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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.G. et al., Persons Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.G. et al.,

Defendants and Appellants.

E054186

(Super.Ct.No. INJ018639)

OPINION

APPEAL from the Superior Court of Riverside County. William S. Lebov, Judge.
(Retired Judge of the Yolo Super. Ct. assigned by the Chief Justice pursuant to art. VI,
§ 6 of the Cal. Const.) Affirmed.

Teri A. Kanefield, under appointment by the Court of Appeal, for Defendant and
Appellant J.G.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and
Appellant J.M.

Pamela J. Walls, County Counsel, and Prabhath D. Shettigar, Deputy County Counsel, for Respondent.

J.G. (mother) and J.M. (father) appeal the termination of their parental rights under Welfare and Institutions Code¹ section 366.26. Mother and father filed separate briefs on appeal. Mother appeals as to her children, Joel G., Natalie M., and N.M. (the children), and father appeals as to Natalie M. and N.M. only.² Father and mother contend that there was insufficient evidence to support the juvenile court's jurisdictional findings under section 300, subdivisions (b) and (g). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 22, 2010, the Riverside County Department of Public Social Services (the department) filed a section 300 petition on behalf of the children, alleging that they came within subdivisions (b) (failure to protect) and (g) (no provision for support).

Joel G. was three years old at the time, N. M. was two, and Natalie M. was 14 months.

The petition contained the following allegations under section 300, subdivision (b):

1) mother admittedly abused controlled substances; 2) mother neglected the health and safety of the children by allowing them to be around her boyfriend (not father), who engaged in criminal activities; 3) mother had a significant history of being a victim of domestic violence, and she failed to obtain a restraining order or seek counseling to address the issue; 4) mother was currently homeless and unable to provide the children

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Joel G. has a different father, A.F. A.F. is not a party to this appeal.

with a stable living environment; and 5) father was not a member of the household and had failed to provide Natalie M. and N.M. with adequate food, clothing, shelter, medical treatment, support, and/or protection. The petition alleged under subdivision (g) that father was currently incarcerated, his exact release date was not known, and he was unable to arrange for the care and support of his children.

In the detention report, the social worker reported that the department received a referral on April 12, 2010, stating that mother apparently drank bleach two nights before, as she stated that she did not want to live. It was reported that mother had attempted suicide in the past. The social worker went to mother's home on April 19, 2010. She noted that the home was neat and clean, and the children were neatly dressed and well-groomed. There were no signs of neglect or abuse. The social worker asked mother if there was food, and mother opened the refrigerator. The social worker did not notice any bread, fruit, milk or baby formula. Mother stated that she was going to the store to pick up more food that day.

Mother denied the allegations that she attempted suicide and repeatedly asked who gave the referral. She said that none of the children attended daycare or school, and that she was the primary caregiver who watched them through the day, since she did not work. She received Cal Works and food stamps. Mother admitted using methamphetamine the day before, and marijuana. The social worker performed a saliva drug test, which indicated a positive result for methamphetamine and marijuana. The social worker noted that mother had a previous dependency with the department, when Joel G. was born positive for methamphetamine. The dependency was terminated on

May 5, 2008, after mother had received reunification services and completed a family maintenance case plan. The social worker asked mother why she started to use again, and mother responded that she was living with her boyfriend, who was always beating her up. Mother reported that her boyfriend, G.Y., was just arrested after the police did a probation sweep on her house, looking for guns and stolen property. She said he “got locked up” and that this was “his second time.” She said she was glad he was gone. When asked why she did not go to a shelter for domestic violence, she said, “I don’t know.” Mother said she never used drugs in front of her children or while they were at home.

Mother informed the social worker that she received an eviction notice and had to be out of her apartment on April 25, 2010. She said she did not want her children to be homeless with her, so she was planning on sending them to live with her mother.

Mother reported that A.F. was the father of Joel G., and that father was the father of Natalie M. and N.M. Mother was never married to either father, neither father had ever been in the children’s lives, and she had had no contact with them. She said neither father had provided any financial assistance for the children. Mother reported that father was incarcerated, but she did not know where.

The social worker asked mother to wait in the home with her children, while she went back to her car to get some paperwork. When the social worker returned, the children were gone. Mother said her mother picked them up. The social worker noticed a change in mother’s behavior and observed that her eyes were red and watery, her speech was slurred, and she was unable to focus anymore. Mother appeared to be under

the influence of a controlled substance. The social worker informed mother that she would be placing the children in protective custody and made arrangements to pick up the children from the maternal grandmother.

The court detained the children in foster care on April 23, 2010.

Jurisdiction/Disposition Report

The social worker filed a jurisdiction/disposition report on May 12, 2010, recommending that the court find the allegations in the section 300 petition true as alleged, that no reunification services be provided to father pursuant to section 361.5, subdivision (e)(1), and that mother be provided with reunification services. The social worker reported that she located father through the California Prisoner Locator hotline. He was scheduled to be released on March 26, 2011, however, he was currently facing additional charges. It was unknown whether he would be convicted of his pending charges and be required to serve additional time.

