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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re CHASE R. et al., Persons Coming  
Under the Juvenile Court Law.

MARIN COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ELISE R.,

Objector and Appellant.

A143920

(Marin County Super Ct.  
Nos. JV25964A, JV25965A)

Elise R. filed separate notices of appeal from the “findings and orders made on 12/22/2014” by the Marin County Juvenile Court concerning the dependencies commenced for her sons Chase and Corbin. Those “findings and orders” come to us in an unorthodox form.

Ordinarily, a juvenile court at a dispositional hearing states its findings, which are recorded in the reporter’s transcript, and they are then in effect re-recorded in a Judicial Council form. It is common for a number of these findings to be in the form of recommendations from the relevant social services agency (here the Marin County Health and Human Services Agency [Agency]), which the court often adopts by reference and in toto. Things are very different here.

Here, at the dispositional hearing the juvenile court explained its procedure as follows: “[T]he Court made an order basically sort of outlining about the contested hearing and who was present and what was admitted and then a generalized summary of the basic issues in the case. And the Court’s finding is set forth therein and the Court makes the following orders in its order.

“Granting full physical custody of Chase to Mr. D. [the presumed father] with visitation to and shared legal custody with Ms. R. [the appellant herein], if it’s not in place it would need to be established. The petition regarding Chase is to be dismissed.

“The family reunification services ordered for Ms. R[.] as to Corbin and the Court orders the [Agency] to exercise discretion to return Corbin to Ms. R[.]’s custody as soon as possible, reasonably possible, and the context of a shared custody arrangement with Mr. N[., the presumed father]. Visitation between Ms. R[.] and Corbin has been two times a week. There may be other relevant visitation orders to be issued and family maintenance services are ordered for Mr. N[.] as to Corbin. Those are the basics of the Court’s order following the highlights of the key concerns.

“The Court also has the findings and orders after the jurisdiction hearing for each of the children as well as the findings and orders after the disposition hearing. And the Court as to what documents that were admitted the Court has stated that in its order and its prior order that was signed by me.

“The Court also under jurisdiction hearing finds that notice was given as required by law for Corbin’s and Chase’s respective matters.

“The JV-412 [a Judicial Council form] is the findings and orders after jurisdiction hearing and the JV-415 [another Judicial Council form] present the findings and orders after the dispositional hearing.

“The Court is incorporating those respective findings and orders for each one of the children and those findings and orders will be attached to the court’s minutes . . . of today and everyone will have a copy of the formal findings and orders after the respective jurisdiction and disposition hearing.”

“And for Corbin, the Court’s findings and orders include, and this is after disposition for Corbin, I don’t know if I stated those already.

“So the JV-415 findings and orders after disposition hearing, this is in regards to Corbin, the JV-420 removal from the custodial parent placement with the previously non-custodial parent, and the JV-400, the visitation attachment structuring visitation between Corbin and mother, and Corbin’s JV-417 the in-home placement with formal supervision.

“Those juvenile findings and orders identified by me through Corbin’s case they too will be incorporated and shall be attached to the court’s minutes . . . of today. I think that wraps up Corbin and Chase.”

There is one matter that may be settled at the outset. Contrary to the obvious import of the juvenile court’s remarks, there was not a separate jurisdictional hearing that was concluded prior to the dispositional hearing. What occurred here was a combined jurisdictional and dispositional hearing, as is apparent from the caption of the order written by the court and mentioned by the court at the beginning of the remarks just quoted.

So, for purposes of this appeal we have: (1) the “Orders Following Contested Combined Jurisdiction/Disposition Hearing” prepared by the court; (2) the “Findings and Orders After Jurisdictional Hearing” on Judicial Council form JV-412; (3) the “Findings and Orders After Dispositional Hearing” on Judicial Council form JV-415, plus attachments; and (4) the court’s oral remarks at the hearing.

