

Filed 2/6/18 In re D.P. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re D.P., a Person Coming Under
the Juvenile Court Law.

B282542
(Los Angeles County
Super. Ct. No. DK19296)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

N.B.,

Defendant and Appellant.

APPEAL from findings and an order of the Superior Court of
Los Angeles County. Karin Borzakian, Commissioner. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for
Defendant and Appellant.

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

Marshal F. Levin, under appointment by the Court of Appeal, for Minor.

N.B. (mother) appeals from the juvenile court's jurisdictional order regarding D.P. (minor) based on Welfare and Institutions Code section 300, subdivisions (b) and (d).¹ She asks us to exercise our discretion to review the sufficiency of the evidence for certain subdivision (d) findings. According to mother, there was insufficient evidence that she knew minor was being sexually abused or was at risk of sexual abuse. Also, she claims there was insufficient evidence that she failed to protect him from sexual abuse.

We find no error and affirm.

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

FACTS

Detention; Initial Interviews

When he was 17 years old, minor called the Child Protection Hotline to report that he had been living with Ashly M. (Ashly) and her family, that he was having sex with Ashly, and he believed she was pregnant with his child. Minor was detained by law enforcement.

A detective from the Los Angeles Sheriff's Department interviewed minor, who stated the following: He and his mother had been living in a Palmdale trailer park next door to Ashly and her husband, Shawn C. (Shawn). At some point, minor and mother were evicted due to accusations that he burglarized a neighbor's home. In November or December 2015, mother moved to Boron, California. Minor, however, did not want to move, so he stayed with friends and then eventually moved in with Ashly and Shawn. Soon after, minor and Ashly started a sexual relationship. Minor said he had video on his phone of him having sex with Ashly, and said Shawn made the recording.² A few weeks before minor called the Child Protection Hotline, he informed mother of his relationship with Ashly, and mother did not approve.

A social worker also interviewed minor. He relayed a consistent story, and added some details. Mother wanted him to move to Boron with her but could not stop him from staying in Palmdale. Ashly asked him to move into the home with her and her family because she knew minor had nowhere to go. Initially, he was hesitant because Ashly and Shawn were "known as

² The detective viewed the videotape.

swingers.” He moved in on his 17th birthday. After moving in, he told Ashly that he was not going to have sex with her. But then they all agreed that minor would be in a “relationship” with Ashly, which included sexual intercourse, and that they would all be “happy” and a “family.” Minor and Ashly began having unprotected sexual intercourse on a regular basis. Shawn told minor to ejaculate inside of her. Minor was concerned about his unborn baby because Ashly had not seen a doctor since she found out she was pregnant. Minor smoked marijuana and drank with Ashly and Shawn.³ Though it had been a while, minor had seen Ashly and Shawn hit each other.

The social worker interviewed mother by phone. Mother said, *inter alia*, that when she moved away, minor initially stayed with his twin sister and older sister. Mother did not know why minor went to stay with friends, stating, “I don’t get in my children’s business. It’s not my house.” When the social worker informed mother that her minor children are her responsibility no matter who they are with or where they are living, she said she was unable to tell minor what to do, and stated, “He does what he wants to do. We have tried to help him but he won’t listen.” Mother claimed she did not know minor was living with Ashly and Shawn. The prior July, minor called mother and said he had been in a fight with gang members, and that she needed to pick him up. According to mother, she went to Ashly and Shawn’s home to pick up minor and they were all drunk. Minor was upset with mother, and “busted” her windshield. Mother

³ In a later interview, minor stated that had used methamphetamine in the past, and on one occasion he had used it with Ashly.

told the social worker, “I was done with him,” and did not talk to him again until he called two weeks before the interview to say he was having sex with Ashly and she was pregnant. Per mother: She picked minor up and he stayed with her for a few days. She said they needed to tell the police and the Department of Children and Family Services (Department), but he begged her not to make a report. Minor threatened to never talk to her, and said he would hate her, if she contacted the authorities. While he was at mother’s house, he was in contact with Ashly. After minor said he wanted to return to Ashly’s home, mother returned him to Palmdale. The social worker asked mother if she made a police report, and she said, “I knew I should have made a report but he made me promise that I wouldn’t.”

The social worker interviewed Ashly, who stated that mother knew minor was living with Ashly because Ashly and mother sent text messages to each other on a daily basis. Also, Ashly said minor spoke to mother every day. Moreover, Ashly and Shawn were informed by minor that he had told mother everything about his relationship with Ashly and her being pregnant with his baby. Mother came to Ashly’s home a month and half prior to the interview to see minor but left after they began arguing. Ashly admitted to having a sexual relationship with minor, and said there was a video, but claimed she did not know who made the video.

Ashly was arrested and charged with felony oral copulation and felony unlawful sexual intercourse with a minor. Shawn was being investigated, and there was a possibility he would be arrested, too.

