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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re C.R., a Person Coming Under the
Juvenile Court Law.

H041488
(Santa Clara County
Super. Ct. No. 114-JD-22728)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

After C.R. (minor) attempted to commit suicide, the trial court adjudged her a dependent of the court and removed her from her mother T.C.'s physical custody. (Welf. & Inst. Code, §§ 300, subs. (b)(1), (c); 361, subd. (c)(1), (c)(3).)¹ Mother claims there was insufficient evidence to support the court's finding under section 300, subdivision (c) that minor had suffered, or was at substantial risk of suffering, serious emotional damage as a result of mother's conduct. Mother also challenges the adequacy of the notice given under the Indian Child Welfare Act (ICWA). We find no merit in mother's claim as to the sufficiency of the evidence; however, we must reverse the disposition order because

¹ Unspecified statutory references are to the Welfare and Institutions Code. Unspecified subdivision references are to section 300.

the Department of Family and Children's Services (Department) did not provide proper ICWA notice.

I. JUVENILE COURT PROCEEDINGS

Separate section 300 petitions were filed for minor and her two half-brothers in July 2014.² The half-brothers' petitions relied on section 300, subdivision (b), based on their parents' failure or inability to protect the children from serious physical harm due to substance abuse. Minor's petition relied on the same section 300, subdivision (b) allegations as her half-brothers' petitions and also included allegations under section 300, subdivision (c) (suffering or substantial risk of suffering serious emotional damage as a result of mother's conduct). After initial hearings, minor and her two half-brothers were detained in protective custody and temporarily placed with minor's step-grandparents. The following summary is based on the Department's second amended section 300 juvenile dependency petition for minor as well as social worker reports and attached exhibits admitted into evidence at the joint jurisdiction and disposition hearing.

Mother gave birth to minor in 1998 while married to presumed father L.R. In 1999, presumed father was arrested after punching mother in the face while she was holding minor. Presumed father was convicted of inflicting corporal injury on a spouse or cohabitant (Pen. Code, § 273.5, subd. (a)) based on that incident. In 2004, presumed father was arrested again after punching mother multiple times in minor's presence. Mother and minor moved out of the house after that incident.

Mother and minor's stepfather A.L., Jr. had been in a relationship for over ten years when minor was detained in 2014. Minor lived with mother, stepfather, and his three children at stepfather's parents' home. J.L. said mother and stepfather "yell at each

² Mother remains legally married to presumed father, L.R. Mother and minor's stepfather A.L., Jr. have two sons together, A.L. III (born in 2006), and J.L. (born in 2009). We refer to A.L., Jr. as "stepfather" to avoid confusion. Stepfather also has a daughter named Andrea L. (born in 1998) from a previous relationship. Andrea L. is not a party to these dependency proceedings.

other all the time” and “ ‘fight and hit each other.’ ” Minor’s step-grandfather A.L., Sr. said they “ ‘argue all the time in front of the children.’ ” Mother and stepfather admitted that they yell at each other but denied that the arguments escalated to violence.

In October 2013, minor was hospitalized for one day for psychiatric observation after she consumed pills and said that she wanted to kill herself. Mother believed the pills were an over-the-counter mood stabilizer she had purchased for minor and reportedly told a social worker that she did not believe minor was actually trying to kill herself and was just seeking attention. In December 2013, mother enrolled minor in counseling sessions at Starlight Community Services (Starlight). Minor was diagnosed with recurrent severe major depressive disorder with psychotic features; an eating disorder; and cannabis use. In March 2014, minor was hospitalized for one week after hearing voices telling her she was “ ‘stupid, fat, and no good for anything.’ ” At some point during her treatment at Starlight, minor was prescribed psychotropic medications. Between December 2013 and May 2014, minor participated in over 30 outpatient counseling sessions at Starlight, including assessment, case management, and individual, family, crisis intervention and treatment planning. Minor began receiving outpatient psychiatric treatment from Starlight in March 2014. Out of five scheduled psychiatric sessions minor participated in three sessions and missed two. A letter from Starlight indicated minor “was not compliant with psychiatric medication directives and often missed days of medication.”

