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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yuba)

In re F. G., a Person Coming Under the Juvenile
Court Law.

YUBA COUNTY HEALTH AND HUMAN
SERVICES,

Plaintiff and Respondent,

v.

R. K.,

Defendant and Appellant.

C070564

(Super. Ct. No. JVSQ110000160)

Appellant R. K., mother of the minor, appeals from the juvenile court’s judgment of disposition. (Welf. & Inst. Code,¹ §§ 360, 395.) She contends the petition failed to state facts sufficient to support jurisdiction and that the evidence was insufficient to support jurisdiction. She further contends the juvenile court’s intervention was improper due to a prior probate court’s order. We affirm.

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

BACKGROUND

On May 11, 2011, the minor's maternal grandmother commenced proceedings in the probate court to obtain guardianship of the then three-year-old minor. Her petition stated that grandmother had taken on a significant role in raising the minor since her birth, the minor had spent nearly half her life in grandmother's home, and grandmother hoped that, with the guardianship in place, mother would receive the services she needed in order to provide a safe and nurturing environment for the minor.

The probate court entered an order granting grandmother temporary guardianship and, pursuant to Probate Code section 1513, subdivision (c), referred the matter to Nevada County Department of Social Services/Child Protective Services (Nevada CPS) for investigation.

The Nevada CPS investigation uncovered a lengthy child welfare referral history. The first referral was made upon the minor's birth, reporting that mother had a history of using methamphetamine, was taking methadone, and the hospital was concerned about mother's aggressive behavior. The second referral was made over six months later, in April 2008, noting mother's history of methamphetamine and methadone use, and reporting that mother had admitted using methamphetamine at a party and then driving with the minor under the influence. Mother agreed to participate in family preservation services and signed a safety agreement. The third referral was made in July 2008, reporting that mother was using methamphetamine. Mother stated she had been diagnosed with bipolar disorder but disagreed with the diagnosis. She initially agreed to participate in a voluntary family maintenance plan but later declined.

The fourth referral was made in March 2009, reporting that mother was using the television to occupy the minor and had threatened to kill anyone who tried to take the minor away. Mother was unresponsive to Nevada CPS's attempts to contact her. The fifth referral was made in October 2009, reporting that mother was neglecting the minor's needs and had drug and mental health issues. Again, Nevada CPS was unable to contact

mother. The sixth referral was made in January 2011, wherein several reports alleged mother was verbally and emotionally abusive. During the investigation, Nevada CPS witnessed mother's volatile behavior firsthand. Mother initially agreed to participate in family preservation services but when the social worker returned with the necessary paperwork, mother became irate and irrational, telling the social worker to leave the residence.

Two referrals were made in February 2011. One reported that mother was neglectful and emotionally abusive toward the minor, was taking prescription pain medication and driving under the influence of the medication, and was medicating the minor to make her sleep at night. Mother admitted she needed counseling but refused services through Nevada CPS. The other referral in February 2011 reported mother was continuing to yell at the minor and abuse prescription medications and that mother had been involved in a physical altercation wherein the minor was present. There was another referral in May 2011 reporting the physical altercation. Mother's whereabouts were unknown to Nevada CPS at that time.

On August 29, 2011, Nevada CPS filed a section 300 petition on behalf of the minor alleging the minor was at risk due to mother's instability and inability to provide safe and stable housing, providing specific allegations establishing such instability. The petition also alleged the minor was at risk because of mother's unresolved mental health issues which periodically rendered her incapable of adequately caring for the minor, as evidenced by her history of inconsistent compliance with treatment, substance abuse, and then current abstention from medication. The petition also alleged that the minor was at risk due to mother's anger management issues and the serious threats she makes when she does not get her way. The petition alleged the minor had been exposed to mother's "road rage," tirades, and yelling and screaming to such an extent that the minor was exhibiting startle responses and had been diagnosed with adjustment disorder with anxiety by Nevada County Children's Behavioral Health. In addition to these

section 300, subdivision (b), allegations as to mother, the petition alleged subdivision (g) allegations of failure to support as to the minor's incarcerated father.

At the prejurisdiction hearing, mother's counsel informed the court he had reviewed the petition, but not the report, with mother in its entirety. Mother was requesting an evidentiary hearing on jurisdiction. Mother's counsel further stated "And I'd just inquire of [Nevada CPS's counsel] if he's open to the idea of amending the petition to deal with some of the concerns my client has about the details behind the allegations in the petition. We can meet and confer about that and confirm with the Court if we have an agreement on that date." Nevada CPS's counsel replied "Certainly."

