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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re N.M. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.G.,

Defendant and Appellant.

B290173

(Los Angeles County
Super. Ct. No. 18CCJP00713A-B)

APPEAL from jurisdictional findings and orders of the
Superior Court of Los Angeles County, Steven E. Ipson, Referee.
Appeal dismissed.

Anne E. Fragasso, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Jacklyn K. Louie, Principal
Deputy County Counsel, for Plaintiff and Respondent.

The Department of Children and Family Services (Department) filed a petition (the original petition) against B.G. (mother) and father (not a party to this appeal) alleging their children N.M. and A.M. were at substantial risk of suffering serious physical harm due to domestic violence (counts a-1 and b-1) and mother's mental and emotional problems (count b-2). The Department also alleged A.M. was at risk of abuse and neglect because N.M. was a former dependent of the Juvenile Court due to the parents' domestic violence (count j-1).

At the first jurisdiction/disposition hearing on May 3, 2018, mother pled no contest to count b-2. At the second hearing on May 9, 2018, the court sustained count b-2, and dismissed counts a-1, b-1, and j-1. The court declared the minors dependents of the court under Welfare and Institutions Code section 300, subdivision (b)¹ and removed them from mother and father's physical custody pursuant to section 361, subdivision (c).

Mother filed notices of appeal on May 16, 2018.

On September 13, 2018, the Department filed a subsequent petition pursuant to section 342² (the subsequent petition) alleging the children were at substantial risk of suffering serious physical harm due to domestic violence and substance abuse. Specifically, the subsequent petition alleged father struck mother

¹ All further references are to the Welfare and Institutions Code.

² When a minor is already a dependent of the court under section 300, and the Department alleges new facts or circumstances other than those under which the original petition was sustained, the Department files a subsequent petition under section 342. (§ 342, subd. (a).) All the procedures and hearings required for an original petition are applicable to subsequent petitions brought under section 342. (*Id.*, subd. (b).)

in the face on August 11, 2018 (counts a-1 and b-1); and both parents had a history of substance abuse and tested positive for marijuana on August 14, 2018 (counts b-2 and b-3).³

On November 20, 2018, the court sustained counts b-1, b-3, and b-4 in the subsequent petition. The court also declared the children dependents of the court under section 300, and again removed them from mother and father's custody pursuant to section 361, subdivisions (a)(1), (c), and (d), and section 362, subdivision (a).

In her opening brief filed May 20, 2019, mother challenges the court's jurisdictional and dispositional orders issuing from the original petition. Specifically, mother alleges the court erred by taking jurisdiction over her children based on domestic violence allegations, and by removing the children from her custody. Mother does not challenge the court's jurisdictional or dispositional orders arising from the subsequent petition.

As to her first allegation, we agree with the Department that the issue is not justiciable. The court dismissed all counts involving domestic violence, finding they were not supported by a preponderance of the evidence. The court's jurisdiction over the children was based on mother's mental and emotional problems, to which she pled no contest and does not challenge on appeal. Accordingly, there is no actual controversy for us to resolve. (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132 [duty of judicial tribunal is to decide actual controversies upon which a judgment could operate].)

³ The petition also alleged father had tested positive for marijuana on January 31, 2018 (count b-3), and that father had violently abused a female companion (count b-4).

We also agree with the Department that Mother’s challenge to the court’s dispositional order removing the children from her custody based on the original petition is now moot. “An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citations.] On a case-by-case basis, the reviewing court decides whether subsequent events in a dependency case have rendered the appeal moot and whether its decision would affect the outcome of the case in a subsequent proceeding.” (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.) Ultimately, “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 N.S.* (2016) 245 Cal.App.4th 53, 60.)

The Department’s subsequent petition brought new allegations of domestic violence and substance abuse based on events that occurred in August 2018—months after the court adjudicated the original petition and removed the children from her care. The court issued another dispositional order in November 2018 removing the children from mother’s custody based on the subsequent petition, which mother does not challenge on appeal. Therefore, even if we were to reverse the court’s dispositional order arising from the original petition, we could grant mother no effective or tangible relief because the subsequent dispositional order remains operative. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316 [appeal moot when event occurs rendering effective relief impossible].) Accordingly, mother’s second allegation on appeal is moot.

DISPOSITION

Mother's appeal is dismissed for lack of an actual controversy as to the jurisdictional findings from the original petition, and because mother's challenge to the dispositional orders from the original petition are moot.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.