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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re NICOLE P.,

a Person Coming Under the Juvenile
Court Law.

B259344

(Los Angeles County
Super. Ct. No. CK69088)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

A.G. (Mother) appeals from that portion of the juvenile court’s disposition orders requiring her to participate in substance abuse treatment as part of her reunification plan with her 13-year-old daughter, Nicole P.¹ Mother contends the juvenile court’s order “was unnecessary, counterproductive, and an abuse of the court’s discretion” as there was no evidence she was currently abusing drugs. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior History and Detention

Mother and John P., Nicole’s presumed father (Father),² have been the subjects of numerous referrals for child abuse and neglect dating back to 2002, when Nicole was only a year old. Many of these referrals were based in part on Mother’s substance abuse.

When Nicole was six years old, in July 2007, the Los Angeles County Department of Children and Family Services (Department) detained Nicole and filed a Welfare and Institutions Code³ section 300 petition based on Mother’s neglect, substance abuse, mental and emotional problems, domestic violence, and physical and emotional abuse. The petition also alleged Father had a history of substance abuse. The juvenile court

¹ “Nicole” is the child’s middle name, and she is frequently referred to in the record by that name. She is also referred to by her first name. Because the juvenile court referred to her as Nicole, we do so as well.

² Father is not a party to this appeal. Although he did appeal from the jurisdiction and disposition orders, his counsel was unable to identify any arguable issues on appeal, and we dismissed the appeal on March 9, 2015 pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, 838 and *In re Sade C.* (1996) 13 Cal.4th 952, 994.

Father and Mother have another child, John P., Jr., who is not a part of this appeal.

³ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

sustained the petition and eventually awarded Father sole legal and physical custody of Nicole and terminated jurisdiction.

Almost six years later, Nicole again came to the attention of the Department on May 23, 2014, when she was 13 years old. Nicole was hospitalized after an incident in which she became violent and threatened her family. She was prescribed medication and released to Father.

In early June, shortly after Nicole's release from the hospital, Nicole went to stay with her maternal grandmother for the summer "in an effort to calm down." While at her grandmother's home, Nicole stopped taking her medication and became violent and aggressive on June 7. Nicole's behavior that day required police intervention.

A children's social worker (CSW) went to the maternal grandmother's home the day following the incident to investigate. According to the maternal grandmother, Nicole said her medication was making her jumpy and she stopped taking it. The previous day when Nicole had become violent, Nicole was in the living room watching television when the grandmother asked her to go into another room so she could clean. Nicole "threw a fit and was yelling and screaming and slamming the doors," and then Nicole left the home. The grandmother became concerned and called Father, who told her to call the police. During the CSW's interview, the grandmother told the CSW Mother had used methamphetamine for 20 years and had been sober for a year, but she still exhibited "drug behavior."

The CSW interviewed Nicole, who accused Father of physical and verbal abuse. Nicole said she came to stay with her maternal grandmother in order to get away from Father. Nicole said she wanted to live with Mother, if possible, stating Mother had been "clean" for over a year and lived with her boyfriend, who was also "clean." If she could not live with Mother, Nicole wanted to be placed in a group home rather than return to Father. Nicole also told the CSW that she stopped taking her medication because it caused anxiety and nausea.

The CSW then interviewed Father, who stated Mother had not visited Nicole during the last three years. Father told the CSW Nicole contacted Mother on Facebook in

April 2014. This led to a series of visits between Mother and Nicole for about a week. During one visit, they went to Disneyland and then got into a fight. Since that time, Nicole had been distraught. On Nicole's birthday, a short time after the fight, Mother posted a picture from Cancun on Facebook, where she was vacationing with her boyfriend and his daughter, stating it was too bad Nicole was not nicer to Mother, otherwise she could have been in Cancun with them. After that, Nicole locked herself in her bedroom. When Father asked to come in, Nicole threw a fit and was throwing things around the home and grabbed scissors to cut herself. Father then called the police, and Nicole was hospitalized.

The CSW interviewed Mother by phone. According to Mother, Nicole told her Father hits her and calls her names. Mother said she left Father due to domestic violence, and she did not know why she did not receive custody of Nicole in 2008. Mother stated she had been in recovery for 15 months, was not using any drugs, and attended Narcotics Anonymous (NA) every day. She stated she was diagnosed with bipolar disorder and posttraumatic stress disorder due to the domestic violence, but she was taking medication for it and was fine. She accused Father of using marijuana, physically abusing Nicole, and being bipolar and a sociopath.

