Filed 9/6/19 In re S.E. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.E. et al., Persons Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.O., Defendant and Appellant.	B292489 (Los Angeles County Super. Ct. No. 18CCJP03514A-B)

APPEAL from findings and an order of the Superior Court of Los Angeles County, Danette J. Gomez, Judge. Dismissed in part, affirmed in part, and reversed in part.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

Appellant L.O.'s (Mother) appeal is twofold.

First, she appeals from the juvenile court's jurisdictional findings made under Welfare and Institutions Code[1] section 300, subdivisions (a), (b), (d) and (j); she contends substantial evidence does not support the court's finding that her use of a belt to discipline constituted physical abuse and placed her children at risk of serious physical harm. However, Mother does not challenge the juvenile court's other jurisdictional findings, i.e., that she placed her children at risk of sexual abuse and that her minor son suffered sexual abuse by a relative. Mother instead requests that we exercise our discretion to decide the merits of her challenge to the physical abuse findings. For reasons explained below, we agree with respondent that Mother's appeal is not justiciable and dismiss as moot her appeal of the juvenile court's findings of physical abuse.

Second, Mother appeals from the juvenile court's exit order that she must present proof of completion of a sexual abuse awareness program and individual counseling "before this Court's orders on custody and visitation may be changed by any court." She contends it improperly limits the family court's judicial authority under section 302, subdivision (d). In as much as we find the exit order impermissibly curtails the authority of the family law court, we reverse and remand for correction of the exit order.

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

FACTUAL AND PROCEDURAL BACKGROUND

A. *Referral and Investigation*

Mother and Father are the parents of two children, 13-year-old daughter S.E. and 11-year-old son C.E. At the outset of the case, Father resided in North Carolina and Mother resided in California with the children.[2] Father is not a party to the appeal.

In April 2018, the family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) after a referral for "allegations of general neglect and sexual abuse to the children [S.E.] and [C.E.], general neglect by mother and sexual abuse by [maternal grandfather]" because of maternal grandfather's "history of sexually abusing the mother when she was a minor." The reporting party also mentioned Mother's use of physical discipline and stated the children "are afraid of" Mother.

A social worker contacted the family at its residence. The apartment "appeared clean and was appropriately furnished"; however, while seated with Mother in the living room, the social worker "observed an older man suspiciously walking around the living room acting as if he was looking for something." Mother identified the older man as her father, i.e. the minor children's maternal grandfather (Maternal Grandfather). Mother reported having moved into Maternal Grandfather's residence three years ago; she stated she "always lived with her children alone but whenever she loses her job and can no longer afford the rent[,]

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[2] Per Mother, there were no family law orders in place. Father "visits the children once a year during the summer"; they talk via telephone "on a regular basis."

she moves back." She stated Maternal Grandfather helps her with the children by picking them up from school "daily" and staying home alone with them for a few hours. Mother denied seeing anything inappropriate between Maternal Grandfather and the children, and stated she "always told the children that if anyone touched them inappropriately[,] they needed to tell her."

She then "shared her story" with the social worker: she reported having been detained as a minor because she was "sexually abused" by Maternal Grandfather; she remembered that the sexual abuse by him started "at a very young age" and "continued throughout her teenage years and progressed"; he had sexual intercourse with Mother "[o]n a regular basis" but she never got pregnant by him because he "would use condoms." The social worker discovered "prior DCFS documentation indicating that [Maternal Grandfather] had sexual intercourse with Mother several times," but that Mother "would recant."[3] Mother was ultimately detained and lived with a relative in North Carolina for a few years, where she met Father and their relationship began; she moved back to California after she and Father broke up when C.E. was two years old.

The social worker interviewed the minor children multiple times. S.E. stated a few weeks ago, Maternal Grandfather "attempted to sleep in the bedroom with her and [C.E.]" and she argued with him about it. She stated she "had a dream that

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[3] The dependency petition filed October 13, 2000 as to Mother and her siblings, stated that she—as a child—was sexually abused by her father (i.e. Maternal Grandfather) "on a regular and ongoing basis from . . . 1995 through January, 1999." It also stated that Mother's maternal aunt was abused by him on a prior unknown date, including his "fondling [of] maternal aunt's genitals when [she] was eleven years of age."

[Maternal Grandfather] was touching her inappropriately." She stated he was "creepy," "weird," and that she "really did not like being around him." She also inquired if the social worker would interview C.E. "because she believed something was happening to [C.E.] but he was not saying anything. She stated that Mother has never hit her with a belt" and that she has "never seen [Mother] hit [C.E.] with a belt"; she did, however, state that Mother "does scream at [C.E.] a lot because he misbehaves at school and at home he has a hard time listening."

