

Filed 7/27/17 In re Mia C. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re MIA C. et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSEPH C.,

Defendant and Appellant.

B279331

(Los Angeles County  
Super. Ct. No. DK19451)

APPEAL from an order of the Superior Court of Los Angeles County, Joshua D. Wayser, Judge. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham,  
County Counsel, R. Keith Davis, Assistant County Counsel,  
Peter Ferrera, Deputy County Counsel, for Plaintiff and  
Respondent.

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The juvenile court asserted jurisdiction over Mia, Grant and Sean C., children of appellant Joseph C. (Father) and Virginia C. (Mother), under Welfare and Institutions Code section 300, subdivision (b) (failure to protect) based on Father's history of drug use, and Mother's alcoholism and mental and emotional problems.<sup>1</sup> Father, an admitted methamphetamine addict, contends the court's finding that his drug abuse posed a risk of harm to the children and that he failed to protect them within the meaning of subdivision (b) was not supported by substantial evidence, because he placed the children in the care of their paternal grandmother before leaving the state to reside in a sober living facility in Texas. Respondent contends Father's appeal is non-justiciable because the court's assertion of jurisdiction over the children is sustainable based on Mother's actions alone. Respondent further contends the evidence supports the court's orders.

Appellate courts generally exercise their discretion to hear appeals from jurisdictional orders that pertain solely to

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code. Mother is not a party to this appeal.

the appealing parent because of the impact such findings may have on dispositional orders, custody issues and future proceedings. While Father does not contest the dispositional order or seek custody of the children, the impact of his having been found an offending parent could have repercussions beyond this proceeding. Accordingly, we address the merits. We find the facts in the record do not support Father's contention that he made suitable plans for the children. They were living with Mother, not their grandmother, when the Los Angeles Department of Children and Family Services (DCFS) became involved with the family in April 2016, months before Father moved to the out-of-state facility. They were still living with Mother in September 2016, when the petition was filed, and there was no evidence that Father transferred their custody to the grandmother before leaving for Texas. We also disagree with Father's alternative contention that substantial evidence does not support the court's finding that his drug use endangered the children. Accordingly, we affirm the trial court's order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The family has an extensive history with DCFS. In July 2003, after Grant was born testing positive for amphetamine, DCFS found substantiated the allegation that Mother had used methamphetamine, and Mother received voluntary services for a few months. Between 2003 and 2014, DCFS received three more referrals for the family,

alleging substance abuse, general neglect, and domestic violence, but none were substantiated. In July 2014, DCFS learned that Mother was abusing alcohol and becoming violent and angry. No proceedings were initiated at that time because the children went to live with Father, and Mother promised to enroll in rehab. When Mother subsequently demanded the children be returned without having addressed her substance abuse problem, Father obtained a custody order and a restraining order from the family court. In March 2015, after an unsubstantiated report that Father was using methamphetamine and a substantiated allegation of domestic violence between Father and his girlfriend, Francesca S., DCFS intervened and convinced Father to place the children with their paternal grandmother. Mother was then in a sober living home. The paternal grandmother filed a petition for guardianship. However, she did not follow up, and her temporary guardianship expired in October 2015. According to DCFS's records, the children were returned "solely to [M]other's care" in January 2016.

In April 2016, police officers found methamphetamine in the garage of the home where the children were living with Mother after Father was arrested for burglary.<sup>2</sup> Father admitted using methamphetamine. A short time later, officers found methamphetamine, used syringes, marijuana and illegal fireworks in the bedroom of adult sibling Eric L.

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<sup>2</sup> At the time, Mia was 14, Grant was 12 and Sean was 10.

after he was arrested for a probation violation. Mother agreed to a voluntary family maintenance plan. Under the plan, she was to participate in individual counseling and substance abuse testing. Father was in jail at the time the plan was put into effect.

On August 31, 2016, a caseworker went to the home to investigate because Mother had stopped returning calls and had missed multiple drug tests. When the caseworker arrived, the three children were there, getting ready to leave for school. Mother admitted she had been drinking while taking prescription anti-anxiety medication, and said she planned to check into a sober-living program for which the paternal grandmother had agreed to pay.<sup>3</sup> Nonetheless, Mother refused the caseworker's request that she voluntarily relinquish the children.<sup>4</sup> The children reported Mother had been drinking since Eric was arrested, and that on the day of the caseworker's visit, she had started drinking at 6:00 a.m. The grandmother stated she had agreed to pay for Mother to re-enter treatment a month earlier, but had subsequently broken off all communication with Mother.

