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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re N.M. et al., Persons Coming Under
the Juvenile Court Law.

H042995
(Santa Cruz County
Super. Ct. Nos. DP003029, DP003030,
DP003031)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

A.M. et al.,

Defendants and Appellants.

M.M. (father) and A.M. (mother)¹ appeal from the dispositional orders entered by the juvenile court in relation to their three children, N.M. (daughter), L.M. (older son) and E.M. (younger son), under Welfare and Institutions Code section 366.26.²

Father and mother argue the juvenile court abused its discretion by ordering that they each undergo psychological evaluations as part of their reunification services plan even though there was no allegation of mental illness or disorder in the section 300 petitions filed by the Santa Cruz County Human Services Department (Department), nor was evidence of any mental illness or disorder presented at the dispositional hearings.

¹ We will occasionally refer to mother and father collectively as “parents.”

² Unspecified statutory references are to the Welfare and Institutions Code.

As explained below, we find the juvenile court acted within its discretion in ordering the psychological evaluations and we will affirm the dispositional orders.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Initial juvenile dependency petitions

In April 2015, the Department filed petitions under section 300, subdivision (b), alleging that daughter (age 15), older son (age 12) and younger son (age four months) were at significant risk of harm due to the parents' failure to provide a safe environment for the children. Father was arrested on March 19, 2015, for being in possession of methamphetamine and being under the influence of methamphetamine. Father was alleged to have a "drug related criminal history dating from 1995 to present," which included using and possessing controlled substances and driving under the influence. A probation search of the family home revealed "numerous knives, hatchets, saw blades, and screw drivers [*sic*] around the property and on the stairs leading to the home. There was a target mounted on a fence with several homemade throwing knives and stars lodged in it. A broken blender jar with shards of glass sticking straight up was located in a pile of trash. Inside the home there were clothes, tools, and trash scattered throughout the living and dining areas. There were numerous sharp objects in the home, including a homemade 'Shuriken,' a martial arts throwing star, stuck in the dining room wall. An ice pick was found between piles of clothes on a couch. There was no fresh food and very limited frozen food in the home. Found in an attached garage was a refrigerator with rotting food, seven PVC pipe bombs with fuses, and marijuana."

The social worker met with older son at his school following father's arrest. He told the social worker father had found some pipe bombs but did not think they were real. When asked about the trash inside and outside of the home, older son blamed their dog. The social worker also asked him about the ninja stars, and older son said that he made those with father.

The social worker also visited with the parents at their home, but they were uncooperative, although they did allow the social worker inside to see younger son asleep in his crib. The crib was clean and free of hazards, and younger son had no apparent marks or bruises. The social worker advised that she wanted to refer father for a drug and alcohol assessment to see if he needed treatment. Mother stated they would not sign any paperwork “including a safety plan or release of information.”

At the April 22, 2015 detention hearing, the parents entered a general denial and claimed to have Indian heritage. The juvenile court found the Indian Child Welfare Act (ICWA) may apply and directed the Department to give notice to the appropriate tribes.³ The parents submitted a handwritten safety plan which they had both signed, in which father agreed to submit to drug testing three times a week, consistently test clean and not care for the children by himself until he provides clean test results. Father also agreed to participate in a drug and alcohol assessment by May 13. The parents further agreed to: (1) store weapons out of the children’s reach, (2) sign medical, educational and criminal releases of information to the Department; and (3) not prevent the Department from entering the home to ensure it was free of health and safety hazards.

B. May 2015 jurisdiction report and hearing

The Department’s May 27, 2015 jurisdiction report recommended that the three children be declared dependents of the court and remain in their parents’ care, with mother and father receiving family maintenance services.

The report noted the social worker had contacted father by phone on May 14 to discuss the allegations. In the course of their conversation, father said he was attempting to get into a residential treatment program, not because he felt he needed it, but because

³ It is undisputed that the juvenile court duly notified the tribes identified by mother and father, but all of those tribes responded that the children were not members or were not eligible for membership. The parents do not challenge the adequacy of the ICWA notification on appeal.

the Department might stop “ ‘harassing’ ” mother if he were in such a program. When asked why he had not been getting tested for drugs as agreed, father said he had spoken with his pastor and testing would be a “ ‘conflict of interest’ ” with his religion.⁴ Father eventually agreed to get tested, in order to prove his sobriety. He insisted that mother was unaware he had started using methamphetamine.

