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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re E.G.,

a Person Coming Under the
Juvenile Court Law.

B342649

(Los Angeles County
Super. Ct. No. 24CCJP02065)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Juan M. Valles, Commissioner. Affirmed.

Paul Couenhoven, by appointment of the Court of Appeal, for
Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County
Counsel, and Eden Gharapet, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

C.A. (father) appeals from the juvenile court's jurisdictional findings that he sexually abused his daughter, E.G., and its dispositional orders that she be removed from his home. Father argues the trial court found his daughter truth-incompetent, and her allegations were not supported by sufficient indicia of reliability. We are not persuaded by father's characterization of the trial court's findings, and we affirm its orders.

FACTS AND PROCEDURAL BACKGROUND

On July 3, 2024, the Department of Children and Family Services (Department) filed a dependency petition on behalf of E.G. under Welfare and Institutions Code section 300, subdivisions (b)(1) and (d).¹ The petition alleged that father penetrated E.G.'s vagina with his fingers on several occasions.² E.G. was four and a half years old at the time the petition was filed.

I. Prior Abuse Allegations

In December 2022, the Department investigated a report that father was physically abusing E.G. The report alleged that E.G., then three years old, had suddenly and dramatically changed her behavior towards father, and there was an injury on E.G.'s lip that looked as though someone had struck her on the mouth. The Department's investigation was inconclusive.

¹ All future statutory references are to the Welfare and Institutions Code, unless otherwise stated.

² E.G.'s mother was not listed as an offending parent in the petition, and is not a party to this appeal.

Both parents reported that previously, when E.G. went to visit her maternal grandmother, the maternal grandmother would hit E.G. right before father picked her up. At some point, the maternal step-grandfather showed E.G. a gun and told her he planned to use that gun to kill father. The parents reported their theory that the maternal grandparents disliked father, and that this behavior was an effort to alienate E.G. from him. After the incident with the gun, which occurred in October 2023, E.G.'s mother did not permit the maternal grandparents any further contact with E.G.

In April 2024, E.G. told her mother that father had touched E.G. When mother confronted father, he denied it. When they asked E.G., mother said E.G. appeared to be intimidated and said that it was not father but the maternal step-grandfather who had touched her. At this point, E.G. had not interacted with the maternal step-grandfather for at least five months.

II. *Current Allegations*

On the night of May 23, 2024, mother was sleeping in bed and father was sleeping on the couch. E.G. was on the couch with father, and mother heard E.G. making noises and telling father not to squeeze her. Mother removed E.G. from the couch and brought her in to sleep on mother's bed. The next morning, May 24, 2024, mother asked E.G. why she had been making noises. E.G. reported that father had been touching her. Mother examined E.G.'s vagina, which she said looked irritated and swollen.

Mother immediately took E.G. to the police station to file a report. After that, she took E.G. to the hospital to get a forensic medical examination. The results of the examination were inconclusive.

On June 20, 2024, E.G. participated in a forensic interview. The interviewer instructed E.G. to tell the interviewer if she did not know the

answer to a question or did not understand the question, and to correct the interviewer if the interviewer made a mistake. The interviewer asked E.G. a series of “practice” questions. Then the interviewer asked E.G. if she had been to the doctor. E.G. said she had, and explained that she went because father had touched her. During the remainder of the interview, E.G. said father had touched her multiple times on multiple occasions, and she used her hand to demonstrate how he touched her.

III. *Court Proceedings*

The trial court held its initial hearing on July 18, 2024. The court ordered E.G. removed from father and placed with mother. Father was permitted monitored visits for at least nine hours per week.

The court made its jurisdictional findings and dispositional orders on December 3, 2024. It found there was no indication mother coached E.G. into making the allegations, and found E.G. credible. The court explained that although “the forensic interviewer did have a difficult time initially engaging with the child,” E.G. did eventually become sufficiently comfortable to interact with the interviewer properly. The court concluded that “while the forensic interviewer was not able to qualify the child in the traditional, typical sense, it does appear that the child was ultimately aware of why she was present at the interview and the child did provide truthful statements.”

Based on these findings, the court sustained the allegations of sexual abuse. E.G. remained placed with mother. Father was permitted monitored visitation, three times a week for three hours at a time.

Father timely appealed.

DISCUSSION

Father contends the juvenile court's jurisdictional findings were not supported by substantial evidence because the trial court did not find E.G. was a competent witness and her statements were not accompanied by special indicia of reliability. We conclude there is no clear record that the trial court found E.G. incompetent, and in the absence of such a finding, the trial court was not required to evaluate E.G.'s statements for special indicia of reliability. Therefore, we affirm.

I. *Governing Law*

"We review the decision of the juvenile court under the substantial evidence test, considering whether there is substantial evidence, whether contradicted or not, that supports the position of the trier of fact. We resolve conflicts in favor of the decision, and do not reweigh the evidence or determine the credibility of the witnesses." (*In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1254.)