C.E. stated Maternal Grandfather and Mother have physically disciplined him with a belt but that he "did not recall . . . the last time." He said the "last time [Mother] hit me with a belt was when I would get in trouble from school. If I would get three warnings at school, then my mom would be mad and hit me with a belt. I never would bleed due to my mom hitting me but I would get marks. This wouldn't happen all the time." When asked if someone sexually abused him, C.E. became emotional and cried; he said Maternal Grandfather would "call him into the garage and touch him inappropriately." The social worker unsuccessfully tried to obtain more details about the incidents. C.E. stated Maternal Grandfather "would tell him not to tell anyone because they were not going to believe him." C.E. denied having told Mother or anyone about the sexual abuse.

During his telephonic interview with DCFS, Father confirmed knowing that Mother was sexually abused by Maternal Grandfather when she was a minor. He said in January 2018, C.E. texted Father and said, "Help me my mother keeps hitting me"; more recently, in May 2018, C.E. texted Father that he had "something to tell you but [Mother] won't let me tell you." C.E. later told Father about the sexual abuse. He and Mother agreed

that the children should move North Carolina to live with Father. Father also informed the social worker that Mother "is aggressive and that's why her and I separated."

Upon learning about the sexual abuse, Mother became "very upset" and "distraught" that Maternal Grandfather "hurt her children." DCFS implemented a safety plan where Maternal Grandfather was not to have any contact with the children until the investigation was completed. Mother signed the safety plan and "has been protective." Maternal Grandfather moved out of the home.

During a forensic medical examination C.E. reported Maternal Grandfather touched his penis "with his hand in the garage 2–3 times when [he] was 7 years old" but "denied penetration, oral copulation or any other acts." Maternal Grandfather would "make food and put on a movie" for the others after school, and would "call [C.E.] into the garage and instruct him to take off his clothes"; he would then "touch [C.E.'s] genitals with his hand." C.E. was found to have encopresis and enuresis, and when asked when these "accidents (poop and pee)" started, C.E. stated it began when he was seven years old. C.E. wanted Maternal Grandfather to "go to jail and learn his lesson."

B. *Petition and Detention*

On June 1, 2018, DCFS filed a petition pursuant to section 300, subdivisions (a), (b), (d), and (j) as to both minors. The petition alleged: 1) Mother physically abused CE by striking him with a belt and also placed S.E. at risk of serious physical harm and physical abuse; 2) Maternal Grandfather sexually abused C.E. and Mother knew or reasonably should have known of the sexual abuse and failed to protect the child. This abuse also placed S.E. at risk of serious physical harm and sexual abuse;

3) Mother placed the children in an endangering situation by allowing them to reside with Maternal Grandfather and be cared for by him when she herself had been abused by him as a minor.

Upon reviewing the petition, Mother told the DCFS case worker: "I think abusing my children is a bit much. I didn't abuse my children. *I will not deny that I hit them with a belt.* I'm not going to sit here and lie. What I will say is that I was raised that way and that's what I've known. I now know that there are other ways of disciplining my children." She also admitted that she "last hit [S.E.] with an open hand several months ago, sometime last year. As for [C.E., Mother] recall[s] hitting him few months back with a belt and it was usually because he is talking back to me after the third warning. That was my last resort, corporal punishment . . . ." (Italics added.)

At the detention hearing on June 4, 2018, Mother denied the allegations in the petition. The juvenile court found "a prima facie showing" that the children are persons described by section 300 and that there are "reasonable services available" to prevent detention. The children were ordered released to the home of Mother "contingent upon" Maternal Grandfather not residing in the home. The court ordered "no contact" between the minors and Maternal Grandfather.

DCFS thereafter spoke with Maternal Grandfather by telephone. In response to the sexual abuse allegations by C.E., Maternal Grandfather stated that his grandson C.E. must have been coached by his father to make the allegations. He denied the allegations and denied ever molesting Mother when she was a minor. Similarly, when interviewed again by DCFS in anticipation of the jurisdictional hearing, Mother denied she was

ever sexually abused by her father, despite what she had previously stated.

C. *Jurisdiction and Disposition*

On August 16, 2018, the court commenced the adjudication hearing. On August 31, 2018, the court sustained all counts of the petition as to Mother, and declared the minors "dependent[s] of the court" under section 300, subdivisions (a), (b), (d), and (j).

The court proceeded to disposition. The court found it reasonable and necessary to remove the children from Mother because "there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the children; the court ordered the children removed from Mother's custody and placed with Father in North Carolina (i.e., home-of-parent Father). Father was found to be a "non-offending" parent.

The court also indicated it intended to terminate jurisdiction pending preparation and receipt of a juvenile custody order. On September 6, 2018, the juvenile court issued the *Custody Order—Juvenile–Final Judgment* (Exit Order), which granted joint legal custody of the children to both parents and granted physical custody to Father alone. Mother was allowed unmonitored visits with the children in North Carolina, but any visits in California had to be monitored by a monitor mutually agreed-upon by both parents. The Exit Order also provided: "Mother must present proof of completion of a sexual abuse awareness program and individual counseling *before this Court's orders on custody and visitation may be changed by any court*." (Italics added.) The juvenile court then terminated dependency jurisdiction.

