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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.J., a Person Coming  
Under the Juvenile Court Law.

B286386  
(Los Angeles County  
Super. Ct. No. DK22009)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIELLE J.,

Defendant and Appellant.

APPEAL from jurisdictional and dispositional orders  
of the Superior Court of Los Angeles County, Emma Castro,  
Commissioner. Affirmed.

Liana Serobian, under appointment by the Court of Appeal,  
for Defendant and Appellant.

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

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In this dependency case, mother pled no contest to a Welfare and Institutions Code section 300 petition.<sup>1</sup> On appeal, she principally challenges the juvenile court's dispositional order placing two of her three children in their father's custody. Mother's legal arguments are based on inaccurate factual premises and accordingly provide no basis for reversal. We affirm the juvenile court's jurisdictional and dispositional orders.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The Department of Children and Family Services (DCFS) reported that at the time of the dependency proceedings, mother and father were divorced. They previously had been married for 10 years and had been in a relationship for 20 years. Father remarried after the divorce. Mother and father indicated that prior to the dependency proceedings, the family law court had entered a shared custody order in which the children spent time at mother's and father's homes.

### **1. *Section 300 Petition***

In March 2017, DCFS filed a petition alleging that N.J. (then 16 years old), E.J. (then 13 years old), and M.J. (then 10 years old) fell within the definition of section 300. The section 300 petition contained allegations that mother and father

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<sup>1</sup> All further statutory citations are to the Welfare and Institutions Code.

physically abused N.J., N.J. sexually abused E.J., and E.J. engaged in inappropriate sexual conduct towards mother.

## **2. *Detention***

The detention report indicated that an unnamed observer reported mother drinks “a fifth of tequila daily” and would drive with the children after drinking. Father and M.J. reported that mother drank alcohol. N.J. reported that mother drank alcohol but did not drive with the children after drinking. Mother’s former roommate indicated that mother exhibited aggressive behavior when she drank alcohol and reported that mother would “drink in excess and then drink with her children and the neighbor’s children in the car.”

N.J. told a social worker that he called the police when mother locked him out of the house. N.J. also recounted that father pushed and hit him. N.J. stated that he and father constantly argued.

Police officers were called when mother and N.J. were fighting. The police report recorded that N.J. said mother was drunk.

Mother admitted drinking alcohol but denied drinking to the point of intoxication. Mother denied drinking alcohol when her children were home. Mother reported taking several medications, including Adderall® and Percocet®. When DCFS first requested testing for controlled substances, mother refused.

Social workers observed mother’s limited parenting skills with N.J. Mother lacked consistency. Mother also was unable to discipline N.J. N.J. received a citation for using marijuana. N.J.’s school reported that between September 2016, and June 2017, N.J. had a total of 107 unverified absences from school.

The detention report indicated that mother was participating in parenting education and substance abuse counseling and had been given referrals for individual counseling.

The juvenile court issued a detention order on March 10, 2017. Over DCFS's objection, the court released N.J. to mother's care. The juvenile court ordered mother to refrain from drinking alcohol while N.J. was in her care. The juvenile court ordered N.J. to attend school every day, and ordered mother to participate in random alcohol testing. The juvenile court detained E.J. and M.J. from mother, placing them in father's custody.

### **3. *Jurisdiction***

On May 16, 2017, both mother and father pled no contest to some of the allegations in the section 300 petition. Specifically they pled no contest to the following allegations: Mother's recent alcohol use "periodically renders" her unable to care for the children and places the children at risk of harm. Mother and father are unable to supervise N.J. "due to his special unique needs and behavioral issues. Such inability on the part of the parents has resulted in physical altercations between [N.J.] and his father and a physical altercation between [N.J.] and his mother, and places [N.J.] and his siblings . . . at risk of harm." DCFS further alleged that father was unable to supervise N.J. properly. The juvenile court sustained the allegations consistent with the pleas.

### **4. *Section 342 Petition***

In June 2017, DCFS filed a section 342 subsequent petition. DCFS alleged that mother abused methamphetamines

and amphetamines, rendering her incapable of providing regular care of the children.

#### **5. *Mother's Drug Courses and Drug Tests***

Mother participated in individual and group substance abuse counseling. Mother's substance abuse counselor reported that mother did not consider drinking alcohol problematic and had not identified "how her substance abuse has impacted her life." Mother told a DCFS social worker that the allegations against her "[a]re all bullshit" and that she had no substance abuse issues.

