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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re V. O. et al., Persons Coming Under the Juvenile
Court Law.

C074574

SHASTA COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

(Super. Ct. Nos.
13JVSQ2969701,
13JVSQ2969801)

Plaintiff and Respondent,

v.

R. O. ,

Defendant and Appellant.

Mother, R. O., appeals the jurisdictional and dispositional orders entered on July 12, 2013, as to the children, C. O. and V. O. She contends there is insufficient evidence to support the jurisdictional finding that the children were at substantial risk of serious physical harm due to the parents' excessive discipline, the juvenile court improperly admitted an audio recording which was not authenticated and not relevant,

and the evidence was insufficient to support removal from parental custody at disposition. We affirm the orders of the juvenile court.

BACKGROUND

At the time of the dependency proceedings the children, C. O. and V. O., were six-year-old twins and their half sister N. M. was 10 years old.¹ From 2008 through 2010, the family had a number of referrals to the Shasta County Health and Human Services Agency (the Agency) alleging abuse and neglect, which were unfounded or unsubstantiated. Within that history, N. M. had made previous allegations of abuse; however, upon investigation, her claims were not supported. Father admitted spanking the children, but there were no reports of the children having marks or bruises from the spankings.

In April 2013, the Agency received a referral regarding excessive discipline in the home, including the children being spanked with a belt. N. M. reported father had washed her mouth out with soap for using foul language. She began to cry and could not stop. Father reportedly grabbed her by the hair, yanked her down, stepped on her, and reportedly chipped a part of her tooth. Upon investigation, N. M. appeared clean and had no visible marks or bruises. Looking into N. M.'s mouth, neither the social worker nor the investigating law enforcement officer, Deputy Padilla, could see whether her tooth was chipped. There was no evidence she had been taken to the dentist. N. M. later indicated she had swallowed her chipped tooth and her parents did not know about it. N. M. said she was afraid to speak with the social worker because she had gotten in trouble the last time she spoke with the Agency.

¹ N. M. is not a subject of this appeal. Therefore, the facts related to N. M. are discussed only to the extent they are relevant to C. O. and V. O.

The social worker went to the home and spoke with father, who was “visibly annoyed” with the social worker. He stated N. M. was a liar, a thief, and very manipulative. He also said that the younger children, especially C. O., were starting to emulate N. M.’s irresponsible and inappropriate behaviors. Father indicated he disciplined the children by putting them in a corner and spanking them, sometimes with a belt. Father also acknowledged he had disciplined N. M. for using foul language by putting a new bar of soap in her mouth for a few minutes. N. M. had been kicked off the school bus for cussing on the bus. When she got home, father put soap in her mouth and made her sit in the corner with it in her mouth until she had bitten the soap. He stated he and mother believed that “children need physical discipline to become productive members of society and not end up in the penal system.” He later stated that physical discipline was a last resort and he rarely used it. Father stated he would spank his children when they were physically assaultive to their mother or siblings. He also would discipline them for lying, stealing, or not listening by putting them in a corner. Father stated the primary problems in the home were caused by N. M. and her poor behaviors.

Mother also acknowledged disciplining the children with a belt. She stated N. M. is a liar, she had stolen from family members, and hit other children on the school bus. Mother also reported she was present when father put soap in N. M.’s mouth, and the reports of violence, including the chipped tooth, were lies.

The social worker interviewed the children’s 11-year-old half sibling, A. H. A. H. reported N. M. got in the most trouble at home because she did not listen. He also stated he felt the discipline was appropriate and he was not concerned about C. O. and V. O. and felt they were safe in the home.

V. O. reported all the children were disciplined by spanking with a belt or when they use foul language they are slapped in the face and soap is put in their mouth. She reported things that make her sad in the home are “when daddy and mommy hurt me.” V. O. also stated N. M. got into the most trouble at home. V. O. did not say how often

she was spanked. The children indicated when they were slapped it was a single slap with an open hand.

