

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARIAH M.,

Appellant.

A146772

(Alameda County
Super. Ct. No. OJ15025662)

Counsel for the minor, appellant Mariah M., contends the juvenile court abused its discretion when, upon learning of Mariah’s death, it declined to retain jurisdiction over her dependency case until a police investigation was completed and the cause of death officially ascertained. The court found there was no longer a basis to continue the dependency action and dismissed the petition. We agree, and affirm.

BACKGROUND

On September 30, 2015, three-year-old Mariah and her five-year-old brother were placed in protective custody based on reports of neglect and physical and sexual abuse. On October 2 the Alameda County Social Services Agency (the Agency) filed juvenile

dependency petitions on behalf of the children. They were detained three days later and an uncontested combined jurisdiction and disposition hearing was set for October 22.

On October 3 the children's temporary care provider took Mariah to the emergency room after she displayed what the Agency's report described as "concerning behavior." Mariah tested positive for methamphetamine and was discharged to the caretaker. Police investigated the incident the same day.

On October 16 the care provider found Mariah unresponsive and called 911. Mariah was transported to the hospital, where she was pronounced dead on arrival.

The Agency's report for the October 22 jurisdiction/disposition hearing discussed the circumstances of Mariah's death and recommended that the court dismiss her petition.¹ A criminal investigation was underway and autopsy results were pending.

At the October 22 hearing Mariah's counsel from the East Bay Children's Law Offices (EBCLO) opposed dismissal and requested a contested hearing. The following discussion ensued. "[COUNSEL]: . . . I would ask that before we do that there be some follow-up and some information provided about the police investigation that's happening right now, and what the report from the coroner's office is. [¶] I do think that we—that the Court should be mindful of those things before the petition is dismissed. There's also an obligation for the Court and for minor's counsel to look into any possible causes of action. And that's—still at this point we don't know. [¶] THE COURT: But you won't be doing that. It would be the District Attorney's Office. [¶] [COUNSEL]: We would be arranging it if we thought that there was— [¶] THE COURT: I mean, but wouldn't there be an investigation by the police department? [¶] [COUNSEL]: Yes. And that's happening right now."

The Agency's counsel interjected that there was nothing more the Agency could do for Mariah and no reason to continue her dependency case. Mariah's attorney argued in opposition that "there is an obligation for the Court and for minor's counsel under

¹ Dependency proceedings continued as to her brother.

[Welfare & Institutions Code section] 317 to assess any causes of action that she may have.^[2] And I think it does bring some dignity to her passing if we take a look at what happened to her.”

The Court stated its intention to dismiss the petition. It explained: “[T]here’s no bases for a contested hearing because the minor is not living at this time. It’s unfortunate, but I think whatever is going to be done, the police are going to do it. And I don’t know where—anything you want to do, you can certainly. I’m certain that they’re going to call witnesses if they need [] based on these reports. [¶] . . . [¶] But at this point I don’t know what you could do, or what you could do in terms of helping with the—I mean, all that’s going to be done is going to be done. Everything is going to be done.”

Another EBCLO attorney argued against dismissal because it could preclude Mariah’s counsel from pursuing tort claims on her behalf and prevent EBCLO from identifying attorneys who could investigate potential causes of action. “But if we’re precluded from even participating in that regard, then that short sets [sic] the rights of this young child who deserves a little bit more than just an immediate dismissal.”

The court dismissed the action. This appeal was timely filed.

DISCUSSION

The issue presented is closely aligned with one addressed for the first time in *Imperial County Dept. of Social Services v. S.S.* (2015) 242 Cal.App.4th 1329 (*Imperial County*). The child in that case died from apparent abuse while in foster care pursuant to a sustained dependency petition. (*Id.* at pp. 1331-1332.) The parents urged the court to keep the dependency case open as a means to investigate the child’s death and moved to appoint a guardian ad litem to investigate potential claims on behalf of the child’s estate. The juvenile court denied the motion and terminated its jurisdiction.

The appellate court affirmed. It explained: “The issue presented to us is not addressed in the Welfare and Institutions Code nor has it been discussed in case law.

² Further statutory citations are to the Welfare & Institutions Code.

Perhaps inherent in the notion of child protection—at the heart of dependency cases—is the existence of a living child, such that a need for review has not previously presented itself. In any event, we conclude the juvenile court properly terminated jurisdiction when it did. [¶] . . . [¶] In dependency cases, a juvenile court has jurisdiction to make orders pertaining to ‘[a]ny child who comes within any of the [statutory] descriptions’ set forth in subdivisions (a) through (j) of section 300. (§ 300.) The purpose of dependency law ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. ‘[Citation.] As numerous courts have reiterated, ‘[t]he paramount purpose underlying dependency proceedings is the protection of the child. . . .’ [Citation.]

“Specifically here, where the juvenile court maintained jurisdiction over Child under section 300, subdivision (b), the Legislature has explicitly declared, ‘[t]he child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.’ [Citation.] When Child's death was confirmed, there could no longer be any risk of her suffering future harm. Moreover, the legal framework surrounding dependency cases, with its desire for reunification of families, or if not possible, development of a permanent placement plan, contemplate that a juvenile court's orders will be made for the benefit of living children. [Citations.]” (*Id.* at p. 1334, italics omitted.)

These considerations apply with equal force where, as occurred here, the child died before the jurisdictional hearing. There is no purpose in continuing the dependency case when, tragically, there is no longer any need to protect the child from harm.

Mariah’s appellate counsel views the matter differently. She argues the juvenile court could and should have refrained from dismissing the petition until it received official information concerning the cause of death and placed it in Mariah’s juvenile court file. We disagree. Even were we to assume for purposes of argument that the court retained jurisdiction after Mariah’s death, and that it had the discretionary authority to

keep the case open to ensure all parties “receive vital information about Mariah’s death while in foster care,” as counsel maintains, the court reasonably declined to do so. Contrary to counsel’s suggestion, the record does not indicate the court believed that it lacked the discretion “to do anything other than dismiss the petition.” Rather, the record reflects the considered rejection of counsel’s view that it was in Maria’s best interest to continue the dependency action after her death.

That decision was within the juvenile court’s discretion. We will not disturb a discretionary ruling in a dependency case “ ‘unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. . . . The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. ’ ” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) Here, Mariah’s death tragically removed her from the court’s protective reach. There is no indication that terminating the dependency action could impede the ongoing police investigation, and her heirs and successors in interest may pursue any potential tort claims they or her estate possess. Moreover, neither they, the police, the press, nor any other members of the public are prevented by the court’s ruling from accessing Mariah’s case file. (*Imperial County, supra*, 242 Cal.App.4th at p. 1335; see also *In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1556.) The court appropriately dismissed the petition and terminated this dependency.

DISPOSITION

The order is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.

In re Mariah M., A146772