Filed 12/27/12 In re N.W. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.W., a Person Coming Under the Juvenile Court Law.	B241203 (Los Angeles County Super. Ct. No. CK91395)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.W., Objector and Appellant.	

APPEAL from an order of the Superior Court of the County of Los Angeles, Amy Pellman, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal for Objector and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

D.W. (father) appeals from a dispositional order declaring his daughter, N.W., a dependent of the court under Welfare and Institutions Code section 300, subdivision (b).[1] Father contends that there was not substantial evidence to support the juvenile court's jurisdictional finding under section 300, subdivision (b) as it pertains to him because there was insubstantial evidence that he had care, custody and control over N.W. when she was injured.[2] We hold that father's appeal is nonjusticiable, and in any event, father's contention has no merit. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 11, 2012, the Department of Children and Family Services (Department) filed a detention report stating that on January 4, 2012, then one-year-old N.W., and her siblings,[3] came to the attention of the Department because of a mandated referral alleging severe neglect and physical abuse, and that N.W. was hospitalized. Father was present at the hospital. Supervising Medical Doctor, Dr. Fernandez, told the Department that N.W. sustained two cuts to her head, and mother told Dr. Fernandez that

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

[2] The juvenile court also sustained the petition allegations under section 300, subdivision (b) as to the conduct of N.W.'s mother, S.W., but mother did not challenge that order on appeal.

[3] N.W.'s siblings are L.L, then seven years old, and N.L., then six years old, and M.G., Jr., then four years old. G.L., who at all times relevant to this appeal was incarcerated, is the biological father of L.L and N.L., and L.L and N.L. have been in the care and custody of their paternal grandmother. According to the paternal grandmother, with the exception of a short period of time, L.L. and N.L. have resided with her since L.L. and N.L. were two years old and one year old, respectively, and mother told her "it was difficult' for mother to take care of them. M.G., Jr., is in the care and custody of his biological father, M.G., Sr., who had been granted full custody of M.G., Jr. Mother is the biological mother of all four children, and according to the paternal grandparents, with the exception of a short period of time, N.W. was the only child residing with mother on and before January 5, 2012.

N.W. fell and landed on her head on a bowl of food when mother was feeding her. The person making the referral to the Department stated that "the child protection hotline was notified because the treating physician feels mother's explanation isn't totally consistent with the injuries. Per caller, mother stated that she was feeding N.W. on a bed with no frame. Therefore, the bed is sitting low directly on the carpeted floor." According to the report, Dr. Astrid Heger stated that he could not rule out "non accidental" [*sic*] trauma as to N.W. and mother's statement "is inconsistent with" N.W.'s injuries.

According to the January 11, 2012, detention report, on January 4, 2012, mother stated that she and father were not legally married and they did not live together. Father told the Department's children's social worker (CSW) by telephone that he was N.W.'s father, and that he was living with friends and does not have an address or telephone number to give to the Department. The CSW asked father to write down her telephone number but father said he did could not do so because he did not have a pen or paper to use to write down the information. Father stated that he was transient and denied living with mother and N.W. According to the report, father's whereabouts were "[u]nknown." The Department placed N.W. in protective custody.

On January 11, 2012, the Department filed a petition pursuant to section 300, subdivisions (a), (b), (e), and (j) on behalf of N.W., and her siblings, L.L and N.L.[4] The petition alleged, inter alia, that on January 14, 2012, N.W. was hospitalized and "found to be suffering . . . [from] two hematomas and three lacerations requiring sutures to the child's right parietal scalp. The mother['s] . . . explanation of the manner in which [N.W.] sustained the . . . injuries is inconsistent with [N.W.'s] injuries. Such injuries would not ordinarily occur except as the result of deliberate, unreasonable and/or neglectful acts by . . . mother and father . . who had care, custody and control of [N.W.]. Such deliberate, unreasonable and neglectful acts on the part of the child's parents

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4 M.G., Jr., was not the subject of the petition because, according to the Department, he was "not at risk." L.L and N.L. were the subject of the petition, and were ultimately found by the juvenile court to be dependents of the court, but they are not the subjects of this appeal.

endangers [N.W.'s] physical health and safety and well being, creates a detrimental home environment and places [N.W.] and [N.W.'s] sibling[s], [L.L.] and [N.L.] at risk of physical harm, damage and danger."