C. O. also reported all the children are disciplined with a belt, and that when they use foul language they get “hot peas”² or soap in their mouths. It made him sad when father spanked him or slapped him on the cheek, kicked “him in the butt” while he was standing in the corner, when mother spanked and slapped him, and when mother threatened to have father spank him. He also stated he had been recently spanked for splashing water on N. M. He explained father had “missed” his buttocks and struck him on his back. When speaking with Deputy Padilla, C. O. stated he was spanked two times on his back and sent to bed. He then showed the social worker and Deputy Padilla marks and bruising on his back that were consistent with being hit twice with a belt. C. O. did not say how often he was spanked. C. O. also told Deputy Padilla he had a lot of bruises from his father pinching him. He showed Padilla small round bruises on his arm that appeared to be a few days old. Both children reported the parents hit them with belts or open hands and used soap in the mouth when the children used bad language.

Father explained that C. O. had been outside damaging the neighbors’ cars by carving into them with a stone. Father asked him to come inside and C. O. started “having a fit,” thrashing on the ground. Father told him to come in and sit in the corner and C. O. refused. Father told him to go to bed. C. O. went to bed, threw a blanket over himself, and started kicking and thrashing. Father told him if he did not stop he would spank his butt. C. O. did not stop and father spanked him with the belt. Father had swung the belt two or three times, and did not know he had hit C. O.

² “Hot peas” are apparently wasabi peas.

Padilla and the social worker interviewed N. M. She was trembling and crying and afraid she would get in trouble for speaking with the social worker. She reported C. O. had gotten into trouble and was spanked because he “wasn’t listening.” She said father had accidentally hit C. O. on his back. N. M. reported she was most afraid of her stepmother because she slapped N. M., hit her with a belt, yelled at her, and constantly called her derogatory names. N. M. stated she was afraid of retaliation from her father and stepmother for talking with the social worker and law enforcement. She reported she had been punished in the past following investigations of abuse.

The day after the social worker visited father in the home, she was contacted by the children’s principal, who reported that two days earlier a message had been left on the Central Valley High School librarian’s voice mail.³ Much of the recording was inaudible, but it sounded to the social worker like mother was physically disciplining N. M. Padilla listened to the tape and was not sure if the “slapping and thumping noises were being inflicted on a person.” He believed he could hear C. O., V. O., and N. M.’s names being said on the recording. He noted when speaking to mother in person there was a difference between her voice and that on the recording.

The social worker was concerned the incident had occurred after her visit to the home so she returned to interview N. M. N. M. reported that mother blamed her for the Agency being in the home, and pushed her on the shoulder, resulting in a bruise. She was not, however, spanked. The social worker played the recording for N. M. who said it was mother yelling at her and spanking her, but it had happened a couple of years earlier. N. M. said neither she nor any of the children had a cell phone at that time.

³ None of the children went to Central Valley High School and there was no apparent connection between the family and the school.

The Agency filed a petition alleging the children had suffered or were at substantial risk of suffering serious physical harm inflicted nonaccidentally by a parent and a failure to protect the children from the conduct of the custodian with whom the children had been left. (Welf. & Inst. Code,⁴ § 300, subds. (a) & (b).)

The children were detained and placed in foster homes. N. M. did not want to return home. V. O. reported she did not feel safe at home and liked her foster home because “nobody gets spanked there.” V. O. said she wanted to go home, but also said she wanted to be at the foster home. C. O. stated he wanted to stay at the foster home for “ ‘ten days’ and then return home.”

At the contested jurisdictional hearing, the juvenile court admitted the audiotape over mother’s counsel’s objection on the grounds that there was not a proper foundation and the tape was not relevant.

Father testified at the hearing. He stated that including the incident with the belt, he had spanked C. O. twice and threatened to spank him twice in the past 12 months. The other time, he spanked C. O. once on the buttocks, because he was throwing a tantrum and kicking his mother. He had spanked V. O. twice and threatened to spank her once in the past 12 months. He said he had also spanked N. M. twice on her buttocks, in the preceding 12 months.⁵ Father denied ever having an incident when he pulled N. M.’s hair, pulled her down to the ground, stepped on her face, and chipped her tooth. He thought it sounded like a wrestling match they had seen on television. Other than this current incident with C. O., he had only ever spanked the children on their buttocks, when they were clothed. He never observed any marks as a result of the spankings. Father stated he had not hit the older children with his hands since 2009, when he would

⁴ Undesignated statutory references are to the Welfare and Institutions Code.

