Filed 6/29/17 In re E.L. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.L., a Person Coming Under the Juvenile Court Law.	B278524 (Los Angeles County Super. Ct. No. DK16575)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.L., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Debra Losnick, Judge. Appeal dismissed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

J.L. (Father) appeals from the juvenile court's jurisdiction and disposition orders made after the juvenile court adjudged his son E.L. (born in 2011) a dependent under Welfare and Institutions Code[1] section 300. The sustained petition alleged: (1) E.L.'s mother, T.W., abused drugs; (2) that the parents had a history of domestic violence; and (3) that Father had a history of substance abuse that interfered with his ability to care for E.L. and placed the minor at risk of harm. Although Father contends this court should reverse the jurisdiction findings involving his substance abuse, he does not challenge the other jurisdictional findings. Because Father's contentions, even if accepted, would not justify a reversal of the court's jurisdiction order or the grant of any other effective relief, we decline to address them and dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

E.L., his mother (T.W.), and Father came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in August 2014 when DCFS received a referral alleging neglect and emotional abuse of E.L. and his older half-sibling N.W.[2] based on domestic violence arising from a custody dispute between the parents over E.L. Although DCFS determined the allegations were inconclusive, in November 2015, DCFS received a second report of physical and emotional abuse of the children, again based on a confrontation between the parents. The second allegation was also found to be inconclusive.

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

[2] E.L. has two older half-siblings, N.W. and Ty.W., who, are under legal guardianship with relatives and are not the subject of these proceedings.

The current proceedings began on March 7, 2016 when DCFS received a referral that the police had been summoned to a hotel room in Long Beach because T.W. and Father had engaged in domestic violence while E.L. was present. During the incident Father had allegedly choked and bit T.W. Police arrested Father for domestic violence and released the minor to T.W. The referral also indicated that T.W. was homeless and that she had a history of substance abuse and was currently abusing drugs.

When the social worker interviewed Father in jail, he stated that E.L. lived primarily with him in the paternal grandparent's home. Father would take E.L. to visit T.W., who lived in various hotels. With respect to the incident in the hotel room, Father minimized the domestic violence, but admitted that he and T.W. have fought on prior occasions.

Father denied having a problem with drugs or alcohol, but stated that he had voluntarily enrolled in an alcohol treatment program in the past. Father also reported that he had been arrested once for possession of drugs. DCFS discovered additional criminal history for Father, including two arrests as a juvenile—one for receiving stolen property and the other for attempted murder. As an adult, Father suffered a felony conviction for possession of a loaded weapon on a school campus, a 2003 misdemeanor conviction for driving under the influence, and a 2005 misdemeanor conviction for driving without a license.

Father's record also disclosed arrests involving controlled substances. Specifically in October 2014, Father was stopped by police when he ran a red light in his car and nearly caused a traffic accident. Based on Father's strange responses, erratic behavior and physical appearance police suspected that Father was under the influence of a controlled substance. Police found a baggie containing off-white crystals believed to be methamphetamine in the pocket of Father's shorts and found a small glass pipe

containing white residue in the compartment of the driver's side door of Father's car. Father admitted to officers that the baggie containing methamphetamine and the pipe belonged to him and that he had recently used the drug. Father was arrested for possession of a controlled substance and possession of unlawful paraphernalia.[3]

After that in August 2015, Father was arrested for vandalism and possession of a controlled substance after he drove his car through a chain-linked fence at the Irwindale Speedway. E.L. and his older sibling N.W. were in the car with him at the time. When police arrived Father appeared pale, fatigued and sweating profusely, as though he was about to pass out. When officers searched Father's car they found a small glass pipe containing residue believed to be methamphetamine in the compartment of the driver's side door. Father denied awareness of the drug paraphernalia, and stated that he drove through the gate trying to get help because he had a medical emergency. He also admitted to the social worker, however, that the officers thought he was under the influence of a substance at the time. Police arrested Father for vandalism and possession of drug paraphernalia.[4]

When interviewed, T.W. confirmed that Father had physically assaulted her in the hotel room. T.W. also admitted to prior marijuana and methamphetamine use. E.L. told the social worker that Father beat his mother in the hotel room while E.L. hid under

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[3] Father's criminal history indicates that the charges were rejected by the prosecutor for an unspecified reason. Nonetheless, on December 19, 2015, the court issued an arrest warrant for Father for possession of a controlled substance.