The quickest glance at appellant’s opening brief discloses that, wholly apart from the merits, she discerned a problem with the form of the rulings she was contesting. The first caption in her brief reads: “The Juvenile Court’s Findings and Orders on December 22, 2014 must be reversed because they are so internally inconsistent as to preclude [] meaningful review.” Appellant notes that the “Findings and Orders After Jurisdictional Hearing” clearly show that the court sustained the allegations of the third amended petition (“filed on 09/08/2014”), but the court’s hand-written order spoke of “the 4th Amended . . . Petition filed October 24, 2014.” This is not a pedantic detail, because the “Findings and Orders After Jurisdictional Hearing” show the court sustaining the

allegations under subdivisions (b) and (g)<sup>1</sup>, but the fourth amended petition (unlike the third) had no allegations under subdivision (g).<sup>2</sup> Further confusion is present in the “Dispositional Attachment” (Judicial Council form JV-420) to the “Findings and Orders After Dispositional Hearing.” On the attachment is the following: “The child is a person described under Welf. & Inst. Code, § 300 (check all that apply).” The box for “300(b)” is checked, but not the box for “300(g).” Thus, there is a tangible possibility that the court sustained an allegation that had been withdrawn.

Appellant further notes that on the “Findings and Orders After Dispositional Hearing” for Chase, neither of the boxes for the recitals “**The child has [/ does not have] siblings under the court’s jurisdiction**” are checked. By contrast, on the “Findings and Orders After Dispositional Hearing” for Corbin, the box for “**The child does not have siblings under the court’s jurisdiction**” has been checked.

In addition, appellant notes that although the court in its written order stated “The petition regarding Chase is dismissed,” the court attached to its “Findings and Orders After Jurisdictional Hearing” a JV-400 form specifying that appellant was to have once-a-week visits with Chase, supervised by the Agency, with Chase being transported by his presumed father to an “Agency visitation facility.” The attachment further states: “The [Agency] has the discretion to increase frequency and decrease supervision for this

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<sup>1</sup> The subdivision references are to section 300 of the Welfare and Institutions Code. Statutory references are to this code. References to a “rule” are to the California Rules of Court.

<sup>2</sup> As pertinent here, the two allegations under subdivision (b) were: (1) “There is a substantial risk that the children . . . will suffer, serious physical harm or illness, by the willful or negligent failure of their mother . . . to provide the children with adequate food, clothing, shelter or medical treatment,” and (2) “There is a substantial risk that the child, Corbin N[.] . . . , will suffer, serious physical harm or illness, as a result of the failure or inability of the father . . . to adequately supervise or protect Corbin.” The allegation under subdivision (g) in the third amended petition was that “The children . . . have been left without any provision for support. On or about 07/21/2014, Ms. R[.] was arrested by the San Rafael Police Department on two counts of child endangerment for forcing the children to live in an environment that poses health and safety risks for them. There were no other adults to care for the children.”

visitation. Additionally, the [Agency] may change the location of the visits to be in the mother's home. The [Agency] may authorize overnight visitation if/when deemed appropriate."

In its amended respondent's brief, the Agency had a variety of responses. It invoked the rule that "when multiple written orders are internally inconsistent, the juvenile court's oral ruling prevails. *In re Karla C.* (2010) 186 Cal.App.4th 1236, 1259–1260, fn. 9." Here, however, the court's "oral ruling" does nothing more than reiterate the points made in the court's written order, and thus furnishes no basis for reconciling the deficiencies noted by appellant.

The Agency next admits that presence of "discrepancies" as well as "some clerical errors and stale findings," but argues that "even if this Court determines the juvenile court's order to be unclear, such a finding would only result in a remand to clarify the juvenile court's oral reading of the written order." Although conceding the possibility of a remand, the Agency's approach is rather narrow, permitting only "clarification" of the juvenile court's remarks at the hearing. This would not necessarily correct the problems identified by appellant, which the Agency sees as being no more significant than "clerical errors and stale findings." The Agency does not detect any real problems, particularly those of omission: "the court's order was and is clear and unambiguous."