The contested jurisdiction hearing took place several weeks later on October 14, 2011. Both mother and her treating physician testified. At the conclusion of the evidence, a brief recess was taken. Upon return, the following colloquy took place:

"[Nevada CPS's counsel]: Are we back on the record, your honor? Your Honor, at this time I would be requesting by oral motion to amend the current petition. I do not have an amended petition with me. However, I do have language that I have discussed with [mother's counsel] and the other attorneys. And if I could present this to the Court?"

"THE COURT: Yes. What I will do is ask that the court reporter provide a transcript of just the amended language to the parties so that a proper filing can be done to reflect that."

The juvenile court then read the amended section 300, subdivision (b), allegation, which reads: "The mother has demonstrated a continuing pattern of inconsistent, frequent, and sudden change of housing and periodic reliance on her mother for the regular care of the minor. This pattern has been exacerbated by the mother's chronic mental health issues and impulse control problems." Mother's counsel affirmed that he had explained and discussed the amendment with mother.

Thereafter, the juvenile court found jurisdiction "by a preponderance of the evidence as to [m]other under [section 300, subdivision] (b)(1) with the language as

amended” and as to father under subdivision (g). The juvenile court specifically noted mother’s ongoing mental disability and inconsistency with treatment, her lack of consistency in providing a stable place of residence, and her unresolved mental health and anger issues.

After the juvenile court’s ruling on jurisdiction, mother objected to the venue of the case being in Nevada County. The case was transferred to Yuba County Superior Court the following month for the disposition hearing.

Prior to the hearing, mother filed a “demurrer” to the section 300 petition. This document, however, contested the current state of the evidence in support of the petition, rather than the legal adequacy of the allegations contained in the petition.

The juvenile court denied mother’s “demurrer” which it termed a motion, “based on the way the motion [had] been presented,” and further noted that amended language in the petition appeared to have been by agreement. Thereafter, the juvenile court proceeded to disposition and declared the minor a dependent child of the court.

DISCUSSION

I

Allegation In The Petition

Mother argues the allegations in the amended petition are not sufficient to support jurisdiction. She argues that each supporting fact does not, itself, constitute neglect. Based on the unique facts of this case, we conclude that, not only was mother not prejudiced by the inadequacies of the amended petition, she is estopped from making this challenge.

Under the California Constitution, “[n]o judgment shall be set aside . . . for any error as to any matter of pleading . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.” (Cal. Const., art. VI, § 13.) This provision applies to civil, criminal, and dependency proceedings alike.

Any shortcomings in the petition, as amended by stipulation of the parties after the close of evidence, certainly did not prejudice mother. “In the initial ‘pleading’ stage, the role of the petition is to provide ‘meaningful notice’ that must ‘adequately communicate’ social worker concerns to the parent.” (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1037.) The original petition, the adequacy of which mother never challenged, provided mother the necessary notice. The evidence adduced at the hearing supported the original allegations.

Furthermore, a party’s request for or consent to action, even if that action is beyond the court’s jurisdiction or statutory power, may be estopped to question it when to hold otherwise would permit that party to trifle with the courts. (*In re Griffin* (1967) 67 Cal.2d 343, 348; *People v. Beebe* (1989) 216 Cal.App.3d 927, 932.) We would be hard pressed to think of a better example of trifling with the courts than where a party specifically seeks an amendment of a legally sufficient petition after the close of evidence, stipulates to specific amended language, waits in silence for the court to find the allegations true and jurisdiction accordingly, proceeds to disposition, and then complains on appeal about the agreed-upon amended language.

We will not permit mother to trifle with the courts by exploiting professional courtesies (however ill-advised)² and procedural rules on appeal in an attempt to avoid jurisdiction based on the very amendment *she* sought.³

² We emphasize, however, that the social service agency should not agree to amend allegations of petitions in an attempt to please a parent -- especially where, as here, it leaves the sufficiency of the allegations open to attack. The allegations of the petition are there to provide meaningful notice to the parent of the allegations and concerns of the agency, for the protection of the minor, and to shape services. It is not expected, nor pertinent, that a parent endorse them.

