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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re E.L., et al., Persons Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.H.,

Defendant and Appellant.

A132678

(Alameda County
Super. Ct. Nos. OJ11017005,
OJ11017006, OJ11017007)

K.H., the mother of three children, appeals from jurisdictional orders sustaining dependency petitions (Welf. & Inst. Code, § 300, subs. (b), (j)¹) and dispositional orders (§ 360) adjudging the children dependents of the court.² Mother limits her appeal to seeking reversal of the jurisdictional findings concerning her conduct. However, because mother’s contentions, even if meritorious, would not require reversal of the jurisdictional orders or granting of other effective relief, we see no reason to address them, and therefore dismiss the appeal. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1487-1488.)

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

² Mother’s appeal from the dispositional orders allows her to challenge the juvenile court’s jurisdictional orders. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754 [jurisdictional order is “appealable by way of a challenge to a dispositional order made subsequent to it”].)

FACTUAL AND PROCEDURAL BACKGROUND

K.H. (mother) and E.L. Sr. (father) are the biological parents of E.L., D.L., and L.L. At the time of these 2011 proceedings, father had physical custody of the children (twelve-year-old E.L, and eight-year-old twins D.L and L.L) and mother had lived apart from the family for about eight years since the twins were less than a year old.

On June 22, 2011,³ the Alameda County Social Services Agency (agency) filed first amended petitions as to each child, seeking to have the court declare the three children dependents of the court, pursuant to section 300, subdivision (b) (failure to protect) and subdivision (j) (abuse of sibling). As to father's conduct, it was alleged, among other things, that father used corporal punishment to discipline the twins, and E.L. was at risk for harm based on the abuse inflicted on his siblings as alleged in the amended petitions. As to mother's conduct, it was alleged that she had been "absent for up to four months at a time from the lives of the [children], for years. She ha[d] not routinely parented the [children] nor ha[d] she provided for their physical or emotional needs. Because of [her] absence, she was unable to protect the [children] from the father's whippings and other disciplinary measures."

At the June 23 jurisdictional hearing, father was present and represented by counsel. Mother was not present but she was represented by counsel. Mother's counsel demurred to the amended petitions, arguing the allegations regarding mother's conduct were insufficient and there was no substantial evidence to support the allegations. The agency asserted its reports were sufficient to allow the court to make a true finding as to the allegations regarding mother's conduct. Mother's counsel submitted the matter to the court, expressly waiving a jurisdictional hearing based on mother's signed waiver.⁴ The court ruled the failure to protect allegations concerning mother's conduct were sustainable.

³ All further dates are in the 2011 calendar year.

⁴ In her written waiver of rights, mother indicated she wished to submit on the basis of the social worker's report and other documents, if any. She acknowledged that she was waiving certain rights including a hearing, and she understood that the court would probably find the petitions were true, and if the children were declared dependents of the court, the court might assume custody of the children, and under certain circumstances, it was possible that no reunification services would be offered or provided.

As to the allegations regarding father's conduct, the juvenile court accepted father's submission to the allegations after he waived a jurisdictional hearing. The juvenile court declared each child a dependent of the court, finding the allegations in the amended petitions were true.

At the July 7 dispositional hearing, father was present with counsel. Again, mother was not present but she was represented by counsel. In response to the juvenile court's query, mother's counsel confirmed that mother did not contest the court taking jurisdiction "as to both parents."⁵ Mother's counsel submitted the matter on the issue of disposition. Adopting the agency's recommendations, the juvenile court again declared the children dependents of the court. Father was granted physical custody of the children with family maintenance services to be provided by the agency. The court found "the previously noncustodial mother" was not entitled to reunification services. At its discretion, the agency was to provide mother with informal child welfare services if she chose to take advantage of them. Mother timely appeals.

