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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.P. et al., Persons Coming
Under the Juvenile Court Law.

B276228

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK15270)

Plaintiff and Respondent,

v.

M.T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

M.T. (Mother) appeals from the juvenile court's jurisdictional findings under Welfare and Institutions Code¹ section 360, subdivision (b). We affirm the order sustaining the jurisdictional findings as to Mother.

FACTS

Mother has four minor children: three with Mario E. (Father), 12-year-old Mario, Jr., 10-year-old Matthew, and 5-year-old M., and one with Ignacio P., 16-year-old A.² On December 16, 2015, the Los Angeles County Department of Children and Family Services (DCFS) received a referral reporting the children were often left home alone for days at a time with their 18-year-old sibling, Jose, who mostly abdicated his child care responsibilities to A. As a result, A. felt overwhelmed and had expressed suicidal thoughts.

Mother admitted to DCFS in an interview that she and Father used methamphetamine on a regular basis, but never at home. Instead, they left the younger children with the older ones on the weekends. Mother asserted, "My children are always taken care of whether we were using or not." Mother explained she contacted DCFS because she did not want to lose Father.

The children denied being aware of any drug use by Mother and Father, although Mother's adult daughters believed Mother and Father had relapsed. A. admitted she was left home alone with her younger siblings, but claimed it was not that often. Matthew and M. reported they sometimes witnessed arguments

¹ All further section references are to the Welfare and Institutions Code unless otherwise specified.

² Ignacio's whereabouts are unknown and he is not a party in this action.

between Mother and Father, but denied any domestic violence occurred. Jose reported witnessing Mother and Father yell and push each other in the past.

Mother cooperated with DCFS to make a safety plan in which the children would be supervised by her adult daughter, Kathy M., and her mother, Elsa T., if she and Father were away. She also agreed to random drug testing.

On January 25, 2016, DCFS filed a non-detained dependency petition under section 300, subdivision (b), against both Mother and Father, alleging each has a history of illicit drug abuse and is a current user of methamphetamine, which renders them incapable of providing regular care for the children. In particular, Mother tested positive for methamphetamine on January 19, 2016, and Father is a registered substance abuse offender with a long history of convictions for possession of narcotics for sale. Both admitted to using methamphetamine, but not in the home. Father reported he began using marijuana when he was 11 years old and he “went to camp and jail for substance abuse” after he was kicked out of school in the ninth grade. Father also admitted using methamphetamine on and off for the past few years, but asserted he had stopped.

At the detention hearing on January 25, 2016, the juvenile court found a prima facie case had been made that the children were persons described by section 300, subdivision (b). However, the children were to remain with the parents. On March 29, 2016, at the adjudication hearing, the juvenile court issued a tentative order dismissing the case under section 360, subdivision (b).³ Mother sought dismissal of the allegations against her,

³ Section 360, subdivision (b) provides: “If the court finds that the child is a person described by Section 300, it may,

arguing “the parents use [of illicit] drugs does not automatically create the nexus required to sustain an allegation based on the use alone,” particularly since the children remained in Mother’s care and were adequately provided for. Further, Mother tested negative in a subsequent test.

After hearing from DCFS, the juvenile court sustained the allegations as against Father and Mother and ordered them to drug test randomly and participate in counseling. It found that the parties all believed counseling was needed. Moreover, DCFS’s involvement was beneficial to the family and had been in the past to get Mother and Father into programs. “But since the parents have been proactive in the services, the court is going to find that the parents shall retain physical custody of these children.” The juvenile court ordered services for Mother, including individual counseling. Mother timely appealed.⁴

without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child’s parent or guardian under the supervision of the social worker for a time period consistent with Section 301.”

⁴ As is usual in dependency proceedings, the matter continued in the juvenile court as Mother’s appeal wound its way through this court. On September 19, 2016, the juvenile court found Mother and Father were not in compliance with the terms of the dismissal under section 360, subdivision (b). As a result, the children were removed from Mother and Father’s custody and placed in the care of DCFS for suitable placement. This development does not affect our decision in this appeal.

DISCUSSION

Mother contends the children were not at risk of suffering serious harm due to Mother's drug use. Substantial evidence shows otherwise.