Mother timely appealed.

DISCUSSION

On appeal, Mother contends: 1) we should exercise our discretion to review the court's jurisdictional findings of physical abuse and determine that the physical abuse finding is not supported by substantial evidence; and 2) the Exit Order impermissibly limited the family court's judicial authority in modifying custody or visitation. Although we decline to exercise our discretion in reaching the merits of Mother's first contention, we agree with Mother's position as to the Exit Order, as explained below.

A. *Mother's Challenge to the Juvenile Court's Jurisdictional Finding of Physical Abuse is Not Justiciable.*

Where, as here, " 'a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Thus, "a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings." (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

However, the reviewing court may exercise its discretion to reach the merits of the jurisdictional finding(s) involving one parent when the finding: (1) serves as the basis for dispositional orders that are also challenged on appeal; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings; or (3) could have other consequences for the appellant, beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763; see also *In re J.C.* (2014)

233 Cal.App.4th 1, 4; accord, *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 [An appellate court ordinarily will not dismiss as moot a parent's challenge to a jurisdictional finding if the purported error "could have severe and unfair consequences to [the parent] in future family law or dependency proceedings."].)

"We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) Although we may exercise our discretion to consider Mother's appeal of the physical abuse jurisdictional findings even when there are independent grounds warranting dependency jurisdiction, there is no good reason for us to do so in this case.

Mother's unspecified concerns about the prejudicial consequences the adverse finding might have in future proceedings do not convince us we should exercise discretion to review that finding. The only semi-colorable support Mother provides for how the physical abuse finding will prejudice her in the future is that it is "*reasonably probable* the family court will be *less inclined* to modify the exit orders given the sustained physical abuse findings and *may require* Mother to complete additional services before doing so." (Italics added.)

Mother's articulated concern that the family court may require Mother to complete additional services is purely speculative. Further, a review of the record provides no evidence of any ongoing family law litigation or custody dispute between Mother and Father that would demonstrate to us that it is likely Mother would be affected by the physical abuse findings in her quest to modify the current orders. Neither does Mother state

she intends on initiating family court proceedings to modify custody or visitation. Vague references to what the family court may be *less inclined* to do or *may require* Mother to do if Mother initiates a family court proceeding at some unspecified, unknown future date are not enough.

We therefore decline to exercise our discretion to reach the merits of Mother's first contention on appeal and dismiss it as moot.

B. *The Juvenile Court's Exit Order Was Not Within Its Discretion as It Unreasonably Restricts the Family Court's Power to Modify Custody/Visitation.*

The juvenile court has broad discretion to make custody orders when it terminates jurisdiction in a dependency case, (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 265, fn. 4 (*Nicholas H.*).)

In fashioning custody and visitation orders, the juvenile court's "focus and primary consideration must always be the best interests of the child." (*Nicholas H.*, *supra*, 112 Cal.App.4th at p. 268.) The " 'juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion . . . order[s] in accordance with this discretion.' " (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) The court's exit order "remain[s] in effect after [dependency] jurisdiction is terminated" and may thereafter be modified by the family court if (1) "there has been a significant change of circumstances," and (2) "modification . . . is in the best interests of the child." (§§ 302, subd. (d), 362.4, subd. (b); *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163; see also *In re Marriage of Carney* (1979) 24 Cal.3d 725, 730–731.)

Although a juvenile court enjoys broad discretion in fashioning an exit order regarding custody and visitation (e.g., *In re M.R.* (2017) 7 Cal.App.5th 886, 902), that discretion has limits. An exit order cannot restrict the family court's power to modify the exit order's custody or visitation provisions should the prerequisites for such a modification exist (that is, should the modification be in the best interests of the child based on changed circumstances). (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1456 (*Cole Y.*).) Thus, an exit order is invalid if it restricts a family court's power to modify custody/visitation unless and until a parent completes certain programs and obtains counseling. (*Ibid.*)

Here, the juvenile court's September 6, 2018 Exit Order provides, in relevant part: "Mother must present proof of completion of a sexual abuse awareness program and individual counseling *before this Court's orders on custody and visitation may be changed by any court*." (Italics added.) The order is too restrictive. The juvenile court does not have the authority to condition the family court's modification of an exit order upon the completion of programs or counseling. (*Cole Y.*, *supra*, 233 Cal.App.4th at p. 1456.) The September 6, 2018 Exit Order is reversed to the extent it conditioned modification of custody or visitation by the family court on Mother's completion of a sexual abuse awareness program and individual counseling. In all other respects, the Exit Order is affirmed.

DISPOSITION

The juvenile court's exit order that Mother's custody and visitation cannot be modified "by any court" until she presents proof of completion of program/counseling is reversed; the matter is remanded for correction of the exit order. We dismiss Mother's appeal of the court's jurisdictional findings of physical abuse. All other findings and orders are affirmed.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.