

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re T.W. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.W.,

Defendant and Appellant.

E056529

(Super.Ct.Nos. J234685 & J234686)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,
Judge. Dismissed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for
Plaintiff and Respondent.

Father appeals from an order made at an 18-month review hearing (Welf. & Inst.

Code, § 366.22¹) in which the juvenile court terminated reunification services and ordered a planned permanent living arrangement (PPLA) as the permanent plan for the minors. Father argues it was error for the court to terminate his services on the ground he would not admit to sexually molesting his stepdaughter. He further argues that because the case was so close to family reunification with the mother at the 18-month mark that reunification services should have been extended.

However, approximately one month after the juvenile court made the orders which are the subject of father's appeal, the juvenile court vacated them because it had lacked statutory authority to order a permanent plan for the children at the section 366.22 hearing. Because the issue is now moot, we dismiss this appeal.

BACKGROUND

This dependency originated when C.V., mother's six-year-old child from a prior relationship, was taken to the hospital by her maternal grandmother on August 24, 2010. The maternal grandmother informed the hospital staff that the injury was sustained when she fell down some stairs a day or so earlier. However, the grandmother was concerned because the child's mother used drugs and mother's live-in boyfriend, T.W., Sr. (father of mother's two younger children) was abusive. The parents had a prior history with the San Bernardino Children and Family Services (CFS) agency for various unfounded or inconclusive allegations.

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

The medical examination revealed the vaginal laceration and hymenal oddities. The findings were not specific for sexual abuse but the child's history raised concerns about neglect and sexual abuse. C.V. was interviewed following the medical examination and informed the social worker that both her six-year-old cousin T., and her "daddy" (T.W., Sr.), had touched her "down there" at the paternal grandmother's residence in Newberry Springs. A detention warrant was obtained from the juvenile court resulting in the temporary removal of C.V., along with her two younger half-siblings, M.W. and T.W., Jr.

Juvenile dependency petitions were filed with respect to M.W., age four, and T.W., Jr., age two, alleging that they were at risk of abuse or neglect due to the parents' failure to protect due to mother's substance abuse and ongoing acts of domestic violence (§ 300, subd. (b)), sexual abuse of C.V. (§ 300, subd. (d)), and the abuse of a sibling. (§ 300, subd. (j).) At the detention hearing, the juvenile court ordered the children detained from their parents' custody upon a finding of a prima facie case. At that hearing, the juvenile court also sustained father's demurrer to an allegation that substance abuse prevented him from properly parenting the children.

The jurisdictional hearing commenced on January 25, 2011. At the conclusion of the testimony, the juvenile court found that C.V. had been touched by father but that he had not caused the laceration in her vagina. The court then made true findings under section 300, subdivisions (b), (d), and (j), as to M.W. and T.W., Jr. The children were declared dependents, and were removed from their parents' custody; the court approved a reunification plan as to M.W. and T.W., Jr., ordering both parents to participate in it.

Father timely appealed the jurisdictional and dispositional findings and orders. On November 15, 2011, we affirmed the judgment. (*In re T.W., et al.; San Bernardino County Children and Family Services v. T.W.* (Nov. 15, 2011, E052867) [nonpub. opn.])

By the time of the six-month review hearing, the parents had complied with some but not all of their service plans. CFS recommended continuation of reunification services based on father's progress reports, although the social worker noted he had never taken responsibility for the sexual abuse of his stepdaughter. Based on a mediated agreement and the social worker's recommendations, the court continued services and gave CFS authority to liberalize visits.

During the next review period, the parents failed to make progress to rectify the problems that brought the family to the attention of CFS and the court, namely, the areas of substance abuse and sexual abuse. Mother continued to have a substance abuse problem and failed to complete any program. Although father complied with some of his services and was engaged in therapy, he continued to deny sexually abusing C.V. Visits went well and both children were described as bonded to the parents. Nevertheless, CFS recommended that services be terminated and that a hearing pursuant to section 366.26 be scheduled.

