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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B250904
(Los Angeles County
Super. Ct. No. CK48012)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.O.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of the County of Los Angeles, Carlos Vasquez, Judge. Reversed.

Serobian Law, Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant J.O. (mother), the mother of 17-year-old M.O., appeals from the dependency court's¹ jurisdiction and disposition orders finding M.O. a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivision (b).² Mother contends, inter alia, that the dependency court was precluded from taking jurisdiction over M.O. on the first amended section 300 petition because the delinquency court had previously declared M.O. a dual status minor³ under the purview of both sections 300 (dependency court jurisdiction) and 602 (delinquency court jurisdiction). We hold that the dependency court erred by taking jurisdiction over M.O. on the first amended section 300 petition because under section 241.1 and the existing Los Angeles County protocol, there was no provision for dual jurisdiction of the delinquency and dependency courts.

PROCEDURAL BACKGROUND

On July 13, 2012, the Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivision (b), alleging that M.O., then 16 years old, was at risk of physical harm because of her father's⁴ unresolved substance abuse problem

¹ Because the appeal involves proceedings that were held in both the dependency and delinquency departments of the juvenile division of the Superior Court of the County of Los Angeles, case numbers CK48012 and MJ21386, respectively, we distinguish between the two departments by using the phrases "delinquency court" and "dependency court."

² All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

³ A "dual status child" is one who could be "simultaneously a dependent child and a ward of the court." (§ 241.1, subd. (e).)

⁴ Father is not a party to the appeal.

(count b-1) and his violent criminal history (count b-2). At the time, father was on parole and M.O. was on informal juvenile probation for a period of six months pursuant to section 654.2.⁵ The dependency court detained M.O., found that there was a prima facie case that she was a person described by section 300, subdivision (b), and placed her with the DCFS.

A September 13, 2012, probation officer report⁶ that bore both the delinquency and dependency court case numbers stated that the delinquency court had ordered a section 241.1 assessment,⁷ and “[t]he matter [was] on calendar [in the delinquency court] for a [section] 241.1 . . . joint assessment report.” The probation officer report also stated that the July 13, 2012, petition filed in the dependency court pursuant to section 300, subdivision (b), “ha[d] not yet [been] adjudicated.”

On March 20, 2013, M.O. was arrested for possession and sale of methamphetamine, and was detained in juvenile hall. On March 22, 2013, a section 602 petition was filed in the delinquency court. A March 25, 2013, delinquency court minute

⁵ The Department’s July 13, 2012, detention report states that M.O. “is on informal probation.” The delinquency court’s June 26, 2012, minute order, of which we take judicial notice, provides that M.O. “is placed on probation for a period of six months pursuant to section 654.2 over people’s objection.” There is no evidence in the record regarding why M.O. was the subject of that delinquency court proceeding. Section 654.2 contemplates the involvement of a probation officer, and the record contains reports from a probation officer.

⁶ We obtained the dependency court’s file on our own motion. (Cal. Rules of Court, rule 8.155(a)(1)(A).) It contained that report.

⁷ Section 241.1 provides in part that when a minor appears to come within the description of a dependent child under section 300 and a ward of the court under section 601 or 602, the Probation Department and the DCFS shall determine which status shall serve the best interests of the minor and the protection of society. The Probation Department and the DCFS are to develop a written protocol “to ensure appropriate local coordination in the assessment” of the minor. (§ 241.1, subd. (b)(1).)

order⁸ stated that M.O. was referred to the Probation Department for a “Pre-Plea/241.1 WIC [Welfare and Institutions Code] Report,” and a hearing was scheduled for April 11, 2013, for “PPR [pre-plea report]/241.1.”

An April 9, 2013, probation officer report in the dependency court file, signed on behalf of both the DCFS and the Probation Department (section 241.1 report),⁹ stated that it concerned the April 11, 2013, delinquency court hearing. That report bore both the delinquency and dependency court case numbers and is contained in the dependency court file. The section 241.1 report stated that on March 22, 2013, a petition was filed in the delinquency court alleging counts of possession of a controlled substance for sale and possession of a controlled substance. The report also discussed M.O.’s dependency history and stated that the section 300 dependency court petition was filed on July 13, 2012, that the DCFS was recommending family reunification services for father, and that the section 300 petition “ha[d] not yet [been] adjudicated.” The report recommended that M.O. “be placed on 300/602 WIC suitable placement with the Probation Department as the lead agency.”

According to an April 11, 2013, delinquency court minute order, on that date the delinquency court found M.O. to be a person described by section 602, declaring her a ward of the court pursuant to section 602, and “designat[ing] [P]robation [Department] as the lead agency. [WIC 300/602 WIC].” The delinquency court ordered M.O. suitably placed.