Mother tested negative for all substances on March 20 and March 30, 2017. Mother missed two tests in April 2017 and explained that she missed one of them because her driver's license had expired. On April 21 and 27, 2017, mother tested positive for amphetamine. On May 5, 12 and 19, 2017, mother tested positive for amphetamine. On May 24, 2017, mother tested positive for amphetamines and oxycodone. On May 30, 2017, mother tested positive for methamphetamine. On June 5, 2017, mother tested positive for amphetamine. On June 12 and 21, 2017, mother tested positive for amphetamines and oxycodone. On June 28, 2017, mother tested positive for amphetamines. On July 3, 2017, mother tested positive for amphetamines and oxycodone.

Mother's psychiatrist indicated that mother "has a history of substance misuse." He stated that mother should not drink alcohol while taking her prescription medication.

#### **6. *DCFS Jurisdictional and Dispositional Reports***

DCFS reported that the police responded several times to mother's home. In addition to the incident involving N.J., police

responded when nine neighbors reported teenagers drinking alcohol and smoking marijuana. On a different occasion, mother's neighbors reported that there was a loud party at mother's home. Mother acknowledged that some people at the party were drinking alcohol, but stated that those drinking were over the age of 21.

Mother reported that in 2013, she had been arrested for public intoxication, but the charge was reduced to disturbing the peace. She believed that the conviction had been expunged. Mother acknowledged drinking three or four times a week, but denied drinking and driving with children in her car. Mother stated that she stopped drinking alcohol in March 2017. Mother reported that E.J. and M.J. wanted to spend more time with her. Mother asserted that the methamphetamine test was incorrect, claiming that she never used drugs. Mother admitted that she drank alcohol on her birthday.

Father reported that mother was drunk when she attended a meeting with a specialist, who had been assisting E.J. According to father, mother was aggressive towards him at that meeting. E.J.'s therapist reported that mother came to a counseling session under the influence of alcohol. Father was surprised when mother tested positive for methamphetamine because according to him, " '[a]lcohol was her thing. She was always a heavy drinker.' " Father reported that mother did not drive with the children after drinking.

DCFS reported that mother was uncooperative and refused to allow DCFS to enter the home to assess it. "The Department assessed that the family would not benefit from Voluntary Family Maintenance services due to the parents' lack of insight and the mother's refusal to cooperate with the Department."

DCFS further reported that alcohol was contraindicated with mother's prescription medications.

N.J. reported that mother would drink outside the house and drive home, but according to him, she drove alone. N.J. believed that mother stopped drinking after the dependency proceedings began. M.J. and E.J. reported that mother drank alcohol but did not drive after drinking. E.J. and M.J. indicated that they would like to see mother more frequently. Both were achieving developmental milestones. Father volunteered to monitor mother's visits so that she could have additional visits, but mother rejected this offer.

#### **7. *Jurisdictional Hearing on the Section 342 Petition and Dispositional Hearing***

At a hearing on the section 342 petition, mother testified and acknowledged that she tested positive for amphetamines regularly and methamphetamines once. Mother further testified that the positive amphetamine test was the result of her prescription medication, Adderall®. Mother testified that she tested positive for oxycodone because she took Percocet®, a prescription medication. Mother testified that for seven years, she took oxycodone twice a day every day. Mother denied drinking any alcohol even though she previously reported that she drank alcohol on her birthday. Mother testified she never used methamphetamine.

E.J. and M.J.'s counsel advocated in favor of sustaining the section 342 petition. Mother requested the section 342 petition be dismissed, arguing "we already have a sustained petition in this case. My client feels that this . . . count is duplicative and unduly burdensome, and there's no current risk as to the positive methamphetamine test from 5-31-2017." Mother's counsel

reiterated several times that the court had already sustained a petition in this case. Both M.J. and E.J. requested unmonitored visits with mother, and mother requested shared custody of them.

## **8. *Juvenile Court Findings and Orders***

The juvenile court found that mother was not credible.

The juvenile court emphasized that mother's psychiatrist reported that mother had a "history of substance misuse." The juvenile court also found mother lied under oath when she testified that she did not drink alcohol on her birthday.

The juvenile court further found that mother used methamphetamine. Although the juvenile court found the allegation of methamphetamine use true, it nevertheless concluded that the single use was insufficient to show the children would suffer serious physical harm "particularly, when those children [E.J. and M.J.] were in the custody of their father and not in the custody of the mother." The juvenile court emphasized, however, that it had found mother's methamphetamine use to be "factually true." The court indicated that it could consider mother's positive methamphetamine use in the context of making its dispositional orders.

The juvenile court took jurisdiction over N.J., E.J., and M.J. The juvenile court ordered mother's visits monitored with E.J. and M.J. They remained in father's custody. N.J. remained in mother's custody. The court ordered mother to participate in on-demand drug testing and individual counseling. The juvenile court ordered father to attend family counseling with E.J. and M.J.

This appeal followed. On appeal, mother requests the shared physical custody of E.J. and M.J.



