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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B238481

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK90297)

Plaintiff and Respondent,

v.

Z.R.,

Defendant and Appellant,

D.P.,

Defendant and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County. David R. Fields, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant Z.R. (mother).

Karen B. Stalter, under appointment by the Court of Appeal, for Appellant S.P. (minor).

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Respondent D.P. (father).

No appearance for Plaintiff Los Angeles County Department of Children and Family Services.

Mother Z.R. and minor S.P. appeal from a dependency court order dismissing a dependency petition and refusing to assert jurisdiction over S.P. Mother and S.P. argue the court erred in concluding S.P. was not at risk of sexual abuse by father D.P. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In late August 2011, the Los Angeles County Department of Children and Family Services (DCFS) received a referral regarding 10-year-old S.P. DCFS was informed that S.P.'s adult half-sister, Anna R., had recently reported that father—her step-father—molested her around 13 years earlier, when she was 10 years old.

In late September 2011, the family law court entered a judgment of dissolution of marriage, ending the parents' marriage. Mother and father were to share joint physical and legal custody of S.P. Around the same time, DCFS interviewed the family. Mother admitted that when Anna was between 10 and 12 years old, she told mother that father had sexually abused her. Mother said when Anna told her about the abuse 11 years ago, mother was afraid of father, she was pregnant with S.P., she had only been in the United States for four years, and she did not know what to do. Mother said she confronted father but he denied Anna's claims. Mother addressed the situation by installing a lock on Anna's door. Mother also reported she told the family law mediator and her family law attorney that father had molested Anna. According to mother, both told her not to raise the issue because it would seem like mother was lying to get custody of S.P., which could result in her losing custody altogether. Mother said she also told a second lawyer about the molestation, and the attorney advised her not to bring it up until after the final divorce decree was signed.

Anna told DCFS father molested her when she was a child. When the molestation happened, Anna became depressed and gained weight. Anna noticed that S.P. had also gained weight recently and seemed depressed. Anna thus grew concerned that father was also molesting S.P. Anna recalled the inappropriate touching started with father asking her to massage his back, and S.P. had revealed that father had also asked her to massage his back.

S.P. denied any abuse by father. She told DCFS it was “ok” when she went to father’s house, but she preferred mother’s home. Father denied ever molesting Anna. He believed mother and Anna fabricated the allegations so that mother could gain full custody of S.P.

In October 2011, the juvenile court detained S.P. from father and released her to mother. In a November jurisdiction and disposition report, S.P. reported she felt safe with father. Yet she told the DCFS, “I would feel [a] little bit uncomfortable to have unmonitored visits because I know what he did to my sister. My sister wouldn’t say anything like that if it didn’t happen.” S.P. said she used to give father back massages, but no longer did so. She also said father had never touched her “private areas.”

Anna maintained she reported the molestation because she was concerned for S.P. who was now the age Anna was when father began abusing her. Although Anna reported the abuse to police in August 2011, she thought the case had been dismissed.

Two maternal cousins told DCFS they always thought father and Anna had a normal relationship and they did not believe Anna’s allegations.

DCFS recommended the court declare S.P. a person described under Welfare and Institutions Code section 300, subdivisions (b), (d), and (j),¹ but that the court terminate jurisdiction with a family law order granting mother sole physical custody, granting father monitored visits, and allowing unmonitored visits after father completed a sexual abuse program.

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

Anna testified at the jurisdiction hearing. She indicated father began sexually abusing her when she was nine and a half or ten years old, in the form of sexual touching. The abuse took place for two years or less, on a weekly basis, when Anna and her younger brother were home alone with father. Anna testified that she told mother about the abuse when she was 12 years old. Anna recalled that mother confronted father, they got into an argument, and Anna refused to discuss the matter with mother again. Father attempted to touch her again once or twice, but Anna told him “no,” and the abuse stopped. Anna did not undergo any counseling following the abuse, and did not tell anyone until she was around 20 years old, when she revealed the abuse to friends.² Anna said she was still not ready to seek professional help. She testified that in January she saw S.P. and noticed S.P. had gained “a lot of weight.” This made Anna uneasy because she gained weight when father began abusing her. Anna then made the decision to report the abuse to law enforcement. She denied that she spoke with mother about making a report to law enforcement before she went to the police. Anna subsequently indicated she went to the police because she was depressed and “couldn’t take it anymore,” and “it just clicked in [her] head to just go to the police[.]” She testified she did not know if father was sexually abusing S.P., but “that triggered something in me when I saw her weight gain.”

A cousin related to both mother and father also testified. The cousin recalled that 10 years earlier mother and father argued at her house because mother did not want father to go on a trip. The cousin recalled that mother threatened to say father was inappropriate with Anna.

Father testified that the dissolution proceedings included an independent custody evaluation. At no time during the family law proceedings were there allegations of sexual abuse. Father admitted that he had asked Anna to give him a back massage with a vibrating massage tool when he suffered from back pain. He denied ever touching Anna inappropriately. He also testified that Anna had a lock on her door because her older

² Anna was almost 24 years old at the time of the jurisdiction hearing.

brother had been going through her things. Father believed S.P. had gained only a normal amount of weight in the past year and was not at all overweight.

Mother testified she believed Anna when she first reported father's abuse. She tried to talk to Anna, and tried to take her to the doctor, but Anna refused. Mother talked to father about the abuse the same day Anna told her, but never brought it up again with father after that. She explained that Anna said the abuse had happened, father denied it, mother did not know what to do, and Anna refused to discuss it further or go to the police. Mother claimed Anna did not tell her she planned to report the abuse to the police in 2011. Mother admitted she was not happy with the family court's joint custody order. She believed S.P. had gained weight in the past three years, but not in the past year.

