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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. E.H., Defendant and Appellant.	E071462 (Super.Ct.No. J273725) OPINION

APPEAL from the Superior Court of San Bernardino County. Winston S. Keh, Judge. Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene Sevidal, Andrew Mestman and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL BACKGROUND

In August 2015, defendant and appellant E.H. (minor) was declared a dependent of San Bernardino County Children and Family Services (CFS). On November 14, 2017, in San Bernardino County, a petition under Welfare and Institutions Code[1] section 602 alleged that minor committed a misdemeanor assault on school property under section 241.2, subdivision (a).

On December 12, 2017, in Ventura County, a wardship petition alleged that minor committed misdemeanor petty theft under Penal Code section 484 subdivision (a) (count 1), and misdemeanor battery under Penal Code section 242 (counts 2 and 3). The next day, minor admitted the allegations in counts 1 and 2. The court dismissed count 3. Thereafter, the court transferred the matter to San Bernardino County pursuant to Welfare and Institutions Code section 750.

On December 19, 2017, the matter was referred to the section 241.1 committee for review and recommendation. On January 9, 2018, the committee issued a report recommending dual status supervision with CFS as the lead agency if minor were declared a ward of the court.

On February 27, 2018, minor was declared a ward of the court and placed on probation with 20 probation conditions. The court also ordered that minor remain in CFS custody. The court dismissed the November 14, 2017, petition without prejudice.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

A July 11, 2017, Alameda County wardship petition alleged that minor committed second degree robbery under Penal Code section 211. On July 31, 2018, the petition was amended to allege that minor committed attempted misdemeanor grand theft; minor admitted the allegation. Thereafter, the court transferred the matter to San Bernardino County pursuant to Welfare and Institutions Code section 750.

On August 7, 2018, the matter was referred to the section 241.1 committee for review and recommendation. A dual status hearing was set for August 14, 2018. On August 8, 2018, the San Bernardino County Probation Department (Probation) filed a dual status memo recommending that minor continue on dual status but with a lead change from CFS to Probation.

At the August 14, 2018, hearing, the People stated that "[t]his was erroneously not set for discussion by the 241.1 committee this morning." After discussion on this issue, the juvenile court noted: "But the Court is going to make the order that there is to be a lead change from CFS to [P]robation, and then, we can take the matter up further with the 241 referral which the Court will, again, make so that this is accomplished next week on August 21. [¶] So the Court believes from what the Court has read, both by the probation dual status memo for today, along with the PPR report today, that a lead change would be appropriate. So the Court is going to make that order. [¶] And, then, if there's any issue with it being any different by way of a recommendation from the committee, then, the Court can hear the matter again. [¶] So unfortunately, under the circumstances, that's the best I can do. If there's not going to be a waiver beyond the

15th, then, the court does not have much of a choice." The court then changed the lead from CFS to Probation.

On August 15, 2018, the matter was continued to August 28, 2018, for a contested disposition hearing. On August 21, 2018, the committee issued a report recommending minor be continued a ward under dual status, with Probation continued as the lead agency, as the court ordered on August 14, 2018.

On August 28, 2018, minor withdrew his contested disposition. The court ordered minor to continue as a ward of the court and placed minor in the custody of the probation officer. The court further ordered that minor remain in juvenile hall pending suitable placement.

On October 20, 2018, minor filed a notice of appeal. On August 10, 2019, the People filed a motion to augment the record. On April 16, 2019, we granted the People's motion and deemed the documents attached to the motion part of the record on appeal.

B. FACTUAL BACKGROUND

Minor and two or three cohorts surrounded the victim and took the victim's wallet and cell phone. Minor and his cohorts fled on foot. Minor denied any involvement in the robbery. He claimed that he was walking away when one of his friends committed the crime.

DISCUSSION

Minor contends that the juvenile court violated his "right to due process by determining changing the lead for his supervision without following the procedures and protocols of Welfare and Institutions Code section 241.1 and California Rules of Court,

rule 5.521." The People argue that "any error by the juvenile court's failure to obtain a report and recommendation pursuant to Welfare and Institutions Code section 241.1 was harmless; moreover, remand would be futile." For the reasons set forth below, we find that any error was harmless beyond a reasonable doubt.

Generally, a minor cannot be both a dependent of the juvenile court under section 300, and a ward of the juvenile court under sections 601 or 602. (§ 241.1, subd. (d); *In re Ray M.* (2016) 6 Cal.App.5th 1038, 1048.) Where a minor appears to qualify as both a dependent and a ward, "section 241.1 sets forth the procedure the juvenile court must follow to determine under which framework the case should proceed." (*Ray M.*, at p. 1048.) Section 241.1, subdivision (a), provides: "the county probation department and the child welfare services department shall . . . initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor." Section 241.1's "statutory mandate is 'augmented by [California Rules of Court] rule 5.512, which requires the joint assessment under section 241.1 to be memorialized in a written report.' " (*Ray M.*, at p. 1049.) California Rules of Court, rule 5.512 also specifies timelines for conducting joint assessments and status determinations under section 241.1. Namely, the responsible child welfare and probation departments must complete a joint assessment under section 241.1 "as soon as possible after the child comes to the attention of either department" and "[w]henever possible, the determination of status must be made before any petition concerning the child is filed." (Cal. Rules of

Court, rule 5.512(a)(1), (2) "If the child is detained, the hearing on the joint assessment report must occur as soon as possible after or concurrent with the detention hearing, but no later than 15 court days after the order of detention and before the jurisdictional hearing." (Cal. Rules of Court, rule 5.512(e).) Among others, all attorneys of record must receive notice of the hearing. (Cal. Rules of Court, rule 5.512(f).) "All parties and their attorneys must have an opportunity to be heard at the hearing." (Cal. Rules of Court, rule 5.512(g).)