DISCUSSION

On this appeal mother challenges the juvenile court's jurisdictional findings concerning her conduct claiming the amended petitions failed to state a cause of action and there was no evidentiary support for the findings concerning her conduct. However, she correctly concedes that the juvenile court's exercise of jurisdiction over the children can be sustained based solely on its findings regarding father's conduct. (See *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Consequently, any decision we may render in favor of mother "will not result in a reversal of the court's order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the [children] on the basis of the unchallenged allegations [concerning father's conduct]. Further, the court will still be permitted to exercise personal jurisdiction

⁵ Although the juvenile court spoke "of jurisdictional findings being made 'as to' a particular parent [citation], the dependency court does not, in fact, make jurisdictional findings 'as to' a particular parent. The findings ordinarily involve the conduct, or lack thereof, of one or both parents, but the findings are made with respect to the child, not the parents." (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1493, fn. 6.)

over [mother] and adjudicate [her] parental rights . . . since that jurisdiction is derivative of the court’s jurisdiction over the [children] and is unrelated to [mother’s] role in creating the conditions justifying the court’s assertion of dependency jurisdiction.” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) Because “we cannot render any relief to [mother] that would have a practical, tangible impact on [her] position in the dependency proceeding,” the issues she raises on appeal “are ‘ “abstract or academic questions of law” ’ [citation],” which we see no reason to review. (*Ibid.*) Even if we found merit to her contentions, “we would not reverse the court’s jurisdictional and dispositional orders nor vacate the court’s assertion of personal jurisdiction over [her] parental rights.” (*Ibid.*)

Mother asks us to consider her appellate contentions because the jurisdictional findings concerning her conduct “may have an impact on future placement and reunification orders.” However, she does not “identify any specific potential impact, and we can find none on our own.” (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1493-1494.) In the juvenile court mother did not seek custody of the children or reunification services. If mother later decides to seek custody of the children during this dependency proceeding, she can pursue such relief pursuant to section 361.2, subdivision (a), which “does not require a parent to be nonoffending [citation]” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1494.) Similarly, if mother later decides to seek reunification services during this dependency proceeding pursuant to section 361.5, the jurisdictional findings would not bar her request. “[W]hile misconduct can result in a denial of reunification services, any finding must be by clear and convincing evidence (§ 361.5, subd. (b).) Because a jurisdictional finding need only be made by a preponderance of the evidence, it cannot support a denial of reunification services under section 361.5. [Citation.]” (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1494.) Therefore, “[w]e find no potential impact of the challenged jurisdictional finding[s] on the present dependency proceedings.” (*Ibid.*)⁶

⁶ *In re John S.* (2001) 88 Cal.App.4th 1140, and *In re Joshua C.* (1994) 24 Cal.App.4th 1544, cited by mother, are factually distinguishable and do not demonstrate that review of mother’s contentions is warranted in this case. (See also *In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1493-1494.)

“It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.]” (*In re I.A., supra*, 201 Cal.App.4th at p. 1489.) “An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status.” (*Id.* at p. 1490.) Nothing in mother’s briefs would require reversal of the juvenile court’s “jurisdictional findings as to the mother.” “[T]he court did not find dependency jurisdiction ‘as to [mother],’ since such jurisdiction is asserted over the child, not the parent. (Fn. omitted.) While the court did assert *personal* jurisdiction over [mother] on the basis of its dependency jurisdiction over the [children], [mother’s] arguments, even if accepted in full, would not demonstrate any error in the court’s exercise of personal jurisdiction. . . . While arguably we could vacate the juvenile court’s implicit finding regarding [mother’s] conduct, vacating that finding would have neither legal nor practical consequence.” (*Id.* at p. 1493.) Because we see no “threatened prejudice” to mother from the jurisdictional orders, “we decline to exercise our discretion to review [them].” (*Id.* at p. 1495.)⁷

DISPOSITION

The appeal is dismissed.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.

⁷ In light of our dismissal of the appeal, we deny as moot the agency’s application to file a reply in response to certain issues raised in mother’s reply brief.