⁵ At the time of the jurisdictional hearing, N. M. was living permanently with her mother, the nonoffending parent.

hit them on the bottom with his hand, and had never hit C. O. or V. O. with his hands. He had never slapped the children in the face. He stated he had had a surgery on his right hand and forearm, and flattening his hand fully is painful. He had threatened to place a bar of soap in C. O.'s mouth once for him using foul language, but he had never threatened V. O. Father testified the children were aware that soap in the mouth was the punishment for using foul language. He acknowledged he had had N. M. place a bar of soap in her mouth on one occasion. She had the bar of soap in her mouth for approximately five minutes. He denied ever having the children hold wasabi peas in their mouths, although he admitted threatening to do that once. The youngest he ever spanked one of the children was approximately age five or six. He did not ever kick the children in the butt, but would put his foot on his son's buttocks to keep him in the corner. With regard to the audio recording, he had never heard mother speak to the children in that manner and did not recognize any of the voices on the tape.

Mother testified she had used a belt on all four children, when no other discipline was working. Over the course of four or five years, she had used the belt on N. M. four or five times, three or four times on C. O., and three times on V. O. She had never seen any marks or bruising left from the use of the belt. She also acknowledged she had used her open hand to hit each child, once or twice in their lives. She had never seen any marks on the children from those blows. She had disciplined both A. H. and N. M. by using soap in their mouth. She denied ever using liquid soap or having them hold wasabi peas in their mouths. She did not recognize any of the voices on the recording, and denied it was her voice on the recording.

The juvenile court listened to the audio recording, but did not accord it a great deal of weight. The juvenile court noted the person on the tape appeared to be using a similar method of corporal punishment as mother had described using. The court also found there was a child named "[N. M.]" referred to on the tape. The court found the most compelling evidence supporting the allegations was the parents had alleged N. M. was a

liar, but N. M. “had a real sustained fear of her parents at the time that she gave her reports to law enforcement. She didn’t want the social worker or the Agency to be involved at all. And that sustained fear and her statements with respect to her fear demonstrated for the court or gave some evidence to the court that she was being truthful about the statements that she had made to law enforcement. They were supported also by her siblings.” The trial court found father had spanked C. O. with a belt, leaving marks on his back; father and mother used excessive discipline on the children, “including using a belt, hitting them with their hands, putting bar soap in their mouths, having them drink liquid soap, and making the children hold wasabi peas in their mouths”; N. M. is fearful of father; N. M. has displayed emotional damage, crying hysterically, being terrified to return home, using foul language, telling lies and showing aggression toward her peers; and, father only refers to N. M. in negative terms and blames her for his use of excessive discipline on her and the other children. The court sustained the allegations of the petition and declared the children dependents under section 300, subdivisions (a) and (b). The trial court removed the children from parents’ custody.

At the six-month prepermanency hearing, the trial court found the parents had complied with all the case plan objectives, been appropriate in their interactions with the children, and the children wanted to return home and did not appear fearful of their parents. The children were returned to the parents’ home with a family maintenance plan. Approximately one month later, the court granted the parents full legal and physical custody and terminated dependency jurisdiction.

DISCUSSION

I

This Case Is Not Moot

The Agency contends the appeal is moot because the trial court returned the children to the parents’ custody and terminated dependency jurisdiction. Mother

contends the appeal is not moot because the jurisdictional finding has continuing negative consequences.⁶ We agree with mother.

“ ‘A case is moot when any ruling by this court can have no practical impact or provide the parties effectual relief.’ ” (*Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 364.) “As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but ‘must be decided on a case-by-case basis.’ ” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) Termination of jurisdiction does not render an appeal from a previous order moot if the order would have negative consequences for the appellant. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

Here, the jurisdictional finding being appealed is that the children were at substantial risk of serious physical harm due to the parents’ excessive discipline, in other words that parents were abusing the children. Law enforcement officials and social workers are required to forward substantiated reports of child abuse to the Department of Justice. (Pen. Code, §§ 11165.9, 11169.) The Department of Justice maintains the child abuse central index (CACI) and makes the list available to third parties for purposes of background checks in areas such as employment, licensing, volunteer opportunities, adoption, or child placement. (Pen. Code, § 11167.5, subd. (b); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, 1177-1178, 1187-1188, revd. and remanded on other grounds *sub nom. Los Angeles County v. Humphries* (2010) 562 U.S. 29 [178 L.Ed.2d 460].) Inclusion in the CACI list imposes a tangible burden, as the law

⁶ Mother has made no argument that the order removing the children from parental custody was not rendered moot by the return of the children to the parents’ custody and termination of dependency jurisdiction. There is no effective relief we can grant as to the order of removal and no continuing negative consequences of that order. Accordingly, we find that claim is moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404-405.)