The 12-month review hearing was continued in order to obtain a report or letter from father's therapist regarding risk factors from the prior sexual abuse reports. Father's therapist reported that father had made excellent progress in all of the treatment areas except the issue of sexual abuse of C.V. However, father's therapist concluded father was a low risk for sexual abuse of his children, but would be a high risk if he were to

resume substance abuse. The social worker concluded that the parents, while willing to complete parts of the service plan, had failed to address the problems that brought the family to the attention of the court, which were substance abuse and sexual abuse.

The juvenile court continued the 12-month review hearing a second time to obtain additional opinions about father's history, progress, and risk factors. The new hearing date was also scheduled as an 18-month review hearing. (§ 366.22.) A psychological evaluation pursuant to Penal Code section 288.1 was prepared, using the actuarial assessment instruments to determine his potential for reoffending. It concluded that father was not capable of safely and competently parenting children and presented an unacceptable risk of reoffense. The 12-month review hearing was continued once again to give father an opportunity to obtain another report.

On May 25, 2012, the court conducted the contested 18-month review hearing. Father denied molesting C.V. in his testimony and indicated that what he had learned about sexual abuse from his therapy sessions related to what was considered sexual abuse, such as kissing the mother or having sex in front of the children. However, father demonstrated he had successfully completed the other aspects of his reunification plan. As to mother, the only remaining protection issue was her unwillingness to acknowledge the sexual abuse findings made by the court.

After hearing testimony and the arguments of counsel, the court terminated reunification services to the parents, but determined that it was not in the best interest of the minors to consider termination of parental rights. Over the objections of county counsel and the minors' attorney, the court ordered a PPLA with the children in their

current placement, with the goal of returning them to mother's custody. Reunification services to father were terminated, but mother was to receive services under the children's plan. On June 20, 2012, father timely appealed.

On July 23, 2012, the juvenile court reconsidered the orders made on May 25, 2012, and vacated them, concluding that it lacked authority to order a permanent plan of PPLA at the section 366.22 hearing.² After vacating the previous order, the court entered a new order terminating reunification services for both parents, and setting a hearing for the selection and implementation of a permanent plan pursuant to section 366.26.

DISCUSSION

An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision either way. (*In re M.C.* (2011) 199 Cal.App.4th 784, 802.) An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054-1055.)

We do not pass on the question of whether the juvenile court acted in excess of its authority in reconsidering its prior order of May 25, 2012, after father had perfected an appeal from that order, because all parties acquiesced in the procedure. However, ordinarily the perfecting of an appeal stays proceedings in the trial court upon the

² On August 29, 2012, we issued an order on our own motion that the writ petition in case No. E056728 would be considered with the appeal in case No. E056529.

judgment or order appealed from or upon the matters embraced therein or affected thereby. (Code Civ. Proc., § 916; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 259.)

This rule is subject to an exception embodied in Code of Civil Procedure, section 917.7, which states that the “perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding. . . .” (See *In re Anna S.* (2010) 180 Cal.App.4th 1489, 1499; *In re Natasha A.* (1996) 42 Cal.App.4th 28, 39.)

Although there are no cases dealing with this situation, where a juvenile court reconsidered an order establishing a permanent plan and vacated it while that order was pending appeal, we note the following: First, the order made on May 25, 2012, was voidable, not void. Where a court has jurisdiction over the subject matter and parties in the fundamental sense, but lacks the power to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites, its actions are merely voidable. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1422.) In such situations, the judgment is valid until it is set aside, and a challenge to such a ruling is subject to forfeiture if not timely asserted. (*Ibid.*) A party has no right to attack a voidable judgment after it is final. (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 716, fn. 7.) The hearing at which the juvenile court reconsidered and vacated the order of PPLA was conducted on July 23, 2012, 59 days after the voidable order, so we consider the challenge by county counsel to be timely.

Second, we note that all parties acquiesced in the reconsideration of the prior order. Although mother objected to the setting of a section 366.26 hearing, and father joined that objection, no one objected on the record to vacating the prior order. As a result, a new and different order was entered, which both parents have challenged by way of extraordinary writ, rendering the father's appeal to the original order terminating services moot.

Because the July 23, 2012, order renders it impossible for us to grant the appellant effective relief, it is moot. (*In re Esperanza C.*, *supra*, 165 Cal.App.4th at pp. 1054-1055.) Consequently, the appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.