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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re M. C., et al., Persons Coming Under
the Juvenile Court Law.

B234171

(Los Angeles County
Super. Ct. No. CK86006)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

MICHAEL C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Debra Losnick, Juvenile Court Referee. Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrew Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

Michael C. (father) appeals from a judgment declaring three of his children, M. (born in April 2007), Michael (born in June 2008), and Monique (born in November 2009) dependents of the court pursuant to Welfare & Institutions Code section 360, subdivision (d).¹ Specifically, father contests the jurisdiction and disposition orders, which he contends were based on unreliable hearsay statements that should have been excluded under section 355, subdivision (c)(1)(B). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Rosa A. (mother) are unmarried parents of M., Michael, and Monique. The parents live in separate residences.

1. Section 300 petition

On January 6, 2011, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivisions (b) (failure to protect); (d) (sexual abuse); and (j) (abuse of sibling).

On January 3, 2011, mother made a police report alleging that father had sexually abused M. and Michael and that the children were afraid of him. An emergency social worker went to the police station to meet with mother and the children. When the social worker arrived, mother was being treated and prepared for transport to the hospital with a complaint of heart problems. Mother asked the social worker to contact her 28-year-old daughter, Carolina, to care for the children while she was in the hospital.

Los Angeles Police Department Detective Edwards informed the emergency social worker that the matter would be investigated by the Valley Child Abuse Unit. Detective Edwards further stated that the allegations could be the result of a custody battle between the parents, since there had been a previous investigation of sexual abuse allegations in 2010.

M. was transported to Northridge Hospital Center for assault treatment services. She was examined, and showed no signs of sexual abuse or injuries. Michael and Monique were not examined, since they were not considered to be primary victims.

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

Mother was interviewed by the social worker on January 3, 2011. She played a voice recording of M. saying: “My daddy kissed me on my precious, on my mouth, and on my booty.”² Mother also told the social worker that her son, Michael, was “wiggling his tongue” and saying that his daddy did it.

Mother explained to the social worker that she went to the emergency room because her blood pressure went up to 290. She reported that she suffers from anxiety and depression. Three months prior to the present incident, mother had a panic attack. Mother was taking Lorazepam and Zoloft, but was not taking blood pressure medicine. Mother was given some medication in the emergency room and was then released from the hospital.

On the same day, the social worker used a Barbie doll to interview three-year-old M. She asked M. if her daddy touched her in a bad way and M. responded: “Yes. Precious and booty.” When the social worker asked M. where her daddy touched her, the child pointed to the doll’s lips, buttocks and vaginal area. When asked whether it hurt, M. responded “yes.” The social worker also asked if father used anything under her clothes, to which M. responded: “Fingers.” When asked where father put his fingers, M. responded: “Precious, booty.”

When questioned whether father removed her clothing, M. replied “no.” The social worker asked M. if father had touched her in that way more than once. M. responded, “When I visit.”

Michael, then age two, was also interviewed on January 3, 2011, with the aid of a Barbie doll. When asked if his father touched him in a bad way, Michael nodded his head up and down, which the social worker accepted as an affirmative response. In response to questions as to where his father touched him, Michael pointed to the doll’s lips, buttocks and vaginal area. When asked if it hurt, the child again nodded. Michael was then asked if father used anything under his clothes, to which Michael responded, “Pee-pee, fingers.”

² M. refers to her vagina as her “precious.”

The children's half-sibling, Anna, age 12, denied that father ever touched her private parts. When asked if the siblings were sexually acting out, Anna replied in the negative. The siblings had not disclosed any allegations to Anna. She denied any sexual, emotional or physical abuse.

Adult half-sibling Viviana similarly denied knowledge of the current allegations. She stated that Michael had tried to kiss her with his tongue, but that she did not permit him to kiss her in that manner.

The social worker met with father during the initial investigation. He denied the allegations, and stated that mother had made the same claims the previous year.³ He thought mother was creating these allegations in retaliation against him. Mother wanted to get back together with him and get married. He denied kissing the children on their mouths. Father once observed Michael trying to kiss M. on the mouth, but he corrected the boy and told him to kiss her on the cheek. Father observed this behavior on several occasions. Father thought perhaps Michael had seen father and mother kiss when the two were trying to reconcile.

2. Detention hearing

Both parents appeared at the initial detention hearing on January 6, 2011. The court declared father the presumed father of M. and Michael, and later declared him the presumed father of Monique after genetic testing confirmed paternity. Father's counsel advised the court that mother made this report against father because he filed a paternity and child support action in family court.