The CSW believed Nicole's physical and emotional health would be in danger if she were to be returned to Father's home and therefore took Nicole into protective custody.

B. Jurisdiction

The Department filed a section 300 petition on June 11, 2014, alleging that Nicole was at risk of serious physical harm inflicted nonaccidentally due to Father's physical abuse. The petition further alleged Nicole was at risk of serious physical harm or illness based upon Father's inability to supervise her, Father and Mother's domestic violence and histories of illicit drug use, and Father's physical abuse of Nicole.

At the June 11, 2014 detention hearing, the juvenile court found a prima facie case for detention and ordered Nicole to be detained from her parents' care. The court ordered

Nicole to receive individual counseling and psychiatric care. It ordered the Department to refer Mother for weekly random and on demand testing for drugs and alcohol and to assist her in enrolling in conjoint counseling with Nicole when appropriate. The juvenile court granted Mother weekly monitored visits with Nicole.

The Department filed the operative first amended petition under section 300, subdivisions (a) and (b), on July 23, 2013. It alleged Nicole and Father “had ongoing conflicts which included” Father pushing Nicole, grabbing her shoulders and pushing her against a wall, and choking her with his hands. Father’s actions were “excessive and caused the child unreasonable pain and suffering,” endangered Nicole’s physical health and safety, created a detrimental home environment, and placed her at risk of physical harm. (Counts a-1, b-5.) The petition further alleged Father was “unwilling and unable to provide [Nicole] with ongoing care and supervision due to the child’s mental and emotional problems,” having requested her removal from his home after her involuntary hospitalization. (Count b-1.)

As to Mother, the first amended petition alleged Mother “has a history of illicit drug use, including methamphetamine, cocaine and marijuana, which resulted in . . . [M]other failing to provide regular care for” Nicole, which “endanger[ed] [Nicole]’s physical health and safety and place[d] the child at risk of physical harm, damage and danger.” (Count b-3.) In addition, the petition alleged Mother “has a history of mental and emotional problems including a diagnosis of Bipolar Disorder with intense emotional states of mood episodes consisting of [M]other displaying impaired judgment, impulsiveness, and unresolved anger. Further, [M]other has entered into a compulsive explosive episode while making derogatory and negative comments about [F]ather to [Nicole] causing the child’s mood to change into a manic state and potentially become hospitalized. Due to . . . [M]other’s mental and emotional problems, [she] is unable to provide regular care for the child,” placing Nicole “at risk of physical and emotional harm and damage.” (Count b-6.)

The court conducted the jurisdiction hearing on August 7, 2014. In its jurisdiction/disposition report, the Department reported Mother acknowledged her history

of substance abuse but stated that she had been sober for 16 months, was enrolled in college and receiving A's in her classes, and was in a stable relationship. Mother also told the Department she attended NA meetings and was "still in recovery." According to Mother, she had been in therapy for five years. She said even when she was using drugs, she "always took care of" her children.

The Department's report also reflected Mother and Nicole both stated Mother's bipolar diagnosis was related to the stressful environment in which she lived with Father, and she was no longer having mental health problems. Mother accused Father of being bipolar and stated the Department should be investigating him.

The jurisdiction/disposition report also informed the juvenile court Nicole had been hospitalized on June 17, 2014, while she was in shelter care, after she "made homicidal threats to kill staff, refused her medication, [and] became aggressive with others demonstrating explosive behavior." At the hospital, she "was diagnosed with Major Depressive Disorder and prescribed Prozac."

The Department further reported there were issues regarding Mother's visitation with Nicole. Despite the court's order for monitored visitation, Mother was having unmonitored visits with Nicole during field outings from shelter care and "coached and brainwashed" Nicole to lie about the unmonitored contact. On June 23, Mother came to Nicole's placement unannounced, barged into Nicole's room, was disrespectful to the staff and told Nicole she did not have to abide by placement rules or respect the staff. In addition, Mother made an excessive number of telephone calls to Nicole at the placement, during which she made negative comments about the placement, the staff, the CSW, and Father, putting Nicole in a bad mood. At a team decision making meeting on July 10, Mother ignored or minimized concerns regarding her noncompliance with the visitation order and placement rules.