In September 2016, the caseworker obtained an order removing the children from Mother. Mia and Sean were placed with the paternal grandparents. Grant was placed

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<sup>3</sup> The caseworker noted that the combination of prescription anti-anxiety medication and alcohol "is extremely dangerous."

<sup>4</sup> Later, the caseworker learned that the children had gone to their grandparents' home after school, and refused to return to Mother's home. The caseworker gave permission for them to remain there.

with family friends. At that time, Father was in Texas, reportedly living in a sober living home. When contacted, Father stated he would like to reunite with the children but was working toward “establishing himself” first. The paternal grandmother said Father had a methamphetamine problem, and that he had used the drug as recently as January 2016.<sup>5</sup>

Shortly after the detention order, Mother went to the grandparents’ home to speak to the children, in violation of the court’s order. When the grandfather confronted Mother, she said “this does not concern you.” The grandparents did not ask Mother to leave because they were afraid of her. The caseworker expressed concern over the grandparents’ ability to keep the children safe.

Re-interviewed for the November 2016 jurisdiction/disposition report, Mother stated she was using Lexapro for depression and Ativan for anxiety, that she had used drugs and alcohol since she was very young, and that she had become an alcoholic by the time she was 12. She relapsed into drinking when her son Eric was arrested. Mother said Father had been a heavy user of methamphetamine since he was 14, and was using the last time she saw him. The children confirmed that Mother had been drinking. The children believed Father was using drugs the

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<sup>5</sup> When he spoke to the caseworker, Father claimed to have been in the Texas sober living home since January 2016. However, the detention report and CLETS report indicated he had been in jail in California in February 2016 and April or May 2016.

last time they saw him, three or four months earlier, by the way he looked and behaved, which they described as “panicking,” and “paranoid,” and “not wanting to do anything.” Father did not make himself available for an interview.

The November 2016 report included a discussion of the March 2015 incident of domestic violence between Father and his girlfriend Francesca that led to the custody transfer from Father to the grandmother. It stated, erroneously, that “in March 2015, [Father] gave [the grandmother] temporary custody [of the children] while he moved to Texas to work on his sobriety,” and that the grandmother thereafter made the decision to transfer custody to Mother due to her perception that Mother was “doing better.” A last-minute information for the court included a statement from the grandmother clarifying that Father had left for Texas in July or August 2016.

At the November 29, 2016 hearing, counsel for DCFS and the attorney for the children contended the court should sustain the allegations of the petition that the children were at risk due to Mother’s and Father’s history of substance abuse and current substance abuse, and Mother’s mental and emotional problems. Father’s counsel argued no finding should be made that Father posed a risk of harm to the children for jurisdictional purposes because Father had “made an appropriate plan, by leaving [the] children with the paternal grandmother and going to a rehabilitation

facility in Texas” in early 2016.<sup>6</sup> Counsel contended the decision to allow Mother unfettered access to the children was the grandmother’s alone and should not be attributed to Father. Counsel for Father conceded that with respect to disposition, the court was “going to have to make a detrimental finding . . . .”

The court disagreed that Father had made an appropriate plan, pointing out that the paternal grandmother had permitted Mother to reside with the children before Father left for Texas. With respect to counsel’s contention that the grandmother’s decision was her own, the court stated: “It’s part of the problem. If that’s your plan, you have to suffer the consequences of those choices.” The court stated that it found persuasive the evidence that Father was a long-term user of methamphetamine and was, in his own words, “establishing himself” and unable to care for the children at the time of the hearing. After deleting an allegation that Father was a “current abuser” of methamphetamine, the court found true that (1) Mother had a history of substance abuse, including

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<sup>6</sup> Counsel mistakenly claimed this timeline was “laid out in today’s last minute [information].” As we have said, the last-minute information stated Father went to the Texas facility in July or August 2016, months after the grandmother returned the children to Mother’s custody and abandoned the guardianship petition. Father’s counsel also mistakenly stated that the grandmother had permitted Mother to “move[] into the home, while the children were in the care, custody and control of the paternal grandmother . . . .” The record reflects that as of April 2016, the children were living with Mother apart from the grandparents.



methamphetamine and alcohol, and was a current abuser of alcohol and prescription medication, which rendered her incapable of providing the children with regular care and supervision; (2) Father knew or reasonably should have known of Mother's substance abuse and failed to protect the children; (3) Father had a history of methamphetamine abuse through early 2016, which rendered him incapable of providing the children with regular care and supervision; and (4) Mother suffered from mental and emotional problems, including anxiety, which rendered her incapable of providing the children with regular care and supervision, and failed to take medications as prescribed.<sup>7</sup> Father appealed.

