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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.R.,

Defendant and Appellant.

E075537

(Super.Ct.No. J280738)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Dismissed.

Brent D. Riggs, under appointment by the Court of Appeal, for Defendant and Appellant.

Svetlana Kauper and Michelle D. Blakemore, County Counsel for Plaintiff and Respondent.

Defendant and appellant Lo.R. is the mother of L.R., who was born in October 2018 and who is the subject of this dependency matter. On July 1, 2020, after reunification efforts failed, the juvenile court ordered mother's parental rights as to the child terminated, freeing the child for adoption. Mother's arguments here, however, do not directly challenge that order. Rather, she raises arguments relating to the juvenile court's *jurisdictional* findings, issued on May 15, 2019, asserting that those findings must be reversed and therefore so too should subsequent orders, including the one terminating her parental rights. We decline to consider mother's untimely arguments on the merits and dismiss the appeal.¹

I. BACKGROUND

The child came to the attention of plaintiff and respondent San Bernardino County Children and Family Services (CFS) after mother was arrested in April 2019 for vandalism and resisting arrest. Mother and her live-in partner had been arguing in a manner that resulted in police responding to the home three times within 12 hours "because of excessive arguing and violence in the home." Mother had allegedly kicked a door down and failed to comply with officers. The child was not injured, but was present during the incident.

¹ Mother has requested that we take judicial notice of the Court's file in her related petition for writ of habeas corpus (Case No. E076090), which we have ordered to be considered together with this appeal. The request is granted. We will rule on the petition by separate order.

Subsequently, CFS filed a dependency petition alleging that the child came within Welfare and Institutions Code² section 300, subdivisions (b)(1) and (g). The petition alleged as to mother that she had engaged in domestic violence in the child's presence on the date she was arrested in April 2019, that the child was at risk of harm due to mother's untreated mental health issues and history of substance abuse, and that mother had left the child without provision for care or support after her arrest, all of which fall under subdivision (b)(1). The petition further alleged under both subdivision (b)(1) and (g) that the child's father's whereabouts and ability to parent were unknown.³

In the jurisdictional report, CFS conceded that the allegation about mother failing to provide for the child while she was incarcerated should be dismissed for lack of evidence. Additionally, at the jurisdiction and disposition hearing on May 15, 2019, CFS agreed to a "deal" with mother to dismiss the allegation relating to her history of substance abuse, conditioned on her agreeing to participate in random drug testing and to attend an outpatient program for treatment if she had any "unexcused, missed, or dirty tests." Mother, who was present for the hearing, submitted a waiver of rights on a standard form (JV-190), checking the box indicating that she wished to "plead no contest" to the petition but writing in "objecting" next to that plea. Her attorney similarly altered the form by writing in "objecting," but checked a box indicating that she had

² Further undesignated statutory references are to the Welfare and Institutions Code.

³ The child's father's whereabouts remained unknown throughout the dependency, and he is not a party to this appeal.

explained and discussed with mother the rights and consequences of “submitting the petition on the report,” rather than the box for “pleading no contest.”

During the jurisdiction and disposition hearing, mother, mother’s attorney and the court engaged in the following colloquy:

“[COUNSEL]: We are submitting a waiver. Mom has criminal charges pending, so we’re objecting for the record to the allegations. But I think it’s important to go over trial rights.

“THE COURT: What’s the waiver for?

“[COUNSEL]: I didn’t go over her trial rights with her.

“THE COURT: Got it. Then, ma’am, did you go over this waiver of rights form with your attorney and sign it?

“THE MOTHER: Yes

“THE COURT: And do you understand everything on the form and your right to a trial?

“THE MOTHER: Yes.

“THE COURT: And you’re waiving the right to have a trial?

“THE MOTHER: Yes.

“THE COURT: Then I’ll find that waiver was knowingly, intelligently, freely, and voluntarily made.”

The juvenile court accepted CFS's concession on the allegation relating to providing for the child while mother was incarcerated, as well as the agreement of the parties regarding the history of substance abuse allegations. It dismissed those two allegations, and found the remaining allegations of the dependency petition true. It removed the child from mother's care and ordered that mother receive reunification services. The court made the condition requiring mother to participate in drug testing and attend treatment if she failed to test clean an order, including it as part of mother's case plan.