[4] On December 21, 2015, Father pled to misdemeanor vandalism and in exchange the court dismissed the drug paraphernalia charge.

a table. E.L. also told the social worker that he had witnessed his parents fight "like 10 times."

Thereafter on April 19, 2016, DCFS filed a dependency petition under section 300, alleging that T.W. and Father engaged in domestic violence (counts a-1 and b-1), T.W. had a substance abuse problem and that Father failed to protect E.L. (count b-2). The petition further alleged that Father placed E.L. in a dangerous situation by having drug paraphernalia in the car within access of E.L. and N.W. (count b-3). At the detention hearing, the court ordered E.L. detained and then released him to a paternal aunt.

On June 1, 2016, DCFS filed an amended dependency petition, adding the allegation that Father had a history of substance abuse, including methamphetamine use and was a current abuser of illicit drugs, and that he was under the influence of drugs while E.L. was in his care (count b-4).[5]

The jurisdiction/disposition report reveals that although Father had been referred to and had agreed to drug testing for DCFS, he failed to appear for testing. DCFS also reported that in connection with Father's criminal case, he had enrolled in a court-ordered Penal Code section 1000[6] drug program.

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[5] As sustained by the court, "amended" count b-4 provides (capitalization omitted):

"[E.L.]'s father, J[.] 0[.] L[.], has a history of substance abuse including methamphetamine, which periodically interferes [with] the father['s] ability to provid[e] regular care of the child. On prior occasions, the father was under the influence of illicit drugs, while the child was in the father's care and supervision. The father's substance abuse endangers the child's physical health and safety, placing the child at risk of serious physical harm, damage, danger and failure to protect."

[6] Penal Code section 1000 et seq. allows the option for a deferred entry of judgment on certain drug offenses provided the defendant participates in a county-certified drug program.

The 20-week program required the participants to attend classes, 12-step meetings as well as drug tests. As of mid-June 2015, Father had attended five classes and had missed five classes. DCFS reported that if Father missed one more class, he would be dismissed from the program. Father had also failed to submit to drug tests for the program.

In T.W.'s subsequent interview she conceded that she and Father had a six-year history of domestic violence. She also admitted she started using methamphetamine when she was in high school and submitted a urine sample that was positive for methamphetamine.

At the June 28, 2016 jurisdiction and disposition hearing, DCFS and the minor's counsel recommended the court declare E.L. a dependent of the court and ordered reunification services for both parents. Father only contested the b-4 drug abuse allegation in the petition, arguing there was no evidence he used drugs in E.L.'s presence or that his use placed the minor at risk. Father asserted that the 2014 incident was too remote and reminded the court that he had never been prosecuted for possession of a controlled substance or drug paraphernalia.

The court sustained counts b-1 and b-2, regarding the parents' domestic violence and T.W.'s substance abuse, but struck count b-3 and the allegation that Father failed to protect E.L. from T.W.'s substance abuse. The juvenile court also found sufficient evidence to sustain the count b-4 regarding Father's substance abuse, observing that "children are entitled to drug free environments as part of [section] 300."

The juvenile court declared E.L. a dependent and removed him from his parents' custody; Father did not object to the court's declaration of dependency or E.L.'s removal. The court also ordered reunification services for Father including a drug treatment program and random drug testing. Father asked that he be

required to do 10 to 15 drug tests, and if he missed a test or tested positive for drugs, then he should enter a drug treatment program.

Father timely appealed.

DISCUSSION

Father contends that this court must reverse the juvenile court's findings on the substance abuse allegation b-4, arguing that his alleged prior drug consumption did not affect his ability to care for E.L. and that the court misapplied the law. As we explain, Father has failed to assert an argument which warrants appellate review.