## **DISCUSSION**

Father contends there was no substantial evidence that his use of methamphetamine posed a risk to his children because he “came to terms with his substance abuse in January 2016” and “left the children in the care of the paternal grandmother” who “allowed Mother to visit the children after [Father] had moved to Texas.” Respondent disagrees, and also contends the appeal should be dismissed as non-justiciable, as the juvenile court made its jurisdictional finding on multiple grounds that are uncontested by Father.

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<sup>7</sup> The reunification plan required Mother and Father to participate in a substance abuse program, parenting classes, and individual counseling to address case issues.

With respect to respondent's procedural argument, there is no dispute that "[w]hen 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," and that "the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]" (*In Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.) Nonetheless, a reviewing court has discretion to consider the merits of a parent's appeal that challenges fewer than all the juvenile court's jurisdictional findings, and will generally exercise that discretion when the jurisdictional finding "(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation].'" (*In re M.W.* (2016) 238 Cal.App.4th 1444, 1452, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Although Father has asserted no ground to challenge the dispositional order and does not suggest the children should be returned to him before he has dealt with his addiction, the stigma of being labeled an offending parent could have repercussions beyond this proceeding. Accordingly, we address the merits.

Father contends he should not be deemed a neglectful parent because he arranged for the children to be protected before DCFS's 2016 intervention. The timeline evident from the record does not support his contention. In 2014, after DCFS substantiated an allegation that Mother was abusing alcohol and becoming violent, Father took legal custody of the children, obtaining a formal custody order. In March 2015, domestic violence between Father and his girlfriend caused DCFS to step in again, persuading Father to voluntarily relinquish custody and the paternal grandmother to commence seeking legal guardianship. The grandmother initiated steps toward that goal, but abandoned it when Mother came out of her sober living program in late 2015 or early 2016. The children were back in Mother's care by January 2016, months before Father acknowledged his substance abuse problem and moved to Texas to enter the sober living facility.

To the extent Father suggests he took control of the children after January 2016 and transferred custody to the grandmother, that is also negated by the record. The children were in Mother's custody when DCFS became involved with the family in April 2016 and Mother entered into the voluntary family maintenance plan. In August, when the caseworkers went to investigate her lack of communication, the children were still living with Mother. When the children were removed from Mother's custody in September, no one suggested they had been living with the grandmother all along. The October 2016 report stated

Father gave the grandmother temporary custody “while he moved to Texas to work on his sobriety,” but the date specified -- March 2015 -- was the date of the domestic violence incident, long before the incidents that gave rise to the current petition, and more than a year before Father moved to Texas. In short, at all relevant times, Mother had custody of the children, and Father, who was in California until July or August 2016, must have been aware that the children were living with Mother, that she had relapsed into heavy drinking, and that her alcohol problem prevented her from properly caring for the children.

Father alternatively suggests that his drug use did not support jurisdiction, citing cases such as *In re Rebecca C.* (2014) 228 Cal.App.4th 720, *In re Drake M.*, *supra*, 211 Cal.App.4th 754, *In re Destiny S.* (2012) 210 Cal.App.4th 999 and *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322. In those cases the children were living in stable homes and were being well cared for despite having a drug-using parent. (See *In re Rebecca C.*, *supra*, at p. 727; *In re Drake M.*, *supra*, at p. 768; *In re Destiny S.*, *supra*, at p. 1004; *Jennifer A. v. Superior Court*, *supra*, at p. 1345.) The principle conveyed is that “a lack of evidence of life-impacting effects of drug use, will not support a finding that a parent has a substance abuse problem justifying the intervention of the dependency court.” (*In re Rebecca C.*, *supra*, at p. 726.) Here, the children’s lives have been in constant turmoil since at least 2014, when Mother’s alcoholism impaired her ability to care for them. Father

took over their care, but his brief period of custody was marred by domestic violence and continuing drug use which, by the children's account, rendered him panicky and paranoid, and led to another upheaval in their lives, as the children were sent to live with their grandmother in 2015. A third transfer of custody took place in 2016, when the grandmother abandoned the quest for legal guardianship and returned custody to Mother, who was able to maintain sobriety for only a few months. Father's admitted addiction left him unable to step in to protect the children when Mother relapsed. In contrast to the authorities cited by Father, here the effect of both parents' substance abuse has been injurious to the children, and neither he nor Mother have been adequately caring for them. The court's assertion of jurisdiction under subdivision (b) of section 300 based on Father's drug addiction was well supported by the evidence.

**DISPOSITION**

The court's November 29, 2016 order is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.