In May 2014, staff at Starlight determined from a meeting with minor that she was experiencing suicidal thoughts on a daily basis, had been cutting her forearms and upper thighs, and continued to hear a voice telling her negative things, such as that no one would miss her if she died. Minor also reported daily marijuana use and occasional alcohol consumption. Based on those disclosures, staff admitted minor to the hospital for a third time for two weeks of treatment and monitoring. Following that hospitalization,

mother did not bring minor to her follow-up psychiatric appointment at Starlight and allowed a prescription for psychiatric medication to lapse.

Minor's counselor terminated her from Starlight after attempting to contact mother and minor by phone more than 10 times between May and June 2014. The discharge report indicated minor and her family would benefit from additional services but that minor "would need to be compliant with prescribed treatment, including taking medications and attending appointments consistently."

Mother and stepfather voluntarily submitted to drug tests in early July 2014. Both tested positive for methamphetamine and marijuana. Stepfather also tested positive for buprenorphine. Later that month the Department filed juvenile dependency petitions and removed the children from mother and stepfather's care. In connection with initial court proceedings and detention hearing, mother informed the social worker that minor's maternal great-great-grandmother might have been part Cherokee. She did not know the name of that relative but gave the social worker the names of minor's great-grandmother and grandmother. Those individuals were included on the Notice of Child Custody Proceeding for Indian Child (Form ICWA-030) but the maternal grandmother's last name was misspelled and the maternal great-grandmother's married name was omitted.

After the children were detained, mother and stepfather told the social worker that they did not use controlled substances in front of the children but admitted they were sometimes under the influence while caring for them. Stepfather told the social worker he began using drugs again in 2012 after a period of sobriety. Mother said she also started using drugs in 2012 when stepfather brought drugs back into the house.

Minor told the social worker she did not want counseling and would not take her medications. She continued to be hostile to the idea of counseling throughout the dependency proceedings. Mother explained to the social worker that she had tried to convince minor to attend counseling but that minor refused to do so. Mother said she gave minor her medications but would find pills discarded in minor's bedroom.

Mother testified at the September 2014 contested joint jurisdiction and disposition hearing. Mother stated that though she always gave minor her medications, minor did not always take them and sometimes hid them in a dresser drawer. Mother stated that she did not object to minor's participation in therapy, but claimed that minor stopped wanting to participate after the social worker spoke with minor. Regarding minor's statements that she hears voices in her head, mother described it as similar to when "you think to yourself, 'Oh, what should I wear today?'" Like that. Not that there's a voice telling her anything." When asked if she was concerned about minor's eating disorder diagnosis, mother stated: "Yeah. But I don't -- she's trying not to eat meat." Regarding Starlight's attempts to contact her, mother said that it was possible they called and she did not get the message but that "I never stopped just talking to them."

The juvenile court made handwritten amendments to the second amended petition to conform to proof and adjudged minor a dependent of the court, finding the allegations in the second amended petition true under both subdivisions (b) and (c) of section 300. Regarding subdivision (c), the court found that minor was exposed to domestic violence between mother and presumed father as well as between mother and stepfather. The court also noted that mother had a responsibility to make sure minor received the follow-up psychiatric services she needed and that mother did not meet that responsibility. The court found a nexus between mother's conduct and minor's emotional damage, "not only based on the exposure to the domestic violence but also ... the lack of follow-through" The court found minor was at substantial risk of suffering further serious emotional damage because mother was not making sufficient efforts to help her.

In its dispositional order, the juvenile court found by clear and convincing evidence that minor's welfare required that physical custody be taken from mother based on the risk to her physical and emotional well-being. The juvenile court ordered that minor and mother receive family reunification services. Minor was ordered to attend mental health counseling services and a psychotropic medication consultation. Minor

and her half-brothers continued their placement with minor's step-grandparents. The court found that ICWA notice had been sent more than 10 days before the hearing.

