Filed 1/26/26 In re A.J. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 A.J., a Person Coming Under the Juvenile Court Law.	B341243 (Los Angeles County Super. Ct. No. 22CCJP02134B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. V.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Benjamin Ekenes, under appointment by the Court of Appeal, for Defendant and Appellant.

Dawyn R. Harrison, County Counsel, Kim Nemoy, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Mother V.G. (mother) appeals from the juvenile court's dispositional order regarding A.J. (born in 2024, the child). Mother contends the juvenile court erred by imposing weekly, random drug testing as part of her case plan. We affirm.

II. BACKGROUND

A. *Referral*

On June 6, 2024, the Los Angeles County Department of Children and Family Services (Department) received an emergency response referral from a social worker, alleging that mother and father S.J. (father) had violated a court order by visiting their son A.K.J., the older brother of the child, who lived with paternal grandparents.[1] The juvenile court had ordered

---

[1] A.K.J., born in 2021, was the subject of dependency proceedings because of the parents' domestic violence in his presence. We grant mother's request for judicial notice of the dependency petition, the minute order of the adjudication and disposition hearing, and mother's case plan in A.K.J.'s

that the parents visit A.K.J. separately because they had a history of domestic violence, yet mother and father had visited A.K.J. together. During the social worker's visit of paternal grandparents' home, the social worker discovered the existence of the child. Mother had hidden her pregnancy and the birth of the child from the Department. The Department social worker also reported that as part of their case plan in the dependency case regarding A.K.J., the parents were ordered to drug test, but they had not completed any drug testing in a couple of months. Out of 83 required drug tests, mother submitted to 15 tests, and 10 were positive for marijuana.

B. *Section 300 Petition*

On August 6, 2024, the Department filed a dependency petition on behalf of the child pursuant to section 300, subdivisions (a), (b)(1), and (j) (counts a-1, b-1, and j-1), alleging that the parents' domestic violence in A.K.J.'s presence endangered the child's physical health and safety.

C. *Jurisdiction/Disposition Report*

In its jurisdiction/disposition report, the Department recommended that mother's case plan include: participation in individual therapy; conjoint counseling with father; weekly drug/alcohol testing; participation in a Victims of Domestic

---

dependency proceedings. He is not a subject of this appeal. Mother's case plan regarding A.K.J. included random, on-demand drug testing.

Violence program; participation in a parenting education class; and family preservation services.

D. *Adjudication and Disposition*

On October 3, 2024, the juvenile court held the adjudication and disposition hearing. The Department and the parents submitted exhibits which were admitted into evidence. Mother testified. Counsel then presented their arguments. As relevant here, mother's counsel argued that the petition be dismissed. Regarding the case plan, mother's counsel objected to the domestic violence program and parenting education class, asserting that mother had already completed them in her previous case. Mother's counsel also stated: "I would submit as to the individual counseling since mother is already enrolled in conjoint counsel and the weekly testing with the understanding that her levels should be going down and the family preservation referral."

Following argument, the juvenile court dismissed counts a-1 and b-1, and sustained count j-1. The child was declared a dependent of the court. For disposition, the court removed the child from the parents' custody. The court also noted that it was concerned because "it does appear that based on the parents' use of marijuana, it is happening around this baby."

For mother's case plan, the juvenile court ordered, among other things, random, on-demand, weekly drug testing and individual counseling to address case issues. Mother appealed.[2]

---

[2] Father also appealed. On May 30, 2025, father's appeal was dismissed as abandoned.

E. *Postappeal Proceedings*

At the six-month review hearing on May 20, 2025, the juvenile court terminated reunification services for the parents, finding "[p]rogress by parents ha[s] been unsubstantial." The matter was set for a section 366.26 hearing.

III. DISCUSSION

A. *Mootness*

On July 25, 2025, the Department moved to dismiss mother's appeal. The Department asserted that mother's appeal was moot because the juvenile court terminated family reunification services and set the matter for a section 366.26 hearing. Moreover, mother failed to challenge the setting of the section 366.26 hearing by filing a petition for extraordinary writ, as required by statute. (See § 366.26, subd. (l)(1) ["An order by the court that a hearing pursuant to this section be held is not appealable at any time unless . . . . [¶] (A) A petition for extraordinary writ review was filed in a timely manner"].) The Department contended that mother's appeal "effectively asks this Court to reverse the juvenile court's May 20, 2025, findings and orders terminating family reunification services and setting a section 366.26 hearing . . . ." Therefore, according to the Department, this court could not provide any effective relief. (*In re D.P.* (2023) 14 Cal.5th 266, 276 [case becomes moot when events render it impossible for a court, if deciding in favor of appellant, to grant any effective relief].) We disagree.

Although mother has waived a challenge to the *setting* of the section 366.26 hearing by failing to file a petition for extraordinary writ (see § 366.26, subd. (l)(1)), the issue here is not moot. For example, mother may still request reinstatement of family reunification services by filing a section 388 petition. (See *In re I.B.* (2020) 53 Cal.App.5th 133, 153–154, quoting *In re Marilyn H.* (1993) 5 Cal.4th 295, 309 ["'the Legislature has provided the procedure pursuant to section 388 to accommodate the possibility that circumstances may change after the reunification period that may justify a change in a prior reunification order'"].) If we were to conclude that the drug testing requirement was improper, then mother could arguably demonstrate a change in circumstance because she was not required to comply with that requirement. Additionally, although parents need not show they are complying substantially with their case plan to demonstrate the parental-benefit exception under section 366.26, "[i]ssues such as those that led to dependency often prove relevant to the application of the exception." (*In re Caden C.* (2021) 11 Cal.5th 614, 637.) "[A] parent's struggles with substance abuse . . . could be directly relevant to a juvenile court's analysis in deciding whether termination would be detrimental." (*Id.* at p. 639.) Accordingly, we deny the motion to dismiss the appeal as moot.

B. *Forfeiture/Acquiescence*

The Department contends that mother acquiesced or forfeited her argument regarding drug testing by submitting to the Department's recommendation. We agree. "It is settled that an appellant waives or forfeits the right to challenge a ruling on

appeal by agreeing with or acquiescing to the ruling at trial. [Citations.]" (*In re N.S.* (2020) 55 Cal.App.5th 816, 840.)

Mother disagrees and contends that her counsel's statement to the juvenile court was ambiguous. According to mother, it was "unclear" whether counsel "was submitting as to *both* the individual counseling *and* the weekly drug testing components of the recommendation, or whether counsel was submitting just as to individual counseling and providing an explanation." We reject the argument. The record reflects that during the hearing, mother's counsel responded to the Department's recommendations for mother's case plan. Counsel objected to the domestic violence program and parenting classes, but then submitted as to individual counseling, weekly drug testing, *and* family preservation referral.

We reject mother's other argument that counsel's qualifying statement regarding drug testing was not an "'unequivocal submission on the merits.'" Counsel's statement regarding drug testing was qualified by the phrase "with the understanding that her levels should be going down . . . ." This statement indicated counsel's position regarding what would constitute a successful drug test: mother's marijuana levels in her blood decreasing after each test. Counsel, however, unambiguously submitted to the Department's recommendation for drug testing.

Accordingly, mother has waived her challenge to weekly drug testing as part of her case plan.

IV. DISPOSITION

The dispositional order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM (D.), J.

We concur:

BAKER, Acting P. J.

MOOR, J.