Mother was interviewed on May 15, 2015. She blamed the mess in the house on the “ ‘miserable pregnancy’ ” she experienced with younger son, which led to an accumulation of laundry as well as irregular cleaning. Her older children do not put trash in the trashcans and their dog will also tear through their garbage. Mother denied knowing there were pipe bombs in the garage; she said father told her about a year ago he had found them in a dumpster and thought they were fake. She believed he had taken them to the dump. Mother denied knowing there was marijuana hidden in the garage, nor did she know that father was using methamphetamine.

The social worker noted that mother did not initially cooperate in her attempts to schedule an appointment for a home visit. The home visit eventually took place on May 1, 2015, and the social worker noted the front yard was mostly cleaned up. Though still cluttered with tools and other items, the social workers did not see any immediate hazards or safety threats. The inside of the house was also cleaned up and there were no sharp throwing objects embedded in the wall.

At a subsequent visit on May 13, the home was still free of immediate safety hazards and the refrigerator contained sufficient fresh food. The social worker asked to look in the garage to ensure that all weapons were locked away, but father said he did not have a key to the lock on the garage and could not obtain it until the following week.

In conclusion, the report noted the Department’s concerns about the parents’ “lack of insight into the safety and risk issues for their children.” Since father was arrested in

⁴ The social worker asked what father’s religious beliefs were and he said “he did not believe in hospitals.”

March, the parents’ “primary focus has been on who is violating their rights and how they are being violated.” In addition, father had failed to submit to regular drug testing. The Department acknowledged that the parents had demonstrated an ability to take protective actions as they had cleaned their home and removed immediate health and safety hazards.

At the May 27, 2015 hearing, the parents disagreed with the Department’s recommendations and requested that the juvenile court schedule the matter for a settlement conference⁵ and contested hearing.

C. July 13, 2015 contested jurisdiction hearing

The parents requested dismissal of the petitions, “[o]n the grounds there’s no injured party,” and asked that they be permitted to represent themselves.⁶ The juvenile court and the parents engaged in an extended colloquy regarding the nature of dependency proceedings, the parents’ understanding of those proceedings, as well as their understanding of their rights. During this colloquy, mother and father frequently interrupted the court, stating “For the record, I object,” and repeatedly denying that the juvenile court had authority or jurisdiction to proceed. The court denied their oral motions to dismiss and their requests to represent themselves, cautioning them that if they continued to repeat themselves and interrupt the proceedings, they would be asked to leave the courtroom and the matter would proceed in their absence.

Mother and father continued to interrupt and object as the Department began presenting its case and called the social worker to testify. Father stated, “For the record, I hold the Court in contempt for violating my—” at which point he was interrupted and

⁵ The record contains minute orders from the settlement conference which indicate that the parties were unable to reach an agreement. The juvenile court set the matter for a further settlement conference and ordered the parents to be personally present. The minute orders from the further settlement conference indicate the parents failed to appear.

⁶ Father stated several times that he was entitled to represent himself because he was his “own sovereign.” He also indicated that the petitions should be dismissed because his children could not be an “injured party” as they were “not old enough to take me to court.”

mother interjected, “You [i.e., the juvenile court] are not working under oath.” Mother continued to argue, saying “I hold this Court in contempt and I am considering bringing criminal charges against you [i.e., the judge].” When the juvenile court indicated it would be hearing from the witness, mother again stated the court “cannot proceed with this hearing without jurisdiction.” The juvenile court then had mother escorted from the courtroom.

The Department began examining the social worker, but father continued to speak and disrupt the proceedings. When asked to sit and listen to the testimony, father said, “I’m leaving. I’m not going to sit here and let my constitutional rights with people who have taken—watch my rights be violated.” Father then left the courtroom. The hearing proceeded with mother’s counsel and father’s counsel in attendance and with their participation.