“effectively requires agencies to check a stigmatizing list and investigate any adverse information prior to conferring a legal right or benefit.” (*Humphries v. County of Los Angeles*, at p. 1188.) This tangible burden is a continuing negative consequence for mother. Because of this burden, mother’s appeal is not rendered moot by the termination of dependency jurisdiction.

II

There Was Substantial Evidence To Support The Court’s Order

Mother contends there was insufficient evidence to support the jurisdictional findings that the children were at risk of serious physical harm due to the parents’ excessive discipline and that the children were at substantial risk of harm due to the parents’ mental illness, developmental disability, or substance abuse.

“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. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

A court may assert jurisdiction over a child when “[t]he child has suffered, or there is a substantial risk the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent.” (§ 300, subd. (a).) “The court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citations.] The court may consider past events in deciding whether a child presently needs the court’s protection. [Citations.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165-166.) “For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the

child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury." (§ 300, subd. (a).)

The juvenile court's findings at a jurisdiction or disposition hearing are reviewed for substantial evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "We consider the entire record, drawing all reasonable inferences in support of the juvenile court's findings and affirming the order even if other evidence supports a different finding. [Citation.] We do not consider the credibility of witnesses or reweigh the evidence. [Citation.] Substantial evidence does not mean 'any evidence,' however, and we ultimately consider whether a reasonable trier of fact would make the challenged ruling in light of the entire record. [Citation.] The parent has the burden on appeal of showing there is insufficient evidence to support the juvenile court's order. [Citation.]" (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 137-138.)

Viewing the evidence under this standard, we find there is substantial evidence to support jurisdiction. Contrary to mother's implicit argument, this is not a case where there was a single incident of reasonable corporal punishment. The children reported the parents had a long and escalating history of physically disciplining the children. This discipline included making them hold wasabi peas in their mouths, slapping them in the face, pinching them, hitting them with open hands, making them drink liquid soap or hold bar soap in their mouths, and spanking them with a belt. The children reported they were sad when they were spanked and V. O. stated she did not feel safe at home and wanted to stay at the foster home because nobody was spanked there. The parents acknowledged washing the children's mouths out with soap, repeatedly hitting the children with open hands, and repeatedly spanking them with a belt. The parents believed the children needed to be physically disciplined to "become productive members of society and not

end up in the penal system.” On at least one occasion, father hit six-year-old C. O. with a belt on the back, not the buttocks, with sufficient force that he left a mark on C. O.’s back, even though C. O. was clothed and under bedcovers. N. M. described numerous incidents of escalating physical discipline and was extremely fearful when speaking with the social worker. She was trembling and crying and afraid of getting in trouble for speaking with the social worker. Rather than taking responsibility for their actions, the parents continued to blame 10-year-old N. M. for their family’s involvement with the Agency. We find, in the context of two six year olds being subjected to increasing levels of corporal punishment, there was sufficient evidence the children had suffered or were at substantial risk of suffering serious injury. (See *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.)

III

Admission Of The Audiotape Was Not Prejudicial

Mother’s final contention is that the trial court improperly admitted the audio recording into evidence as it was not authenticated, lacked a proper foundation, and was not relevant. We will assume, without deciding, that the juvenile court erred. Nonetheless, we find any error was not prejudicial.

No judgment will be set aside on the grounds of the improper admission of evidence, unless the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Evid. Code, § 353.) In both criminal and civil cases, “[a] miscarriage of justice should be declared only when the court, after an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Rains* (1999) 75 Cal.App.4th 1165, 1170.) “When reviewing a judgment based in part on excludable evidence, we first strip away the inadmissible evidence and ask whether enough admissible evidence remains to sustain the court’s finding.” (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 837.) Above we considered the evidence without

considering the audiotape and found there was sufficient evidence to support the juvenile court's jurisdictional finding. Furthermore, the juvenile court expressly stated it did not give the tape a significant amount of weight. Under these circumstances, there was not a reasonable probability that in the absence of admitting audiotape, mother would have had a more favorable result.

DISPOSITION

The orders of the juvenile court are affirmed.

ROBIE, J.

We concur:

HULL, Acting P. J.

MAURO, J.