Reunification efforts in the six-month period after the juvenile court assumed jurisdiction over the child did not go well. Mother tested positive for marijuana on multiple occasions, and eventually stopped participating in drug testing. She later admitted she had relapsed on methamphetamines. Nevertheless, she declined to participate in the court ordered outpatient substance abuse treatment program. Mother also refused to participate in a court ordered psychiatric and psychological evaluation. Although she initially enrolled in and participated in some services, she failed to attend consistently and then stopped participating altogether by August 2019. The same was true for visitation with the child; after initially participating as ordered (and the visits going well), she started to cancel visits, and by August 2019, she stopped visiting with the child at all. In advance of the six-month review hearing, CFS recommended that reunification services be terminated and that a section 366.26 permanency hearing be set to consider termination of parental rights and freeing the child for adoption.

In November 2019, mother enrolled in a residential treatment facility for treatment for the symptoms of “Schizoaffective disorder, bipolar type” and “Methamphetamine abuse in remission.” She also began participating again in various services and in drug testing. On that basis, at the contested six-month review hearing in December 2019, mother sought an additional six months of reunification services. The juvenile court, however, found that doing so would not be in the child’s best interest, accepted CFS’s recommendation that mother’s services be terminated, and scheduled a section 366.26 hearing.

In advance of the section 366.26 hearing, held in July 2020 after several continuances, CFS reported to the court that the child was adoptable and had already developed a “mutual positive attachment” with her prospective adoptive parents. Although mother had recently been attending supervised visitation with the child and the two interacted well during the visits, the social worker opined that there was no “significant bond” between mother and child because of the infrequency of their contact.⁴ CFS recommended mother’s parental rights be terminated and that a permanent plan of adoption be implemented.

After hearing evidence and argument from the parties at the contested section 366.26 hearing, the juvenile court found the child was adoptable, both generally and

⁴ This is a stark contrast with reports from early in the dependency, before mother’s participation in visitation waned. Then, the social worker had observed mother and child appeared “very bonded and attached to one another,” and that mother “engages appropriately [with the child] and is very attentive and affectionate.”

specifically, and likely to be adopted. It found that the parental bond exception to adoption did not apply, and that the child would suffer no detriment from adoption. It ordered parental rights terminated, with adoption as the child's permanent plan.

II. DISCUSSION

Mother contends that her rights to due process and effective assistance of counsel were violated at the May 15, 2019 jurisdiction and disposition hearing. She faults both the juvenile court and her appointed counsel for failing to ensure "she was properly advised how she could have challenged the petition's allegations at the jurisdictional hearing . . . and of her right to appeal the adverse findings." She asserts that the record shows "her appointed lawyer never discussed with her the trial rights she had at the jurisdictional hearing," and the juvenile court "glossed over her lawyer's admission of ineffective assistance" in that regard. She also proposes that her trial counsel "failed to recognize that the government's evidence did not support jurisdiction." With the exception of the last issue, which goes to whether the juvenile court was empowered to take jurisdiction over the child, we need not discuss the merits of these arguments because mother failed to timely raise them.

"One of the most fundamental rules of appellate review is that the time for filing a notice of appeal is jurisdictional. '[O]nce the deadline expires, the appellate court has no power to entertain the appeal.'" (*In re A.O.* (2015) 242 Cal.App.4th 145, 148.) "The first appealable order in a dependency case is the dispositional order . . . [A] challenge to the jurisdictional findings must be raised in an appeal from the dispositional order."

(*Ibid.*) Moreover, “[a]n appeal from the most recent order entered in a dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed.” (*In re Edward H.* (1996) 43 Cal.App.4th 584, 590-591; see also *In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150 [“an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order”].)

In “very rare and ““special circumstances constituting an excuse for failure to [timely appeal],”” the appellate court “may grant review of an appealable order by way of extraordinary writ after the deadline to appeal has passed.” (*In re A.O.* (2015) 242 Cal.App.4th 145, 148.) In most cases, however, where courts have found good cause to excuse a parent’s failure to timely appeal an order in a dependency matter, the parent has timely sought appellate review at the next earliest opportunity. (See *In re J.A.* (2019) 43 Cal.App.5th 49, 55 [distinguishing *In re A.O.* and similar cases on that basis].) Mother did not do that here; she could have sought writ review of the juvenile court’s orders terminating her reunification services and setting a section 366.26 hearing, raising the same arguments she now asserts on appeal from the later order terminating her parental rights.⁵ She did not do so.

