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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re BIANCA H. et al., Persons Coming
Under the Juvenile Court Law.

B246721

(Los Angeles County
Super. Ct. No. CK87162)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CLAUDIA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Honorable Mark A. Borenstein, Judge. Appeal dismissed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant Claudia M.

Marissa Coffey, under appointment by the Court of Appeal, for Appellants Minors Bianca H. and Angela H.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Claudia M., appellant and mother of 15-year-old Bianca H. and 14-year-old Angela H., appeals from a January 7, 2013 dispositional order removing Bianca and Angela from her physical custody. Bianca and Angela also appeal from the dispositional order. While this appeal was pending, the juvenile court made orders returning Bianca and Angela to mother's physical custody and terminating jurisdiction as to Angela. We requested letter briefs addressing the effect, if any, of those orders on the current proceeding. Respondent, the Los Angeles County Department of Children and Family Services (the Department), argues the orders render the appeal moot. We agree and therefore dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 2011, the Department filed a Welfare and Institutions Code¹ section 300 petition on behalf of Bianca, Angela and their then-three-year-old brother, Mathew,² alleging the minors came under the jurisdiction of the juvenile court due to the parents' history of engaging in physical altercations in the minors' presence, father inappropriately physically disciplining the minors, father's substance abuse and mother's failure to protect the minors. On June 2, 2011, the juvenile court sustained the section 300 petition, declared the minors dependents of the juvenile court, removed them from father's custody, and released them to mother's custody.

On August 16, 2012, the Department filed a section 342 petition alleging that mother emotionally abused and was unwilling to care for Bianca and Angela.³ The petition was based on mother's repeated requests to have Bianca and Angela removed from her home due to the minors' escalating "disrespectful" behavior and mother's stated inability and unwillingness to provide the minors with ongoing care and supervision. The accompanying detention report detailed numerous occasions in which mother had either

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

² Mathew is not the subject of this appeal.

³ Mathew was not detained and the Department reported that it had no concerns over Mathew's safety because mother was "able and willing to care for the minor."

made such requests to Department social workers in Bianca's and Angela's presence, or had directly threatened the minors with having them placed in foster care. At the detention hearing, mother's attorney confirmed that it was mother's decision to have Bianca and Angela removed from her home. The court made orders detaining Bianca and Angela and granting the Department discretion to place the minors in foster care or with an appropriate family member. The court also ordered mother and the minors to undergo conjoint counseling forthwith.

On December 10, 2012, the juvenile court sustained the section 342 petition, and found Bianca and Angela to be dependents pursuant to section 300, subdivisions (b) and (c) on the grounds that (1) mother was "unwilling to provide the children with ongoing care and supervision" in that "mother requested the children's removal from the mother's home"; and (2) mother "emotionally abused the children by frequently telling the children they were no good, blaming the children for all of the mother's problems, frequently threatening to have the children placed in foster care, frequently threatening to have the children hospitalized in a psychiatric facility and frequently telling the children mother did not want them."

On January 7, 2013, the juvenile court held a dispositional hearing on the sustained section 342 petition. Bianca and Angela each testified that their relationship with mother had improved and that they wanted to return to mother's home. However, reports submitted by the Department indicated that the minors had made only limited progress in improving their behavior. Mother also testified that she wanted the minors returned to her custody, but admitted that she had not participated in counseling or a Department-approved parenting class, despite the court's prior orders.

After considering the reports submitted by the Department, and mother's and the minors' testimony at the dispositional hearing, the juvenile court found by clear and convincing evidence that returning the minors to mother's custody would pose a substantial risk to their physical health and emotional wellbeing. Pursuant to section 361, the court ordered Bianca and Angela removed from mother's custody. The court also

ordered mother to attend Department-approved counseling that focused on parenting teenagers, conflict resolution and communication.

On January 7, 2013, mother filed an appeal from the dispositional order. On January 10, 2013, Bianca and Angela also appealed from the dispositional order.

On July 9, 2013 and July 12, 2013, the juvenile court made orders releasing Bianca and Angela to mother's physical custody, terminating jurisdiction as to Angela, granting family maintenance services as to mother and Bianca, and setting a section 364 review hearing for October 7, 2013.

By letter dated August 13, 2013, this court invited the parties to file supplemental letter briefs discussing the impact, if any, of the juvenile court's July 9, 2013 and July 12, 2013 orders on this proceeding.

DISCUSSION

In its supplemental letter brief, the Department asserts that this appeal is moot and should be dismissed because the appeal challenges only the dispositional order and Bianca and Angela have now been returned to mother's physical custody.⁴ Mother argues that this appeal is not moot because, under section 361.5, subdivision (b)(3), she contends the juvenile court may rely on the dispositional order to deny her family reunification services in future dependency proceedings. We agree with the Department's view and find the appeal is moot.

“ ‘[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.’ [Citation.]” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.)

Here, as the Department points out, mother, Bianca and Angela challenged only the dispositional order removing Bianca and Angela from mother's custody. However, during the pendency of this appeal, the juvenile court ordered Bianca and Angela returned to

⁴ Bianca and Angela informed us that they would not be filing a supplemental brief opposing the Department's position.

mother's custody, terminated jurisdiction as to Angela, and ordered family maintenance services for mother and Bianca. Because Bianca and Angela have been returned to mother, our reversal of the dispositional order will have no "practical, tangible impact on the parties' conduct or legal status." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.) Under such circumstances, an appeal is moot and should be dismissed. (*Ibid.* ["When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed."].)

Mother contends that the appeal is not moot because the dispositional order could have adverse consequences for her in subsequent proceedings. (See *In re Dylan T.* (1998) 65 Cal.App.4th 765, 769 ["An issue is not moot if the purported error infects the outcome of subsequent proceedings."].) In support of her contention, mother cites section 361.5, subdivision (b)(3), which she argues would allow the juvenile court in a subsequent dependency proceeding to deny her family reunification services based on the challenged dispositional order. We disagree.

Section 361.5, subdivision (b) states that "[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, . . . [¶] . . . [¶] (3) [t]hat the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 *as a result of physical or sexual abuse*, that following that adjudication the child had been removed from the custody of his or her parent . . . pursuant to Section 361, that the child has been returned to the custody of the parent . . . , and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse." (Italics added.) Here, the juvenile court adjudicated Bianca and Angela dependents pursuant to section 300, subdivisions (b) and (c) on the grounds that (1) mother was "unwilling to provide the children with ongoing care and supervision"; and (2) mother "emotionally abused the children" The juvenile court

made no finding that mother had physically or sexually abused Bianca or Angela.⁵ Hence, the dispositional order poses no risk of being invoked as a basis for denying mother reunification services under section 361.5, subdivision (b)(3).

Because Bianca and Angela have been returned to mother's physical custody, the appeal from the dispositional order is moot.

DISPOSITION

The appeal is dismissed as moot.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

⁵ Prior to the filing of the section 342 petition, the Department had investigated an allegation that mother physically abused Bianca by striking her with an electrical cord as a form of discipline. Although the Department stated in its reports that the allegation had been substantiated, the juvenile court made no finding that such physical abuse occurred, and the allegation was not a basis for the court's jurisdictional determinations or the challenged dispositional order.