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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.L., a Person Coming Under
the Juvenile Court Law.

B277444
(Los Angeles County
Super. Ct. No. DK17621)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Dismissed.

Anne E. Fragasso, 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.

A. O. (mother) filed this appeal after the juvenile court sustained a dependency petition, removed her child, M.L., from her care, placed the child with his father, and ordered monitored visitation for her. At the Welfare and Institutions Code section 364¹ hearing six months later, the juvenile court continued jurisdiction, but permitted M.L. to return to mother's care, under the supervision of the Department of Children and Family Services (DCFS). Mother's failure to appeal from that order renders her challenge to the jurisdictional finding moot. Accordingly, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Mid-afternoon on May 18, 2016, a woman observed four-year-old M.L. barefoot and alone on the sidewalk. She put the child in her car in an unsuccessful attempt to locate his home. She flagged down a passing Inglewood police car and turned M.L. over to the officer. The officer, too, tried to follow the child's directions to his home and even knocked on a door the child seemed to recognize, but there was no answer.

The officer took the child to the police station and contacted DCFS. A social worker took M.L. to the hospital for an examination. Other than a burn scar on his arm, the examination was normal.

Hours later, M.L.'s mother and father came to the police station to report their child missing. Mother and father were interviewed by DCSF that evening. Mother advised she suffers from leukemia and had taken morphine that day for the pain.

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

She fell asleep and awoke several hours later, but thought M.L. was safe in the fenced yard or with their housemate, who was not at home, either. She did not have the housemate's phone number. She did not initiate a search for the child. She acknowledged this was not the first time M.L. had wandered away from home. This was the first time M.L. had ever been solely in her care, however.

Mother and father were living in the same house on the date of M.L.'s disappearance.² They had moved there shortly before M.L. wandered off; the residence was on the same block as the paternal grandfather's. Father was working that afternoon; he thought mother was watching the child. Father arrived home after 6:00 p.m.

Both parents submitted to drug testing the following day. Father's test was negative. Mother's test was negative for the morphine she said she had taken, but positive for methamphetamine.

Presented with the results of the drug test, mother admitted she used methamphetamine because she did not have any morphine. She maintained it was the only time she used methamphetamine. Mother did not object at the May 27, 2016 detention hearing to M.L.'s placement with his father, and her request for monitored visits was granted. Other than a missed drug test which was deemed positive, the rest of mother's drug tests were negative for illegal substances.

A contested jurisdiction/disposition hearing followed on August 4, 2016. Mother testified and reiterated she used

² By the time of the jurisdiction/disposition hearing, mother's trial counsel advised the court, "she does not intend to resume a relationship with father at all."

methamphetamine only once and agreed she failed to properly supervise her son. Although mother denied any substance abuse, she was attempting to be admitted into a substance abuse program that permitted mothers to be with their children. She knew of no one, other than father and his family members, who could help her care for M.L. Mother was pregnant at the time of this hearing, not involved in any cancer treatments, and her doctors were “just waiting for the pregnancy to be over for me to officially be in remission.”³

Finding mother’s use of methamphetamine and failure to supervise M.L. placed the child at risk, the juvenile court sustained portions of the petition, as amended, as to mother only (§§ 300, subd. (b), 361, subd. (c)). The juvenile court noted inconsistencies in mother’s testimony and found she was not “being completely forthright about [her] drug use. . . . [¶] Whether [mother] took the meth on the 17th, the morphine on the 18th, you know, and the drug test on the 19th, the dates really don’t matter to me. But it is clear—and you essentially said this in your testimony as well—that both the methamphetamine and the morphine contributed to your neglect of the child.”

One allegation against father was dismissed at the conclusion of DCFS’s case (§ 350, subd. (c)), the other was not sustained. The juvenile court ordered M.L. placed with him. Mother’s visits were to be monitored, but the court observed, “If mother does develop a track record of clean testing and success in the program, feel free to file a [section] 388 for a home-of-parents

³ Mother advised the social worker she learned on May 20, 2016, two days after M.L. was found wandering the neighborhood, that she was pregnant and due in October 2016.

order, but I'm not going to make that order now." The court emphasized DCFS had discretion to permit unmonitored and overnight visits with mother. At the time of the jurisdiction/disposition hearing, mother told the court she was "in another program where I'm just in a women's shelter."

Mother appealed from the jurisdictional finding. She contended no substantial evidence supported the juvenile court's finding of a current risk of harm to M.L.

During the pendency of this appeal, mother's appellate counsel asked this court to take judicial notice of minute orders from two subsequent hearings. We did so. On October 6, 2016, the juvenile court ordered unmonitored visits for mother, provided she continued to drug test with negative results. At the February 1, 2017 hearing pursuant to section 364, M.L. was released to the care of both parents, subject to continued DCFS supervision. The juvenile court found "continued jurisdiction is necessary because conditions exist which justify jurisdiction under [sections 300 and 364]."

There is no record of an appeal by mother from the findings made at the section 364 hearing. Given the child's placement with mother and mother's failure to appeal from the finding at the section 364 hearing that conditions justifying initial jurisdiction still existed, we asked appellate counsel whether the current appeal was moot. Counsel for DCFS submitted a letter brief advising that although the minute order did not reflect that mother stipulated to continued jurisdiction at the section 364 hearing (see, e.g., *In re Dani R.* (2001) 89 Cal.App.4th 402, 405-406), her appeal was mooted by her failure to appeal from the juvenile court's order continuing jurisdiction at the section 364 hearing.