The court detained the three children in mother's custody, ordered monitored visits for father, and continued the matter for a pretrial conference.

³ On April 9, 2010, a referral of sexual abuse was made regarding father towards M., then age two. The allegations were found to be inconclusive and the referral was closed. Two prior DCFS referrals concerning the family alleged general neglect against the mother: one in 2006 and one in 2010. The neglect allegations were investigated and deemed unfounded.

3. DCFS reports

Mother was assessed by the University Corporation Valley Trauma Center on January 8, 2011. She repeated the allegations, and was upset that she had not been taken seriously when the allegations surfaced a year before. Mother reported that she has suffered verbal and physical abuse from father during their off-and-on relationship, although he never abused her in front of their children. Mother explained that she had no support system. Father accused mother of cheating on him; however, he was the one who cheated on her. Mother and another woman were pregnant at the same time by father. Mother was also concerned about father flirting with her oldest daughter.

Mother said the children were not sleeping well and M. had lost her appetite. Mother's older children were angry at mother for getting them involved in the situation. Mother was currently not compliant with her psychotropic medication because she did not like the side effects. Mother was willing to receive services.

Mother was initially opposed to allowing the children to visit with father. She was concerned that DCFS would liberalize the visits and that father would "smooth-talk" the children into doing anything he asked. Mother was very angry and appeared to believe that it was the social worker making the decisions about father's visits.

Over mother's objections, father had his first monitored visit with M. and Michael on January 20, 2011.⁴ Father had regular monitored visits with the children between the date of the detention hearing and the date of the jurisdiction/disposition hearing. Father engaged appropriately and affectionately with the children. He brought nutritious snacks and was prepared to change Monique's diaper.

In a jurisdiction/disposition report filed on March 7, 2011, the dependency investigator (DI) indicated that it appeared to her that "the children are used as emotional pawns in their parents' turbulent relationship." It also appeared to the DI that "the

⁴ Mother refused to bring Monique to the first visit until the paternity test results were obtained. After speaking with her attorney, she agreed to bring Monique to the second visit. The results of the paternity test were obtained on February 17, 2011, and showed that father's probability of paternity was 99.99 percent.

children may be financial pawns in a custody battle between their parents.” Father alleged that the children are mother’s only means of financial support, and that mother coached the children to make the allegations because father had requested full custody.

The March 7, 2011 report noted an incident which had occurred on February 24, 2011. The DI made arrangements to interview mother and the children directly after their visit with father. Mother said it would be better for the children not to see her before their interview, as they would not stay for the interview once they saw her. Father did not agree with this arrangement, as he did not want to leave the children without a parent present and insisted that they be taken to their mother. As a result, the DI felt the children were too upset to proceed with the interview. The DI noted that it was not clear whether father was trying to sabotage the interviews. Instead of comforting the children, he made statements which caused alarm.

On February 25, 2011, DCFS interviewed mother at the DCFS offices. Mother explained that in February 2010, she and the children were watching the movie *The Lion King* (Walt Disney Pictures 1994). At the point in the movie when the big lion licks the little lion, M. said, “daddy did that to me right here,” and pointed to her vagina. Mother was shocked and paused the movie. Mother asked the child to repeat what she had said, and the child stated that father touched her “precious” and demonstrated with her hand. Mother confronted father about it the next day. They began arguing and the neighbors called the police. Mother was able to get a restraining order against father for a month, but she claimed that when she went back she was unable to get an additional restraining order because “they said I was just making allegations.” Mother spoke in detail about her dissatisfaction with father’s behavior, how he cheated on her, and how she just wanted a normal relationship.

A DCFS service log reported on all of father’s monitored visits. At the beginning of an April 2011 visit, Michael expressed feeling scared. When the social worker asked why, Michael responded that it was because his father licked his booty. Michael started screaming and refused to go into the visitation room. With mother’s encouragement, Michael eventually entered the visitation room, and the visit otherwise went well.

During a visit in late May 2011, M. was crying and did not want to attend the visit with father. When the social worker asked why, M. said it was because “he (father) put his precious on her (my) booty.” Further, mother reported that after the visit, mother heard Michael telling M. that “father was very nice to them and he did not do those things to them anymore.”

On June 7, 2011, DCFS reported that father was participating in weekly individual counseling. He was also enrolled in sexual abuse awareness classes.

4. Father’s request for discovery and notice of objection to hearsay statements

On April 5, 2011, father filed a discovery request seeking DCFS’s case files and documents. Father also filed a formal objection to “all hearsay and other objectionable statements contained in DCFS reports, report attachments and all other documentation that DCFS seeks to introduce as evidence in the upcoming adjudication of the petition” pursuant to section 355, subdivision (c)(1).