Mother and father appeared at the January 11, 2012, detention hearing, and the juvenile court found father to be the presumed father of N.W. The juvenile court made emergency detention orders but set the matter for the following day to conduct a contested detention hearing.

Mother and father appeared at the January 12, 2012, contested detention hearing. Mother testified that on January 4, 2012, she was feeding N.W. while they were in mother's bedroom, sitting on the bed. When mother turned to get a "wipey" to clean N.W.'s face, N.W. fell off the bed onto a glass bowl that mother had placed on the floor. There was carpet on the floor to the bedroom. Shortly after N.W. fell off the bed, father "walked in to drop off the diaper and [mother] told him to call 911 immediately." The juvenile court ordered temporary placement and care of N.W. be vested with the Department pending disposition, the Department was to have discretion to detain N.W. with an appropriate person, and the Department was to provide mother and father with reunification services.

On February 24, 2012, the Department filed a jurisdiction/disposition report stating that the whereabouts of father was unknown and he has not provided a statement to the Department. According to the report, there were several inconsistent statements regarding the cause of N.W.'s January 4, 2012, injuries. N.L., N.W.'s sibling, said that mother told her that N.W. "was jumping on the bed" and fell off and landed on a glass bowl, but the paternal grandmother said that N.W. was "unable to jump on a bed." L.L. said that mother told her that N.W. "was sleeping on the bed" and fell off onto a glass bowl. L.L. also said that father "left and when he came back" mother told him to call an ambulance.

On February 24, 2012, the Department filed a first amended petition pursuant to section 300, subdivisions (a), (b), (e), (g) and (j) on behalf of N.W., and her siblings, L.L and N.L. The first amended petition alleged, inter alia, substantially the same allegations

as the original petition, and that mother had a history of substance abuse and was a current abuser of marijuana, which rendered her incapable of providing N.W. and her siblings with regular care and supervision, thereby endangering the children. Father did not appear at the February 24, 2012, pre-trial resolution conference.

According to the Department's March 14, 2012, last minute information for the court report, N.W. was placed in foster care, rather than with the paternal grandmother, because the paternal grandmother was unable to care for N.W. due to her work schedule and her responsibilities in caring for L.L and N.L. On March 14, 2012, the Department filed an interim review report attaching a police report of the incident. The police report stated, inter alia, that mother said she and father were "separated." The interim review report stated that a "[d]ue [d]iligence" investigation to determine the location of father was pending, and that on March 8, 2012, the Department was informed that father had been arrested and sentenced in Florida, and his expected release was March 10, 2012. The report attached a declaration of due diligence by an adoption assistant dated February 16, 2012, stating that, "Due [d]iligence for [father] . . . is complete. Mail was found to be delivered at" a specified address in Florida.

According to the March 14, 2012, interim review report, Dr. Heger said N.W.'s January 4, 2012, injuries were "concerning," and the injuries are difficult to explain by an accidental fall from two feet high . . . . The interim review report attached a police report regarding the January 4, 2012, incident stating that Dr. Kohanteb, a doctor "[o]n scene," confirmed that N.W's injuries "were consistent with [mother's] statements."

Father did not appear at the April 19, 2012, adjudication and disposition hearing; father's counsel represented that he was living in Florida. Mother submitted on the first amended petition, as amended, and stipulated that there was a factual basis for them. The juvenile court ordered that father was to remain in the section 300, subdivision (b) amended petition allegation, stating, "[T]he evidence shows that [father] was in the home, at the time of the injuries, and there were court findings that he did have care, custody, and control of [N.W.], and the court is going to leave him in (b)(1)."