Lastly, the Agency concludes with "In any event, any errors were harmless."

We were sufficiently concerned that we asked for supplemental briefing. Moreover, our own research failed to disclose whether the minors had ever been adjudicated dependents. We therefore asked for "additional briefing on the following issues: (1) Whether the juvenile court erred in dismissing the dependency petition as to minor Chase R., and terminating its jurisdiction over said minor, while the matter of visitation by appellant remained unresolved. (2) Whether the juvenile court's dispositional orders comply with Welfare and Institutions Code sections 361 and 390, and California Rules of Court rules 5.695(a)(1), (a)(5)-(a)(7), and 5.695(d). (3) Whether, if such error or noncompliance did occur, reversal or remand for corrective action is appropriate."

With the benefit of that briefing, we conclude that the dispositional orders are so veined with procedural deficiencies that an informed review cannot be undertaken with confidence, and that the most prudent course is to reverse so that new dispositional orders may be entered.

There is no denying the power of a juvenile to terminate a dependency. A number of statutes address dismissal in various situations. Sections 303 and 391 govern when a juvenile court is considering terminating jurisdiction because a dependent has reached the age of majority. Sections 361.2 and 362.4 govern when a juvenile court is considering terminating jurisdiction because a dependent in a parent's care is no longer at risk if left in the parent's care without the court's supervision. And Section 390 governs when a juvenile court is considering dismissing a dependency petition, before or after the court has sustained one or more allegations of that petition. (See *In re Shannon M.* (2013) 221 Cal.App.4th 282, 294, fn. 7.)

In its supplemental briefing, the Agency defends the findings and orders of the juvenile court in the obvious belief that the dismissal of the petition was made pursuant to sections 361.2 and 362.4. Such a conclusion is certainly a reasonable one, but it is hardly the only one. The "Findings and Orders After Dispositional Hearing" recite:

**"Disposition is ordered as stated in** (check appropriate box and attach indicated form):  
. . . . X Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 361, 361.2) (form JV-420), which is attached and incorporated by reference," and which states that Chase's presumed father "is granted physical and legal custody of the child . . . . **Jurisdiction of the court is terminated.**"

The word "dismissal" does not appear in section 361.2. It does appear in section 390, which provides: "A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the

minor is not in need of treatment or rehabilitation.”<sup>3</sup> According to a leading practice authority, “Such dismissals are rare and usually occur only when the goal of protecting the child has been achieved without court intervention.” (Abbott, et al., *Cal. Juvenile Dependency Practice* (2015) § 5.15, p. 318.) Concerning termination of juvenile court jurisdiction, the same source states: “Once dependency jurisdiction has been terminated, the juvenile court no longer has jurisdiction of the parties and lacks any ability to change, modify, or set aside any previous orders.” (*id.*, § 14.88, p. 1261; see *In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1504 [“The moment the juvenile court terminates the dependency proceedings, the child passes completely from the . . . jurisdiction of the juvenile court”].)

Here, the juvenile court purported to “terminate” its jurisdiction in the JV-420 attachment to the “Findings and Orders After Dispositional Hearing” for Chase, while simultaneously stating in its “Orders Following Contested Combined Jurisdiction/Disposition Hearing” prepared by the court that “The petition regarding Chase is dismissed.” This is not simply semantic hairsplitting, because dismissing a petition cannot be accomplished unless the juvenile court makes the findings required by section 390, namely: (1) “that the interests of justice and the welfare of the minor require the dismissal” and (2) “that the parent or guardian of the minor is not in need of treatment or rehabilitation.” (See *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2008) 162 Cal.App.4th 1408, 1417–1418; *In re Natasha H.* (1996) 46 Cal.App.4th 1151, 1156–1157; Cal. Rules of Court, rule 5.695(a)(1); Seiser & Kumli, *California Juvenile Courts Practice & Procedure* (2010) § 3.121, p. 3-199.)