Only part of the family law court file had been received for the contested hearing on April 13, 2011. Therefore, the matter was continued to June 7, 2011.

5. Contested jurisdiction/disposition hearing

The contested hearing was held on June 7, 2011. The court received into evidence the detention report dated January 6, 2011, the jurisdiction/disposition social study report and its attachments dated March 7, 2011, the jurisdictional report dated March 7, 2011, the interim review report dated April 13, 2011, and the interim review report dated June 7, 2011. These documents were received into evidence without objection.⁵

The first witness for DCFS was Viviana, the children’s older sister. Viviana resided with the children and mother. She testified that she was concerned about the children having contact with their father based on the statements the children had made. Viviana recalled a night when her mother woke her up. Viviana asked M. what had happened, and M. stated: “My daddy licked me in my precious, my mouth . . . and my

⁵ It does not appear that the court ever explicitly ruled on father’s formal objection, filed April 5, 2011, to the hearsay evidence contained in the DCFS reports.

bootie.” Viviana asked the child when, and the child responded “today.” The children had returned from a visit with father that day.

Viviana stated that there was a second time when M. made the same disclosure. M. and Michael were resistant to attending a visit with their father. When Viviana asked why, M. repeated the same allegations. Michael also made similar statements to Viviana. Viviana recalled an incident when Michael was playing with a toy gun. Michael stated that he was going to shoot his dad. When Viviana asked him why, Michael stated: “because my dad licked me in my bootie.” Michael repeated these allegations on more than five occasions.

Viviana denied previously telling a social worker that she did not know about the allegations.

Mother also testified. Mother described the incident on February 25, 2010, when they were watching *The Lion King* and M. disclosed that her father licked her like that on her vagina. Mother admitted that she did not do anything at the time of M.’s disclosure, but confronted father the following day. An argument ensued and the police were called. Mother explained that Michael later made similar disclosures. Mother admitted that her request for a restraining order in family court was denied because the judge did not believe her.

During closing arguments, the children’s counsel joined county counsel in asking that the petition be sustained. The children’s counsel opined that “[i]t would be an incredible accomplishment that a four year old and a three year old could be coached and be so consistent in their statements.” Father’s counsel argued that the allegations were the result of a tumultuous emotional battle between the parents, and were instigated by the mother as retaliation by mother to gain father’s financial support.

After hearing closing arguments, the court noted that the “criminal courts have a very different standard than this court does,” and indicated that the decisions of the district attorney would have no bearing on its decision. Further, the court stated, “it would be absolutely incredible for anyone to get a three and a two year old to be able to tell this type of a story so consistently to so many people.” Additionally, the court noted

that the children's statements were documented by numerous people, including the mother, the sister, the social worker, and two monitors. The court felt that this also lent credibility to the allegations.

After amending the allegations, the court found them to be true by a preponderance of the evidence. The court declared the children to be persons described by section 300, subdivisions (b), (d), and (j). The children were declared dependents of the court and were placed in the home of their mother under supervision of the court, with family maintenance services for mother and family reunification services for father.

Father filed an application for rehearing, which was denied. Father filed his notice of appeal on June 8, 2011.

DISCUSSION

Father argues that the evidence did not support the court's jurisdictional findings because the hearsay statements of M. and Michael were uncorroborated, the product of mother's undue influence, and did not provide sufficient indicia of reliability. Father also argues that the juvenile court erred by failing to make a ruling on father's timely filed objections to those hearsay statements.

I. Standard of review

Challenges to a juvenile court's jurisdictional findings are reviewed for substantial evidence. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) "When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]" (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

II. The children's hearsay statements

Father argues that the uncorroborated statements of M. and Michael did not constitute substantial evidence and could not be used as the basis for sustaining the petition.