On April 26, 2010, mother contacted the social worker and said she was evicted from her apartment and had no place to live. Mother's sister-in-law contacted the social worker on May 10, 2010, to report that mother was still transient, but her family relayed information to her regarding the date and time of an appointment with the department. The next day, mother showed up unannounced at the Indio Child Protective Services office with her boyfriend, G.Y. Mother stated she wanted to be offered services, and she confirmed that she had no address or phone number, but could be contacted through the maternal grandmother. Mother stated that she had reunited with G.Y., and they were

both currently “on the streets.” She also reported that she last used methamphetamine on May 5, 2010.

The social worker recommended that father be denied services pursuant to section 361.5, subdivision (e)(1), since he was currently incarcerated and his incarceration period exceeded the statutory time line for him to reunify with his children.

The social worker further reported that the maternal grandmother wanted the children placed in her care. She was currently participating in the relative assessment process.

The court held a jurisdiction hearing on May 17, 2010. Father was present in custody, and represented by counsel. Father’s counsel asked for a two-week continuance, and entered denials to the allegations. She indicated that father was supportive of the department “exploring” the maternal grandmother for possible placement, and stated that father had some additional names to provide to the department for alternative placements.³ Mother was also present at the hearing. Her counsel told the court: “We are submitting on jurisdiction disposition for her.” The court continued the matter.

The continued jurisdiction hearing was held on June 1, 2010. Father appeared, represented by counsel. The department recommended that the allegations in the petition be found true, that mother be offered services, and that father be denied services. Father objected for the record. Mother’s counsel informed the court that mother “provided a

³ Father later told the social worker that his first choice was for the children to reside with the maternal grandmother, and his second choice was his sister. The social worker contacted father’s sister, but the record does not indicate whether she cooperated in being assessed for placement.

waiver of rights form,” and again stated: “We are going to be submitting on the report.” He then said that mother needed referrals, especially for substance abuse. The form mother signed indicated that she wanted to submit the petition on the basis of the social worker’s report. The court reviewed the waiver of rights form with mother to make sure she understood her rights. The court then asked if she was going to submit the issues and allegations against her, and she said yes. The court sustained the petition, finding the allegations to be true by a preponderance of the evidence, and adjudged the children to be dependents of the court. The court denied reunification services as to father, but ordered reunification services for mother.

Six-month Review

The social worker filed a six-month review report on November 16, 2010, recommending that mother’s services be terminated. The social worker met with her on October 4, 2010, to discuss her case plan, and mother confirmed that she was still homeless and had no where to go. Mother did not stay in contact with the department after that date. Her whereabouts were unknown. It was the department’s understanding that she was still actively using methamphetamines and marijuana, and that she had not participated in any services.

At the six-month review hearing on November 29, 2010, father did not appear but was represented by counsel. Father had informed his counsel that he did not want to be transported for the hearing that day. The court terminated mother’s services, set a section 366.26 hearing, and ordered adoption with the maternal grandmother as the permanent plan.

Section 366.26

The section 366.26 hearing was held on July 28, 2011, with father present in custody. Counsel for father objected to the recommendation to terminate parental rights. She argued that father was incarcerated at the time the children were detained, so he was essentially a nonoffending parent. Father's anticipated release date was in December 2011. He was supportive of the placement with the maternal grandmother, but requested the court to consider legal guardianship rather than termination of parental rights. Mother's counsel informed the court that mother was recently incarcerated, but she also was requesting the court to consider legal guardianship. The court stated that there was clear and convincing evidence the children would be adopted. It then terminated parental rights and set adoption as the permanent plan.

ANALYSIS

The Court Properly Took Jurisdiction of the Children

Father argues that the court lacked any basis for taking jurisdiction over his children. Mother adopts each of father's arguments, and adds the claim that father's due process rights were violated because "neither his attorney, or the court, made sure he understood what was happening."⁴ She then makes her own arguments that there was

⁴ In support of this claim, mother points out that, shortly after the jurisdiction hearing, father told the social worker he did not understand what happened. Mother then asserts that the requirements of due process make clear that a court "may not make adverse findings against an individual if that individual does not understand what is happening at the hearing, which is why defendants have [the] right to an interpreter." We note, however, that there is no indication anywhere in the record that father did not understand English. Moreover, after the social worker explained to father that mother

[footnote continued on next page]

insufficient evidence to support the jurisdictional findings concerning her. She contends that there was no evidence to show her drug use negatively affected her children, that her homelessness was insufficient to support jurisdiction, and that there was no evidence that the children ever witnessed any domestic violence or were even aware that it occurred. She further asserts that the fact that her boyfriend had a criminal record was insufficient to support jurisdiction. We conclude that the court properly took jurisdiction of the children.

