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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re S.A., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

A138989

(Alameda County
Super. Ct. No. OJ12019666)

A.A. (Father) appeals from the juvenile court’s jurisdictional and dispositional orders removing his daughter, S.A., born January 1999, from the custody of her parents and placing her in out-of-home placement. His sole contention is that the juvenile court failed to comply with the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 *et seq.*) The Alameda County Social Services Agency (Agency) responds that the appeal should be dismissed because dependency jurisdiction was terminated after Father filed his notice of appeal. We agree the appeal should be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

Juvenile Dependency Petition

On September 28, 2012, a dependency petition was filed under Welfare and Institutions Code section 300¹ (the dependency action) on behalf of then 13-year-old S.A., alleging Father hit her multiple times in the face with a fist and choked her, causing her to suffer swollen lips and eyes and a scratch under her eye.² S.A. said that Father had always been abusive and had also molested her when she was younger. S.A. said she had been spending time with men who burglarized homes while she sat in the car. She admitted to prostituting and said she likes it and might continue. S.A.'s mother (Mother) was worried that S.A. was "enamored by the street life." Mother said she could no longer care for S.A. and wanted her to be in foster care, with reunification services. Father filed a Notification of Indian Status stating he may have Chippewa heritage. The court detained S.A., and she was placed in foster care.

The Agency reported in its jurisdiction/disposition report that it was "unknown if [ICWA] does or does not apply." In an attempt to determine whether ICWA applied, the Agency "submitted the appropriate notices" to numerous individuals and multiple Chippewa tribes, and to other places including the Bureau of Indian Affairs and the Department of the Interior. According to the report, S.A. was not attending school, admitted to smoking marijuana, and said she had received money from men in exchange for oral sex. When her 25-year-old boyfriend learned of this, he told her they "should make money together." Father reported that S.A. began staying out late at night at age eight and coming home at 3:00 a.m. intoxicated. He denied all abuse allegations and said he saw no need for Agency or court intervention.

At the hearing, Father was found to be the presumed Father, and he requested a contested hearing. S.A. ran away from the county assessment center and later called Father to tell him she was now pimping two girls. The juvenile court issued a protective

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

²An amended petition was filed June 3, 2013.

custody warrant on S.A. and ordered Father to disclose information as to her whereabouts or to call as soon as he sees her. On January 16, 2013, the Agency requested that the petition be dismissed on the ground that S.A.'s whereabouts had been unknown for two and a half months. Minor's counsel agreed. The court declined to dismiss the petition at that time and thereafter continued the matter several times.

Juvenile Wardship Petition

In the meantime, on December 5, 2012, the Oakland Housing Authority found S.A. and her suspected pimp. The suspected pimp was arrested, and S.A. was taken to the assessment center, but ran away again. Stockton police located S.A. on February 1, 2013, and child welfare worker Sue Snow (Snow) brought her back to the Oakland Police Department Child Exploitation Unit to be interviewed. Father called the Oakland Police Department and asked to have S.A. arrested for vandalizing his vehicle. After Snow and S.A. arrived at the police station, S.A. became agitated and aggressive and began making threats of violence and actually injured the police officers. She was arrested after threatening to kill police officers and threatening to physically harm Snow.

On February 5, 2013, the District Attorney filed a juvenile wardship petition under section 602 (the delinquency action), charging S.A. with two felony counts and one misdemeanor count for breaking Father's car window with a baseball bat and resisting arrest and obstructing a peace officer. The District Attorney found S.A. was eligible for deferred entry of judgment, and sought the deferment.

On February 6, 2013, the delinquency action came before the juvenile court. The court ordered S.A. detained at the Juvenile Justice Center (JJC) and vested the probation department with S.A.'s placement and care. At a "[p]re-[t]rial [h]earing/NTW/To Set," the District Attorney and Public Defender requested a copy of the dependency petition and jurisdiction/disposition report. The juvenile court continued the order detaining S.A. at JJC and continued the hearing in the delinquency action to February 21, 2013. At the continued hearing, S.A. waived her rights and admitted the misdemeanor count of resisting arrest. The remaining counts were dismissed. The court ordered S.A. released from juvenile hall to the child welfare worker on GPS. Shortly thereafter, S.A. tampered

with the GPS device and ran away from the assessment center. S.A. was permanently terminated from the GPS program, and disposition in the delinquency action was set for March 13, 2013, at JJC.

Meanwhile, at a February 26, 2013 hearing in the dependency action, the juvenile court denied the Agency's request for dismissal of the dependency petition. At a March 13, 2013 hearing in the delinquency action, S.A. failed to appear and the court issued a warrant for her arrest. Thereafter, S.A. was arrested by Oakland Police at Mother's home and was detained in juvenile hall. The court ordered S.A. detained at JJC and vested the probation department with her placement and care.

While at JJC, S.A. was " 'erratic, aggressive, disrespectful and threatening' " and was transferred to a different unit to participate in the day treatment program. She threatened and fought with another minor and had issues on almost a daily basis. She was placed on suicide watch after placing a plastic bag over her head. The parents expressed concern about S.A.'s safety and said they often saw her walking up and down International Boulevard attempting to prostitute. The probation officer consulted with Snow, who said that S.A.'s behavior was beyond the control of the Agency and that S.A. needed to be adjudged a ward of the court under section 602. The probation officer recommended the same.

In March 2013, a contested jurisdictional and dispositional hearing took place in the dependency action, and the matter was argued and submitted. The court found jurisdiction and continued disposition to June 18, 2013.