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<sup>3</sup> And in a parallel statute, section 782, the relevant language of which states: “A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor [who is the subject of the petition require that dismissal] . . . .The court shall have jurisdiction to order such dismissal or setting aside of the findings and dismissal regardless of whether the minor [the subject of the petition] is, at the time of such order, a ward or dependent child of the court.”

Neither of their required findings is set forth in the record. There is no finding that Chase's interests require the dismissal. There is no finding that appellant is not in need of rehabilitation. We do not hold that such findings could not be made. The court clearly believed it was appropriate to maintain some sort of authority, even if only contingent, to regulate visitation between appellant and Chase. On the other hand, the court found in its "Orders Following Contested Combined Jurisdiction/Disposition Hearing" that appellant's "reunification with the two children may occur in the future," prompting the court to order the Agency provide "reunification services . . . for Ms. R[.] as to Corbin." In light of these determinations, it is not self-obvious that the court would conclude that appellant was "not in need of treatment or rehabilitation."

True, section 361.2 does provide for termination of a dependency. Its subdivision (b)(1) provides that when a child is removed from a custodial parent and placed with a noncustodial parent, the juvenile court has several options, one of which is that the court may "Order that the [noncustodial] parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents." The first three sentences of this subdivision do appear to replicate the circumstances here. However, the final two sentences implicitly contemplate that if the court terminates jurisdiction, any further proceedings—such as a dispute about visitation—will take place in the family court. (See *In re J.S.* (2011) 196 Cal.App.4th 1069, 1077.) And section 361.2 subdivision (c) directs findings substantially similar to those required by section 390. Here, there is nothing in any of the juvenile court's findings orders, or attachments suggesting there was a pending, or imminent, controversy between Chase's parents in the family court.

Section 362.4 is to the same effect, except that it is more explicit about the presence of a then-pending action in the family court.<sup>4</sup> In *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 269, this court held: “An order entered pursuant to section 362.4 is commonly referred to as an ‘exit order.’ [Citation.] The exit order is filed in any pending superior court action in which the custody of the child is at issue and if no such action is pending, the exit order can be used to open a file in the superior court of the county of residence of the parent who has been given custody of the child.” As already noted, there was no family court action, pending or contemplated, concerning Chase’s custody, in whose favor the juvenile court meant to end its involvement. The nonexistence of such an action is readily inferred from appellant and Chase’s presumed father who resided in the same county as the juvenile court.<sup>5</sup> If there was such an action, one would expect to see it mentioned in the Agency’s exhaustive disposition report

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<sup>4</sup> This statute provides in pertinent part: “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the minor’s parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act . . . are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . and an order determining the custody of, or visitation with, the child.

“Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.

“If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.” (§ 362.4.)

<sup>5</sup> It is therefore puzzling to have the Agency advocate in its supplemental brief that “any remand should be to the family court.”

submitted to the juvenile court, or noticed by the court itself. Instead, all that emerges from the record on appeal is silence.

To this uncertainty must be added the confusion as to what was the precise basis of the juvenile court asserting jurisdiction, i.e., was it subdivisions (b) and (g) of the third amended petition, or just subdivision (b) of the fourth amended petition? No less troubling is the possible bureaucratic separation of Chase from Corbin. Appellant argues that what we have is reversible error. The Agency is equally convinced that any error is harmless. We believe a proper respect for the juvenile court is best served by a remand, which will provide the court with an opportunity to restate its intentions with greater clarity.

The dispositional orders are reversed, and the causes are remanded to the juvenile court with directions to enter new dispositional orders in conformity with the views expressed herein. The Agency's request to take judicial notice of the fourth amended petition is denied as moot.

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Richman, J.

We concur:

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Kline, P.J.

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Miller, J.

A143920; *Marin County H & HS v. E.R.*