A. Mother Waived Her Right to Challenge the Jurisdictional Findings

Any challenge to the jurisdictional findings is waived or forfeited by failing to appeal from the dispositional order. (See *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150-1152; *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754.) Here, the court sustained the petition after mother waived her rights and submitted the petition on the basis of the social worker's report. Neither mother nor father appealed from the dispositional order, and the time for doing so has long since expired. Since mother did not appeal the jurisdictional findings or the order, her claim is waived.

B. Father's Ineffective Assistance of Counsel (IAC) Claim Fails

Father concedes that he failed to challenge the court's jurisdictional findings in a timely manner. However, he claims that he can challenge the jurisdictional findings in this appeal because his prior failure to do so was the result of IAC.

[footnote continued from previous page]

was offered services and he was denied services due to his incarceration period exceeding the time frame to receive services, father stated that he understood.

“Where the ineffective assistance concept is applied in dependency proceedings . . . [f]irst, there must be a showing that “counsel’s representation fell below an objective standard of reasonableness . . . [¶] . . . under prevailing professional norms.” [Citations.] Second, there must be a showing of prejudice, that is, [a] “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” [Citation.]’ [Citations].” (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628.)

Here, if the department was able to introduce sufficient evidence of jurisdiction, then father’s counsel could have reasonably decided not to appeal the disposition order. On the other hand, if the department was not able to introduce sufficient evidence of jurisdiction, then trial counsel’s failure to challenge the sufficiency of the evidence could have constituted ineffective assistance. Either way, the issue we need to consider is the sufficiency of the evidence at the jurisdictional hearing. We turn now to this issue.⁵

Father argues that the evidence did not establish jurisdiction under section 300, subdivision (b) or subdivision (g). He claims there was no evidence that he could not arrange for the care of Natalie M. and N.M. He asserts that “[e]ven if neither parent had been available for the children’s care, there were other options that were not shown by

⁵ We note the department’s first response that father was merely an alleged father and did not have a right to appointed counsel. The department reasons that father therefore cannot argue that his right to effective counsel was violated. We decline to address this issue, except to note that mother named father as the father of N.M. and Natalie M., the section 300 petition listed father as the biological father, and none of the parties ever disputed father’s paternity status.

the Department to be unavailable at the jurisdictional hearing.” He suggests that the paternal grandfather and a paternal aunt “might have offered their care and support of the children.” He also states that his “first choice” was the maternal grandmother.

We initially note that “[w]hen 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.) In other words, ““the juvenile court’s jurisdiction may rest on a single ground.’ [Citation.]” (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 83.)

Section 300, subdivision (b), provides that the juvenile court may adjudge a child a dependent of the juvenile court when the child has suffered, or there is a substantial risk that the child will suffer, serious harm or illness, “as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, . . .” Here, there was sufficient evidence to support the court’s finding that father’s children did or may suffer serious physical harm as a result of his failure or inability to protect or supervise them. (See *In re James C.*

(2002) 104 Cal.App.4th 470, 482-483, superseded by statute on other grounds, as stated in *In re Christopher C.*, *supra*, 182 Cal.App.4th 73.) Being incarcerated, he was unable to supervise his children. (See *James C.*, at p. 483.) Furthermore, he “presented no evidence he had ever made inquiries about the care or supervision of the children.” (*Ibid.*) There was also no evidence that he ever made any effort to arrange care for his children once their circumstances were made known to him. (See *Ibid.*) From these circumstances, the juvenile court could infer that father was either unable or unwilling to supervise or protect his children. (*Id.* at pp. 483-484.)

Section 300, subdivision (g), provides that the juvenile court may adjudge a child a dependent of the juvenile court when “[t]he child’s parent has been incarcerated or institutionalized and cannot arrange for the care of the child” Again, the record here shows that father was incarcerated at the time of the detention. There is no evidence father ever attempted to care for his children during their lifetimes. In fact, the evidence showed that he had not been involved with them since they were born, and that he had never provided any financial assistance for them. The absence of evidence suggesting that father was ever interested in the welfare of his two children during their lifetimes was sufficient for the juvenile court to infer that he could not make preparations for their care. (*In re James C.*, *supra*, 104 Cal.App.4th at p. 484.) Thus, substantial evidence supports the court’s finding that jurisdiction was appropriate under section 300, subdivision (g). (*James C.*, at p. 484.)

For the reasons set forth above, a reasonable attorney could have decided not to contest jurisdiction. Thus, father’s IAC claim fails. (See *In re Athena P.*, *supra*, 103

Cal.App.4th at p. 630.) Ultimately, there was sufficient evidence to support the court's jurisdiction over father's children.

DISPOSITION

The orders are affirmed.

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HOLLENHORST
Acting P. J.

We concur:

KING
J.

CODRINGTON
J.