Mother's counsel disagreed, arguing, "Appeals in dependency matters are not moot if the purported error is of such magnitude as to impact the outcome of subsequent proceedings. [Citations.] Here, should this Court find moot mother's appeal of possibly erroneous jurisdictional findings, then she will have a child welfare history that could affect decisions to file any future dependency petitions against her involving [M.L.] and/or his siblings, and the true finding could compromise her position in any family law action that might arise with respect to [M.L.] and/or his siblings."

DISCUSSION

Section 364 applies when a dependent child remains in the home of a parent under DCFS supervision. Subdivision (c) provides in pertinent part, "The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn." (See also *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1146 ["the social services agency . . . clearly bears the burden of proof to show the existence of the conditions section 364(c) specifies must be proven to support retention of dependency jurisdiction"].) "Section 364, subdivision (c) establishes a statutory presumption in favor of terminating jurisdiction and returning the child to the parents' care without further court supervision." (*In re Armando L.* (2016) 1 Cal.App.5th 606, 615.)

In retaining jurisdiction over M.L. at the section 364 hearing, the juvenile court expressly found "conditions exist

which justify jurisdiction under [sections 300 and 364].” As counsel for DCFS noted in her letter brief, mother’s acceptance of the juvenile court’s decision to retain jurisdiction at the section 364 hearing is inconsistent with her challenge here to the juvenile court’s initial assumption of jurisdiction over M.L.

The decisions mother relied upon to urge that we not dismiss this appeal are inapposite. They all involved situations where the juvenile court terminated jurisdiction at a subsequent hearing, but the reviewing court denied motions to dismiss the appeal as moot and decided the appellate issues on the merits. In *In re Marquis H.* (2013) 212 Cal.App.4th 718, for example, the juvenile court assumed jurisdiction over the child, but placed him with parents under a family maintenance plan. Jurisdiction was terminated six months later. The Court of Appeal denied the social service agency’s motion to dismiss the parents’ appeals, noting “the parents raise[d] a statutory interpretation issue that could arise again and evade review.” (*Id.* at p. 724.)

In re J.K. (2009) 174 Cal.App.4th 1426 was similar. The juvenile court sustained the dependency petition, awarded custody to mother, terminated jurisdiction, and immediately issued exit orders. Father’s appeal was not moot because “the sustained jurisdictional findings against Father [already] had an adverse effect on his custody rights. In addition . . . the jurisdictional findings could affect Father in the future, if dependency proceedings were ever initiated, or even contemplated, with regard to the Minor or Father’s other children, if any.” (*Id.* at p. 1432; see also *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [“Upon termination of the dependency proceedings, the juvenile court entered continuing orders relating to custody and visitation. Relief from, or modification of, these

orders is based on the best interest of the child and may be sought either in a pending family law action or, if none is pending, a new action based solely on the orders. [Citations.] [¶] Because the jurisdictional issues were actually litigated in the dependency proceeding, appellant is collaterally estopped from relitigating those issues in the family law court”].)

Similarly, in *In re Kristen B.* (1986) 187 Cal.App.3d 596, the Court of Appeal refused to dismiss the parent’s appeal from the judgment terminating their parental rights. Instead, the appellate panel addressed the appeal on the merits and affirmed the judgment terminating parental rights: “[W]here a judgment terminating parental rights is challenged on appeal, an earlier appeal arising out of a juvenile court dependency proceeding is not moot *if* the purported error is of such magnitude as to infect the outcome of the ensuing termination action *or* where the alleged defect undermines the juvenile court’s initial jurisdictional finding. Consequently, the question of mootness must be decided on a case-by-case basis.”⁴ (*Id.* at p. 605, fn. omitted.)

Despite reliance on these decisions, mother’s appellate counsel did observe, “[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with

⁴ Another line of opinions, not cited by mother, declines to dismiss dependency appeals as moot where the subsequent juvenile court order has resolved the issue in the appealing parent’s favor but “the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) Mother does not contend either of these factors is present here.

effectual relief.” (*People v. Gregerson* (2011) 202 Cal.App.4th 306, 321, internal quotation marks omitted.) That is the situation here. The section 364 hearing was not contested, and no testimony was taken. The juvenile court’s finding at the section 364 hearing is now unassailable. The minutes do not reflect whether any stipulations were provided to the court, and we have not exercised our discretion under Code of Civil Procedure section 909 to augment the appellate record to determine if that was the case.⁵ But to preserve her challenge to the initial jurisdictional findings alive, mother should have also appealed from the court’s findings at the section 364 hearing. She did not. On the record before us in this case, her appeal must be dismissed.

⁵ A stipulation would be “fatal to [the] pending [appeal].” (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1395; see also *In re Dani R.*, *supra*, 89 Cal.App.4th 402 [reviewing court dismissed as moot the parents’ appeal from jurisdictional findings after they stipulated at the six-month review hearing to continued dependency jurisdiction].)

DISPOSITION

The appeal is dismissed.

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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.