The juvenile court sustained the first amended petition allegations, as amended, to section 300, subdivision (b). The juvenile court found true: "b-1 [¶] On 1/4/12, one year old [N.W.] suffered injuries including two hematomas and three lacerations requiring sutures to the child's right parietal scalp. Such injuries would not ordinarily occur except as the result of neglectful acts by the child's mother and father . . . who had care, custody and control of the child. Such neglectful acts on the part of the child's parents places the child at risk of physical harm, damage and danger. [¶] . . . . [¶] b-4 [¶] [M]other . . . has a history of substance abuse and is a current user of marijuana, which occasionally [illegible] . . . the mother's ability to supervise [N.W.]. The mother's substance use places [N.W.] at risk of harm."

The juvenile court denied father's counsel request that N.W. be released to him pursuant to section 361.2.[5] The juvenile court then found under section 361, subdivision (c),[6] that "[t]here is a substantial risk if [N.W. was] returned to the home, to the physical health, and safety, protection or physical emotional well-being of [N.W.]. and [she] cannot be protected without removal from the parent's physical custody." The juvenile court ordered that custody of N.W. be taken "from parent," and placed in the care of the Department for suitable placement.

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5 Section 361.2, subdivision (a) provides, "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

6 Section 361, subdivision (c) provides in pertinent part, "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence [that] . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody."

DISCUSSION

Although father's appeal was taken from the juvenile court's dispositional order, he does not question that order. Rather, his sole contention is that is there was not substantial evidence to support the juvenile court's sustained jurisdictional allegation[7] under section 300, subdivision (b) as it pertains to him. Father's appeal is nonjusticiable.

"[I]t is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300[,] the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is '"good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent."' [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence. (E.g., *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [90 Cal.Rptr.3d 44] [addressing remaining findings only '[f]or [f]ather's benefit']; *In re Joshua G.* [(2005)] 129 Cal.App.4th [189,] 202 [when a jurisdictional allegation involving one parent is found supported, it is 'irrelevant' whether remaining allegations are supported]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address remaining allegations after one allegation found supported]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th

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[7] While an appeal cannot be taken directly from a dependency court's jurisdictional order, the jurisdictional order is "appealable by way of a challenge to a dispositional order made subsequent to it." (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754.)

67, 72 [74 Cal.Rptr.2d 770] [same].)" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.)

When "issues raised in [an] appeal present no genuine challenge to the court's assumption of dependency jurisdiction[,] . . . any order we enter will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief. For that reason, we find [such an] appeal to be nonjusticiable." (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1491.) "The many aspects of the justiciability doctrine in California were summarized in *Wilson v. L. A. County Civil Service Com.* (1952) 112 Cal.App.2d 450 [246 P.2d 688]: "'A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition. . . . [A]s a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a question or proposition . . . .'" (*Id.* at pp. 452-453.) An important requirement for justiciability is the availability of 'effective' relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status. "'"'"'It is this court's duty '"'to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."'"'"'"' [Citations.]" (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1490.)

Here, the juvenile court had jurisdiction over the children under section 300, subdivision (b) based on mother's conduct, even if the finding under section 300, subdivision (b) as to father, as he contends, was not supported by substantial evidence. Father's appeal therefore is nonjusticiable. (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1491.)

Citing *In re P.A.* (2006) 144 Cal.App.4th 1339, and *In re Aaron S.* (1991) 228 Cal.App.3d 202, father contends that, "Reversal of a jurisdictional finding is necessary, even though other bases for the dependency exist, because the erroneous finding can have a negative consequences for disposition, reunification, and if future dependency actions

are filed." Even thought the courts in *In re P.A.* and In re *Aaron S.* determined whether the juvenile court erred in sustaining jurisdictional allegations based on the conduct of one parent when there was jurisdiction over the children based on the other parent's conduct, these cases do not discuss the propriety of doing so. When cases do not address a point, they "are not authority for propositions not considered. (*People v. Barragan* (2004) 32 Cal.4th 236, 243 [9 Cal.Rptr.3d 76, 83 P.3d 480].)" (*People v. Williams* (2004) 34 Cal.4th 397, 405.)