The Dependency Petition

The Department filed a three-count dependency petition on minor's behalf. Two counts—one pursuant to section 300, subdivision (b), and one pursuant to section 300, subdivision (d)—alleged that Ashly sexually abused minor; Shawn encouraged minor to engage in sexual intercourse with Ashly; Shawn exposed minor to child pornography by taping Ashly and minor engaging in sexual intercourse; and mother failed to protect minor even though she knew of the sexual abuse. In a separate count pursuant to section 300, subdivision (b), the petition alleged that mother failed to make an appropriate plan for minor's ongoing care and supervision.

Jurisdiction/Disposition Report

On October 24, 2016, Ashly and Shawn pleaded no contest to unlawful sexual intercourse with a minor within the meaning of Penal Code section 261.5, subdivision (c) and production of pornography of a child within the meaning of Penal Code section 311.4, subdivision (c).

A social worker interviewed minor on January 5, 2017. He explained that he called the Child Protection Hotline because Ashly was pregnant and drinking, and because Shawn was hitting her. Also, minor explained that he called mother and asked her to help "get" his child. According to minor, mother said he could not live with her for two months. Asked if he informed mother of his whereabouts, he said she knew he was living with Ashly and Shawn. On three occasions, mother picked minor up from their residence and then returned him to their residence.

Jurisdiction/Disposition Hearing

The juvenile court admitted the Department's detention report and jurisdiction/disposition report into evidence.

Minor's sister C.P. testified. At one point, minor lived with C.P. and her older sister. When he left, he sometimes stayed with mother and sometimes stayed with friends. Eventually C.P. learned that minor was living with Ashly and Shawn. Two weeks prior to "this case" she heard about minor having a sexual relationship with Ashly, and heard that Ashly and Shawn were swingers. C.P. asked mother if she was aware of the sexual relationship between minor and Ashly. Mother expressed concern for minor and indicated that she did not know what to do.

The juvenile court sustained the allegations under section 300, subdivision (b). It amended the count under subdivision (d) by removing the allegation that Ashly sexually abused minor and adding the allegation that Ashly exploited minor. By interlineation, the juvenile court crossed out "sexually abused" and wrote in "exploited" in one place. Otherwise, on the petition, the juvenile court left intact the allegations that "[s]uch sexual abuse consisted of [Ashly] repeatedly engaging in sexual intercourse with [minor], resulting in [Ashly] becoming pregnant." Also, the juvenile court left intact the allegations that Shawn "encouraged [minor] to engage in sexual intercourse with [Ashly]" and "exposed [Shawn] to child pornography and video[taped] [Ashly] and [minor] engaging in sexual intercourse. [Mother] failed to protect [minor] when [she] knew of the ongoing

sexual abuse of [minor] by [Ashly].”⁴ As amended, the juvenile court sustained the count pursuant to section 300, subdivision (d).

The juvenile court declared minor a dependent and ordered him suitably placed.

Mother appealed.

DISCUSSION

Mother does not challenge jurisdiction under section 300, subdivision (b), nor does she challenge jurisdiction under the first clause of section 300, subdivision (d)⁵ (i.e., minor has been sexually abused), so we need not “consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) But, as an exercise of discretion, we can consider mother’s challenge to the jurisdictional findings under the third clause of section 300, subdivision (d) (i.e., failure to

⁴ It is unclear whether the juvenile court intended to substitute “exploited” or some gerund in every instance in which the words “sexually abused” or “sexual abuse” appeared in the petition. Regardless, the amended petition alleged that Ashly had sexual intercourse with minor.

⁵ Section 300, subdivision (d) provides that a child is within the jurisdiction of the juvenile court if he or she meets the following description: “The child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

protect) if, inter alia, it could prejudice her in current or future dependency proceedings, or if they could have consequences for her beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Findings that a mother knowingly or negligently exposed a minor to a substantial risk of sexual abuse “carries a particular stigma,” and failure to protect findings in general “could potentially impact . . . future dependency proceedings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) We therefore opt to reach the merits.

Jurisdictional findings are reviewed under the substantial evidence test. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.)

Here, there was substantial evidence that mother knew of Ashly’s sexual abuse of minor and failed to protect him from future sexual abuse. Before minor called the Child Protection Hotline, he told mother about his sexual relationship with Ashly, and that she was pregnant. Though mother let minor stay with her for a few days, she returned him to Palmdale when he said he wanted to return to Ashly’s home. At some point, minor asked mother to help him with custody of his unborn child. Mother told minor he could not live with her for two months. This evidence supported the juvenile court’s findings under section 300, subdivision (d) because it established mother did nothing to protect minor from Ashly upon learning about their sexual relationship; mother did not call the police or otherwise act to keep minor away from Ashly.

DISPOSITION

The jurisdictional order and findings are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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