³ We recognize that mother’s Yuba County counsel subsequently represented to the juvenile court that mother’s Nevada County counsel had indicated to her that mother did not stipulate to any amended language. This is, however, contradicted by the record.

Mother relies on *In re Alysha S.* (1996) 51 Cal.App.4th 393, for the proposition that agreeing to the amendment of the petition and submitting on the reports does not bar her from challenging the adequacy of the petition on appeal. While *Alysha S.* supports mother's contention that her request and stipulation to amend the petition did not constitute a concession of jurisdiction, the case does not lend support for the proposition that she cannot be estopped from challenging the adequacy of the petition based on that request and stipulation. (See *In re Alysha S.*, *supra*, 51 Cal.App.4th at p. 395.) *Alysha S.* simply held that the failure to challenge the sufficiency of the petition in the juvenile court does not preclude such a challenge on appeal. (*Id.* at p. 397.) Although *Alysha S.* did note that "[o]n September 7, 1995, at a contested jurisdictional hearing, the parties agreed to amend the petition and submit jurisdiction on the reports," no additional facts surrounding the circumstances or substance of the amendment are provided and, more significantly, *Alysha S.* did not address the issue of estoppel. (*Id.* at pp. 395-396.) Cases are not authority for propositions not addressed therein. (*People v. Jennings* (2010) 50 Cal.4th 616, 684.)

II

Evidence To Support Jurisdiction

Mother also argues that the evidence was insufficient to support jurisdiction. She argues that her frequent and sudden housing changes and periodic reliance on the minor's grandmother for care were not demonstrated to pose a substantial risk of harm to the minor. The basis of her argument, however, is not that the evidence was insufficient to support those allegations in the amended petition, but simply another way of arguing that those allegations are not sufficient to support jurisdiction. As we held in the previous section, mother's request to amend the language of the petition was, essentially, an agreement that the agreed-upon allegations would be sufficient for the juvenile court to assume jurisdiction under section 300, subdivision (b), if it found those allegations true.

Since the evidence was sufficient to support those amended allegations, it was sufficient to support jurisdiction.

The evidence was also sufficient to support the allegation that her frequent housing changes and periodic reliance on the minor's grandmother for care were exacerbated by her mental health issues and impulse control problems. Mother's treating physician, Dr. Long, testified mother has attention deficient disorder, with hyperactivity and mood disorder. Her symptoms include impulsivity, inconsistency, "not following through," hyperactivity, anger control problems, depression and feelings of being overwhelmed. He further testified mother had demonstrated inconsistency in conformity with her disorder in her treatment noncompliance -- both in keeping appointments and in taking prescribed medication.⁴ There was also evidence that mother's inconsistency and anger control issues were reflected in mother's housing arrangements. In the four years since the minor's birth, mother had moved at least seven times for various reasons, including disagreements with those in authority, an alleged assault, and an alleged rape. Mother had moved in with grandmother as an interim residential solution on four occasions, leaving on the last occasion after a volatile argument with grandmother.

Taken together, this evidence is sufficient to support the allegation that mother's frequent housing changes and periodic reliance on the minor's grandmother for care were exacerbated by her mental health issues and impulse control problems. Mother's

⁴ There were varying reasons given for mother's lack of medication compliance. Dr. Long testified mother had been obtaining additional medicine from another doctor at one point, in violation of their treatment agreement and in a possible attempt to take a higher dosage. Mother admitted she had obtained additional medication from another doctor, but stated she was taking it for weight loss. Dr. Long also testified that mother had stopped taking her medication on one occasion without explanation and on a later occasion due to reported complaints of nausea. Mother testified the reason she stopped taking the medication prescribed by Dr. Long was due to fear of losing custody of the minor.

argument that there was insufficient evidence that her mental health issues posed a risk to the minor sufficient to support jurisdiction under section 300, subdivision (b), apart from the limitation of the allegation in the amended petition, is irrelevant. Since she requested the amended language in the petition and the evidence was sufficient to support the amended allegation, it was sufficient to support jurisdiction.

Additionally, because we find jurisdiction was proper under section 300, subdivision (b), we need not address mother's separate contention that jurisdiction cannot be based solely upon the allegation against the minor's noncustodial father pursuant to section 300, subdivision (g).

III

Risk Of Harm To Minor

Finally, mother contends the juvenile court's intervention was inappropriate because there was no longer a substantial risk of harm to the minor at the time of the jurisdiction hearing. The basis of this argument is that the risk of harm had been alleviated by the probate court's order. Her contention has no merit.