At the conclusion of the hearing, the juvenile court found that, based on evidence presented, it was necessary to remove the children from the parents’ custody. Accordingly, the juvenile court issued a protective custody warrant and ordered supervised visitation at least twice weekly with the two older children and at least three times per week with the youngest child. The juvenile court proceeded to address jurisdiction and, based on the evidence presented in court, sustained the allegations in the petitions.

D. Department’s request for monitored telephone/mail contact

On July 21, 2015, the Department filed a memo with the juvenile court advising that law enforcement, having been provided with the custody warrants, went to the family home to pick up the children after the July 13 hearing, but no one was home. A neighbor advised police that daughter and older son were seen earlier that morning with their belongings packed. Police sought the children at the various addresses provided by the Department and eventually located older son and younger son at the maternal

grandmother's home on July 15, 2015. Daughter was reported to have left the maternal grandmother's home the night before and her whereabouts were unknown.

Based on these events, the Department asked for an order that, in addition to supervised visits, all telephone and mail contact between the children and the parents be monitored. The Department was concerned the parents would try to abscond with the children if they were allowed unsupervised contact or if they were to learn the location of the foster placements. At a hearing on July 21, 2015, the juvenile court granted the Department's request to supervise and monitor all telephone and mail contact between the parents and the children. The court also set the dispositional hearing for August 4, 2015 and ordered the parents (who were in attendance) to appear on that date.

E. Department's disposition hearing reports

Prior to the contested hearing, the Department prepared a report setting forth its assessment and evaluation for disposition. As to placement, the Department advised that the children⁷ should not be placed in the same foster home, as it remained concerned that the parents might abscond with the children. The Department recommended providing family reunification services for both mother and father, given that the parents had been together for more than 20 years and strongly desired to keep their family together. As to mother, the Department expressed concern about her "ability to prioritize the children's need for safety at home . . . over her relationship with the father" as well as her "level of protectiveness." Accordingly, the Department recommended "that the Court order a psychological evaluation for the mother in order to identify services that will best support reunification."

In a subsequent report to the juvenile court, the Department requested that father be ordered to undergo a psychological examination as well. The Department wrote: "Throughout the course of the Department's work with [father], it has been very

⁷ At the time the report was prepared, daughter had not been located.

challenging for social work staff to determine the services that will be most useful to assist [father] with addressing and ameliorating the risk issues that led to Department involvement. [Father] appears pre-occupied to the point of obsession with the idea that his rights have been and will continue to be violated. He displays pressured speech and at times appears anxious when staff tries to reason with him or talk with him about the concerns regarding his children's safety. His communication is circuitous such that [father] will ask multiple and rapid fired questions, but he will not allow time for those questions to be answered. Social worker attempts to redirect him and focus him on what steps he needs to take have proven to be fruitless to date. The Department believes that a court ordered psychological evaluation will help the Department gain insight regarding [father]'s diagnosis, if any, so that staff can be more effective in developing a case plan and connecting him to services that will be specific to his needs.”

F. Parents' motions

On August 27, 2015, the parents filed several motions on their own behalf. These motions argued that the juvenile court lacked jurisdiction and that the parents' constitutional rights had been violated in various ways. The motions demanded payment of damages to the parents, as well as the immediate return of the children to their custody.

At the September 8, 2015 settlement conference prior to the disposition hearing, the juvenile court indicated that it considered the parents' motions to be tantamount to an appeal.⁸ The parents responded that they could not file an appeal because “we haven't been to trial yet.” The parents stated that they had never consented to have attorneys appointed for them, and continued to dispute that the juvenile court had jurisdiction over the matter. At one point, mother engaged in the following colloquy with the judge:

⁸ At father's request, we have taken judicial notice of the record in that separate appeal, *In re N.M. et al.* (H042728), which was dismissed as abandoned by order dated November 5, 2015.

“THE MOTHER: Your Honor, are you an oath holder? Are you working under your oath of office, the 5 USC section 3331? Or are you advocating the overflow [*sic*] of the constitutional form of government under 18 USC 19, 181? [*Sic.*] And could you please tell me where is the Grand Jury indictment for forcing us to answer.

