Filed 11/8/16 In re B.B. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re B.B. et al, Persons Coming Under the Juvenile Court Law.	B269473
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SADE W. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. DK12618)

APPEALS from an order of the Superior Court of Los Angeles County, Philip Soto, Judge. Dismissed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant Sade W.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant Ronald B.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Sade W. and Ronald B., parents of B.B. and Alyssa B., appeal from a September 18, 2015 order removing B.B. and Alyssa from their custody. The juvenile court declared the children dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b),[1] after Sade and Ronald pleaded no contest to juvenile court jurisdiction. The court then removed the children from their parents' custody. Sade and Ronald separately appealed from the juvenile court's order, contending that substantial evidence did not support the order of removal. Each of them seeks to reverse the removal order and regain custody of the children.

On September 15, 2016 the juvenile court "terminated" the September 18, 2015 removal order and returned B.B. and Alyssa to their parents. Because we cannot grant any effective relief, we dismiss both appeals.

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1 Statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2015 the Los Angeles County Department of Children and Family Services detained B.B. and Alyssa, who at the time were two years old and six months old, respectively. The Department filed a juvenile dependency petition on behalf of the children alleging a substantial risk that the children would suffer "serious physical harm, damage or danger" from violent altercations between Sade and Ronald. (§ 300, subd. (a).) The petition further alleged that Ronald had recently grabbed Sade, held her in a "head lock," and squeezed her neck, all in the children's presence. The petition alleged that on prior occasions Sade had "struck" Ronald. Following a hearing on July 28, 2015, the juvenile court detained the children, allowed monitored visits for Sade and Ronald, and ordered the Department to provide the family various services.

During subsequent visits with the children and meetings with Department staff, Ronald yelled at the children's foster parent, cursed and yelled at staff members, and threatened to slit the throat of a social worker. The Department asked the court to suspend Sade's and Ronald's visitation rights and to issue a restraining order against Ronald to protect the Department's staff. The court granted a temporary restraining order and ordered that future visits take place at a police station or another law enforcement agency.

In September 2015 the Department filed an amended petition adding allegations under section 300, subdivisions (b) and (d). Sade and Ronald eventually pleaded no contest to a count under section 300, subdivision (b), that alleged that Sade and Ronald "have a recent history of engaging in physical

altercations in the minors' presence. The parents' conduct endangers the children's physical health and safety and places the children at risk of serious physical harm, damage and danger."

On September 18, 2015, at the disposition hearing, the Department requested that the court allow the children to remain in foster care, and counsel for the children agreed. Sade and Ronald asked the court to release the children to them jointly, even though Sade had previously represented to the court that she intended to end her relationship with Ronald. Counsel for Sade explained that Sade planned to live with Ronald, "work on [their] relationship," and "raise their children together." Counsel stated that "this isn't a situation where we need to break up this family."

The court removed the children from the custody of Sade and Ronald and continued the children's existing placement. The court stated that, although it could not "say that the children were not well taken care of" by Sade and Ronald, it found the risk of further domestic violence "so prevalent that [the court] cannot say the children will be safe with these parents if they go back to them." The court noted, among other things, that Sade and Ronald had not actively participated in the services offered them, they had not cooperated or communicated regularly with the Department, and Ronald had been verbally and physically aggressive toward social workers. The court ordered visitation and services for the family, including counseling for domestic violence, and ordered Ronald to stay away from the social worker he had threatened.

With regard to the possibility of placing the children with Sade, the court stated, "The children could be placed with her,

but that's not what you're asking for today. You're asking for me to return to both of the parents, for them to live together and just go through counseling and services, which they have demonstrated they do not want to participate in."

Sade and Ronald separately appealed from the juvenile court's removal order. Sade argued that the juvenile court erred by removing custody of the children from her, asserting (inaccurately) that she had "asked the juvenile court to release her children to her care." Ronald argued that insufficient evidence supported the court's removal order in light of the uncontested facts that the children had not been physically harmed and that he and Sade had taken good care of them. Sade and Ronald asked this court to reverse the juvenile court's removal order and return the children to their custody. Neither of them contended that the juvenile court erred in connection with any other disposition order, such as mandatory counseling or drug testing.