The Department concluded Mother triggered Nicole's recent emotional problems, and neither Mother nor Father had the ability to care for and control Nicole properly. "Both parents blame each other for [Nicole's] behavior and are fixated on their own past issues with one another." The Department reported "Mother has a long extensive past

substance abuse history and although it is commendable that [M]other has gained some sobriety, [M]other still presents underl[y]ing mental health issues which are of concern. Further [M]other exhibits uncontrolled anger and rage against [F]ather to the extent she imposes such feelings on the child causing the child to feel confused, anger, resentment, and possibly having another emotional breakdown. Furthermore, [M]other has not successfully completed a dual diagnosis substance abuse treatment program despite her long extensive drug history coupled with her own mental health issues. Although [M]other completed Volunteers of America on 11/08/2007, [M]other admitted she relapsed and continued drug use thereafter.”

The Department acknowledged “Mother has demonstrated to some extent she has gained sobriety but still presents escalating behaviors which are alarming and concerning for the safety of the child. Without [M]other having completed a formal dual diagnosis treatment program including relapse prevention, it remains questionable if [M]other has the necessary coping skills to meet the unique mental and emotional needs of the child. Although [M]other has made progress in her recovery as she claims, there are concerns [M]other’s erratic and volatile behavior is an underl[y]ing safety factor posing risk to the child.”

Through an interim review report submitted at the time of the jurisdiction hearing, the Department advised the juvenile court Nicole’s placement was changed on July 31 after Nicole got into a fight with another girl in her group home. Mother also had an altercation with the girl, during which she allegedly called the girl names and pushed her. Mother complained to the Department about the group home and claimed that the other girl was the aggressor.

The Department also reported in the interim review report “[s]ince the matter was last heard, [M]other has not been actively drug testing and keeps missing scheduled random drug tests. Mother keeps asking . . . CSW to have make-up tests. Most recently on 08/06/2014 [M]other missed a random scheduled drug test and requested . . . [Supervising] CSW to reschedule a make-up test for Thursday because she was working.”

At the jurisdiction hearing on August 7, 2014, the juvenile court sustained the first amended petition allegations related to Father having pushed and grabbed Nicole, as well as his inability to provide ongoing care for Nicole due to her mental and emotional problems. (Counts a-1, b-1 and b-5.) As to Mother, the juvenile court sustained allegations that Mother “has a history of illicit drug use, including methamphetamine, cocaine and marijuana, which resulted in . . . [M]other failing to provide regular care for the child. Such actions by . . . [M]other endanger the child’s physical health and safety and place the child at risk of physical harm, damage and danger.” (Count b-3.) It also sustained the allegation that Mother “has a history of mental and emotional problems including a diagnosis of Bipolar Disorder with intense emotional states of mood episodes consisting of [M]other displaying impaired judgment, impulsiveness, and unresolved anger.” (Count b-6.)

To assist it with its disposition orders, the juvenile court appointed an expert pursuant to Evidence Code section 730 to examine Nicole, Mother, and Father. It ordered weekly monitored visitation for Mother in a therapeutic setting and granted the Department discretion to liberalize visitation.

C. Disposition

The juvenile court conducted a contested disposition hearing on October 6, 2014. At the hearing, the court received into evidence two reports prepared by the Department for the hearing, an Interim Review Report and a Last Minute Information for the Court. The court also received into evidence two pages of sign-in sheets evidencing Mother’s participation in a 12-step program.

The Interim Review Report informed the juvenile court Mother did not participate in the Evidence Code section 730 evaluation and had not enrolled in parenting classes. Mother told the CSW she was not going to participate in reunification services because she was too busy with school and could not have Nicole live in her home. Mother said Nicole was a sociopath and should live with Father.

The Department advised, however, Mother had been participating in conjoint counseling with Nicole but had quit seeing her own therapist. The Department had not been able to obtain any information from Mother's former therapist despite having left numerous messages for the therapist. Mother told the Department she would not obtain a letter from the therapist documenting her treatment plan because "her therapist does not deal with [the Department's] cases" and the therapist would not provide such a letter. Finally, the Department reported that Mother had submitted to random drug testing and all of her test results had been clean.

In the Last Minute Information for the Court, the Department reported a CSW met with Nicole, who admitted lying about physical abuse by Father and stated that "guilt is keeping her up at night with anxiety." Nicole said she wanted to live with Father.

The Department recommended Nicole be declared a dependent of the court, be enrolled in therapy, and attend Al-Anon/Alateen classes. It recommended Mother receive reunification services and be required to submit to a mental health assessment, complete a parenting program focusing on emotionally disturbed children, complete an outpatient dual diagnosis program including substance abuse relapse prevention, attend weekly NA meetings, participate in conjoint counseling with Nicole, and complete Parents Beyond Conflict. The Department also recommended that visitation between Mother and Nicole take place in a therapeutic setting and Mother be admonished to comply with visitation orders.