A child comes within the jurisdiction of the juvenile court if "[t]he child has been sexually abused . . . by the child's parent or guardian." (§ 300, subd. (d).) A child's reports of parental abuse, even if made out of court, constitute admissible evidence in dependency proceedings. (*In re I.C.* (2018) 4 Cal.5th 869, 875, 886–888.) However, if the child is found "truth-incompetent" (unable to separate truth from falsehood), and the child's hearsay reports form the sole basis for the court's findings, the reports must bear "special indicia of reliability." (*Id.* at pp. 875, 888–891.) Those indicia include, but are not limited to: "(1) spontaneity and consistent repetition; (2) the mental state of the declarant; (3) use of terminology unexpected of a child of a similar age; and (4) lack of motive to fabricate." (*Id.* at p. 891.)

II. *Forfeiture*

The Department argues father has forfeited his challenge to the jurisdictional findings by failing to object to the admission of E.G.’s statements in the trial court, and by failing to “test her competence” by calling her as a witness. This misunderstands the nature of the dispute.

The issue here is not whether E.G.’s statements are admissible. They are. (*In re I.C.*, *supra*, 4 Cal.5th at p. 875.) The issue is whether they are sufficient, by themselves, to support the trial court’s findings. (*Id.* at pp. 886–887 [admissibility and substantiality of evidence are different issues].) Father’s counsel did argue this issue below, challenging E.G.’s competence and walking through the special indicia of reliability. The Department cites no authority for the proposition that a party must formally call a child as a witness to challenge the child’s competence. In the absence of authority, we decline to impose such a rule. Father’s argument has not been forfeited.

III. *Analysis*

Father asserts, and the Department concedes, that E.G.’s statements form the sole support for the trial court’s findings. Father relies on *In re I.C.*, in which the trial court found jurisdiction based on the hearsay statements of a minor victim, but the California Supreme Court reversed. (*In re I.C.*, *supra*, 4 Cal.5th at p. 876.) However, in that case, there was evidence the child had been molested by a minor neighbor two months before the alleged parental abuse, and saw the neighbor at school four days before reporting the alleged parental abuse. (*Id.* at p. 877–878.) There was also extensive evidence contradicting the child’s account, brought forward at a lengthy evidentiary hearing. (*Id.* at pp. 878–881.) Most importantly, the social services report in

that case found the child truth-incompetent, and the parties tacitly accepted that finding in their briefing. (*Id.* at pp. 878, 888, fn. 5.) Here, there was no such finding of truth-incompetence.

Father argues, in a single paragraph in his opening brief, that E.G. should be treated as a truth-incompetent witness on appeal because the forensic interviewer was unable to show E.G. was competent and the trial court did not expressly find E.G. competent. There are three related problems with this argument.

First, it is not the interviewer's burden to show E.G. is competent. It is father's burden to show E.G. is incompetent. (*Adamson v. Department of Social Services* (1988) 207 Cal.App.3d 14, 20.) Second, as the party pressing the competency issue, it is also father's burden to secure a clear ruling on that point. (See *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 556.) Third, it is father's burden on appeal to show the record affirmatively demonstrates error. (See *Armando D. v. Superior Court* (1999) 71 Cal.App.4th 1011, 1025.)

The court did not expressly rule that E.G. was truth-incompetent. The court's exact words on the subject were: "while the forensic interviewer was not able to qualify the child in the traditional, typical sense, it does appear that the child was ultimately aware of why she was present at the interview and the child did provide truthful statements." For father, this is ambiguous at best. It does not affirmatively demonstrate that the court found E.G. truth-incompetent, and the second half of the statement suggests the court in fact found E.G. competent. Father's flat assertions that the record shows E.G. was incompetent are insufficient to carry his burden on appeal.

Father argues on reply that even if E.G. was competent, the court was still obliged to evaluate her statements for special indicia of reliability,

because that requirement “is grounded in the Constitution.” In support, father cites *Idaho v. Wright* (1990) 497 U.S. 805. But that case involved Confrontation Clause rights in a criminal proceeding, and was implicitly overruled in *Crawford v. Washington* (2004) 541 U.S. 36. (See *In re I.C.*, *supra*, 4 Cal.5th at pp. 889–890 & fn. 6.) This is not a criminal case, and Father cites no other authority which suggests the special indicia of reliability should be applied even where the child making the statements is competent.

Because the court did not find E.G. to be truth-incompetent, it was not obliged to evaluate E.G.’s statements for special indicia of reliability. (See *In re I.C.*, *supra*, 4 Cal.5th at pp. 886–888.) Therefore, we need not discuss father’s arguments that those special indicia were absent. The trial court was entitled to rely on E.G.’s statements.

DISPOSITION

The orders of the juvenile court are affirmed.

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ZUKIN, P. J.

WE CONCUR:

COLLINS, J.

TAMZARIAN, J.