II. DISCUSSION

Mother does not challenge the sufficiency of the court's findings under section 300, subdivision (b) and acknowledges that by failing to do so we could summarily affirm the jurisdiction finding. (Citing *In re D.P.* (2014) 225 Cal.App.4th 898, 902 (*D.P.*) [" '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 ... if any one of the statutory bases for jurisdiction ... is supported by substantial evidence.' "] .) However, mother urges us to exercise our discretion to reach the merits of her claim. (See *D.P.*, at p. 902.) Because mother could be prejudiced in future dependency proceedings if the juvenile court incorrectly found her conduct contributed to minor's serious emotional damage (or substantial risk of damage) under subdivision (c), we will exercise our discretion to review those findings.

A. SUBSTANTIAL EVIDENCE SUPPORTED THE § 300, SUBD. (C) FINDINGS

Mother challenges the sufficiency of the evidence supporting jurisdiction under section 300, subdivision (c). The Department had the burden in the juvenile court to prove by a preponderance of the evidence that minor qualified as a dependent. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) We review the record in the light most favorable to the judgment to determine whether there is any substantial evidence, whether contradicted or uncontradicted, to support the juvenile court's decision. (*Ibid.*)

A child may be adjudged a dependent under subdivision (c) if the "child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care." (§ 300, subd. (c).) Dependency under that subdivision can be established by showing either

that a parent's conduct caused emotional damage (or substantial risk of damage) or that the child is suffering emotional damage in the care of a parent who is unable to provide adequate treatment for the child, even if the parent is not otherwise the cause. (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 557 (*Alexander K.*)) When, as here, the juvenile dependency petition alleges the emotional damage is as a result of a parent's conduct, the Department must prove three things: (1) the offending parental conduct; (2) causation; and (3) serious emotional harm or the risk thereof, as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. (*Ibid.*)

The juvenile court identified two aspects of mother's conduct that warranted judicial intervention: exposing minor to domestic violence and failing to make sufficient efforts to help minor with her mental health issues. Mother acknowledges, as she must, that minor has suffered serious emotional damage, evidenced by minor's diagnosis of recurrent severe major depressive disorder with psychotic features. Mother focuses her appeal on the juvenile court's finding of causation between her conduct and minor's emotional damage, arguing that there was insufficient evidence of a causal link. But the juvenile court did not limit its finding to serious emotional damage being caused by mother's conduct. The court found that her conduct put minor at substantial risk of suffering *further* serious emotional damage. Given that the juvenile court based its jurisdiction largely on mother's conduct after minor's release from her third hospitalization in May 2014, we focus on whether sufficient evidence supported the juvenile court's finding that minor was at substantial risk of suffering further serious emotional damage in mother's care after her release from the hospital.

Mother initially made a laudable effort to help minor by enrolling her in counseling services at Starlight and attending sessions with minor in December 2013. However, after minor's release from her third hospitalization within seven months, the record does not show continuing diligence on mother's part to address minor's serious mental health issues. Mother did not bring minor to her follow-up appointment with a

psychiatrist at Starlight in June 2014, causing an interruption in minor's access to psychiatric medications. Mother testified that she found pills in minor's dresser that she had given minor to consume, but she did not describe any efforts thereafter to ensure that minor actually took the medication. Mother's failure to respond to repeated calls from Starlight caused minor to be discharged from psychiatric services, yet she provided no explanation for her failure to respond apart from the possibility that she did not receive messages left for her.

Mother's testimony at the jurisdiction and disposition hearing suggests that she failed to appreciate the seriousness of minor's mental health issues. Minor's major depression diagnosis included "psychotic features" and she told Starlight staff that she consistently heard a "voice that says a lot of negative things" But according to mother, minor was merely describing an inner voice similar to when "you think to yourself, 'Oh, what should I wear today?'" Mother also minimized the severity of minor's eating disorder diagnosis, stating that she thought minor was merely "trying not to eat meat." Given minor's major depression diagnosis and history of three hospitalizations to treat suicidal ideation, there was a substantial risk of further serious emotional damage absent meaningful efforts to help her. The evidence before the juvenile court supported findings that mother underestimated minor's mental health issues and was not making sufficient efforts to assist her.

We agree that evidence of mother and stepfather frequently arguing would be insufficient standing alone to support jurisdiction based on exposure to domestic violence. But the juvenile court reasonably concluded that exposure to frequent arguments in addition to mother's other conduct put minor at risk of suffering further emotional damage.