In addition, father merely concludes that the jurisdictional findings as to his conduct "can" have negative consequences "for disposition, reunification, and if future dependency actions are filed." Father does not develop this contention, or his general contention that he may challenge the sustained jurisdictional allegation under section 300, subdivision (b) as it pertains to him, despite the unchallenged, sustained petition allegations under section 300, subdivision (b) as to the conduct of the mother. As the court explained in *People v. Stanley* (1995) 10 Cal.4th 764, 793, it is not the role of a reviewing court to independently seek out support for appellant's conclusory assertions, and such contentions may be rejected without consideration. (See also *Alvarez v. Jacmar Pacific Pizza Corp*. (2002) 100 Cal.App.4th 1190, 1206, fn. 11 ["It is not our responsibility to develop an appellant's argument"]; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 ["An appellate court is not required to examine undeveloped claims, nor to make arguments for parties"].) Moreover, father's contention that the jurisdictional findings as to his conduct "can" have negative consequences is speculative.

Father has failed also to establish that those findings would have "negative consequences for disposition, reunification, [or] if future dependency actions are filed." Disposition has already occurred; the juvenile court determined that custody over N.W. is to be taken from the parents and placed N.W. in the care of the Department for suitable placement. Father does not challenge this order on appeal. Father, therefore, cannot establish that the jurisdiction findings as to him had "negative consequences" for the "disposition."

In addition, because father did not challenge the order granting him reunification services on appeal,[8] he cannot establish that the jurisdictional findings as to him had "negative consequences" for "reunification." Moreover, the purpose of reunification services is to help the parent overcome the deficiencies that justified the juvenile court's assumption of jurisdiction and the removal of the child from parental custody. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244 ["'"[T]he purpose of reunification services is to facilitate the return of a dependent child to parental custody"'"].) The requirement that father undergo parent education classes and have monitored visits in Los Angeles do not provide substantial obstacles to his "reunifying" with N.W.

Finally, whether the jurisdictional findings as to father imposes negative consequences "if future" dependency actions are filed is speculative. There is no reasonable basis to conclude that a future dependency action, let alone several of them, will be filed, or what it, or they, may concern.

Assuming father's substantial evidence contention is justiciable, we alternatively hold that it is not meritorious. In determining whether substantial evidence supports the factual findings, "all intendments are in favor of the judgment and [we] must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court." (*Crogan v. Metz* (1956) 47 Cal.2d 398, 403-404.) "'"[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could [make the findings made]."' [Citations.]" (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) "[I]ssues of fact and credibility are the province of the trial court. [Citation.]" (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Substantial evidence supports the finding under section 300, subdivision (b) that father "had care, custody, and control of" N.W. at the time she was injured. Father is the presumed father of N.W. L.L. stated that father "left and when he came back," and

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[8] Reunification services are generally required when a child is removed from parental custody. (§ 361.5, subd. (a).)

immediately after N.W. fell, mother told father to call the ambulance. Mother testified that after N.W. fell from the bed, father "walked in to drop off the diaper" and she told him to call 911. A trier of fact could reasonably conclude that father, N.W.'s presumed father, was in the home both immediately before and after—if not during—the incident, and that father had the right to "walk in" to the residence or mother's bedroom even if he were to merely drop off a diaper.

In addition, although father appeared before the juvenile court on January 11 and 12, 2012, he did not appear at any of the subsequent hearings. Father never provided the Department with his contact information, and until the Department performed a due diligence investigation concerning his location, his whereabouts were unknown to the Department. Father never provided the Department with a statement concerning the incident or the dependency proceeding. At one point, defendant was incarcerated in Florida, was expected to be released on March 10, 2012, and there is no evidence in the record that father contacted the Department after his release from custody to participate in the case. The juvenile court could reasonably infer from father's conduct that he was acting out of a consciousness of culpability. While flight may not be the sole evidence of guilt, a trier of fact can consider it in conjunction with other factors. (*People v. Mendoza* (2000) 24 Cal.4th 130, 180.)

The conclusion reached by the dependency court finding at N.W. came within the jurisdiction of the court under section 300, subdivision (b) based upon father's conduct is supported by substantial evidence.

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.