The juvenile court concluded DCFS had not met its burden and the court could not find any of the petition's counts true by a preponderance of the evidence. The court noted S.P. unequivocally denied any abuse by father. The court further explained it did not believe father had sexually abused Anna. The court found it "very highly unusual" that mother would not have taken any steps to get help after Anna reported the abuse. The court explained: "[Mother] knew she could have called the police. In fact, she testified now that I wanted to go to the police. I wanted to go to see a counselor, but I didn't do it because Anna wouldn't talk. I don't buy that. When a girl is 12 years old and you are the mother, you have some sway over your daughter, and you can go to the police. You can go to a counselor, and you can get the child help. It happens all the time. And the fact that the mother didn't do it here, and Anna backs this up. . . . There has never been a police report. There's never been a counselor seen suggested to this court. That's because it never happened. There is no reason for them to go because it never happened."

The juvenile court also found Anna not credible based on her testimony that the abuse bothered her for many years but she never sought help or talked about it with mother to get help. The court further found the timing of Anna's 2011 report to police notable: "[T]o me it is all about the timing. There is just no good reason that, as I sit here today, why of all times ten years after the fact that she decides to report it right at the time

that this family law case is happening. It doesn't make sense to the court." The court also did not believe mother's testimony about her reports to the family law mediator and her attorneys, noting that if mother had mentioned father's sexual abuse of Anna, these individuals would have found it highly relevant.

The court dismissed the dependency petition. Mother and S.P. timely appealed. DCFS did not appeal the juvenile court ruling and has not made an appearance in mother's and S.P.'s appeal.

DISCUSSION

I. Substantial Evidence Supported the Juvenile Court Ruling Dismissing the Dependency Petition

"We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.]' [Citation.] " "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" [Citation.]' [Citation.]" (*In re V.M.* (2010) 191 Cal.App.4th 245, 252.) This standard of review applies when the juvenile court has asserted jurisdiction over a child, and when, as here, the juvenile court has dismissed a dependency petition and refused to assert jurisdiction. (*In re E.H.* (2003) 108 Cal.App.4th 659, 669; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

"It is the [juvenile] court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have 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. [Citation.]' [Citation.]" (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615.)

On appeal, mother and S.P. argue that in finding Anna not credible, the juvenile court improperly relied on its own lay opinion about the likelihood that a sexual abuse victim would fail to report the abuse until many years after it occurred. However, the court had no expert opinion to consider. Mother and S.P. now contend Anna's delayed reporting was consistent with child sexual abuse accommodation syndrome. Yet no party raised this issue below or offered any related evidence for the juvenile court to consider.³ It is a fundamental rule of appellate procedure that we may not review documents and facts not in the record, and, in general, we will not consider new theories that were not presented below. (*In re Jose C.* (2010) 188 Cal.App.4th 147, 161; *McDonald's Corp. v. Board of Supervisor's* (1998) 63 Cal.App.4th 612, 618.) “ ‘It has long been the general rule and understanding that “an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.” ’ [Citations.]” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1239-1240.) This new argument is fact-based and relates to an issue that was vigorously disputed below. We decline to reevaluate the evidence based on a theory concerning witness credibility that was not presented in the juvenile court.

Substantial evidence supported the juvenile court's determination that S.P. was not a person described under section 300. S.P. indicated father had never touched her inappropriately. The assertion that S.P. was at risk of sexual abuse was based entirely on Anna's claim that father had sexually abused her over 10 years earlier. But the court did not believe Anna. The timing of Anna's disclosure to law enforcement was suspect as it coincided with the family law court's joint custody order, to which mother objected. Although one could draw multiple inferences from this timing, the court inferred that the timing rendered Anna's account less believable.

³ We previously denied mother's request that we take judicial notice of “the Child Sexual Abuse Accommodation Syndrome (CSAAS), a diagnostic tool commonly admitted into evidence by dependency and criminal courts for the limited purpose of disabusing the fact finder of common misperceptions it might have about how child victims react to sexual abuse.” In light of our ruling on the request for judicial notice and the discussion above, we need not address father's motion to strike.

Moreover, Anna’s credibility was not the only issue. The court also found mother’s testimony was not credible. Mother said she believed Anna when she first disclosed the abuse as a child, but mother did not know what to do. But she also claimed she wanted to go to the police, or get counseling for Anna, but she did not because Anna refused. While one might view this as the behavior of a child sex abuse victim and a mother who fails to respond appropriately, one could also reasonably infer that mother’s failure to do anything about Anna’s disclosure, despite claiming she wanted to take action, was an indication the entire account was false. It was for the trial court to make this determination. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.) In addition, the juvenile court believed father’s testimony that he never molested Anna. The court noted father admitted Anna had given him back massages, suggesting father had “nothing to hide.” (*In re Sheila B., supra*, 19 Cal.App.4th at p. 200 [testimony of a single witness is sufficient to uphold a judgment and appellate court may not evaluate that testimony as a basis for reversal].)

We must defer to the juvenile court’s credibility determinations. And we resolve all conflicts in inferences so as to uphold the court’s order. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) “It is not an appellate court’s function . . . to redetermine the facts. [Citation.] Absent indisputable evidence of abuse—evidence no reasonable trier of fact could have rejected—we must . . . affirm the juvenile court’s determination.” (*In re Sheila B., supra*, 19 Cal.App.4th at p. 200; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 138.) There was no indisputable evidence S.P. was at risk of abuse. We therefore affirm the juvenile court order dismissing the petition.

DISPOSITION

The juvenile court order dismissing the dependency petition is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.