A memorandum dated May 14, 2013, addressed to the “Court Assistant[.]” assigned to the dependency court, attached a copy of the delinquency court’s April 11, 2013, minute order, and instructed the court assistant to give the minute order “to your

⁸ The Department requests, and mother does not oppose, that we take judicial notice of several delinquency court minute orders, and the Los Angeles County’s protocol pursuant to section 241.1. We grant the request.

⁹ The parties agree that this report was made pursuant to section 241.1 and was before the delinquency court.

Hearing Officer A.S.A.P. The minor has an active Delinquency case, [and the] Dependency Court needs to be notified.” The dependency court file contains this May 14, 2013, memorandum, along with the attached copy of the delinquency court’s minute order. On May 15, 2013, the DCFS filed a “last minute information for the court” in the dependency court stating that on April 11, 2013, the delinquency court declared M.O. “a 602/300, Dual Supervision,” and “Probation [Department] [a]s the lead agency.”

On July 11, 2013, the DCFS filed a first amended section 300 petition with the dependency court. That amended petition repeated the same section 300, subdivision (b) allegations of father’s substance abuse and criminal history as were alleged in the original petition filed on July 13, 2012 (counts b-1 and b-2). The amended petition added counts pursuant to section 300, subdivisions (a) and (b), alleging that mother and stepfather were involved in a violent altercation on April 30, 2009, in M.O.’s presence, for which stepfather was convicted, served time in prison, and was later deported to Mexico, and that mother and stepfather continued to engage in domestic violence. The first amended petition contained an allegation that the violent conduct endangered M.O. and placed her at risk of physical harm (counts a-1 and b-3).

The DCFS’s supplemental report, dated July 17, 2013, concerning a “Jurisdiction/Disposition/300” dependency court hearing scheduled for July 17, 2013, noted that “on April 11, 2013, [the delinquency court] declared [M.O.] a 602/300, Dual Supervision. Probation [Department] is the lead agency.” The DCFS recommended that the dependency court sustain the first amended petition, remove M.O. from parental custody, deny father family reunification services because his “incarceration period is said to be over 1 year,” and provide mother with family reunification services.

On July 18, 2013, the dependency court dismissed the domestic violence allegation in the first amended petition as to mother under section 300, subdivision (a), but sustained the domestic violence allegation under subdivision (b) and the original allegations under subdivision (b) concerning father’s substance abuse problem and criminal history. The dependency court declared M.O. a dependent of the court, removed

her from parental custody, and ordered unmonitored visits for mother, monitored visits for father, and reunification services for both mother and father. Mother timely appealed.

DISCUSSION

A. Dual Status Minor

Section 241.1 provides the procedure for juvenile courts to deal with cases in which it may have dual grounds for jurisdiction over a child. Under section 300, a child who is neglected or abused falls within the juvenile court's protective jurisdiction as a dependent of the court. The juvenile court also may take jurisdiction over a minor as a ward of the court when the child is habitually disobedient or truant (§ 601) or commits a crime (§ 602).

“Delinquency courts follow a system parallel to that used in dependency courts for removing a child from the family home. The dependency and delinquency systems serve overlapping but slightly different aims, however. Whereas the dependency system is geared toward protection of a child victimized by parental abuse or neglect, the delinquency system enforces accountability for the child's own wrongdoing, both to rehabilitate the child and to protect the public. [Citations.]” (*In re W.B.* (2012) 55 Cal.4th 30, 46.)

Section 241.1, subdivision (a), provides, in pertinent part, “Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court . . . and the court shall determine which status is appropriate for the minor.” The Supreme Court in *In re W.B.*, *supra*, 55 Cal.4th at page 46 said, “Based on th[e] joint assessment, the juvenile court decides whether the child should be treated as a dependent child or a delinquent ward. [Citations.] ‘Dual jurisdiction [simultaneously being declared a

dependent child and a delinquent ward] is generally forbidden’ [Citation.]” (See § 241.1, subd. (d) [“Except as provided in subdivision (e) [discussed below], nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court”].)

The Supreme Court in *In re W.B.*, *supra*, 55 Cal.4th 30, noted, however, that, “In 2004, the Legislature created a small exception to the ban on dual jurisdiction. Section 241.1, subdivision (e) allows a minor to be designated a ‘dual status child,’ and treated simultaneously under the court’s dependency and delinquency jurisdiction, but only in accordance with a precise written protocol.” (*Id.* at pp. 46-47.) Dual jurisdiction is generally prohibited; a minor may not be both a dependent child and a delinquent ward of the court absent a written protocol agreed upon by the presiding judge of the juvenile court, the child protective agency and the probation department. (See § 241.1, subs. (d), (e); *In re Henry S.* (2006) 140 Cal.App.4th 248, 254.)

