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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.H., a Person Coming Under
the Juvenile Court Law.

B287418

(Los Angeles County
Super. Ct. No. 17CCJP00771)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Rudolph A. Diaz, Judge. Dismissed.

Megan Turkat Schirn, under appointment by the Court of
Appeal, for Defendant and Appellant D.H.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent Los Angeles County
Department of Children and Family Services.

D.H. (Mother) appeals from the juvenile court's jurisdiction and disposition orders made after the court adjudged her daughter M.H. (born in 2002) a dependent under Welfare and Institutions Code¹ section 300.² Mother contends that substantial evidence did not support the jurisdiction and disposition orders. As we explain, the juvenile court's orders terminating dependency jurisdiction and returning M.H. to Mother's custody render the appeal moot and, therefore, we dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

In early September 2017, the family³ came to the attention of the Department of Children and Family Services (DCFS) when it received a referral from the police that M.H.'s 16-year-old sister, S.L., had disclosed to her school counselor that R.O. (the 24-year-old boyfriend of her adult sibling E.S.)⁴ had raped S.L. when she was

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

² The court also made jurisdictional findings regarding Mother's daughter S.L. (born in 2001), but Mother does not challenge them and S.L. is not a party to this appeal.

³ The family, which includes Mother, M.H., S.L., and other siblings some of whom are now adults, was the subject of dependency referrals and investigations in 2001, 2002, 2003, 2008, 2009, and 2014, and on two separate occasions, the juvenile dependency court sustained section 300, subdivision (b)(1) findings based on allegations that Mother failed to protect the children from domestic violence, and from Mother's mental health and substance abuse problems.

⁴ E.S. and R.O. have two children that are 3 years old and 5 years old. Although they maintain a separate household, they spent time in the home of Mother with S.L. and M.H.

12 years old. S.L. reported that R.O. had sexually assaulted her on a number of occasions since the initial rape. S.L. stated that she reported the sexual abuse to Mother in the fall of 2016, but Mother refused to report the abuse to law enforcement and the abuse continued. The police informed the DCFS social worker that they had also interviewed 15-year-old M.H., who denied R.O. abused her, but also stated she was aware that R.O. had abused S.L.

Mother denied to the DCFS social worker that she was aware of the sexual abuse, and when the social worker interviewed S.L. and M.H., they initially recanted the statements they had given to the police. Nonetheless, another sibling (R.P.), who had previously lived in the family home when some of the alleged sexual assaults occurred, confirmed the facts supporting the sexual abuse, including the fact that S.L. had previously reported the abuse to Mother. Later, after Mother threatened S.L. with harm, S.L. reaffirmed to the social worker the allegations of sexual abuse and S.L. reported that Mother had pressured her and M.H. to recant their statements to police.

DCFS filed a petition under section 300, subdivisions (b)(1), (d) and (j), on behalf of minors S.L. and M.H. The petition alleged that in September 2017, and on prior occasions, for approximately five years, R.O. had sexually abused S.L. and that Mother knew of the sexual abuse and failed to take action to protect the child by allowing R.O. to frequent the family home and have access to the child. The petition also alleged that the sexual abuse of S.L., and Mother's failure to protect her, placed the child's sibling, M.H., at risk of serious physical and emotional harm. At the detention

hearing, the juvenile court ordered M.H. released to her father⁵ and detained her from Mother.⁶

As reflected in the jurisdiction/disposition report, when re-interviewed by the social worker, Mother admitted that in 2016, S.L. had reported the sexual assaults to her. Mother also stated that R.O. had revealed to her that he had a “sexual relationship” with S.L. Mother claimed that she had not contacted law enforcement because S.L. had asked her not to report it and because Mother wanted to protect her daughter, E.S. and her grandchildren from losing R.O. who provided them with financial support. DCFS recommended that the court sustain the section 300 petition.

On December 12, 2017, the court conducted the combined jurisdiction/disposition hearing.⁷ Over the objection of Mother and M.H.’s counsel, the juvenile court sustained the allegations, finding M.H. was described by section 300, subdivisions (b)(1), (d), and (j). The juvenile court found that Mother’s knowledge of the sexual assaults, as well as Mother’s failure to take action to protect her children, posed a risk of harm to S.L. and M.H. The court further expressed a concern that Mother had involved M.H. in “what looks like a cover-up [of the abuse], or at least a failure to cooperate” with the authorities. The juvenile court declared M.H. a dependent child of the court, ordered M.H. removed from Mother’s custody, and

⁵ The court detained S.L. from Mother and placed her in shelter care. S.L. subsequently ran away from her placement.

⁶ Mother and M.H.’s father are not married and are no longer in a relationship, but prior to the dependency proceedings, they shared custody of M.H.

⁷ Although the whereabouts of S.L. remained unknown, the court proceeded with the jurisdictional hearing as to both S.L. and M.H.

placed her in the custody of her father. The court also ordered Mother to have monitored visitation and participate in programs and classes.⁸

Mother filed a timely notice of appeal. On August 30, 2018, the dependency court terminated its jurisdiction over M.H., and ordered her released to the custody of both parents.⁹

DISCUSSION

“As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but ‘must be decided on a case-by-case basis.’” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) The appellate court may find that the appeal is not moot “‘if the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] or where the alleged defect undermines the juvenile court’s initial jurisdictional finding.’” (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 [italics omitted], quoting *In re Kristin B.* (1986) 187 Cal.App.3d 596, 605; 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

⁸ The court continued the disposition hearing for S.L.

⁹ We grant DCFS’s request to take judicial notice of the orders terminating dependency jurisdiction and returning custody of M.H. to Mother and M.H.’s father. (Evid. Code, §§ 452, subd. (d) & 459.) In a supplemental brief, DCFS urges this court to dismiss as moot Mother’s appeal of the disposition and visitation orders. Although Mother’s appellate counsel was served with the request for the judicial notice and DCFS’s motion to dismiss, Mother did not file a response.

have severe and unfair consequences to [the parent] in future family law or dependency proceedings.”].)

In her opening brief, Mother contended that the juvenile court erred in assuming jurisdiction over M.H. because the evidence was insufficient to support the jurisdictional findings. She also challenged the disposition and visitation orders. The issues, however, of whether substantial evidence existed to support the juvenile court’s exercise of jurisdiction and the disposition and visitation orders have been rendered moot by the subsequent order terminating dependency jurisdiction over M.H. and returning her to the custody arrangement that existed before the dependency proceedings.

After given an opportunity to do so, Mother did not oppose the motion to dismiss the appeal of the disposition and visitation orders. Also, she did not submit a supplemental brief asserting an exception to the mootness doctrine or maintaining the viability of her appeal in light of the subsequent orders terminating jurisdiction and returning M.H. to her custody. In addition, on this record, we do not perceive of any defect undermining the exercise of jurisdiction, other extraordinary circumstances, or unfair or severe future consequences that require us to decide these moot issues. Therefore, we decline to exercise our discretion to review the merits of the appeal.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.