## DISCUSSION

### I. Threshold Issues

Initially, mother appears to challenge jurisdiction, arguing that the juvenile court could have placed the family under informal supervision. This argument is unavailing. First, it is forfeited because mother failed to request this relief in the juvenile court. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339.) Also, mother pled no contest to allegations that her alcohol use placed the children at risk of harm. Mother's challenge to jurisdiction ignores her plea.

When entering her plea, mother acknowledged that jurisdiction was appropriate. She further acknowledged: "I understand that if I plead no contest or submit the petition on the report, the court will probably find that the petition is true." Mother further acknowledged: "I understand that if the petition is found to be true and the child is declared a dependent of the court, the court may assume custody of the child, and under certain circumstances, it is possible that no reunification services will be offered or provided." We reject mother's efforts to circumvent her plea.

Even without mother's plea, the evidence supported the conclusion that informal supervision was not warranted because mother failed to cooperate with DCFS and failed to acknowledge any need to ameliorate the conditions that led to the dependency proceedings. Notwithstanding her participation in substance abuse counseling, mother denied having any problems and described the allegations against her as "bullshit." Further, mother lied under oath about her alcohol and methamphetamine use. Mother's statement that DCFS failed to consider voluntary services is inconsistent with the record, which shows that DCFS

considered these services and concluded they would be insufficient in this case.<sup>2</sup>

## **II. Mother Demonstrates No Error in the Juvenile Court's Dispositional Order**

Mother's principal argument concerns disposition. She contends that the record does not support the conclusion that removing E.J. and M.J. from her care was the only way to protect them. She bases her argument on the following factual premises: (1) Mother's alcohol use did not place her children at risk; and (2) She tested negatively for all drugs that were not included in her prescription medication. Both factual premises are based on mischaracterizations of the record.

### **A. Mother mischaracterizes the record**

Mother's assertion that her alcohol use did not place E.J. and M.J. at risk is not supported by the record. Initially, she pled no contest to an allegation that her alcohol use "endangers the children's physical health and safety and places the children at risk of harm." Mother thus admitted the truth of the allegation of risk. Mother's admission is dispositive.

Additionally, although mother challenged the evidence, there was evidence that mother drove with the children in her car after drinking. Mother became aggressive when she drank as

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<sup>2</sup> Mother also incorrectly states that "[w]hen the Department got involved with the family, it requested that mother submit to a random alcohol and drug test on March 21, 2017, she did and the results were negative." March 21 was after mother pled no contest to the petition. We further observe mother refused to submit to a drug test.

evidenced by her aggression towards N.J. when police were called. Mother also acted aggressively towards father at a meeting involving E.J.'s therapist. Further, according to mother's psychiatrist, mother was not supposed to drink any alcohol in conjunction with the prescription medication that she used.

Mother's second factual premise—that the only drugs she used were prescription medication—also ignores the evidence in the record. The juvenile court expressly found that mother used methamphetamine, a drug that was not contained in her prescription medications. The reason the juvenile court concluded mother's methamphetamine use did not support jurisdiction was that E.J. and M.J. had been placed in father's custody.

**B. The evidence supported the juvenile court's dispositional order**

When the evidence in the record is considered under the appropriate standard of review, it amply supported the juvenile court's dispositional order. "On appeal from a dispositional order removing a child from a parent we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence." (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.) Removal is appropriate only if the juvenile court finds clear and convincing evidence of a substantial danger to the children and that there are no reasonable means to protect the children in the home. (*Ibid.*)

The following evidence supported removing E.J. and M.J. from mother's custody. As noted, the evidence demonstrated that mother became aggressive when she drank alcohol, including

fighting with N.J. Further, she attended meetings while under the influence of alcohol. She was arrested for public intoxication. Although there was conflicting evidence, there was evidence supporting the conclusion that mother drove alone and with the children after drinking alcohol.

Mother failed to acknowledge the risks posed to her children and failed to take steps to ameliorate the conduct that was the basis for jurisdiction. Although she participated in substance abuse counseling, she failed to acknowledge how drinking alcohol negatively influenced her life. She also failed to report to several drug tests and admitted to a social worker that she drank alcohol on her birthday. Additionally, police were called numerous time to mother's home, including when mother and N.J. were fighting and when mother was hosting loud parties. Mother's alcohol abuse was not an isolated occurrence, and she was not able to control her drinking even during the course of the dependency proceedings.

The same evidence undermines mother's argument that the juvenile court was required to terminate jurisdiction over E.J. and M.J. at the time of the dispositional hearing. Contrary to mother's argument, the evidence showed a continuing need for jurisdiction. Specifically, mother failed to address her drinking and simply lied about it, as well as about her drug use.

## **DISPOSITION**

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

CHANEY, Acting P. J.

CURREY, J.\*

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