Section 241.1, subdivision (e) provides, in part, that “the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court.” Section 241.1, subdivision (e)(5)(B), provides, “In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.”

The California Rules of Court, rule 5.512, subdivision (a) provides, “Whenever a child appears to come within the description of section 300 and either section 601 or section 602, the responsible child welfare and probation departments must conduct a joint assessment to determine which status will serve the best interest of the child and the

protection of society.” “The joint assessment report must contain the joint recommendation of the probation and child welfare departments if they agree on the status that will serve the best interest of the child and the protection of society, or the separate recommendation of each department if they do not agree.” (Cal. Rules of Court, rule 5.512(d).)

The Rules of Court specify when the section 241.1 hearing is to take place: “If the child is detained, the hearing on the joint assessment report must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of detention and before the jurisdictional hearing. If the child is not detained, the hearing on the joint assessment must occur before the jurisdictional hearing and within 30 days of the date of the petition. The juvenile court must conduct the hearing and determine which type of jurisdiction over the child best meets the child’s unique circumstances.” (Cal. Rules of Court, rule 5.512(e).) In short, the rule contemplates the section 241.1 hearing will occur before a jurisdictional hearing to determine whether a crime has been committed. (Cal. Rules of Court, rule 5.512(e); *In re Greg F.* (2012) 55 Cal.4th 393, 403.) California Rules of Court, rule 5.512(g) further specifies that “[a]ll parties and their attorneys must have an opportunity to be heard at the [section 241.1] hearing.”

Los Angeles County has developed a protocol (protocol) pursuant to section 241.1, “designed to restate the procedures utilized in implementing . . . section 241.1 in Los Angeles County.” The protocol does not deal with the issue of “dual jurisdiction” under sections 300 and 602, and merely addresses the procedure to be followed when petitions under both sections 300 and 602 are pending in the dependency and delinquency courts.

The protocol states, “Occasionally a new petition in Dependency Court is followed by a new petition in Delinquency Court while the [section] 300 petition is pending or vice versa. The procedure for dealing with that situation is found in [exhibit L to the protocol].” Exhibit L to the protocol states, “This memorandum [from the presiding judge of the juvenile court of the County of Los Angeles] is designed to create a process

to handle cases where a youth has unadjudicated petitions pending in both the Dependency and Delinquency Courts. There are two scenarios in this regard. ¶ . . . ¶ The first scenario occurs^[10] when the filing of a [section] 300 petition is followed by the filing of a [section] 602 petition. In that case, the following procedure will occur: ¶ The [section] 241.1 hearing will occur in the Delinquency Court with Probation [Department] as the lead agency. [Section] 300 proceedings will continue in the Dependency Court. ¶ If the result of the [section] hearing is a ruling by the Court that [section] 602 is most appropriate, the [section] 300 proceeding will continue until the [section] 602 petition is sustained and the youth is declared a [section] 602 ward at disposition.” That is, under the protocol, there is no dual jurisdiction. The section 300 proceedings continue in the dependency court until the delinquency court sustains the section 602 petition.

B. Jurisdiction

What occurred here falls under the first scenario set forth in Exhibit L to the protocol; that is, a section 300 petition was filed in the dependency court, but was not adjudicated, followed by a section 602 petition filed in the delinquency court. And on April 11, 2013, the section 241.1 hearing occurred in the delinquency court, and it designated Probation Department as the lead agency “[WIC 300/602 WIC].”¹¹

The delinquency court also sustained the section 602 petition, found M.O. to be a person described by section 602, declared her a ward of the court pursuant to section 602, and ordered her suitably placed. Under that first scenario, as discussed above, had the delinquency court found that section 602 “is most appropriate [for the child],” the section 300 proceeding would cease to continue because the delinquency court sustained the section 602 petition and declared M.O. a section 602 ward. The record does not disclose,

¹⁰ The second scenario occurs when the filing of a [section] 602 petition is followed by the filing of a [section] 300 petition.

