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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re M. J. O., a Person Coming Under the
Juvenile Court Law.

SOLANO COUNTY HEALTH AND
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

B. O. et al.,

Defendants and Appellants.

A133028 and A134380

(Solano County
Super. Ct. No. J40698)

In these consolidated appeals, B. O. (mother) and M. O. (father) challenge the juvenile court’s assumption of jurisdiction in regard to a petition filed by Solano County Health and Social Services Department (Department) pursuant to Welfare and Institutions Code section 300,¹ alleging father sexually molested their minor son, M. J. O. (M. J.) and that mother failed to protect M. J. from molestation by father. Upon careful review of the record and consideration of the arguments presented by the parties, we conclude the juvenile court’s jurisdictional findings should be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

The Department filed a dependency petition in March 2011 in regard to the minor children of the O. family, M. J. (age 5), A. O. (age 10), L. O. (age 13) and T. M. (age 16).

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The petition alleged pursuant to section 300, subdivision (d), that the children are at a substantial risk of sexual abuse because father fondled the genitals and buttocks of minors M. J. and A. O. The petition also alleged pursuant to section 300, subdivision (b), that the children are at risk of suffering serious physical harm on account of mother's failure to protect the children from father's sexual molestation.

The detention report accompanying the petition stated that M. J. told teachers at school he was excited because he would get \$4 he earned for letting his father touch him "down there." When interviewed by the social worker who responded to the school, M. J. reported his father touches him on his private parts every day and "dad's hand moves up and down." Father does the same to his sister A. O. M. J. also reported father touches his buttocks, stating, "He just loves it (my butt) and he touches it but I don't let him."

The detention report further states that the social worker interviewed mother about the referral. Mother admitted she knew father touched M. J.'s genitals but denied the touching was sexual. However, mother has told father "to stop it because he is not in the Philippines any more." Mother added father grabs "her son's 'toy toy' (Filipino/Tagalog for penis) as a game." Mother opined father's habit of touching M. J.'s penis is a "cultural thing" and that her husband was "just teasing M. J." and "it is a 'boy thing.' "

The juvenile court held a detention hearing on March 9, ordered that M. J. and A. O. continue in out-of-home placement and set a jurisdiction hearing for March 30. The Department prepared a report in anticipation of the jurisdiction hearing. The jurisdiction report states in part: "The Department recognizes that the [] family's cultural practices must not be dismissed and need to be taken into account during this investigation. . . . There are some cultures in Southeast Asia that would not classify co-bathing or [] touching a child's genitals as sexual abuse. This type of touching is often explained as a form of expressing affection or pride for a male child and it is considered by some to be a harmless custom. . . . The Department acknowledges that there is some possibility that cultural practices could have played a role in [father's] behavior, but [] cannot explain his actions altogether. [¶] The Department has concerns as to how the

father [] was touching his son's [] genitals based on the following issues. [Father] offered his son money in exchange to touch the minor's genital area which is not supported by cultural practices. Additionally, the mother [] reportedly told her husband that this type of behavior was inappropriate in the United States and asked that he not do this but [father's] behavior persisted." The Department proposed that the allegations regarding A. O. be stricken from the petition for lack of evidence and recommended the juvenile court sustain the allegations as to M. J.

The jurisdiction hearing spanned two days of testimony on May 11-12, 2011. The Department presented testimony from Bonnie Mencher, the social worker currently assigned to the case and author of the jurisdiction report; Kristin Flores, the social worker who responded to the initial referral and author of the detention report; Rozzana Verder-Aliga, who testified as an expert in Philippine culture and identifying, treating and working with victims of sexual abuse; and father. Parents presented testimony from several friends and family members.

Mencher testified M. J. had declined to talk to her about the allegations. However, Mother admitted father touched M. J.'s genitals but denied father's touching was sexual abuse. According to mother, father's touching was "poor taste on the father's part better explained by culture." Mother asked father previously not to touch M. J. in that manner because she did not approve, felt it was inappropriate, was concerned how it could be interpreted by others and did not want her son treated in that way, even if it was culturally acceptable in the Philippines. Mencher opined that father's behavior cannot be fully explained by cultural factors alone. Rather, she opined that father's touching of M. J.'s genitals was sexual in nature because father offered M. J. money in exchange for touching M. J.'s genitals; the touching was skin on skin and not over clothing; the minor did not like it and asked his father to stop; mother disapproved of it and asked father to stop. Another factor indicating father's touching was sexual was the frequency of the touching, which occurred on almost a daily basis. Mencher also spoke with mother's therapist, Dr. Cragun, a PhD in Biblical counseling, who reported mother tried to "discourage her husband's behavior short of involving law enforcement." Cragun also

told Mencher he did not believe father's actions were culturally motivated and questioned whether it was "really a common cultural practice in the Philippines." Further, Mencher testified she attempted to obtain a statement from father concerning the allegations but father declined to provide a statement on the advice of counsel as he is currently subject to criminal prosecution.²