⁵ We note that, although mother has contended the juvenile court erred by failing to advise her of her right to appeal the jurisdiction and disposition orders, there is no question that the juvenile court adequately advised mother of her writ rights when it set the section 366.26 hearing.

Mother relies on *In re S.D.* (2002) 99 Cal.App.4th 1068 as an example of a case where a parent's challenge to jurisdictional and dispositional orders was permitted, even though she failed to raise it until her parental rights were terminated. We do not read *In re S.D.* as establishing a general exception, allowing parents to wait until their parental rights have been terminated to challenge jurisdictional and dispositional orders. In *In re S.D.*, the mother's counsel had "essentially conceded" that the juvenile court had jurisdiction over the child under section 300, subdivision (g). (*In re S.D.*, at p. 1080.) The record, however, actually compelled the opposite conclusion, that there was no appropriate basis for the juvenile court to take jurisdiction. (*Id.* at p. 1078 ["In fact, on this record, we would have no problem concluding that [the department] failed to sustain its factual burden"].) The Court of Appeal found on that basis that the record affirmatively established mother's ineffective assistance claim to have merit, and that the error "was entirely legal, and quite fundamental." (*Id.* at p. 1080.) The Court of Appeal also emphasized that, under the particular circumstances of that case, reversal of the judgment and the concomitant delay in final resolution of the case would not work to the child's detriment. (*Id.* at p. 1082.) To the contrary, reversal would "restore" the case to the point it "likely would have reached" absent counsel's ineffective assistance, namely, the child in the long-term care of the mother's sister during the remaining period of the mother's incarceration. (*Id.* at p. 1082.)

The circumstances of this case are different. The record here does not compel the conclusion that, absent counsel's alleged ineffective assistance, mother would have been

able to show that there was no appropriate basis for the juvenile court to assume jurisdiction over the child. Rather, substantial evidence supported the juvenile court's conclusion that the child came within section 300, subdivision (b)(1), on at least one basis. Mother admittedly engaged in violent behavior in her home and in the presence of the child during the April 2019 incident that caused police to respond to the home three times within twelve hours and ultimately arrest mother. Mother agreed with the social worker's assessment that "she could benefit from taking domestic violence and anger management classes in an effort to address her maladaptive coping skills and lack of control over her emotions." Mother's live-in partner also told the social worker that mother "has always had anger issues." A parent's mental illness alone is not a basis for juvenile court jurisdiction, but given mother's behavior it is relevant that she had a history of mental illness, but was not currently taking medication or under a doctor's care. Even though the child was not injured during the April 2019 incident, the juvenile court had a reasonable, non-speculative basis for concern that, absent intervention, mother would again engage in violent behavior in the child's presence, placing the child at substantial risk of serious physical harm. (See *In re R.V.* (2012) 2012) 208 Cal.App.4th 837, 843 ["The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child."]) We therefore reject mother's assertion that "the government's evidence did not support jurisdiction."

Additionally, this is not the rare circumstance, such as that of *In re S.D.*, where a late reversal of the juvenile court’s jurisdictional findings would have no detriment on the child, leaving him in the same position as if the juvenile court never assumed jurisdiction. Rather, the child is in the care of a non-relative prospective adoptive parent, awaiting a resolution of these proceedings. Thus, the usual policy considerations in dependency proceedings apply with full force. The “purpose of appeal deadlines is to promote the finality of judicial decisions and provide security to the litigating parties,” and “[n]owhere is this purpose more crucial than in dependency cases, where the paramount consideration is child welfare.” (*In re J.A.*, *supra*, 43 Cal.App.5th at p. 56.) Our Supreme Court has “long recognized that providing children expeditious resolutions is a core concern of the entire dependency scheme,” and that this is “doubly true for the very young.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 847, fn. 4.) Here, the child was a six-month-old infant when the juvenile court ruled on CFS’s dependency petition, but mother waited more than a year after that to assert any challenge to the jurisdictional findings or to her attorney’s performance during that stage of the proceedings. To now excuse mother’s delay in asserting her rights would be a profound disruption to the child’s interests.

We conclude that mother has failed to make a showing of good cause sufficient to justify her failure to raise her arguments in a timely manner, or even in an untimely manner but at the next available opportunity for seeking appellate review during the dependency process.

III. DISPOSITION

We dismiss the appeal.

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RAPHAEL
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.