After grandmother instigated guardianship proceedings in the probate court, the probate court entered a temporary guardianship order and referred the matter to Nevada CPS for investigation. Probate Code section 1513, subdivision (c), requires the probate court to refer a guardianship case to CPS whenever it is alleged that a parent is unfit.⁵ After its investigation, Nevada CPS filed the section 300 petition. The jurisdiction hearing was held approximately six weeks later.

⁵ Probate Code section 1513, subdivision (c), provides: "If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending."

Mother contends that, by following this procedure, the juvenile court improperly took jurisdiction when there was no present risk of harm to the minor. It is important to point out, however, what mother does *not* argue here. Mother does *not* contend that *her circumstances* had subsequently changed thereby eliminating the risk of harm by the time of the jurisdiction hearing. (Cf. *In re Rocco M.* (1991) 1 Cal.App.4th 814, 825.) Instead, mother contends that because the probate court entered a temporary guardianship order to protect the minor prior to its mandatory referral to Nevada CPS for investigation and filing of the section 300 petition, *it* eliminated the risk of harm prior to the jurisdiction hearing. Of course, this would be an absurd construction of the law.

The probate court was *required* to refer the case to Nevada CPS for investigation and determination whether a section 300 petition was warranted. (Prob. Code, § 1513.) The fact that it entered a temporary guardianship order to protect the minor in the interim in no way alleviated the risk to the minor so as to overcome grounds for the juvenile court's jurisdiction. It differs little from a prejurisdiction detention order pursuant to section 315 in that regard. Neither order resolves the current risk to the minor for purposes of the requirements of section 300.

The procedures utilized by the probate court, Nevada CPS, and the juvenile court in this case were proper. (See *Guardianship of Christian G.* (2011) 195 Cal.App.4th 581, 611 [order of temporary guardianship to remain in place pending referral to CPS for possible commencement of dependency proceedings].) We find no error.

The cases cited by mother in support of her contention are wholly inapposite. Mother cites cases discussing circumstances wherein the parents voluntarily arranged for the appropriate care and custody of their children prior to dependency jurisdiction being taken, and the applicability of section 300, subdivision (g), thereto. (*In re J.O.* (2009) 178 Cal.App.4th 139, 153; *In re Monica C.* (1995) 31 Cal.App.4th 296, 305.) Unlike those cases, here, *grandmother* instigated guardianship proceedings, mother was *contesting* the guardianship, and the allegations against mother were not of abandonment

under section 300, subdivision (g), but failure to supervise or protect under section 300, subdivision (b).

Mother's citation to *In re Kaylee H.* (2012) 205 Cal.App.4th 92, is equally inapposite. There, too, the guardianship proceeding had been filed with the parents' consent. (*Id.* at p. 97.) The probate court granted the temporary guardianship and referred the matter to CPS for investigation. CPS decided not to file a section 300 petition and, instead, recommended permanent guardianship, which the parents also favored. (*In re Kaylee H.*, at pp. 97-98.) The juvenile court reviewed CPS's decision and ordered it file a section 300 petition, agreeing to "dismiss the petition and go probate" after the parents received the advice of counsel. (*In re Kaylee H.*, at pp. 98, 106.) The appellate court held the juvenile court erred in focusing its concern, not the risk to the minor but rather, on the parents' lack of advice of counsel on conceding to the guardianship. (*Id.* at pp. 106-107.) In so holding, the court stated that the guardianship was sufficient to ensure the safety of the minor. (*Id.* at p. 106.) However, as acknowledged by mother, the court then limited its statement, explaining "This of course assumes the parent is not contesting an allegation of unfitness in probate court and seeking custody of the child. (Cf. *Christian G.*, *supra*, 195 Cal.App.4th at pp. 605-606.)" (*In re Kaylee H.*, at p. 106, fn. 13.)

Here, mother *was* contesting the allegation of unfitness in probate court and did not consent to the guardianship. The policies for having contested allegations of parental unfitness referred to CPS and, if substantiated, handled in the dependency, rather than probate, system (discussed at length in *Christian G.*) provide the basis for the critical distinction between the contested guardianship in this case and the cases cited by mother.

The juvenile court did not err in finding the minor came within the provisions of section 300, subdivision (b).

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

RAYE, P. J.

BLEASE, J.