Social worker Kristin Flores testified that she received the referral and interviewed M. J. at his school in Fairfield. M. J. was friendly and outgoing. M. J. told Flores "his dad touches his private parts," reaches under his clothes and "pinch[es] his private parts." This happens day and night on a daily basis. M. J. also said his father touches him "on his butt." Flores asked M. J. if father "moved his hand up and down" when touching his penis, and M. J. replied, "Yes." M. J.'s sisters told Flores they had observed father touching M. J.'s penis on many occasions. Each sister said she had spoken with father and asked him to stop touching M. J. in that manner because "they weren't in the Philippines anymore."

Rozzana Verder-Aliga testified for the Department as an expert in Philippine culture. Verder-Aliga was born and raised in the Philippines, is a 1978 graduate of the University of the Philippines and came to the U.S. in 1981 at age 25. Since then, Verder-Aliga has been "a resource and a lecturer on Filipino culture" and conducts parenting classes specifically for Filipino families. Currently, she is senior mental health manager for Solano County Mental Health with responsibility for management of the Vallejo Children's Mental Health Clinic. Verder-Aliga testified that Filipino culture is typically matriarchal, meaning that although the husband is a person of authority, "the mother has a lot of say in terms of disciplining the child, managing the household, and the mother is usually the holder of the purse strings, is responsible for the budget." In a Filipino family, Verder-Aliga would expect a mother's opinion about child-rearing to influence a father's decisions about child rearing. Verder-Aliga also testified it is common in Filipino families for parents and children of the same sex to bathe together. In Filipino

² The criminal case against father was dismissed in September 2011.

culture, it is not common for parents to touch the genitals of a child, but some do. Some consider the practice playful but “it could be looked at as personally stimulating to the adult parent.”

The Department also called father as a witness. Father testified he is originally from Masantol Pampanga in the Philippines and moved to the U.S. in June 1992. Father met mother here in the U.S. and was married to her in September 1995.

Parents’ case began with a stipulation by counsel that if called to testify, the minors T. M. and L. O. would testify as follows: “Each minor observed father, [], to touch the private area of their little brother, [], in a joking way. The touching they saw was brief when father and [M. J.] were in the communal portion of the home when others were present. They each recall telling their father to stop this behavior as they found it annoying. The actions they witnessed by father did not appear sexual in any way. They’ve always felt safe in their home. [¶] After [the Department] became involved with their family, their mother, [], explained to all four children that father should not have been touching M. J. in that way and that this type of behavior will not occur in their home again.” Counsel further stipulated that when M. J. was “asked if his dad had put his fingers in his [M. J.’s] butt, M. J. [] responded quote, ‘It doesn’t go in the hole.’ ”

Several friends of the family also testified on behalf of parents. Melo Quezon testified that he is an immigration officer for the U.S. Immigration Service and is married with children, two girls aged 13 and 14. He is godfather to M. J. and has known the O. family since they first started coming to the church in Vallejo in the 1990s. His family and the O. family interact a lot; for example, they have been on overnight camping trips together. When he’s been with the O. family, Quezon has never observed “any concerning behavior or interactions between the parents and children,” nor has M. J. appeared uncomfortable around his parents. Quezon lived in the Philippines until he was 10 years old; he grew up in an environment where it was considered a “crude sense of humor” among “lower middle class or working class people” to touch or grab at a son’s testicles.

Sunbeam Arcilla testified she works at the Social Security Administration. Arcilla met the O. family about 14 years ago through the church, sees them two or three times a week and is godmother to A. O. Arcilla is Filipino and is aware of the practice by some Filipino fathers of touching or grabbing at a son's genitals. From what Arcilla has observed of this practice, it is a form of "teasing" or "roughhousing." Arcilla has observed father with his children and opined he is "a great father" who "just dotes on these kids." Arcilla has never seen father "do what's being described as grabbing at M. J.'s genitals."

Keith Jainga testified that he is pastor at the Baptist church attended by the O. family and has known the family for about 13 years. Jainga is Filipino. Before coming to the U.S. in 1996, Jainga resided in the Philippines and observed the practice of fathers grabbing at their sons' private parts. However, Jainga has never seen father touching M. J. in this manner. Jainga has observed M. J. around his father and would characterize their relationship as affectionate.

L. testified that she is married to father's brother and has known father for about 24 years. L.'s family and the O. family get together about once a month. According to L., father horseshoes around a lot with the kids; he is a good father and has a loving relationship with his son M. J.