On September 15, 2016, at the 12-month permanency review hearing, the juvenile court "terminated" the September 18, 2015 placement order and placed B.B. and Alyssa with their parents.[2] The court also found that Sade and Ronald were in compliance with their case plan, but, because the conditions that justified jurisdiction still existed, the court continued jurisdiction.

On September 20, 2016 we advised all counsel that we intended to dismiss the appeal as moot unless Sade or Ronald

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[2] We take judicial notice of the juvenile court's September 15, 2016 order pursuant to Evidence Code sections 452, subdivision (d), and 459.

established in a supplemental letter brief why we should not dismiss the appeal as moot. Counsel for Sade and Ronald submitted supplemental briefs.

DISCUSSION

An appeal is moot if the reviewing court cannot grant effective relief. (*In re A.B.* (2014) 225 Cal.App.4th 1358, 1364; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054; see *In re N.S.* (2016) 245 Cal.App.4th 53, 60 ["the critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error"]; *In re E.T.* (2013) 217 Cal.App.4th 426, 436 ["[a]n appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the reviewing court to grant effective relief"]; *In re Pablo D.* (1998) 67 Cal.App.4th 759, 761 [appeal was moot where the minor sought to reverse an order for reunification services and the reviewing court was "unable to fashion an effective remedy" because the services already had been provided].) Because by this appeal Sade and Ronald seek to reverse the disposition order removing B.B. and Alyssa from their custody, and the juvenile court has already returned the children to their parents' custody, "there remains no effective relief we could give [them] beyond that which [they have] already obtained." (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 62.)

Sade and Ronald nevertheless urge us to address the merits of their appeals because the juvenile court's alleged errors will affect the outcome of subsequent proceedings and because

their appeals present issues of public concern that are likely to recur yet evade review. Neither argument is convincing.

A. *The Juvenile Court's Alleged Errors Will Not Affect the Outcome of Subsequent Proceedings*

An alleged error is not moot where it could affect the outcome of subsequent proceedings. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432; *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) For example, a court may consider the merits of an appeal that otherwise would be moot where the erroneous denial of visitation prevents a parent from developing a meaningful relationship with a child, and thus prevents the parent from demonstrating the existence of an exception to termination of parental rights under section 366.26. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769-770.) The same principle may apply where the denial of visitation could create prejudice in subsequent family law proceedings. (*In re C.C.,* at pp. 1488-1489; see *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [based on potentially erroneous jurisdiction findings, the juvenile court issued custody and visitation orders that had a continuing effect even after the termination of jurisdiction].) We determine whether a juvenile court's order may affect future proceedings on a case-by-case basis. (*In re A.B.*, *supra*, 225 Cal.App.4th at p. 1364; see *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.)

Neither Sade nor Ronald have adequately explained how the juvenile court's September 18, 2015 removal order will affect subsequent proceedings in this case. Sade contends that, if we do not address her appeal on its merits, "[t]he Department could easily again remove the children for the same reasons as it did initially." Similarly, Ronald expresses concern that "the removal

order presently informs the current ongoing dependency case . . . and the potential for subsequent removal of the children from his care." These concerns are "highly speculative." (*In re C.C.*, *supra*, 172 Cal.App.4th at p. 1489.) Unlike the circumstances in cases involving visitation rights, the removal of B.B. and Alyssa has no continuing effect on Sade or Ronald, nor is it likely to prejudice future proceedings in this case. (Cf. *In re Dylan T.*, *supra*, 65 Cal.App.4th at p. 769 [appeal was not moot where the juvenile court's visitation order had a continuing effect]; *In re Joshua C.*, *supra*, 24 Cal.App.4th at p. 1548 [juvenile court orders that "continue[d] to adversely affect appellant" were reviewable even after the dismissal of the dependency action].)

