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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B257995
(Los Angeles County
Super. Ct. No. CK76867)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VICTOR C.,

Defendant and Appellant.

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

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Michele Anne Cella, for Minors.

No appearance by Plaintiff and Respondent.

Victor C. (father) appeals the juvenile court's jurisdictional findings and dispositional orders with respect to his three children. He contends that the juvenile court violated his due process right to cross-examine an adverse witness by refusing to admit into evidence a DVD of a court-ordered forensic interview of his youngest child in the absence of a transcript, as required by a local rule of court, and by denying his request for a continuance in order to procure a transcript of the interview. We determine that the juvenile court rulings did not deprive father of his due process rights, and so affirm the findings and orders.

FACTUAL AND PROCEDURAL BACKGROUND

On April 1, 2014, juvenile dependency petitions were filed with respect to father's children Alyssa (aged 7), Drake (aged 5), and Emma (aged 4). The petitions contained allegations under Welfare and Institutions Code¹ section 300, subdivisions (a), (b), and (j), alleging that father physically abused Alyssa by striking her with belts, sandals, and his hand; grabbed her by the shoulder and pushed her, causing bruising and bleeding lacerations; and struck her with an empty plastic bottle. The children's mother, Heather C. (mother), purportedly knew of the abuse and failed to protect Alyssa. The petitions also alleged that father physically abused Drake by striking him with belts, sandals, and his hand; physically abused Emma by striking her with belts and sandals, and once struck her with a shoe causing her mouth to bleed; and that the parents had a history of domestic violence.

The juvenile court held a detention hearing on the same day the petitions were filed. It found that father is the presumed father of all three children. The court found substantial danger existed to the physical or emotional health of the minors; that there were no reasonable means to protect the minors short of removal; and that reasonable efforts were made to prevent their removal from the home. The court ordered the minors

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

be detained and ordered the Department of Children and Family Services (“DCFS” or “Department”) to provide family reunification services to the parents.

In various interviews with the Department, the children both confirmed and denied that father had hit them. Once Alyssa was removed from the home, she described more physical abuse by father, and domestic violence between the parents. It was additionally reported that Alyssa was acting out sexually. She was physically and sexually abusive to other children in the foster home, and the foster mother requested that she be removed from the home because she was afraid her husband would be at risk of false sexual abuse allegations. Alyssa was eventually placed in an Intensive Treatment Foster Home.

The jurisdiction hearing was calendared for May 12, 2014. At that time, the minors’ counsel declared a conflict and was relieved. Two lawyers new to the case were then appointed to represent the minors, one for Alyssa and another for Drake and Emma, each of whom requested a continuance in order to prepare for the hearing. In addition, the Department requested a forensic evaluation of Alyssa, apparently to investigate possible sexual abuse allegations which were not included in the Department’s section 300 petition. The juvenile court determined that a forensic examination was warranted; it ordered mother to participate in that effort, and continued the matter to July 16, 2014, with an order that the Department file its report containing the results of the forensic evaluation on June 25, 2014.

At the continued hearing, the Department informed the court that it had a DVD of a videotaped forensic interview with Emma (not Alyssa, as ordered by the court) which it intended to introduce into evidence; however, it had not yet provided a copy to counsel for the parents and minors. DCFS also indicated that the interview contained “things perhaps that might be considered exculpatory, and that I have a duty to disclose to counsel.” The court ruled the evidence inadmissible because it was not accompanied by a transcript as required by a local rule of court. Counsel for all parties requested a continuance of the hearing so that they could review the contents of the DVD. The court

ordered a one-day continuance. DCFS stated, "I'm not going to be able to have it transcribed," to which the court responded, "No, you aren't."

The following day, over the objection of DCFS and father, the court refused to admit the DVD into evidence because it was not transcribed, and denied a continuance so that a transcription could be prepared. The Department introduced into evidence the following documents: DCFS's detention report dated April 1, 2014, jurisdiction/disposition report dated May 12, 2014, and last minute information reports dated May 12 and July 16, 2014. The Department then rested.

Counsel for Alyssa called her to testify. Alyssa stated that father would hit her with his hand or a sandal on her bottom if she did something to make him angry. She explained that the bruise on her torso which was described in the section 300 petition resulted from father pushing her "at the table." Alyssa also testified that father hit Emma and Drake with a sandal and an open hand, making them cry; that mother also hit her; and that she had seen father hit mother, who was scratched.

All counsel stipulated that, if called to testify, Drake and Emma would testify that father hit them with an adult's black belt.

Minors' counsel joined the Department in urging the dependency court to take jurisdiction of the children based on Alyssa's testimony that father hit her and her siblings with an open hand and a sandal, and hit mother as well. Counsel for mother and father argued that there was no substantial evidence to support the allegations that the parents engaged in physically abusive behavior with the children or with each other, pointing to the children's various reports that they were hit, which were contradicted by subsequent statements that they were not hit.