A trial court's determination under section 241.1, whether to maintain section 300 dependency status or declare section 602 wardship, is reviewed for abuse of discretion. (*In re Joey G.* (2012) 206 Cal.App.4th 343, 346.) "To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice." (*Ibid.*) A reviewing court "will not lightly substitute [its] decision for that rendered by the juvenile court and [it] must indulge all reasonable inferences to support the juvenile court's decision." (*Ibid.*)

Here, minor contends that the juvenile court violated his due process rights because it failed to obtain a section 241.1 report before changing the lead status. Minor argues that the matter must be remanded for a section 241.1 report to be prepared. We disagree. First, at the dual status hearing, both Probation and CFS agreed that the lead should be changed to Probation. Therefore, any error was harmless beyond a reasonable doubt. Second, a section 241.1 report from CFS and Probation was submitted a week after the hearing. Hence, a remand would be pointless.

As provided *ante*, under section 241.1 a joint recommendation by CFS and Probation must be prepared and presented to the court to determine which status is appropriate for minor. In this case, the section 241.1 report was not prepared prior to the August 14, 2018, dual status hearing. The court, however, ordered the lead change from CFS to Probation after representatives from both departments recommended the change. Minor contends that this change in lead without a section 241.1 report violated his due process and was not harmless beyond a reasonable doubt. In support of his argument, minor relies on *In re R.G.* (2017) 18 Cal.App.5th 273, 290 (*R.G.*) which held that "due process may be implicated where a required . . . report is completely omitted."

In *R.G.*, the juvenile court denied the minor's request for a section 241.1 assessment and report. (*R.G.*, *supra*, 18 Cal.App.5th at p. 276.) The minor then admitted the allegation. The court placed her on formal probation and in the custody of CFS. (*Id.* at p. 277.) The court then scheduled the matter for a hearing under section 241.1. After the court received the section 241.1 report, the court declared the minor a ward of the court with CFS lead jurisdiction. (*R.G.*, at p. 277.)

On appeal, we held that the section 241.1 assessment and report should have been submitted prior to the filing of the wardship petition. We also held that the harmless beyond a reasonable doubt standard was applicable "because the [juvenile] court effectively held the section 241.1 hearing [], without the benefit of a section 241.1 assessment report and without notifying the proper parties that it would be making a section 241.1 determination at that hearing." (*R.G.*, *supra*, 18 Cal.App.5th at p. 290.)

We then held that the error in *R.G.* was not harmless beyond a reasonable doubt, as follows:

"By compelling Minor to go through both the jurisdictional and dispositional hearings prior to making a section 241.1 determination, let alone prior to even referring the matter for a section 241.1 assessment report, the court violated the very reason for the section 241.1 process itself. [Citation.] Had the section 241.1 joint committee been tasked with preparing a section 241.1 assessment report without the juvenile court's ruling already hanging over their heads, it is possible the committee would have recommended that the court continue to treat Minor as a dependent, rather than as a delinquent. This is not pure speculation. Indeed, the section 241.1 assessment report which was eventually filed contains contradictory recommendations; the lengthier, more detailed portion of the report recommends that Minor 'be put on Informal Probation and remain a [section] 300 dependent.'" (*In re R.G.*, *supra*, at p. 291.)

The facts in this case are readily distinguishable from the facts in *R.G.*, wherein we noted that the only report filed prior to the court's determination to treat the minor as "dual status" was the one filed by Probation; there was consultation with CFS personnel. (*R.G.*, *supra*, 18 Cal.App.5th at p. 291.) Here, in addition to minor's counsel and the prosecutor, representatives from both Probation and CFS were present at the August 14, 2018, dual status hearing. At the hearing, both probation and CFS representatives provided their recommendation that minor be continued on dual status with Probation as the lead agency. The CFS representative noted, "CFS is in agreement with the lead change." Hence, although there was no section 241.1 report prepared for the hearing,

unlike *R.G.*, all the parties that would have been involved in the preparation of the report and recommendation were present and agreed with the recommendation to have Probation as the lead agency. Hence., there was no possibility that the juvenile court in this case would have continued to treat minor as a dependent, rather than as a delinquent. Therefore, any error in failing to obtain a section 241.1 report and recommendation prior to the hearing was harmless beyond a reasonable doubt.

Additionally, remand for the preparation of a section 241.1 report would be pointless at this juncture. As previously noted, following the hearing the section 241.1 committee met and issued a report and recommendation on August 21, 2018. The recommendation stated that minor should "be continued a ward under Dual Status, with Probation continued as the lead agency, as already ordered by the [juvenile court] on 8/14/18." The juvenile court had the report prior to the final disposition hearing on August 28, 2018. Therefore, a remand for the preparation of an additional report would serve no purpose. Minor, however, argues that the latter-filed section 241.1 report "amounted to a rubber stamp of the court's action, which [minor's] counsel could no longer contest" because the CFS representative admitted she did not get a statement from minor's counsel. We disagree with minor. As we discussed previously, unlike *R.G.*, *supra*, a CFS representative was present at the hearing on August 14, 2018. CFS was able to participate in the hearing, listen to what the parties had to say, and even recommended that minor should be continued as a ward with Probation as the lead agency. The combined report was not a "rubber stamp" of the court's decision.

DISPOSITION

The judgment is affirmed.

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MILLER
Acting P. J.

We concur:

CODRINGTON
J.

SLOUGH
J.