“THE COURT: Right. And so—

“THE MOTHER: Are you aware that your assets and your bond can have a lien filed on them? And they will if you continue to violate our rights and our children’s rights.

“THE COURT: And I’m not really understanding what you’re having to say because—

“THE MOTHER: Are you constitutional, have you taken that oath?

“THE COURT: You repeating yourself isn’t going to help. All right?”

Father later accused the juvenile court of violating parents’ due process rights, stating: “So it seems like this collaborative court that you told me about it just seems really foreign to me and I know—is it not true any other law besides the constitutional law is foreign law such as Napoleonic law, uniform commercial code, civil law any color of state law. Any statute. Any state ordinance, any state regulation, or any state custom, or any state usage, the Court is striking against the constitutional form of government by using foreign law under the 11th Amendment; is that not true?”

At one point, the juvenile court explained that it heard testimony after the parents left the courtroom during the jurisdictional hearing. Mother spoke up, saying, “Your Honor, are you aware that for a judge to have a trial without a jury is considered insanity knit [*sic*] upon the judge. It’s considered treason and you can be impeached.” The juvenile court responded, “we have a difference of opinion about the laws that apply. And I can tell how much you both have studied and how passionate both you are [*sic*]. And how you care about . . . not only the law but I know that you love your children. . . . And I want to see you and your family reunify And . . . I don’t want to have a long

discussion about our disagreement with the law because we don't have time this afternoon.”

Mother replied, “[A]re you aware that all of your individual assets can and will be lawfully subject to seizure which cannot be removed by any court of law but only by me for your high crimes and misdemeanors? Are you aware of this? Because I would hate to, you know, have to file a lien and do all that.” Later, mother added, “I have so much fraudulent paperwork on this Court. On you. On every single person in here. . . . [I]f you want to continue, I will be filing criminal complaints with a lien. . . . I mean, are you running a foreign Court? I understand what a foreign Court is. And if you are a judge that had taken an oath, you know what a foreign Court is. You have worked in the federal Courts. You know what a foreign Court is. This is a foreign Court.” The juvenile court responded, “I think the record shows that it supports the reason that I denied your request to represent yourself because a lack of understanding and your inability to understand that you can't interrupt the Court while I'm talking.”

After the parents' attorneys renewed the parents' request to represent themselves, the juvenile court denied those requests, stating “I am concerned with them not recognizing this Court's authority, being disruptive while I do want to tell them I'm appreciative of them being here today and being patient, not talking over me the whole time, but when I ask questions, instead of responding to the questions that I have which is: ‘Are you willing to engage in some services?’ Instead you ask me questions about my understanding of some code sections and your interpretation of the law that aren't making sense to me.”

The parents objected to setting a contested hearing on disposition. Father expressly refused to engage in voluntary services and mother said she would “not comply with an illegal process.” Father reiterated that he was seeking “religious counseling” rather than engaging in substance abuse counseling or testing. The juvenile court

scheduled the contested hearing for September 23, 2015 and ordered the parents to be present.

G. Contested disposition hearing as to older son and younger son⁹

At the hearing, the social worker testified regarding the various risk factors which led to the children's initial removal and detention. When asked why she was recommending that mother undergo a psychological evaluation, the social worker said it was "based on observations about the mother's primary focus being on her rights allegedly being violated over the safety and well-being of her children." On cross-examination, the social worker admitted she did not "have specific information that [mother] suffers from any current mental illness."

As to father, the social worker testified that she was recommending he undergo a psychological evaluation because of "incidences where social workers or representatives of the Department have attempted to explain the Court process and certain events to [father] and [mother] and had subsequent concerns even after being explained that [father] and [mother] were not able to comprehend that information or to demonstrate any insight into what was being explained to them."

At the conclusion of the hearing, the juvenile court expressly found that returning the children to the parents' custody would be detrimental to their welfare. The Department was ordered to provide reasonable reunification services to mother and father. Based on the evidence provided by the Department, the juvenile court found that psychological evaluations of both parents were appropriate.