Following the presentation of evidence and argument of counsel, the juvenile court took the matter under submission. On May 31, 2011, the court filed its Findings and Orders Following Jurisdictional Hearing. The court found that "both mother and the father knew that the fondling would be 'misunderstood' in America. The court finds that the knowledge of misunderstanding places the fondling of genitals and buttocks of the minor by [father] in a sexual context." Also, the court found that father's "deliberate and persistent fondling of the minor while knowing the sexual context, disregarding the protests of the minor, and offering money to the minor in connection with the fondling is sufficient evidence of the requisite motive for the fondling required to bring the behavior

within Penal Code, section 647.6.”³ Further, the court found that mother “failed to protect the minor as required by WIC [Welfare and Institutions Code] § 300(b). The court disagrees with arguments that suggest she viewed the fondling like tickling, and that one would not expect her to take additional steps (beyond telling [father] to stop) to protect the minor. She knew the behavior was sexual in nature, and according to the evidence did nothing more than ineffectively tell [father] to stop. There are many other things she could have done short of reporting the matter to the police and seeking a restraining order. According to the evidence, she did nothing.” On these findings, the court sustained jurisdictional allegations of sexual abuse under section 300, subdivision (d) and failure to protect under section 300, subdivision (b) as to the minor M. J., and struck the allegations concerning A. O. on the motion of the Department.

Subsequently, on July 22, 2011, the juvenile court entered dispositional orders in this matter. In its dispositional orders, the court ruled that father “may return to the family residence upon the development of a safety plan and case plan of family maintenance” approved by the Department. Thereafter, each parent filed a Notice of Appeal challenging the juvenile court’s jurisdictional findings (appeal number A133028).⁴ On January 18, 2012, following a family maintenance status review hearing, the juvenile court ordered any further dates vacated and terminated dependency jurisdiction over the minor. On January 13, 2012, mother filed a Notice of Appeal from the court’s order terminating jurisdiction (appeal number A134380).⁵

³ Penal Code, section 647.6, which describes the offense of molestation of a child under 18, requires conduct “motivated by an unnatural or abnormal sexual interest in children[.]” (Penal Code, § 647.6, subd. (a)(2).)

⁴ Although parents do not challenge the juvenile court’s dispositional orders, jurisdictional findings can be reviewed on appeal from the disposition. (See *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [“A jurisdictional order is only a finding. [Citation.] The dispositional order is the judgment. [Citation.] Only the judgment is appealable. [Citation.] On appeal from the judgment, the jurisdictional findings can be reviewed. [Citations.]”].)

⁵ On March 1, 2012, we granted mother’s motion to consolidate the above-referenced appeals for purposes of briefing and decision.

DISCUSSION

I

In appeal number A134380, mother raises no new issues in addition to those presented in appeal number A133028; rather, she avers she filed the later appeal solely to preserve “judicial authority to grant the relief requested” in the earlier, pending appeal (A133028), and to assert that the jurisdictional challenge raised in the pending appeal has not been rendered moot by the juvenile court’s termination of jurisdiction. The Department filed a one-page response to mother’s opening brief in A134380, stating, without citation to legal authority, that the Department agrees the jurisdictional issues raised in A133028 are not rendered moot by the juvenile court’s order terminating jurisdiction.

Despite the parties’ agreement on the matter, the procedural posture of the case suggests these consolidated appeals are moot. The appeals challenge only the juvenile court’s jurisdictional findings. However, the juvenile court has terminated its jurisdiction over M. J.; moreover, the sustained jurisdictional findings complained of have not resulted in any orders that continue to adversely affect mother. (See *In re Michelle M.* (1992) 8 Cal.App.4th 326, 330 [appeal is moot where “no direct relief can be granted even were we to find reversible error, because the juvenile court no longer has jurisdiction and we are only reviewing that court’s ruling”]; cf. *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432 [appeal not moot even after juvenile court terminated dependency jurisdiction because sustained jurisdictional findings adversely affected father’s custody rights]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [“The fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant”].)

Mother asserts she continues to be adversely affected by the jurisdictional findings because the Child Abuse Central Index will contain information that her child came within the juvenile court’s jurisdiction; the jurisdictional findings may weigh against parents in any future action by the Department against the family; and parents may be

required to reimburse the county for the legal costs of the dependency proceedings, pursuant to sections 332, 903.1 and 903.2. Mother's assertions concerning any continuing adverse affect of the court's jurisdictional findings are somewhat uncertain and speculative in nature; nevertheless, we shall consider the merits of the appeal, which challenges the sufficiency of the evidence for the juvenile court's jurisdictional findings. (Cf. *In re C.C.* (2009) 172 Cal.App.4th 1481, 1489 [whereas court's termination of jurisdiction appeared to moot mother's appeal challenging order terminating visitation, and whereas mother's concern that she could be prejudiced in subsequent family law proceedings by the finding of detriment attendant to the challenged order was "highly speculative," appellate court would address merits of appeal "in an abundance of caution" and because "dismissal of the appeal operates as an affirmance of the underlying judgment or order"].)