Moreover, the juvenile court cannot remove B.B. and Alyssa from Sade's and Ronald's custody again unless the Department files a new petition and the court finds removal appropriate. (See § 387; *In re F.S.* (2016) 243 Cal.App.4th 799, 808.) In such a subsequent disposition hearing, the court would again have to find by clear and convincing evidence that there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the children and that there are no reasonable means to protect the children's physical health and well-being without removing the children. (§ 361, subd. (c); see *In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 ["[w]hen a section 387 petition seeks to remove a minor from parental custody, the court applies the procedures and protections of section 361"].) While in general Sade and Ronald's past conduct might be relevant in any such proceeding, the juvenile court would have to base any future removal order on findings of an "ongoing or future danger" to B.B. and Alyssa. (*In re A.E.* (2014) 228 Cal.App.4th 820, 826; see *ibid.* ["[e]vidence of past abuse,

standing alone, does not meet the clear and convincing standard of proof required to justify . . . removal from [a] [f]ather's physical custody"]; *In re Hailey T.* (2012) 212 Cal.App.4th 139, 147 [evidence of past abuse is probative but not sufficient in determining whether a child requires future protection].) And in any such future proceeding, the court would still be able to consider the facts that gave rise to the initial removal order, even if we reversed that order in this appeal. (See *In re N.S.*, *supra*, 245 Cal.App.4th at p. 63 [the facts that supported the original exercise of dependency jurisdiction and removal of child from parents "would almost certainly be available in any future dependency proceedings"].)

B. *Neither Appeal Presents an Undecided Issue of Continuing Public Importance*

Sade and Ronald argue that we may exercise our inherent discretion to resolve an issue rendered moot by subsequent events if the issue is of continuing public importance and is capable of repetition yet evades review. (*In re Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1404; see *In re J.E.* (2016) 3 Cal.App.5th 557, 563, fn. 3.) For example, in *In re J.E.*, *supra*, 3 Cal.App.5th 557, the court agreed to consider the merits of an otherwise moot appeal where the child welfare agency appealed from an order extending a family's reunification services based on findings that the agency had failed to provide reasonable reunification services. (*Id.* at p. 559.) The appeal presented the issue of what level and type of services were reasonably sufficient under section 352 after legislative amendments to section 361.5. (*Id.* at pp. 559, 564.) Judicial review allowed the agency to follow the court's guidance immediately to better comply with applicable statutes.

Sade argues that the issue of public concern we should address here is whether it is "legally sound to remove minors from their mother where the evidence shows the mother took good care of her children" and the children "had no injuries." Many courts, however, already have addressed that issue in the context of deciding whether removal under section 361 is appropriate where a child has not suffered actual, physical harm. (See, e.g., *In re F.S.*, *supra*, 243 Cal.App.4th at p. 813; *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492; *In re T.V.* (2013) 217 Cal.App.4th 126, 133; *In re T.W., supra,* 214 Cal.App.4th at p. 1163; *In re S.O.* (2002) 103 Cal.App.4th 453, 460-461.) The issue has not evaded review. Moreover, the juvenile court here did not address the issue Sade raises. Sade did not seek sole custody of her children. Instead, she asked the juvenile court to give her and Ronald joint custody and place the children with them in the home they shared.

The issue of public concern Ronald appears to raise is whether an appellate court should allow "findings to stand when they are unfounded, especially when a parent has no mechanism to expunge the finding from the records of the courts." As noted, however, many courts already have addressed the circumstances under which we may consider the merits of an otherwise moot appeal where the juvenile court's findings may affect or prejudice future proceedings. (See, e.g., *In re A.B.*, *supra*, 225 Cal.App.4th at p. 1364; *In re J.K.*, *supra*, 174 Cal.App.4th at pp. 1431-1432; *In re C.C.*, *supra*, 172 Cal.App.4th at p. 1488; *In re Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1404.)

The issues Sade and Ronald raise are not issues of public concern that are likely to recur yet evade review. We decline to exercise our discretion to reach the merits of their moot appeals.

DISPOSITION

The appeals are dismissed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.