⁹ Daughter had not been located as of the date of this hearing. The record reflects that, on November 2, 2015, Santa Cruz police stopped mother for a traffic violation and discovered older daughter in the vehicle. After they refused to exit the vehicle, officers broke the rear window, unlocked the doors and removed them. Mother was placed under arrest and daughter was eventually placed in a group foster home.

H. Contested disposition hearing as to daughter

On November 20, 2015, the juvenile court held a contested disposition hearing in relation to daughter. In a written update filed with the court, the Department advised that neither mother nor father have participated in any case plan activities, nor had they undergone the psychological evaluations previously ordered. The Department reported that father had not submitted to random drug testing and had not participated in a drug and alcohol assessment as ordered.

At the conclusion of the hearing, the juvenile court adopted the recommendations set forth in the social worker's report and removed daughter from the custody of her parents. At the Department's request, the juvenile court ordered that any psychological evaluation of father could not be used against him in his criminal case.

Mother and father timely appealed.

II. DISCUSSION

Mother and father challenge the court's requirement that they undergo psychological evaluations. They argue there were no allegations in the dependency petitions that either of them suffered from a mental illness or disorder or that any such illness or disorder led to the children being detained. They also argue that no evidence was presented to the juvenile court to show that either of them had a history of mental illness. As explained below, we find the juvenile court did not abuse its discretion in making the dispositional orders.

A. Standard of review

“A reunification plan ‘ ‘must be appropriate for each family and be based on the unique facts relating to that family.’ ’ [Citation.] Section 362, subdivision (c), states in pertinent part: ‘The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the minor is a person described by section 300.’ ” (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 172, superseded by statute on another point as noted in *In re Lucero L.* (2000) 22 Cal.4th

1227, 1239-1242.) Additionally, the juvenile court has broad discretion to make virtually any order necessary for the well-being of the dependent child. (§ 361.2, subd. (b)(2); *In re Sergio C.* (1999) 70 Cal.App.4th 957, 960.) The court has discretion to determine which services are appropriate for the care, supervision, custody, conduct, maintenance, and support of the child. (§ 362, subd. (a).)

A juvenile court's dispositional orders for the reunification plan are reviewed for abuse of discretion. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1007.) Under the abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

B. Analysis

While there was no evidence presented in this case that either parent had diagnosed mental health issues, the juvenile court is tasked with developing a program that will eliminate the conditions which led to the dependency. (See *In re Daniel B.* (2014) 231 Cal.App.4th 663, 673.) Contrary to the parents' arguments, "[i]t would be unreasonable to forbid entry of an evaluation order unless the parent possessed a documented history of mental health difficulties or treatment." (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 840.) "A parent might well have a problem of the kind contemplated by the section without any prior discovery or diagnosis. Where, as in this case, the jurisdictional finding is not based on a parent's mental disability, the juvenile court may rightly look to the circumstances underlying the dependency and the evidence of the parent's conduct in deciding whether to order one or more mental health evaluations. [¶] In doing so, the juvenile court will be guided by its best judgment under all the circumstances." (*Id.* at pp. 840-841.)

In this case, mother and father repeatedly engaged in disruptive conduct while in court. It was clear that they firmly believed the juvenile court lacked jurisdiction to

detain the children, let alone order them to submit to any sort of evaluation or assessment. As noted by the Department, father's intransigence made it "very challenging for social work staff to determine the services that will be most useful to assist [father] with addressing and ameliorating the risk issues that led to Department involvement." He was "pre-occupied to the point of obsession with the idea that his rights have been and will continue to be violated." According to the social worker, mother exhibited the same "primary focus . . . on her rights allegedly being violated over the safety and well-being of her children"

Based on the evidence presented, the juvenile court's order requiring mother and father to undergo psychological evaluations was not arbitrary, capricious or patently absurd. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) Accordingly, there was no abuse of discretion in including this requirement in its disposition orders in order to determine the best possible plan for reunification services.

III. DISPOSITION

The dispositional orders are affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Grover, J.