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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B255277  
(Los Angeles County  
Super. Ct. No. CK77834)

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAVID P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
Julie Fox Blackshaw, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant  
and Appellant.

No appearance for Plaintiff and Respondent.

David P. (Father) appeals from an order of the juvenile court dismissing the allegations against him without prejudice.<sup>1</sup> Father contends that the juvenile court should have dismissed the allegations with prejudice because the dismissal followed a fully contested jurisdictional hearing on the merits of the allegations. Respondent, the Los Angeles County Department of Children and Family Services (DCFS), agrees with Father that the juvenile court's order should be reversed and that the allegations against him should be ordered dismissed with prejudice. We conclude that the concept of dismissal with or without prejudice does not apply in this context. We therefore decline the parties' request to reverse the juvenile court's order.

## **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

Father and Mother have one child, Alison P. (born 2009). Mother has two other daughters from two different fathers, Sara V. (born 2002) and Diana S. (born 2004). Mother and all three daughters formerly lived with Father, but they moved to a shelter in 2013.

The family came to the attention of DCFS in September 2013, when Mother reported that Sara and Diana told her that Father had sexually abused them.<sup>3</sup> At the December 2013 detention hearing, the juvenile court found a prima facie case was established that all three children were persons described in Welfare and

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<sup>1</sup> Gabriela R. (Mother) is not a party to this appeal.

<sup>2</sup> The details of the underlying facts are not pertinent to our review.

<sup>3</sup> In 2009, Sara was detained from Mother based on abuse allegations.

Institutions Code section 300, subdivisions (a), (b), (d), and (j),<sup>4</sup> and ordered them released to Mother.

Questions began to arise about the veracity of the allegations. In a January 2014 jurisdiction/disposition report, the caseworker stated that “the children are still unable to provide a consistent, coherent and cohesive narrative of their history of abuse.” The caseworker further stated that the allegations of abuse seemed to be physically impossible and that Mother “displayed a pattern of impulsive and erratic behavior by continuously interfering with investigations.” The caseworker concluded that it was unclear whether Father’s “behavior and actions rise to the degree described by [Mother] and the children as their disclosures have repeatedly changed.”

At the January 2014 jurisdiction hearing, after the court heard testimony from Sara and Diana, Father’s counsel asked the juvenile court to dismiss the petition pursuant to section 350, subdivision (c). The court found that the reports of the allegations were ambivalent and full of discrepancies, and that Sara and Diana’s testimony was not credible. The court thus granted the motion as to the allegations against Father.

Finding that DCFS had not met its burden with respect to the counts against Father, the court dismissed the allegations without prejudice. Counsel for Father objected and asked the court to dismiss with prejudice, but the court stated that the reason the counts were dismissed was that there was not sufficient evidence to go forward, not that the counts had been adjudicated. The court also dismissed the findings it had made as to Father at the detention hearing.

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<sup>4</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

The court sustained an allegation that Mother's mental and emotional problems, such as her manipulation of the children regarding fabrication of the sexual abuse allegations, endangered the children. The court ordered Alison released to both parents, staying with Father during the week and with Mother during the weekend.

At the March 2014 disposition hearing, the juvenile court declared the children dependents of the court and ordered Alison home to both parents. Father appealed the dismissal of the allegations without prejudice.

## **DISCUSSION**

Father contends, and respondent agrees, that the juvenile court erred in dismissing the allegations against Father without prejudice instead of with prejudice. We conclude, however, that the concept of dismissal with or without prejudice does not apply in this context. The provisions of the Welfare and Institutions Code that address the dismissal of unsustained allegations do not speak of dismissal with prejudice, and the concept of dismissal with prejudice does not make sense here.

Two provisions of the Welfare and Institutions Code address the dismissal of a section 300 petition when the allegations have not been established. Neither refers to whether the dismissal is to be with or without prejudice.

Section 350, subdivision (c) addresses the juvenile court's discretion to dismiss a petition at *any* hearing at which the department does not meet its burden of proof. The statute provides: "At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the

law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review. If the motion is not granted, the parent or guardian may offer evidence without first having reserved that right.”

In addition to this general provision, section 356 directs the juvenile court, after hearing the evidence during the jurisdictional hearing, to make a finding whether the minor is a person described by section 300 and, if so, under which subdivisions of section 300 the petition is sustained. However, “[i]f [the court] finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered.” (§ 356; see Cal. Rules of Court, rule 5.684(h) [after holding a contested jurisdiction hearing, “[i]f the court determines that the allegations of the petition have not been proved by a preponderance of the evidence, the court must dismiss the petition and terminate any detention orders relating to the petition”].)

Thus, when the juvenile court dismisses a section 300 petition under section 350 or section 356, the dismissal is neither with nor without prejudice – it is simply dismissed.<sup>5</sup> In fact, counsel for DCFS argued at the jurisdiction hearing that section 356 and the California Rules of Court merely state that, if the court finds

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<sup>5</sup> The Welfare and Institutions Code does provide that “[a]ny petition filed in juvenile court to commence proceedings pursuant to this chapter that is not verified may be dismissed *without prejudice* by such court.” (§ 333, italics added; see Cal. Rules of Court, rule 5.524(a).) Dismissal without prejudice makes sense in this context because it makes clear that, in order to commence proceedings, the agency may refile a petition whose only deficiency was that it was not verified.

the allegations of the petition have not been proved, the petition shall be dismissed, with no reference to dismissal with or without prejudice. (See § 356; Cal. Rules of Court, rule 5.684(h).) Thus, the phrase “without prejudice” in the trial court’s order is a nullity.