As an initial matter, Mother acknowledges her claim may not be justiciable because striking the allegations against her will not affect the juvenile court's jurisdiction, which would remain under the sustained allegations against Father. Mother is correct. (*In re Alysha S.* (1996) 51 Cal.App.4th 393 ["the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent"].) Father did not contest or appeal the juvenile court's jurisdictional findings. And Mother may not challenge any errors which affect only Father. (*In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806.) Thus, the juvenile court retains jurisdiction regardless of whether Mother's appeal is successful.

However, the juvenile court found Father to be the presumed father only over the youngest three children, Mario, Jr., Matthew, and M. The section 300 allegations regarding Father omit A. entirely, reflecting his lack of status over her. Thus, there is no basis for the juvenile court's jurisdiction over A. unless there exists sustained allegations against Mother.⁵ (See § 362, subdivision (d) ["The juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter"].)

⁵ For all intents and purposes, Father's drug use presents the same danger to A. as to the other children since they live in the same household. However, there is no allegation that Mother is unable to protect A. from Father's conduct.

As a result, we consider whether the juvenile court's findings as to Mother are supported by substantial evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.) In doing so, we do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the trial court's findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We conclude there exists substantial evidence to support the juvenile court's jurisdictional findings as to Mother.

A cause of action in dependency under subdivision (b) of section 300 requires proof "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse." In addition, the Legislature has declared, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment." (§ 300.2.)

As a general rule, a parent's drug abuse does not bring a child within dependency jurisdiction absent evidence that such conduct causes "a specific, nonspeculative and substantial risk to [the child] of serious physical harm." (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) But in cases involving children "six years old or younger at the time of the jurisdiction hearing . . .[,] 'the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting

in a substantial risk of harm’ [citations].” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219.) This is because a child who is six years old or younger is “of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Here, the dependency petition alleged, “[Mother] has a history of illicit drug abuse and is a current user of methamphetamine which renders the mother incapable of providing regular care for the children. On 01-19-16, the mother had a positive toxicology screen for methamphetamine. The children are of such young age requiring constant care and supervision and the mother’s illicit drug use interferes with providing regular care and supervision of the children. The mother’s use of illicit drugs endanger the children’s physical health and safety and create a detrimental home environment, placing the children at risk of serious physical harm and damage.”

Substantial evidence supports the juvenile court’s jurisdictional finding on this basis. M. is 5 years old. Mother is an admitted methamphetamine user. Those facts alone are sufficient to establish jurisdiction in M.’s case under *In re Christopher R, supra*, 225 Cal.App.4th at page 1219.

As to 12-year-old Mario, Jr., 10-year-old Matthew, and 16-year-old A., substantial evidence also supports jurisdiction over them. The record shows Mother has used methamphetamine since she was 13 or 14 years old. Mother admitted to DCFS on January 6, 2016, she used methamphetamine “on a regular basis” and left her children at home alone in order to use drugs. Mother indicated she used methamphetamine three to four times a

month. Father confirmed he and Mother “were using but are clean as of that day. . . . If we used we would go to someone’s house or rent a room but never use inside the house or around the children.” Although Mother denied using any drugs or alcohol in February 2016, she tested positive for methamphetamine on January 19, 2016. Further, Mother had previously completed a drug treatment program, but relapsed in 2015.

Mother contends there is no evidence any of the children are exposed to substantial risk of serious physical harm due to her drug use. According to Mother, the children are well cared for. Their home is adequately decorated and furnished with no safety hazards. Moreover, the children are no longer infants or toddlers, unable to care for themselves. Instead, they attend school on a regular basis and earn passing grades.

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citation], the [juvenile] court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child presently needs the court's protection. [Citation.] A parent’s ‘ “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ [Citation.]” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1215-1216.)

That the children have not suffered any actual physical harm to this point does not mean they are not at substantial risk of future harm. Mother admitted she left a 16 year old and a 18 year old at home alone for days at a time to take care of a 10 year old, a 12 year old, and a 5 year old while she used

methamphetamine with Father. As a result, neither she nor Father were likely able to respond to any emergencies which could arise. It is irrelevant whether each of the children could take care of themselves; Mother forced them to take care of the others. Moreover, Mother could have, but did not, ask for help from her mother or her adult daughter, who indicated a willingness and ability to help care for the children. It was only when DCFS entered the picture that Mother included her mother and her adult daughter in the child care plan. A substantial risk of harm exists in this situation.

DISPOSITION

The order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.