Filed 2/22/17 In re N.N. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.N., a Person Coming Under the Juvenile Court Law.	B271673 (Los Angeles County Super. Ct. No. DK14491)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.H. et al., Defendants and Appellants.	

APPEAL from findings and orders of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Dismissed.

Miri K. Wakuta, under appointment by the Court of Appeal, for Defendant and Appellant D.H.

Annie Greenleaf, under appointment by the Court of Appeal, for Defendant and Appellant L.N.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

From the backseat of the parked family car, six-year-old N.N. watched her father D.H. (Father) and mother L.N. (Mother) punch each other in the face. Both parents had been drinking. The Los Angeles County Department of Child and Family Services (DCFS) later filed a petition in juvenile court alleging the parents' domestic violence and Father's alcohol abuse were grounds for the court to find N.N. was a child described by section 300 of the Welfare and Institutions Code.[1] The juvenile court found the petition's allegations true and ordered DCFS to informally supervise the family and continue providing services to help the family remain together. After six months of informal supervision by DCFS without incident requiring court involvement, the petition to declare N.N. a dependent child was dismissed. We consider whether the parents' appeals from the juvenile court's jurisdictional findings are therefore moot.

I. BACKGROUND

On June 23, 2015, during a family vacation in Northern California, Father took N.N. to play on boardwalk amusement rides while Mother stayed behind and went to a restaurant to do some work. Over the course of the next few hours with N.N., Father drank four single-serving-size bottles of wine. At the restaurant, Mother drank two glasses of wine herself.

Father and N.N. met Mother back at the family car. Father was sitting in the driver's seat, and Mother believed he was drunk. When she told Father he could not drive, the two switched seats and began arguing. Although the parents gave

---

[1] Undesignated statutory references that follow are to the Welfare and Institutions Code.

conflicting accounts of who hit whom first, both parents agree they engaged in a physical fight—punching each other in the face—in N.N.'s presence.

The police were called as a result of the altercation between Mother and Father. When tested, Father's blood alcohol content was 0.134% (higher than the legal limit to drive) and Mother's was .012% (below the limit). Police arrested Father for domestic violence and being drunk in public; Mother was not taken into custody.

DCFS subsequently received a referral concerning the domestic violence incident between Mother and Father in Northern California. DCFS filed a petition in juvenile court alleging N.N. was a child described by section 300, subdivisions (a) and (b). Specifically, the petition alleged, under both subdivisions (a) and (b), that the parents engaged in a violent altercation in N.N.'s presence. The petition further alleged, under only subdivision (b), that Father was an abuser of alcohol, which rendered him incapable of providing regular care for N.N. and placed her at risk of serious harm. Believing, however, that removing N.N. from Mother and Father's care would be detrimental in light of N.N.'s assurance she felt safe in her home, DCFS did not seek to detain N.N. from her parents pending the resolution of the juvenile court proceedings.

DCFS interviewed the parents in advance of a jurisdiction hearing scheduled by the juvenile court. Father told a DCFS social worker he had made a "horrible mistake," adding he regretted hitting his wife and hated that N.N. witnessed the incident. Mother said the June 23, 2015, altercation she had with Father was an "isolated incident," but she did acknowledge she did not like Father's drinking, even though she believed it

was "not excessive."[2] DCFS's jurisdiction report expressed the agency's "serious concerns" over the parents' lack of insight regarding the detrimental impact of their domestic violence on N.N., but DCFS ultimately recommended the court leave N.N. placed with her parents.

The juvenile court found the petition's allegations true at a jurisdiction hearing. In addition to making the requisite findings by a preponderance of the evidence, the court also noted that there appeared to be current evidence of turmoil in the family home and that Mother and Father appeared to be "eager to point the finger at others" rather than reflecting on their own conduct and the effect it was having on N.N. The court set a date for a contested disposition hearing.

At the disposition hearing, the attorneys representing Mother and Father asked the court to refrain from declaring N.N. a dependent child and to instead order informal DCFS supervision of the family under section 360, subdivision (b).[3] DCFS and counsel for N.N. opposed the request. The juvenile

---

[2] Previously, Mother told the police officers who responded to the June 23, 2015, domestic violence call that there had been four or five other unreported instances of domestic violence between her and Father. Father had also previously told a DCFS social worker that there had been "other incidents" in which Mother had hit him.

