

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL – SECOND DIST.

FILED

May 31, 2024

EVA McCLINTOCK, Clerk

mfigueroa

Deputy Clerk

In re S.R. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.F.,

Defendant and Appellant.

B326812

Los Angeles County
Super. Ct. No. 22CCJP03750A, B

ORDER DISMISSING APPEAL

Juvenile dependency proceedings were prompted by a physical altercation between S.F. (Mother) and her two eldest daughters, ages 16 and 22. As a result of the physical violence between Mother and her children, the Los Angeles Department of Children and Family Services (DCFS or the Department) filed a petition alleging that the 16-year-old daughter and Mother's third and youngest daughter were at risk of serious physical and emotional harm because Mother struck the 16-year-old daughter on the head with her fist, struck her body with the pole end of a metal shovel, and brandished a knife. It was also alleged that mother was unable and unwilling to provide the youngest daughter, who was developmentally disabled, with ongoing care and supervision. The final allegation was that Mother was a current daily user of marijuana.

At the combined jurisdictional/dispositional hearing on January 23, 2023, the parties agreed that Mother was defending herself from her two eldest daughters who angrily came to her home ready to physically attack her because she had asked the adult daughter to move out of the house. The issue before the juvenile court was whether Mother's use of force to defend

herself was reasonable. The juvenile court found “Mother’s reaction in this incident was not reasonable and longer than the perceived threat lasted. [¶] I would imagine there was a lot of disrespectful language that was directed at mother, but the court does not find that her grabbing a shovel and hitting [the 16 year old], leaving a mark on her, and, then, grabbing a knife and threatening to kill them was justified; and, in fact, her actions escalated the situation. [¶] I do believe the crux of this case is anger management issues that the Mother needs to continue to address in DCFS-approved programs.” The court sustained the petition as it related to the physical violence between Mother and her children. The court dismissed the allegations that Mother abused marijuana and was unwilling to care for the children.

As to disposition, the juvenile court removed the children from Mother’s home, ordered Mother to participate in individual counseling and conjoint counseling with the children and ordered monitored visitation.

Mother filed a timely notice of appeal on February 6, 2023. At the six-month review hearing on July 24, 2023, the juvenile court returned both children to Mother. (We grant appellant’s two requests for judicial notice of the minute orders returning the children to her custody and terminating jurisdiction with a juvenile custody order. We also grant appellant’s request to take additional evidence, which we deem a motion to take judicial notice.) The children remained dependents of the court and Mother was ordered to comply with family maintenance orders, including participation in family preservation, cooperating with unannounced home visits, conjoint counseling, and excluding the 22-year-old daughter from the home. On February 1, 2024, the juvenile court terminated jurisdiction with a juvenile custody order giving Mother joint legal custody with Father and sole physical custody with unmonitored visits for Father.

On April 5, 2024, we advised the parties that we were considering dismissal of the appeal as moot and invited supplemental briefing on the issue. Both parties filed supplemental briefs which we have reviewed and considered.

DISCUSSION

Mother contends that the juvenile court erroneously assumed jurisdiction over her two youngest daughters and erroneously removed them from her custody. As set out above, the juvenile court returned the children to Mother on July 24, 2023.

The Department contends that Mother's appeal is moot because now that the children are back in Mother's custody, she has obtained the relief she seeks on appeal. We agree Mother's appeal is moot.

The governing principles are described in *In re D.P.* (2023) 14 Cal.5th 266 (*D.P.*). “[W]hen a parent has demonstrated a specific legal or practical consequence that will be averted upon reversal, the case is not moot, and merits review is required. When a parent has not made such a showing, the case is moot, but the court has discretion to decide the merits nevertheless.” (*Id.* at p. 283.)

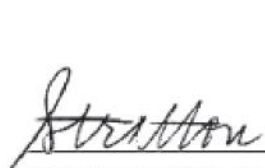
Here, Mother argues that appeals from removal orders present issues of public importance as they implicate the overarching goals of the dependency system: to provide maximum safety and protection for children with a focus on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. (*D.P.*, *supra*, 14 Cal.5th at p. 286.) She also contends that mooted appeals where parents have successfully regained custody of their children will mean erroneous separation of families will go “forever un-remedied.” Mother argues that in the “event of any future removal, the dispositional orders could deprive Mother of any further reunification services.” Finally, Mother posits that when and how to start the clock on the six months of reunification services to which she was entitled is an issue that should be decided on this appeal.

We are not persuaded these contentions should be decided in the context of this case. In *D.P.*, the Supreme Court discussed a nonexhaustive list of factors for assessing whether a court should exercise discretionary review of a moot appeal. (*D.P.*, *supra*, 14 Cal.5th at pp. 285–287.) These include whether the challenged jurisdictional finding could be prejudicial to the appellant in future dependency proceedings (*id.* at p. 285); whether the finding is based on particularly pernicious or stigmatizing conduct (*id.* at

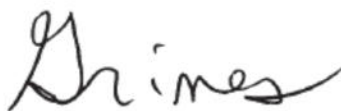
pp. 285–286); and whether the case became moot due to prompt compliance by parents with their case plan (*id.* at p. 286).

D.P. instructs us to consider all relevant factors, the totality of the evidence, and the overarching goal of the dependency system to safeguard children, with a focus on preserving the family and the child’s well-being. (*D.P.*, *supra*, 14 Cal.5th at p. 286.) Here, the court ordered Mother to continue to participate in services after it returned the children to her, so whether reunification services must be offered as a matter of law is not her issue. The jurisdictional finding is limited to one event started by the children’s attempt to physically harm their mother, and the juvenile court made no findings of stigmatizing or pernicious conduct.¹ Whether the findings could be prejudicial to Mother in future dependency proceedings is speculative. Indeed, the juvenile court acknowledged that Mother was defending herself from the children and found fault only in the excessive nature of her response. We recognize, as will courts in the future (if there are future proceedings) that Mother immediately cooperated with the Department in her efforts to regain custody of her children. We see no reason to exercise our discretion to consider the merits of Mother’s moot appeal.

The appeal is dismissed as moot.



STRATTON, P. J.



GRIMES, J.



VIRAMONTES, J.

¹ In her supplemental brief, Mother urges us to reach the merits because she may have been reported to the statewide Child Abuse Centralized Index (CACI). Without proof of this allegation, we decline to act upon it.