A. Admissibility of hearsay in child sexual abuse cases

Father acknowledges that “[t]he difficulties of proving child sexual abuse in juvenile dependency cases led our Supreme Court in *In re Cindy L.* (1997) 17 Cal.4th 15 (*Cindy L.*) to establish the child dependency hearsay exception for a child victim’s out-of-court statements in dependency hearings.” (*In re April C.* (2005) 131 Cal.App.4th 599, 608-609 (*April C.*)) “Under this exception, child hearsay statements in dependency proceedings in which sexual abuse is alleged are admissible if: (1) the court finds that the time, content and circumstances of the statements provide sufficient indicia of reliability; (2) the child is available for cross-examination or there is evidence of child sexual abuse that corroborated the child’s statements; and (3) interested parties have adequate notice that the statements will be used.” (*Id.* at p. 609.) Indicia of reliability of such hearsay statements are: “‘spontaneity and consistent repetition; (2) the mental state of the declarant; (3) use of terminology unexpected of a child of a similar age; and (4) lack of motive to fabricate.’ [Citation.]” (*Ibid.*)

Following the Supreme Court’s articulation of the child dependency exception in *Cindy L.*, section 355 was amended to expressly authorize the admission of hearsay statements of a child victim contained in a social study. (*April C., supra*, 131 Cal.App.4th at p. 609.)

The Supreme Court again considered the child dependency hearsay exception in *In re Lucero L.* (2000) 22 Cal.4th 1227 (*Lucero L.*). The *Lucero L.* court reiterated that this exception to the hearsay rule is not valid unless “‘the class of hearsay evidence proposed for admission is inherently reliable.’ [Citation.]” (*Id.* at p. 1238.) The high court explained that “only certain types of hearsay are sufficient to support a jurisdictional finding.” (*Id.* at p. 1242.) The *Lucero L.* court recognized “the due process problems inherent in relying too heavily on the hearsay statements of incompetent minors to make

jurisdictional findings when there has been no opportunity for cross-examining the minor.” (*Id.* at p. 1244.) The court confirmed that “[e]xcept in those instances recognized by statute where the reliability of hearsay is established, ‘hearsay evidence alone “is insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence. [Citation.]”’ [Citations.]” (*Id.* at pp. 1244-1245.) The court concluded that “section 355 notwithstanding, the out-of-court statements of a child who is subject to a jurisdictional hearing and who is disqualified as a witness because of the lack of capacity to distinguish between truth and falsehood at the time of testifying may not be relied on exclusively unless the court finds that ‘the time, content and circumstances of the statement provide sufficient indicia of reliability.’ [Citation.]” (*Id.* at pp. 1247-1248.)

B. Father’s arguments against the reliability of the children’s hearsay statements

Father argues that the statements of M. and Michael did not show any special indicia of reliability. The social workers did not test the children’s ability to tell the truth or distinguish between truth and falsehood. The police officer who initially interviewed the family opined that the children’s allegations could be the result of the ongoing custody dispute between the parents. Further, father argues, the questions by the social worker initially assigned to the case “went beyond the legal bounds of leading questions.” For example, father points out, she asked M. whether her *Dad* touched her in a bad way. Father argues that instead of assuming that father had touched her in a bad way, the social worker should have asked the child if any *person* had touched her in a bad way. Father points out that there were two subsequent unsuccessful attempts to interview the children, and that the district attorney rejected the case.

Father further argues that the testimony of the children’s sister Viviana was contradictory. When the family was initially contacted by DCFS on January 3, 2011, Viviana stated that she was aware of the prior allegations from the past year but did not know anything about the current allegations. When she testified on June 7, 2011, father argues, a new story emerged corroborating the children’s allegations. Father argues that

Viviana's statements and testimony were attempts to support her mother in the false accusations against the children's father.

Father insists that the children's statements are the product of mother's personal retaliation against father. Father points out that following the resolution of their family court dispute, mother made attempts to resume her personal relationship with father. When father initiated a custody action in family court, mother responded by taking the children to the police department to file allegations of child sexual abuse by father. When she took the children to the police department, she "became histrionic and had a panic attack, which resulted in hospitalization." Father points out that on January 1, 2011, in an attempt to reestablish their relationship, mother sent father a text message that she loved him.

Father claims that mother's imagination escalated during the proceedings. For the first time at trial on June 7, 2011, mother described M. imitating sexual behavior with father. Father argues that it was amazing that over six months after the initiation of the proceedings mother suddenly remembered such a detailed incident for the first time.

Finally, father argues that the initial dependency investigator correctly assessed the situation when she concluded that the children were being used as pawns in the parents' turbulent relationship. Father argues that the children's statements were so repetitive as to be "formulaic," showing signs that they were simply implanted by a rejected woman who wanted revenge.

C. The children's statements show sufficient indicia of reliability

Despite father's arguments to the contrary, we find that the juvenile court properly determined that the content and circumstances of the children's statements showed sufficient indicia of reliability and that the jurisdictional findings were supported by substantial evidence.