During argument, Mother objected to the recommendation she complete an outpatient dual diagnosis program including substance abuse relapse prevention. Her counsel argued: "Mother has consistently been testing for [the Department]. She's never given a dirty test the entire time she's been testing for [the Department]. She is willing to continue to test random and on demand at whatever frequency the Court orders. And should any be missed or dirty, she understands that, under that condition, she would have to complete a full drug rehab program. But I believe that there is no evidence of current use by . . . [M]other. I believe she's just reached her 18-month sobriety date, as a matter of fact, and I'd ask that the Court not order the drug program."

The court found by clear and convincing evidence there would be a substantial danger to Nicole’s physical health, safety, protection, or physical or emotional wellbeing if she were to remain in the home of either parent and declared her a dependent child of the court. The court ordered the Department to provide a suitable placement for her.

The court also ordered Mother “to attend and complete [the Department]-approved programs as possible[,] . . . to participate in a dual diagnosis program including relapse prevention[,] . . . to do a 12-Step program with court card and sponsor, test weekly, random and on demand, for drugs and alcohol[, and] . . . to do parenting education regarding emotionally disturbed children. Individual counseling to address the case issues. The [Evidence Code section] 730 evaluation and conjoint counseling with the child when recommended by the child’s therapist.”

Finally, the juvenile court ordered Nicole have individual counseling to address case issues. It also granted Mother monitored visitation with Nicole in a therapeutic setting at least one hour per week.

DISCUSSION

Mother’s single claim of error on appeal is the juvenile court abused its discretion in ordering her to participate in a dual diagnosis program with a substance abuse treatment component as part of her reunification plan with Nicole. Mother argues that because the juvenile court did not have any evidence before it that she was currently abusing drugs, that portion of the order requiring substance abuse treatment must be reversed as an abuse of discretion.

Section 362, subdivision (d), provides: “The juvenile court may direct any reasonable orders to the parents . . . of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section, including . . . a direction to participate in a counseling or education program” Under section 362, subdivision (d), “[t]he juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order

accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.’ [Citation.]” (*In re A.E.* (2008) 168 Cal.App.4th 1, 4, quoting *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.)

In support of her claim of abuse of discretion, Mother relies on *In re Basilio T.* (1992) 4 Cal.App.4th 155 and *In re Alexis E.* (2009) 171 Cal.App.4th 438. Both cases are unpersuasive as neither *Basilio T.* nor *Alexis E.* approximates the situation here. Mother’s situation is unique because it presents both substance abuse and mental health issues.

In *Basilio T.*, the juvenile court included a substance abuse component in the parents’ reunification plan, even though “there was nothing in the record to indicate either [parent] had a substance abuse problem.” (*In re Basilio T.*, *supra*, 4 Cal.App.4th at p. 172.) The social worker’s observation of the mother’s unusual behavior was insufficient to establish that either parent had a substance abuse problem. Accordingly, the court concluded there was no basis for requiring the parents to participate in a substance abuse program as part of their reunification plan. (*Id.* at pp. 172-173.)

Unlike *Basilio T.*, where there were no sustained allegations against the parents related to substance abuse, the unchallenged juvenile court’s jurisdiction orders here found Nicole to be a person described by section 300, subdivision (b), based in part on Mother’s substance abuse history. The juvenile court found that Mother “has a history of illicit drug use, including methamphetamine, cocaine and marijuana, which resulted in . . . [M]other failing to provide regular care for the child. Such actions by . . . [M]other endanger the child’s physical health and safety and place the child at risk of physical harm, damage and danger.”

Moreover, here, unlike *Basilio T.*, there was substantial evidence of Mother’s 30-year history of substance abuse. Mother, now 46 years old, had begun using drugs when she was only 13. Mother acknowledged completing a drug treatment program in 2007 or 2008 and then relapsing. At the time of the disposition hearing, Mother’s sobriety had existed for only 18 months.

In *Alexis E.*, the juvenile court sustained allegations that the father had a history of substance abuse and was a current user of marijuana. The juvenile court ordered the father to attend a drug rehabilitation program as part of his reunification plan. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at pp. 449-450.) On appeal, the father claimed that the drug counseling component of his reunification plan was improper, because it forced him to choose between his legal right to use medical marijuana and his ability to reunify with his children. (*Id.* at p. 453.) The court disagreed, finding that because the record showed the manner in which the father was using medical marijuana posed a risk to his children, drug counseling was appropriate. (*Id.* at p. 454.)

Alexis E. is factually distinct from this case and therefore provides no guidance. In *Alexis E.*, the father was a current user of marijuana and drug counseling was ordered as a component of his reunification plan. *Alexis E.* does not address an appropriate reunification plan for a parent with a decades-long history of substance abuse, a relatively brief 18 months of sobriety and significant mental health issues. *Alexis E.* does not hold that a parent must be a current user of drugs to justify substance abuse treatment as part of a reunification plan.

Finally, Mother turns to *In re Christopher H.* (1996) 50 Cal.App.4th 1001 for support that a parent must have a current substance abuse problem in order to justify substance abuse treatment as part of a reunification plan. *Christopher H.*, however, is not so limited and illustrates the broad authority of the juvenile court to make orders to assist parents in reunifying with their children.

In *Christopher H.*, the juvenile court did not sustain allegations that the father had an alcohol-abuse problem even though the father had recently been arrested and incarcerated for driving under the influence. (*In re Christopher H.*, *supra*, 50 Cal.App.4th at pp. 1005-1007.) The juvenile court nonetheless ordered the father to participate in drug and alcohol testing as part of his reunification plan. (*Id.* at p. 1005.) In addition to the current arrest, the juvenile court had evidence before it of two prior drunk driving arrests. On appeal, the father complained that since the alcohol abuse allegations had not been sustained, the juvenile court's order for drug and alcohol testing

“was beyond the jurisdiction of the court.” (*Id.* at p. 1006.) The court upheld the juvenile court’s order noting that “when the court is aware of other deficiencies that impede the parent’s ability to reunify with his child, the court may address them in the reunification plan.” (*Id.* at p. 1008.)

While in this case there is no evidence that Mother is currently abusing drugs, the unchallenged jurisdiction orders specifically found that Mother’s “history of illicit drug use . . . resulted in . . . [M]other failing to provide regular care for the child.” The juvenile court specifically found that Mother’s substance abuse history and failure to provide regular care “endanger the child’s physical health and safety and place the child at risk of physical harm, damage and danger.” Nicole’s dependency was based in part on such conditions.

Most importantly, in addition to Mother’s substance abuse history, the evidence before the court established Mother suffered from significant mental health issues. Mother’s own statements to the CSW revealed she had been diagnosed with post-traumatic stress disorder, suffered from obsessive compulsive disorder and was diagnosed eight years ago as suffering from bipolar disorder. While Mother believed she was “on top of [her] mental health” needs and was “due for a reassessment,” Mother’s mental health issues were ongoing.

Mother’s argument she should not be required to participate in any substance abuse treatment ignores the fact her extensive substance abuse history is coupled with ongoing mental health issues. There was no evidence before the court that Mother ever participated in any treatment designed to address both her mental health and substance abuse problems. While it is true Mother completed a program to address her substance abuse in 2007, Mother “admitted she relapsed and continued drug use thereafter.” The juvenile court’s order was specific that Mother participate in a dual diagnosis program including relapse prevention. Such a treatment program would necessarily address Mother’s ongoing mental health needs and ensure Mother could maintain her sobriety with those ongoing needs.

Given Mother’s relatively brief period of sobriety compared to her 30-year history of drug abuse, her significant and ongoing mental health issues, the previous relapse after completion of one substance abuse treatment program and a lack of any participation in a dual diagnosis program, there was justifiable concern that Mother’s recent period of sobriety “was not enough to reassure the juvenile court that the most recent relapse would be [her] last.” (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [200 days of sobriety after years of drug abuse and a relapse following eight months of sobriety]; see also *In re Mary G.* (2007) 151 Cal.App.4th 184, 206 [three months of sobriety after 23 years of using marijuana, methamphetamine, cocaine and heroin].) The juvenile court’s jurisdiction findings recognized that Mother’s substance abuse history, mental and emotional problems and resulting inability to provide regular care for Nicole put Nicole at risk of physical harm, damage and danger. The juvenile court was well within its authority to order substance abuse treatment as a component of a dual diagnosis program to address relapse prevention for Mother to best serve and protect Nicole’s interests.

We conclude the requirement that Mother participate in a dual diagnosis program including relapse prevention was “designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (d); *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 454.) Under the circumstances of this case, the order was not “beyond the bounds of reason” and therefore not an abuse of discretion. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311-312.)

DISPOSITION

The orders are affirmed.

BECKLOFF, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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