We are unpersuaded by mother's arguments to the contrary. Mother urges that subdivision (c) "seeks to protect against abusive behavior" by a parent and that there was no evidence of abusive "maltreatment" by her. But the language of subdivision (c) is not

limited to cases of abuse. It applies more broadly to conduct that either causes emotional damage or a substantial risk thereof (§ 300, subd. (c)), meaning it is applicable “when parental action *or inaction* causes the emotional harm” or risk of harm. (*Alexander K.*, *supra*, 14 Cal.App.4th at p. 557, italics added.) Mother’s failure to take necessary steps to follow through with minor’s mental health treatment qualifies as conduct for purposes of that subdivision. It was therefore unnecessary for the Department to show that her conduct amounted to abusive maltreatment.

Mother complains that in faulting her for not doing more to help minor, the juvenile court failed to take into account minor’s hostility to therapy and medication. We acknowledge that minor was adamant about not wanting to participate in treatment, but minor’s hostility did not negate mother’s conduct or responsibility. Had mother continued working with staff at Starlight and communicated minor’s unwillingness to participate, mother may have had a strong argument against jurisdiction. However, rather than communicate her difficulties to Starlight staff, mother ceased all communications, which resulted in minor’s termination from the therapy she needed.

Mother argues that her failure to make greater efforts after minor’s third hospitalization supports jurisdiction solely under section 300, subdivision (b) because the failure to treat minor’s condition put her at risk of only *physical* harm, that is, suicide. We reject this notion based on ample evidence before the juvenile court that in addition to a risk of self-inflicted physical harm minor was at substantial risk of suffering additional emotional damage if her depression was left untreated.

In the recent case of *In re Roxanne B.* (2015) 234 Cal.App.4th 916 (*Roxanne B.*), over a period of two years Roxanne’s parents declined recommendations from school and social services agency officials that they seek counseling for Roxanne because she expressed suicidal thoughts. Roxanne was hospitalized four times for psychiatric evaluation and throughout that period her parents were unsupportive, expressed anger toward Roxanne, and were resistant to outside assistance. After the social services

agency became involved, Roxanne's mother started taking her to a psychiatrist, who diagnosed Roxanne with depression and prescribed antidepressants. Roxanne willingly attended therapy and took her medications. (*Id.* at pp. 918-919.) The social services agency filed a dependency petition under section 300, subdivision (c) and offered the parents a voluntary maintenance plan. When the parents refused voluntary maintenance, the agency went forward with the petition. The juvenile court found that the parents had "caused some of the emotional harm that Roxanne was experiencing" and had also minimized the seriousness of Roxanne's mental health issues. (*Id.* at p. 920.)

On appeal, Roxanne's parents argued both that there was no risk that Roxanne would suffer further serious emotional damage and that they did not cause Roxanne any emotional damage. (*Roxanne B.*, 234 Cal.App.4th at p. 920.) The court found that although the parents had complied with a mental health care plan for a period of time before the disposition hearing, that "short period of change does not absolve concerns for Roxanne's safety in the context of almost two years of medical neglect" by the parents. (*Id.* at p. 922.) On that record, the juvenile court "had good reason to believe ... that the Parents would cause Roxanne even more serious emotional damage by ceasing her treatment and ignoring her obvious mental health care needs in the future." (*Ibid.*) As for causation, the parents argued they were not a substantial factor causing Roxanne's emotional distress and that her depression was caused by other factors, such as bullying and poor coping skills. (*Ibid.*) The court of appeal reasoned that even if those other factors contributed to Roxanne's depression, the parents' conduct in failing to obtain mental health services for Roxanne as well as their failing to take her emotional problems seriously "caused Roxanne's depression to worsen and persist" and was thus a "substantial factor in causing Roxanne's continuing serious emotional damage." (*Id.* at p. 923.)