[3] The statute provides: "If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301."

court sided with the parents and ordered informal supervision with continued family services, noting DCFS could re-file a petition to come back before the court if issues arose during the six-month period of informal supervision. In addition, the court ordered "the case . . . by operation of law is dismissed pursuant to [section] 390, after six months if it's not refiled [by DCFS]."

Mother and Father noticed appeals after the dispositional hearing. We invited the parties to submit supplemental briefs addressing whether DCFS had filed a petition during the period of informal supervision and, if not, whether juvenile court jurisdiction had been terminated. All parties agree that DCFS did not re-file a petition, and that the case has accordingly been dismissed and jurisdiction over N.N. terminated.

II. DISCUSSION

By virtue of the juvenile court's self-executing order at the disposition hearing, the contested jurisdictional findings do not serve as the predicate for any current order that is adverse to Mother or Father. There is no effective relief we can provide them, and their appeals are moot. (*In re N.S.* (2016) 245 Cal.App.4th 53, 60-61 (*N.S.*).)

Mother and Father do not contend otherwise. Instead, Mother argues certain "exceptions" to the mootness doctrine apply, and Father cites authority for the proposition that we can exercise our discretion to consider the merits of a moot appeal in certain circumstances. Neither position is convincing.

Mother argues we should reach the merits of the appeals because (1) "the controversy may reoccur between the parties" and (2) there is a "public interest" in "ensuring . . . families are not unduly subjected to state intervention where intervention is

unwarranted." As explained by the authority Mother cites, these exceptions to the mootness doctrine are discretionary (*In re M.R.* (2013) 220 Cal.App.4th 49, 56), and we see no reason to so exercise our discretion. This case presents no issue of broad public interest that is likely to recur but evade appellate review: the reporters of this state are replete with decisions that pass upon the jurisdictional issues raised by the noticed appeals in this case.[4] In addition, the bare contention that some unspecified controversy may recur between the parties is speculative and fails for that reason. (*N.S.*, *supra*, 245 Cal.App.4th at p. 62 [no reason to review juvenile court's jurisdiction findings on the basis of "speculation" or "caution" that possibly erroneous findings would remain unexamined and could have severe consequences in potential future proceedings]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1494-1495.)

Father asks us to exercise our discretion to decide the merits of his appeal, asserting we may do so under *In re M.W.* (2015) 238 Cal.App.4th 1444. That case, relying on *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*), holds a reviewing court may consider a challenge to a jurisdictional finding that is moot by virtue of the existence of other sustained findings if the challenged finding "'(1) serves as the basis for dispositional orders

---

[4] Mother asserts DCFS filed the dependency petition in this case "based on the parents' lack of enthusiasm in participating in voluntary services." While it is true that the parents' decision to forego voluntary services barred an alternative avenue of resolution, it is decidedly not the case that the parents' reticence is the basis of the petition. Rather, the petition is "based on" the undisputed physical violence between Mother and Father while in N.N.'s presence.

that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) "could have other consequences for [the appellant], beyond jurisdiction" [citation]."' (*In re M.W.*, *supra*, at p. 1452.) Assuming the *Drake M.* discretionary factors can be invoked in response to the mootness issue we confront in this case, they are nonetheless inapplicable. Father has not challenged the juvenile court's dispositional orders. And the showing he makes in support of the contention that the juvenile court's findings could be prejudicial or have future adverse consequences is limited to unsupported, speculative assertions that "the record of this adjudication can negatively impact [Father's] future legal positions, should he find himself in a custody proceeding" and that "such record is recorded in the Child Abuse Central Index which could permanently mar [Father's] record."[5] This is insufficient reason for us to exercise our discretion to consider the moot claims presented.

---

[5] Father also states he "is estopped from re-litigating the factual findings in any subsequent proceedings of this case . . . ." To the extent he refers to subsequent juvenile court proceedings, there will be none. The petition has been dismissed and jurisdiction has been terminated.

DISPOSITION

The appeals are dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.