Section 350 and section 356 do not address whether the dismissal shall be with or without prejudice because such a concept is not relevant to dependency proceedings. Father claims that dismissal of the allegations with prejudice is required to ensure that he is protected from subsequent “baseless claims.” This argument is akin to a double jeopardy argument. However, “[t]he double jeopardy limitation does not apply in dependency proceedings. [Citations.]” (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 357.) This is because the purpose of dependency proceedings is to protect the child, “not to prosecute the parents.” (*In re Roderick U.* (1993) 14 Cal.App.4th 1543, 1552; see also *In re Carina C.* (1990) 218 Cal.App.3d 617, 624 [dependency proceeding is “civil in nature, designed not to prosecute the parents but to protect the child”]; accord *In re Brittany K.* (2002) 96 Cal.App.4th 805, 816, fn. 30.) Even if the juvenile court were to order the allegations dismissed with prejudice, there would be no bar to DCFS filing another section 300 petition if new allegations or new evidence were to arise. Thus, dismissal with prejudice – in the sense that Father has been cleared of the allegations and can never be charged with them again – does not apply in the dependency context. (See *In re Lauren P.* (1996) 44 Cal.App.4th 763, 768 [reasoning that the juvenile court purported to dismiss a petition “without prejudice” in order “to leave the door open to a new petition alleging similar sexual abuse”] (*Lauren P.*.)

Father relies on *In re Sheila B.* (1993) 19 Cal.App.4th 187 (*Sheila B.*), but *Sheila B.* is inapposite. There, the juvenile court dismissed a section 300 petition

after holding a jurisdictional hearing, thus failing to take jurisdiction and never proceeding to a dispositional hearing. The issue accordingly was whether the order of dismissal was an appealable order. Here, unlike in *Sheila B.*, the juvenile court sustained jurisdiction based on an allegation against Mother, and the case proceeded to disposition, resulting in a final, appealable order. (See *In re Javier G.* (2005) 130 Cal.App.4th 1195, 1199-1200 [although the jurisdictional finding is interlocutory and not appealable, issues pertaining to it are raised in an appeal of the dispositional order, which is an appealable judgment under section 395]; *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1138 [“The juvenile court’s jurisdictional findings are not immediately appealable and the appeal is taken from the order made after the disposition hearing. [Citation.]”].)

In considering the appealability of the juvenile court’s dismissal order, the court in *Sheila B.* relied on the definition of a judgment in the Code of Civil Procedure. (*Sheila B.*, *supra*, 19 Cal.App.4th at pp. 196-197; see Code Civ. Proc., § 577 [“A judgment is the final determination of the rights of the parties in an action or proceeding.”].) The court reasoned that the juvenile court’s order was a judgment on the merits because it followed a contested hearing on the allegations of the petition, and concluded that “the dismissal was with prejudice, and was a final judgment for res judicata purposes.” (*Id.* at p. 197.)

Similarly, the issue in *Lauren P.* was whether the juvenile court’s order dismissing a dependency petition “without prejudice” after holding a contested jurisdictional hearing was appealable. Relying on *Sheila B.*, the court concluded that, regardless of the juvenile court’s characterization of its order, “the dismissal followed a trial on an issue of fact; hence, it was on the merits and res judicata.

[Citation.]”<sup>6</sup> (*Lauren P.*, *supra*, 44 Cal.App.4th at p. 768; accord *In re Andrew A.* (2010) 183 Cal.App.4th 1518, 1525 & fn. 4 [the juvenile court’s order dismissing a section 300 petition on the basis that the jurisdictional allegations were not proven was an appealable order].)

*Lauren P.* contrasted *Sheila B.* with *In re Tomi C.* (1990) 218 Cal.App.3d 694 (*Tomi C.*), where the juvenile court dismissed a petition without prejudice and without ruling on the merits. The court in *Tomi C.* reasoned that, “[b]ecause the dismissal order was made without prejudice and did not involve the merits of the charge, another petition under section 300 could be filed for the same acts alleged in the petition.” (*Id.* at p. 698.) The court thus dismissed the appeal as having been taken from a nonappealable order.<sup>7</sup> (*Ibid.*)

Although *Sheila B.*, *Lauren P.*, and *Tomi C.* referred to dismissing a section 300 petition with or without prejudice, this was in the context of determining whether the order of dismissal was a final judgment for purposes of appeal. As discussed above, there is no question here of the appealability of the order. The concept of dismissal with prejudice for the purpose of precluding subsequent petitions, as Father intends, simply does not exist in the dependency context.

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<sup>6</sup> The court in *Lauren P.* further held that the mother had standing to appeal from the dismissal order because her interest in obtaining the state’s protection for her daughter against future sexual abuse was aggrieved by the dismissal. (*Lauren P.*, *supra*, 44 Cal.App.4th at pp. 768-771.)

<sup>7</sup> The court further reasoned that the father did not have standing to appeal because he did not establish that he was aggrieved by the dismissal. (*Tomi C.*, *supra*, 218 Cal.App.3d at p. 698.)

**DISPOSITION**

The order appealed from is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.