the children to remain in her custody.

Father filed a timely notice of appeal.

DISCUSSION

Standard of review.

There is no dispute as to the standard of review in this case. Both sides concede that the standard of review is one for a search of the record to determine whether or not substantial evidence supports the judgment of the trial court. If so, the judgment is required to be affirmed by the court of appeal.

The statement of the standard of review by the People in this instance is more expansive than that of the appellant father but nevertheless found by this court to be legally accurate. We therefore adopt the statement of the People on the subject as follows: “A petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child who is the subject of a petition comes under the juvenile court’s jurisdiction. (§ 355.) This Court reviews the juvenile court’s jurisdictional and dispositional findings for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 111.) Under this standard of review, the Court should examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427 [The reviewing court ‘must defer to the trial court’s assessments. [Citation.] “We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses.” [Citation.]’]; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.)

“The juvenile court’s order must be upheld if there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court’s order, resolving all conflicts in support of the determination and indulging all legitimate inferences in favor of the order. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004-1005.) The parent complaining about the dependency order ‘has the burden of showing that there is no evidence of a sufficiently substantial nature to support the finding or order.’ (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57.)”

The court properly exercised jurisdiction over the minor.

In capsule form, Father contends there is “no” evidence to support the court’s findings that Minor suffered serious physical harm, or illness or sexual abuse of any kind by Father and that the Department made no such contention below. In using the term “no evidence” Father is in effect declaring that an evidentiary vacuum exists which leads to a mandated conclusion that the juvenile trial court had no jurisdiction over the matter. The position of Father emanates from the fact that Minor, as a four-year-old, was not capable of appreciating Father’s actions toward Minor’s half sisters. To conclude, Father maintains that Minor was not at “substantial risk” of physical harm or sexual abuse as required by section 300, subdivisions (b), (d), and (j) and therefore the jurisdictional findings of the court must be reversed.

The relevant portions of section 300 provide: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court. [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness. . . . [¶] (d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused. . . . [¶] (j) The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (j), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

Mootness of disposition order.

As conceded in the briefing on appeal by both sides, the question of deprivation of custody of Minor from Father is now moot. Father, by subsequent order of the juvenile court is now permitted to move back into the family home with protective conditions stated. The appeal from the disposition order should therefore be dismissed as moot. To buttress our opinion on the mootness issue, we further note that when the court made its jurisdictional finding as to Mother, no challenge was made at that time, or anytime. Because of the unchallenged posture, the court had continuing jurisdiction over the minor.

“[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; see *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.) Accordingly, the finding relating to the mother provides a sufficient ground for affirming the declaration of dependency as to the minor. (See *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045 [single basis of jurisdiction is sufficient to uphold dependency court’s order]; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876 [where one basis for jurisdiction supported by substantial evidence, court need not consider sufficiency of evidence to support other grounds].) Thus, we conclude that the issue is moot as to Father because of the finding as to Mother.

DISPOSITION

The jurisdictional findings and order of the juvenile court are affirmed. The dispositional order of the trial court is dismissed as being moot.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.