In the delinquency action, the juvenile court ordered S.A. detained at JJC and placed her on probation without wardship. On May 30, 2013, S.A. was ordered released from JJC and was placed in a group home. Shortly thereafter, the group home gave a 7 day notice due to S.A.'s acting out behaviors and mental health issues. S.A. got into trouble for physically fighting with a female peer in the home, smoking marijuana, and refusing to go to school. She was disrespectful to staff and peers and had to change houses due to conflict with peers.

On June 18, 2013, disposition in the dependency action was continued to June 25, 2013. Father filed a notice of appeal challenging the May 20, 2013 order “[a]ssuming [d]ependency [j]urisdiction” over S.A. Because the notice of appeal was filed prematurely before the dispositional order in the dependency action was issued on June 25, 2013, our court issued an order construing Father’s notice of appeal to have been taken from the June 25, 2013 dispositional order.

On June 25, 2013, the juvenile court issued a dispositional order in the dependency action, ordering out-of-home placement for S.A. and reunification services for the parents. S.A. was returned from the group home to the assessment center. S.A. left the assessment center the next day and another protective custody warrant was issued.

The probation officer in the delinquency action reported to the court that S.A.’s whereabouts were once again unknown. S.A. did not appear at the July 18, 2013 delinquency hearing, and a warrant for her arrest was issued. On July 24, 2013, S.A. was arrested by Oakland Police for prostitution; she resisted arrest and gave false identification. The District Attorney filed another section 602 wardship petition with four misdemeanor counts for loitering, prostitution, resisting arrest, and false identification.

On July 25, 2013, S.A. appeared in juvenile court in custody in her delinquency action. The court ordered her detained at JJC, with the probation department vested with her placement and care. At a hearing held the next day, S.A. waived her rights and admitted to count 4 (false identification). She was ordered detained at JJC and disposition was set for August 14, 2013. S.A. said she was hoping to remain a dependent because she feels that probation is too hard on kids. During the interview with the probation officer, she said she is easy to get along with, does not cause problems, and tries to be polite to JJC staff. Once the interview was over, she started yelling at staff.

At an August 14, 2013 disposition hearing in the delinquency action, the juvenile court set aside S.A.’s probation and adjudged her a ward of the court. In the dependency action, the court dismissed dependency jurisdiction over S.A.

DISCUSSION

Father's sole contention is that the juvenile court failed to comply with ICWA. (25 U.S.C. § 1901 *et seq.*) We decline to address the contention and conclude the appeal must be dismissed.

It is well settled that a court may decide only justiciable controversies. (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 813; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 21, pp. 84–86.) The duty of every judicial tribunal “ ‘is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’ ” (*Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.) A case is moot when “the question addressed was at one time a live issue in the case,” but has been deprived of life “because of events occurring after the judicial process was initiated.” (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120; see also *van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 560 [a case is moot when the decision of the reviewing court “ ‘can have no practical impact or provide the parties effectual relief’ ”].) Thus, when pending an appeal from the judgment of a lower court, an event occurs that renders it impossible for the court—if it should decide the case in favor of the appellant—to grant the appellant any effectual relief, the court will not proceed to a formal judgment, but will dismiss the appeal. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1575; *In re Guardianship of Ambrose* (1915) 170 Cal. 160, 164 [where a controversy existing at the time the appeal was taken has by reason of matters subsequently transpiring ceased to exist, the proper course is to dismiss the appeal].)

In re Michelle M. (1992) 8 Cal.App.4th 326, is instructive. There, the court found at the jurisdictional and dispositional hearing that the minor was a dependent and placed her in the custody of the mother under the supervision of the Agency. (*Id.* at p. 327.) The court ordered no contact between Father and the minor except in a therapeutic setting if deemed appropriate by the minor's therapist in consultation with the social worker.

(*Id.* at p. 328.) Thereafter, the court terminated its jurisdiction over the minor. (*Ibid.*) The father did not appeal from the order terminating dependency jurisdiction and appealed only from the jurisdictional and dispositional orders. (*Id.* at pp. 327–328.) The Court of Appeal dismissed the appeal as moot, rejecting the father’s argument that the orders were not moot because they had collateral consequences such as custody issues. (*Id.* at pp. 229–330.) The court held that the father’s remedy was to address collateral issues in the collateral proceedings, “and not an appeal from a matter where jurisdiction has been terminated and is final. In such a case, jurisdiction cannot be conferred upon the appellate court. [Citation.]” (*Id.* at p. 330.)

Similarly, here, Father appealed only from the jurisdictional and dispositional orders in which the juvenile court removed S.A. from her parents’ custody and ordered her placed in out-of-home placement. Thereafter, S.A. was adjudged a ward of the court in a separate delinquency action and the dependency was dismissed. As a result of the dismissal of dependency, any controversies that existed at the time Father filed his appeal no longer exist. Therefore, the issue is moot. Even if he were to prevail in his appeal, the result can have no practical impact or provide him effectual relief in the dependency case, which has been dismissed.

Father argues the issue is not moot because “[w]hether [S.A.] is an Indian child is an actual controversy” in the delinquency action.³ Father’s remedy, however, would be to address these issues in the delinquency proceedings, and “not [in] an appeal from a matter where jurisdiction has been terminated.” (*In re Michelle M.*, *supra*, 8 Cal.App.4th at p. 330.)

³Father acknowledges that section 602 cases are generally exempt from ICWA, and that ICWA procedures must be followed only in “rare cases.” (Citing *In re W.B.* (2012) 55 Cal.4th 30, 59 [“If the court sets a permanency planning hearing to terminate parental rights over a delinquent ward, or if the court contemplates ordering a delinquent ward placed in foster care and announces on the record that the placement is based entirely on parental abuse or neglect and not on the ward’s offense, notice must be sent to the relevant tribes and all other ICWA procedures must be followed”].)

CONCLUSION

The appeal is dismissed.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.