¹¹ The delinquency court did not adjudicate the section 300 petition.

however, whether the delinquency court found that section 602 was “most appropriate” for M.O., such that the section 300 proceeding would cease to continue. Regardless of whether delinquency court made that finding, it sustained the section 602 petition and declared M.O. a ward of the court. The dependency court was therefore precluded from thereafter sustaining the first amended section 300 petition and declaring M.O. a dependent of the court, because it would subject M.O. to dual jurisdiction under both sections 300 and 602—which in this situation, is prohibited by law. (*In re W.B.*, *supra*, 55 Cal.4th at p. 46; § 241.1, subd. (d).) By sustaining the first amended section 300 petition and declaring M.O. a dependent of the court, the dependency court erred.

C. Forfeiture

The DCFS contends that mother has forfeited her contention that the dependency court’s adjudication of the first amended section 300 petition was improper because mother failed to raise that issue before the dependency court when it adjudicated the first amended section 300 petition and declared M.O. a dependent of the court. Mother did not forfeit her contention.

The distinction between lack of jurisdiction in the fundamental sense, and an act in excess of jurisdiction, has been explained as follows: “A judgment is void if the court rendering it lacked subject matter jurisdiction or jurisdiction over the parties. Subject matter jurisdiction “relates to the inherent authority of the court involved to deal with the case for matter before it.” [Citation.] Lack of jurisdiction in this “fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.” [Citation.] [¶] In a broader sense, lack of jurisdiction also exists when a court grants “relief which [it] has no power to grant.” [Citations.] Where, for instance, the court has no power to act “except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites,” the court acts without jurisdiction in this broader sense. [Citation.] [Citation.] [¶] “The consequences of an act beyond the court’s jurisdiction in the fundamental sense differ from the consequences of an act in excess of jurisdiction.

An act beyond a court’s jurisdiction in the fundamental sense is void; it may be set aside at any time and no valid rights can accrue thereunder. In contrast, an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time. [Citations.]’ [Citation.]” (*In re Andres G.* (1998) 64 Cal.App.4th 476, 482.) “[I]ssues relating to jurisdiction in its less fundamental sense may be subject to bars including waiver . . . [citation] and forfeiture [Citations.]” (*People v. Mower* (2002) 28 Cal.4th 457, 474, fn. 6.)

As our Supreme Court made clear in *In re Chantal S.* (1996) 13 Cal.4th 196, “[a] ‘juvenile court’ is a superior court exercising *limited jurisdiction* arising under juvenile law. [Citations.] . . . [¶] By contrast, ‘family court’ refers to the activities of one or more superior court judicial officers who handle litigation arising under the Family Code. It is not a separate court with special jurisdiction, but is instead the superior court performing one of its general duties.” (*Id.* at pp. 200-201, italics added.) Here, the limited jurisdiction of the juvenile court had been invoked. Thus, it appears that the dependency court did not lack jurisdiction in the fundamental sense. Accordingly, there could be a waiver, estoppel or, forfeiture of any challenge to the limited jurisdiction of the juvenile court. (See *In re Angel S.* (2007) 156 Cal.App.4th 1202, 1209.)

When, as here, however, an appeal raises a question of law on undisputed facts, the issue of the power of the dependency court to exercise jurisdiction has not been forfeited. (*Winchester Mystery House, LLC v. Global Asylum, Inc.* (2012) 210 Cal.App.4th 579, 594; *C9 Ventures v. SVC-West, L.P.* (2012) 202 Cal.App.4th 1483, 1492.) It is undisputed that as of April 11, 2013, the section 300 petition had not been adjudicated, and on April 11, 2013, the delinquency court found M.O. to be a person described by section 602 and declared her a ward of the court pursuant to section 602. Under those circumstances, whether the dependency court can properly adjudicate the first amended section 300 petition and deem M.O. a dependant of the court pursuant to section 300 is a question of law.

Moreover, in this case mother’s failure to object in the dependency court that it violated section 241.1 and subjected M.O. to dual jurisdiction, is also excused. (*People v.*

Espiritu (2011) 199 Cal. App. 4th 718, 725 [“The appellate court has discretion to excuse forfeiture in cases presenting an important legal issue”].) Mother’s appeal concerns an important legal issue—whether the dependency court is prohibited from subjecting M.O. to dual jurisdiction.

D. Other Contentions

Because we conclude that the dependency court erred by taking jurisdiction over M.O. on the first amended section 300 petition, we do not reach mother’s contentions that (1) the dependency court erred because it did not comply with section 241.1 by considering a new section 241.1 report before adjudicating the first amended section 300 petition; and (2) there was not substantial evidence to support the dependency court’s jurisdictional finding with respect to domestic violence between mother and stepfather.

DISPOSITION

The dependency court’s orders are reversed.

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MOSK, Acting P. J.

We concur:

KRIEGLER, J.

MINK, J.*

* Retired Judge of the Superior Court of Los Angeles County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.