II

"The standard of proof at the jurisdictional stage of a dependency proceeding is a preponderance of the evidence," and we affirm the juvenile court's jurisdictional findings where they are supported by substantial evidence. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.) Substantial evidence is "evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court's findings. (Citations.)" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

Also, we note that when a dependency petition alleges multiple grounds for jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction " 'if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by

the evidence.’ (Citation.)” (*In re Andy G.* (2010) 183 Cal.App.4th 1405, 1415, fn. 6.)

We begin with the juvenile court’s finding of jurisdiction over M. J. under section 300, subdivision (d), which provides that a child is within the jurisdiction of the juvenile court if “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, *as defined in Section 11165.1 of the Penal Code*, by his or her parent . . . or the parent . . . has failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse.” (§ 300, subd. (d) [italics added].) Penal Code section 11165.1 defines “sexual abuse” as “sexual assault or sexual exploitation” where “sexual assault” “means conduct in violation of one or more of the following sections . . . 647.6 (child molestation).” (Penal Code, § 11165.1, subd. (a).) In this case, the jurisdictional allegations pursuant to section 300, subdivision (d), and the trial court’s jurisdictional findings under that subdivision, were based on father’s sexual molestation of M. J., as described in Penal Code, section 647.6 (section 647.6). As noted above, section 647.6 describes the offense of molestation of a child under 18 and requires conduct “motivated by an *unnatural or abnormal sexual interest in children*[.]” (Penal Code, § 647.6, subd. (a)(2) [italics added].)

Parents contend that there is insufficient evidence to support a finding that father’s conduct was motivated by an unnatural or abnormal sexual interest in the minor, M. J., as required under section 647.6. Specifically, father and mother both contend father’s motivation in touching M. J. was based on pride in his son and joking or teasing, and that genital touching of a son by his father is an acceptable cultural practice within Filipino society. Parents arguments on this point are unavailing.

Whereas both parents recite at length testimony in support of their contention that touching of a son’s genitals by a father is an acceptable cultural practice within Filipino society, there was contrary evidence that does not support such a conclusion. For example, Rozzana Verder-Aliga, the Department’s expert on Filipino culture testified it is not common in Filipino families for parents to touch the genitals of a child, although some do; moreover, she opined the practice could be viewed as “personally stimulating

to the adult parent.” Also, social worker Mencher testified that Dr. Cragun, a PhD in Biblical counseling and mother’s individual therapist, did not believe father’s actions were culturally motivated and questioned whether genital touching was “really a common cultural practice in the Philippines.”

Furthermore, the record is replete with other evidence that father’s touching of M. J.’s genitals was motivated by a sexual interest in the minor. Particularly telling is the minor’s own statements about the practice. M. J. reported that father “moved his hand up and down” when touching M. J.’s penis. Moreover, according to M. J., father’s touching was not confined to the penis; rather, M. J. reported father touches his buttocks and told the social worker that father “just loves it (my butt) and he touches it but I don’t let him.” Additionally, the evidence showed that when father touched M. J.’s genitals the contact was skin-on-skin under M. J.’s clothes; in contrast, there was no testimony that specifically skin-on-skin genital touching or grabbing was an acceptable Filipino cultural practice. That father’s touching was motivated by a sexual interest in the minor is further supported by the sheer frequency of the genital touching, because the victim stated: “it happens in the day and in the night. It happens every day.” The evidence also showed that on at least one occasion, father promised M. J. money in exchange for allowing father to touch him on the genitals. In addition, father persisted in touching M. J.’s genitals despite the fact M. J. told father he did not like it, mother admonished father not to touch M. J. in that manner, and M. J.’s sisters all told father to discontinue his practice of touching M. J.’s genitals because “they weren’t in the Philippines anymore.”

In sum, applying the governing standard of review to the record before us, we conclude that substantial evidence supports the juvenile court’s jurisdictional finding under the preponderance of the evidence standard, that M. J. had been sexually abused or was under a substantial risk of sexual abuse, as defined under Penal Code, sections 11165.1 and 647.6, within the meaning of section 300, subdivision (d).⁶

⁶ Accordingly, we do not address whether the juvenile court properly sustained jurisdiction under section 300, subdivision (b), on account of the risk of substantial

DISPOSITION

The trial court's jurisdictional and dispositional orders, and its order terminating jurisdiction, are affirmed.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.

physical harm arising from mother's failure to protect M.J. from father's sexual molestation. (See *In re Andy G.*, *supra*, 183 Cal.App.4th at p. 1415, fn. 6.)