The juvenile court sustained the petition as pled. Among other things, the court stated: "We do have some differing stories by the children, recantations, statements that yes, that, you know, they were hit, then they were not hit. . . . Father told them to lie, no, father told them to tell the truth. And so how do you sort it out? [¶] Well, for one, we saw Alyssa testify. I saw her in person. I didn't have to rely on the reports. And she was

frightened. As you recall, she barely spoke audibly, which the court believes is quite consistent with a child that has experienced some trauma and also is fearful, perhaps of the parents telling her to say something different.”

The court ordered that the children remain detained, that all parties receive counseling, and that both parents be provided visitation. Mother was to receive unmonitored two-hour visits, while father’s three-hour weekly visits were to be monitored.

Father timely appealed the juvenile court’s jurisdiction and disposition findings and orders. On appeal, he contends that his due process rights were violated because the trial court refused to admit the DVD of Emma’s forensic interview, which contained evidence undermining Emma’s credibility and which prevented him from effectively cross-examining the minors.²

DISCUSSION

Father contends that the juvenile court violated his due process right to confront and cross-examine witnesses by refusing either to admit the DVD of Emma’s forensic interview into evidence or to continue the hearing to permit the Department to obtain a transcript of the interview. According to father, “This effectively denied father his right to explore highly relevant and exculpatory evidence, and thereby challenge the credibility of adverse witnesses.”

As father asserts, “A parent in a dependency proceeding has a due process right to confront and cross-examine persons who prepared reports or documents submitted to the court by the petitioning social service agency, and witnesses called to testify at the hearing. [Citations.]” (*Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1513.) Father argues that the juvenile court abrogated this principle by denying a continuance of the hearing to allow for the preparation of a transcript of Emma’s forensic interview,

² Mother did not appeal the judgment, and the Department did not file a brief and takes no position in this matter.

which was a prerequisite to the DVD's admissibility into evidence. However, the principle is not implicated here, as the DVD proffered by the Department was neither admitted into evidence nor formed the basis of any report submitted to the court. Father complains that he was denied the "opportunity to cross-examine adverse witnesses effectively." He does not explain, however, how the court's refusal to admit the DVD into evidence, with the consequence that the contents of the DVD formed no part of the court's decision-making process, resulted in the denial of his right to confront and cross-examine a witness.

We note as well that if father wished to present Emma's testimony to the juvenile court, he had every opportunity to call her as a witness at the hearing. The juvenile court even suggested that since both DCFS and father were arguing for the admission into evidence of Emma's forensic interview, "[i]f you want to stipulate to some testimony on that DVD, the court can consider that." Father declined to do so. Father cannot complain that the juvenile court erred by permitting Emma's credibility to go unchallenged when he affirmatively chose not to challenge it.

The crux of father's claim is that the reports of the children were unreliable: "[T]he children's credibility versus that of mother and father was the central issue, and deciding factor, in the findings and orders sustaining the dependency petitions. The juvenile court expressly found the children credible with regard to the abuse and domestic violence allegations, and found neither parent credible. [¶] The problem is, the children's stories changed and metamorphosed between every single interview reported by the Department, all the way through Alyssa's trial testimony." However, the juvenile court was well aware of the children's inconsistent statements concerning their parents' conduct. Said the court: "We do have some differing stories by the children, recantations, statements that yes, that, you know, they were hit, then they were not hit. . . . Father told them to lie, no, father told them to tell the truth." In making its credibility determination, the court explicitly stated that it was relying on Alyssa's in-court testimony: "[W]e saw Alyssa testify. I saw her in person. I didn't have to rely on

the reports. And she was frightened. As you recall, she barely spoke audibly, which the court believes is quite consistent with a child that has experienced some trauma and also is fearful, perhaps of the parents telling her to say something different. But she was pretty clear in that interview that she has been hit by her father and has been hit by a grownup sandal, that she has seen father hit Emma and Drake.”

In sum, cognizant of the inconsistent accounts given by the young minors in this case, the juvenile court based its jurisdictional findings on the in-court testimony of seven-year-old Alyssa, without regard to the statements made by her younger siblings. We determine that the juvenile court’s decision to exclude from evidence the DVD of four-year-old Emma’s forensic interview did not deprive father of his due process right to confront and cross-examine the witnesses against him, since Emma did not in fact testify in court and her statements played no part in the juvenile court’s decision-making process. We therefore affirm the court’s assertion of jurisdiction in this case.

DISPOSITION

The juvenile court's jurisdictional findings and orders are affirmed.

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KIRSCHNER, J.*

We concur:

TURNER, P. J.

MOSK, J.

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