In her Reply Brief, mother distinguishes the facts here from those in *Roxanne B.*, noting that she supported minor by obtaining mental health services for her and that

minor was hostile to therapy in a way that Roxanne was not.³ But mother's support was inconsistent and essentially ended after minor's third hospitalization when she stopped communicating with Starlight, causing minor's services to be terminated. Further, mother's testimony at the jurisdiction and disposition hearing indicated she minimized the severity of minor's mental health issues. While mother's conduct here was different from that of the parents in *Roxanne B.*, substantial evidence in the record nonetheless supports the juvenile court's decision.

Because substantial evidence supported the juvenile court's jurisdiction under section 300, subdivision (c) based on a substantial risk of *future* emotional harm from mother's conduct, we need not address whether mother's conduct caused minor's *existing* serious emotional damage.

B. ICWA NOTICE

Mother argues that the Department did not satisfy ICWA's notice requirements. The Department concedes that the original ICWA notice misspelled the maternal grandmother's last name and failed to list the maternal great-grandmother's complete married name and that "those are errors which could affect the ability of the tribe to determine membership." However, the Department argues that reversal is not required because any error from that ICWA notice can be corrected before the juvenile court makes a definitive finding regarding whether minor is an Indian child. The Department also requests that we take additional evidence under Code of Civil Procedure section 909, urging that a minute order and associated documents from a May 2015 hearing show that the Department has now provided adequate ICWA notice.⁴

³ *Roxanne B.* was filed in January 2015 but not certified for publication until February 25, 2015, five days after the Department filed its Respondent's Brief.

⁴ Code of Civil Procedure section 909 provides, in relevant part: "In all cases where trial by jury is not a matter of right ... the reviewing court may make factual determinations contrary to or in addition to those made by the trial court. ... The reviewing court may for the purpose of making the factual determinations ... take

Where the juvenile court “knows or has reason to know” that a child is an Indian child, notice must be given to tribes with which a child has, or could have, an affiliation. (25 U.S.C. § 1912(a); *In re Samuel P.* (2002) 99 Cal.App.4th 1259, 1264 (*Samuel P.*.) Juvenile courts “must determine whether proper notice was given under the ICWA and whether the ICWA applies to the proceedings.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1530 (*I.W.*.) The notice allows tribes to determine whether the child is an Indian child and provides the tribe an opportunity to intervene in the proceedings. (*Samuel P.*, at p. 1265.) Providing “proper and effective ICWA notice is critically important in dependency cases.” (*I.W.*, at p. 1529.) “Notice is meaningless if no information or insufficient information is presented to the tribe” to allow it to determine whether a child is an Indian child. (*In re Louis S.* (2004) 117 Cal.App.4th 622, 630 [finding ICWA notice deficient due to misspellings and omission of information available to the health and human services agency].) The failure to provide proper notice is prejudicial error requiring reversal. (*Samuel P.*, at p. 1267.)

As the Department concedes, the original ICWA notice provided before the jurisdiction and disposition hearing was improper because it was both inaccurate and incomplete. Contrary to the Department’s suggestion, that faulty notice is prejudicial error requiring reversal of the disposition order. The Department’s error cannot be cured in this appeal by our taking additional evidence under Code of Civil Procedure section 909. “Absent exceptional circumstances,” the California Supreme Court has directed the courts of appeal not to take new evidence or make new findings of fact on appeal. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405-412.) Had the parties stipulated to the adequacy of the revised ICWA notice and tribal responses, taking judicial notice of that additional evidence might have been appropriate. But since mother opposes the Department’s request and argues the revised notice discussed at the May 2015 hearing remains

additional evidence of or concerning facts occurring at any time prior to the decision of the appeal”

deficient, we will allow the juvenile court to consider the legal adequacy of the revised notice on remand.

Proper ICWA notice must contain complete and accurate information about minor's relatives who might have Native American heritage. In this case those relatives include, at a minimum, the maternal grandmother and the maternal great-grandmother.

III. DISPOSITION

The disposition order is reversed. The matter is remanded to the juvenile court with directions to ensure proper ICWA notice of the pending proceedings. If, after proper notice is provided, minor is found to be an Indian child, the juvenile court must conduct a new dispositional hearing. If no tribe confirms that minor is an Indian child, the juvenile court's September 2014 disposition order shall be reinstated.

Grover, J.

WE CONCUR:

Rushing, P. J.

Márquez, J.

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