First, mother and Viviana provided corroborating evidence of the allegations of sexual abuse. Mother, Viviana and father all observed Michael attempting to kiss people inappropriately. Mother had sought help from authorities a year earlier after an initial disclosure from M. Both M. and Michael expressed fear of visiting with father, and each

on separate occasions told a social worker they were scared “because [father] licked [my] bootie” and “[father] put his precious on [my] bootie.” Mother overheard Michael telling M. that father was nice and “did not do those things to them anymore.”

In addition to this corroborating evidence, the children’s repeated statements to numerous people were independently reliable. Two primary indicia of reliability are spontaneity and repetition. (*Cindy L.*, *supra*, 17 Cal.4th at pp. 29-30; *Lucero L.*, *supra*, 22 Cal.4th at pp. 1239, 1246-1247.) As the juvenile court noted, the two children told the story consistently to several different people, including a social worker who interviewed M. soon after the allegations surfaced. M. indicated that father had touched her on her “precious and booty,” and confirmed these statements by pointing at the vagina and buttocks of a Barbie doll. Michael made affirmative head motions when asked if father touched him in a bad way, and similarly used a Barbie doll to show that such inappropriate touching had occurred on his genital area and buttocks. The social worker also heard a voice recording of M. stating that “daddy kissed me on my precious, on my mouth, and on my booty.”

Mother’s testimony in her interview with the social worker was consistent with her testimony at trial. She testified that M. told her spontaneously about the abuse while they were watching *The Lion King*. At the point in the movie when the big lion licked the little lion, M. said “daddy did that to me right here,” and pointed to her vagina. Mother asked if other men in the family touched her, but M. stated that it was only father.

Viviana also confirmed the children’s allegations, and confirmed that the children were resistant to visiting father. While there may have been a discrepancy between her initial report to the social worker and her testimony at trial, it is not our place to assess credibility -- that is the trial court’s role. The reviewing court has “no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) The discrepancy in Viviana’s testimony was brought out during her cross-examination, therefore the juvenile court was aware of it. It is apparent that the juvenile

court did not consider this discrepancy to be significant enough to undermine the credibility of the consistent statements made by the children.

In addition to the consistency of the children's statements, the record shows other indicia of reliability. The initial allegations were spontaneous, and the children bore no apparent ill will towards father. Indeed, there was documentation of affectionate moments between father and the children during their visits.

Under the Supreme Court authority discussed above, the juvenile court was permitted to consider spontaneity and consistent repetition; the mental state of the declarant; the use of terminology unexpected of a child of a similar age; and the lack of a motive to fabricate. (*Cindy L.*, *supra*, 17 Cal.4th at pp. 29-30; *Lucero L.*, *supra*, 22 Cal.4th at pp. 1246-1247.) As set forth above, these factors dictated in favor of the reliability of the hearsay statements. We therefore conclude that the juvenile court did not err in admitting and relying upon the hearsay statements.

Considering all of the evidence presented to the juvenile court, we conclude that substantial evidence supported the jurisdictional findings.

III. Ruling on father's objection

Father argues that the juvenile court erred in failing to make a distinct ruling on his timely filed objections to the hearsay statements of the children. Preliminarily, we note that father did not object when DCFS's reports, containing the hearsay statements, were admitted at trial. This deprived the juvenile court of the opportunity to address father's objections at the time the statements were admitted into evidence and constituted a forfeiture of the issue. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338 [a "parent's failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court"].)

Further, we find that the juvenile court made an implied decision overruling father's objections to the hearsay statements of the children. (*In re Corienna G.* (1989) 213 Cal.App.3d 73, 83 [absent a specific request by the parent, certain determinations may properly be implied on the record].) Under section 355, subdivision (c)(1)(B), the hearsay statements of the children were admissible unless "the objecting party establishes

that the statement is unreliable because it was the product of fraud, deceit, or undue influence.” The juvenile court took care in explaining that it had carefully considered the children’s hearsay statements. The court explained that it would be incredible for anyone to get a two- and three-year-old to consistently repeat the allegations as M. and Michael had done. In fact, the court noted, even after its 20 years experience, it had difficulty believing that even a seven-year-old could be as consistent as M. and Michael had been. Finally, the court noted, “the children’s behaviors as documented by so many different people . . . certainly lend to the credibility of the allegations.”

The court’s comments on the record constitute an implied finding that the children’s hearsay statements were not the product of fraud, deceit, or undue influence, and were therefore admissible as evidence to support the jurisdictional finding. As set forth above, under the guidelines set forth in *Cindy L.* and *Lucero L.*, the juvenile court was permitted to rely on these statements in making its jurisdictional finding.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST