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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re I.R., a Person Coming Under the
Juvenile Court Law.

B268119
(Los Angeles County
Super. Ct. No. DK11450)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSE R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Dismissed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Brian Mahler, Senior Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Jose R., father of I.R., appeals from the juvenile court's jurisdictional findings that I.R. was at risk of harm due to father's history of substance abuse and father's current abuse of methamphetamine and alcohol. He argues that insufficient evidence supports the findings. The Los Angeles County Department of Children and Family Services (Department) contends we should dismiss the appeal for lack of justiciability—that is, that there are independent bases for jurisdiction because father does not challenge the juvenile court's additional jurisdictional finding that he and Alma G., mother of I.R. and her siblings, O.N., K.N., C.N., and M.N., had a history of engaging in violent altercations, and because mother does not challenge that finding or the additional jurisdictional finding that she had a history of substance abuse. As father has failed to establish an exception to the justiciability doctrine, we decline to exercise our discretion to consider his jurisdictional challenge and dismiss his appeal.

BACKGROUND¹

On April 20, 2015, the Department received a referral alleging, among other things, that O.N. (age 15), K.N. (age 13), C.N. (age 6), M.N. (age 5), and I.R. (age 4) were the victims of general neglect. According to the reporting party, father claimed that mother used methamphetamine. A social worker visited the home. Mother told the social worker that father was physically and verbally abusive towards her. She said father used cocaine when she met him six years earlier, but she did not know if he currently used cocaine. Mother denied any substance abuse and agreed to take a drug test. Mother tested negative for drugs and alcohol.

On May 6, 2015, the social worker interviewed father. Father admitted that he used cocaine about seven years earlier. He stated that he started using methamphetamine

¹ Because father does not challenge the juvenile court's jurisdictional finding concerning his and mother's domestic violence, and mother does not challenge the juvenile court's findings concerning her substance abuse history or her and father's domestic violence, we dispense with a full recitation of the facts underlying those findings.

about the same time, when he began dating mother. He used methamphetamine with mother about once a week or once every 15 days, and he and mother had been under the influence of methamphetamine in the children's presence. He claimed that he last used methamphetamine in middle of April 2015. Father also admitted that he previously drank a cup of gin a day, but claimed to have stopped the week prior to his interview. He admitted that he had been under the influence of alcohol in the children's presence. Father did not believe he had a substance abuse "issue" or addiction. Father tested negative for drugs and alcohol.

On May 14, 2015, father informed the social worker that he went to Augustus Hawkins Mental Health Assessment and a clinician there informed him that he needed substance abuse treatment. The same day, father completed a separate substance abuse assessment, apparently through the Department, and agreed to enter an inpatient substance abuse program.

On May 21, 2015, K.N., C.N., M.N., and I.R. were removed and detained from mother's custody. O.N. was removed and detained the next day.

On May 27, 2015, the Department filed a petition under Welfare and Institutions Code section 300 (section 300) with respect to the children. The Department alleged in counts a-1 and b-1 that mother and father had a history of engaging in violent altercations, that mother failed to protect the children from the altercations, and the altercations endangered the children's physical health and safety and placed them at risk of serious physical harm, damage, danger, and failure to protect. In count b-2, the Department alleged that father had a history of substance abuse, including cocaine, and was a current abuser of methamphetamine and alcohol rendering him incapable of providing I.R. with regular care and supervision, and mother failed to protect the children thereby endangering the children's physical health and safety and placing them at risk of serious physical harm, damage, and failure to protect. In count b-3, the Department alleged that mother had a history of illicit drug abuse and currently abused methamphetamine thereby endangering the children's physical health and safety and placing them at risk of serious physical harm and damage. The Department subsequently

filed a first amended section 300 petition that added a b-4 count alleging that O.N., K.N., C.N., and M.N.'s father failed to provide his children with the basic necessities of life including food, clothing, shelter, and medical treatment.

At the detention hearing, the juvenile court found that the Department had established a prima facie case that the children were persons described by section 300, subdivisions (a) and (b). The juvenile court ordered that the children temporarily be placed in the Department's custody.

In its June 24, 2015, Jurisdiction/Disposition Report, the Department reported that O.N. stated father was drunk or "high" most of the time. O.N. had not seen father with drugs, but had seen him with a bottle of whiskey. Father, a violent person, became twice as violent when on drugs. K.N. stated that mother told her that father used drugs and got mother involved with drugs. K.N. had not seen father use drugs. C.N. said he knew father used drugs because he heard father tell mother that father used drugs at work. Mother said that father smelled like wine when he visited the home, she could not tell if he was intoxicated, and she did not know if father was using drugs.

Father told the social worker that he began using cocaine seven years earlier to stay awake when he went with friends to casinos, and used the drug once a week or once every two weeks for about two years. He began using methamphetamine six years earlier when he met mother. Father and mother snorted \$20 worth of methamphetamine a week. He denied using methamphetamine in front of the children, but admitted that he and mother "were always under the influence of methamphetamine while the children were in their care." He and mother also drank brandy or wine, but not to the point of intoxication. Father claimed that due to the "Department's involvement," he and mother last used methamphetamine in April 2015. He also claimed he was not addicted to methamphetamine.

On June 15, 2015, father enrolled in a six-month residential drug treatment program. As of August 14, 2015, father had participated in 176 substance abuse classes, 88 Narcotics Anonymous meetings, 44 parenting classes, and 44 session of individual therapy. Between May 6, 2015, and September 28, 2015, father submitted to eight

random drug and alcohol tests. Each test was negative for drugs and alcohol. Father failed to provide a specimen for a July 17, 2015, test.

On October 13, 2015, the juvenile court held a combined jurisdiction and disposition hearing and sustained counts a-1, b-1, b-2, and b-3 in the section 300 petition with amendments not relevant here. The juvenile court declared the children to be dependents of the court and removed them from mother's and father's physical custody. It ordered family reunification services for mother and father including a full drug treatment program with random testing, after care, and a 12-step program.

DISCUSSION

Father argues that insufficient evidence supports the juvenile court's jurisdictional findings that I.R. was at risk of harm due to father's history of substance abuse and his current abuse of methamphetamine and alcohol. He concedes that the juvenile court will retain jurisdiction over I.R. even if his argument is successful, but asks us to exercise our discretion to consider his argument because the challenged finding "will likely have an undue negative influence on this case moving forward." The Department contends we should dismiss father's appeal because there are bases for jurisdiction independent of the juvenile court's findings concerning father's substance abuse history and current substance abuse.

I. Justiciability Doctrine

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) "An important requirement for justiciability is the availability of 'effective' relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status." (*Id.* at p. 1490.) When "issues raised in [an] appeal present no genuine challenge to the court's assumption of dependency jurisdiction[,] . . . any order we enter will have no practical impact on the pending dependency proceeding,

thereby precluding a grant of effective relief. For that reason, we find [such an] appeal to be nonjusticiable.” (*Id.* at p. 1491.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492 [“an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence”].)

“[I]t is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over [a] child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300—e.g., a risk of serious physical harm (subds. (a) & (b)), serious emotional damage (subd. (c)), sexual or other abuse (subds. (d) & (e)), or abandonment (subd. (g)), among others—the child comes within the court’s jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is “good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.”” (*In re I.A.*, *supra*, 201 Cal.App.4th pp. 1491-1492.)

There is a discretionary exception to the justiciability doctrine in dependency cases. “[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders

that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations] or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation]).” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

II. Analysis

Because father does not challenge the juvenile court’s jurisdictional finding concerning his and mother’s domestic violence, and mother does not challenge the juvenile court’s finds concerning her substance abuse history or her and father’s domestic violence, it is beyond dispute—and father concedes—that the juvenile court had the jurisdiction to declare I.R. a dependent of the court. Accordingly, for jurisdictional purposes, there is no need to decide whether substantial evidence supports the juvenile court’s substance abuse findings with respect to father.

Father contends we should nevertheless exercise our discretion to consider his challenge because the jurisdictional findings “likely will have an undue negative influence on this case.” He reasons that if he is to complete a service plan successfully, he will have to address the protective issues underlying the case to the juvenile court’s and the Department’s satisfaction. He acknowledges that he will have to address “domestic violence issues,” and contends that “[a]dding improperly sustained substance abuse issues to father’s case plan unnecessarily doubles his task.”

Father asserts we should apply the discretionary exception to the justiciability doctrine because the challenged jurisdictional findings “unnecessarily doubles his task.” He states that because of the findings, he will not only have to deal with “domestic violence issues,” but will have to satisfy the court as to “substance abuse issues.”

Father thus appears to assume that a ruling from this court finding the challenged jurisdictional finding unsupported will automatically undo the juvenile court’s dispositional order that he participate in a drug treatment program. This is not the case. Father does not challenge that dispositional order on appeal and, in fact, voluntarily enrolled in a residential drug treatment program independent of the dispositional order.

That is, father effectively acknowledged that he had a drug problem that required a significant course of treatment. The dispositional order would remain regardless of the result of this court exercising discretion to reach the jurisdictional issue.

Additionally, the trial court's dispositional order requiring father's drug treatment need not be based on the jurisdictional finding. For a dispositional order, the court may make orders to the parents as it "deems necessary and proper" to carry out the purposes of section 300 (Welf. & Inst. Code, § 362, subd. (d)), and in doing so has broad discretion to decide what means will best serve the child's interest and to fashion a dispositional order accordingly. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) Father ultimately will have to convince the trial court that substance abuse requirements are no longer necessary regardless of this court's ruling on the challenged jurisdictional findings.

Thus, father's claim that the challenged findings "*likely* will have an undue negative impact on the case" is at best speculation. (Italics added.) (See *In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1494-1495 [a parent invoking the discretionary exception to the justiciability doctrine must identify the manner in which the finding "actually could affect a future dependency . . . proceeding"].) Likewise, father has shown no consequence from the challenged findings beyond jurisdiction. Accordingly, we decline to exercise our discretion to review father's contention that insufficient evidence supports the juvenile court's jurisdictional findings that I.R. was at risk of harm due to father's history of substance abuse and his current abuse of methamphetamine and alcohol.

DISPOSITION

Father's appeal is dismissed.

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RAPHAEL, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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