"When 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 such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) 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." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) An appellate court will not consider an issue raised by Father if the appellate court "cannot render any relief to Father that would have a practical, tangible impact on his position in the dependency proceeding." (*Ibid.*)

Father here does not challenge that substantial evidence supported allegations b-1, and b-2 of the dependency petition nor does he argue that the juvenile court improperly asserted jurisdiction over E.L. based on those allegations. Thus, even if

we conclude that insufficient evidence supported allegation b-4, or that the court misapplied the law in making that finding, we would still affirm the juvenile court's jurisdictional order. (*In re Alexis E., supra,* 171 Cal.App.4th at p. 451.)

In addition, although the court retains the discretion to consider alternative jurisdictional findings, Father has not convinced us that such review is warranted. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Our reversal of the true finding regarding Father's substance abuse would have no impact on any other aspect of the dependency proceeding. Contrary to Father's assertion, reversal of the true finding would not require us to strike the substance abuse terms from his case plan. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006 [dispositional order requiring the father to submit to drug and alcohol testing was proper, even though dependency petition's allegation regarding substance abuse was not proven].)

We do not agree with Father's argument that the court could not have ordered a case plan including a drug treatment program, a 12-step program, and random drug testing absent a jurisdictional finding that he had a history of substance abuse.

"At the dispositional hearing, the juvenile court must order child welfare services for the minor and the minor's parents to facilitate reunification of the family." (*In re Christopher H., supra,* 50 Cal.App.4th at p. 1006, citing Welf. & Inst. Code, § 361.5, subd. (a) ["[W]henever a child is removed from a parent's . . . custody, the juvenile court shall order the social worker to provide child welfare services" to the child and the parents].) And although the reunification plan must be tailored to the unique facts relating to the particular family and "designed to eliminate those conditions that led to the court's finding that the child is a person described by [s]ection 300" (§ 362, subd. (d)), "the juvenile court is not limited to the content of the sustained petition when it considers what

dispositional orders would be in the best interests of the children." (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.)

The juvenile court "has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*In re Christopher H., supra,* 50 Cal.App.4th at p. 1006.) "Our courts have recognized that severe measures are necessary to prevent drug usage from undermining the prospect of the successful reunification of families." (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) Where the record demonstrates that a Father has a substance abuse problem, a dispositional order requiring drug treatment and testing is proper. (*In re Christopher H., supra,* 50 Cal.App.4th at pp. 1007-1008.) Such an order is appropriate even if a dependency petition allegation regarding substance abuse has not been proven and the substance abuse has "not yet affected [the father's] ability to care for" the child. (*Id.* at pp. 1006, 1008.)

Here, the record demonstrates that Father had a history of using controlled substances. He also suffered arrests for possession of controlled substances and possession of drug paraphernalia. In each instance that he was apprehended, the arresting officers believed that he was under the influence of a controlled substance while driving a car. And in the second incident, E.L. and his half-sibling were in the car. Also, even though his last arrest was approximately 10 months before the adjudication, at the time of the jurisdiction and disposition hearing, Father had yet to complete the drug treatment program in his criminal case. In fact he had missed more than half of the required classes and was at risk of being kicked out of the program. Moreover, he had not completed any of the drug tests required in the criminal case and this matter.

Thus, based on Father's substance abuse history and the unique facts of this particular family, we conclude that the juvenile

court's order requiring Father to undergo random drug testing and drug treatment programs as part of his reunification plan would be appropriate even in the absence of the substance abuse jurisdictional finding alleged in b-4. Accordingly, because we cannot render any effective relief, we will not consider appellant's argument regarding the substance abuse allegation b-4. (See *In re I.A., supra,* 201 Cal.App.4th at pp. 1487–1488 ["Because Father's contentions, even if accepted, would not justify a reversal of the court's jurisdictional ruling or the grant of any other effective relief, we decline to address them."].)

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.