

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re SADE A., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RICKY A.,

Defendant and Appellant.

B236030

(Los Angeles County
Super. Ct. No. CK36365)

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

Anne E. Fragasso, under appoint by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Kim Nemoy, Principal Deputy County Counsel for Plaintiff and
Respondent.

Father Ricky A. challenges the sufficiency of the evidence to support the juvenile court's order sustaining a petition declaring his daughter, Sade A., a dependent under Welfare and Institutions Code section 300, subdivision (b).¹ He also challenges the disposition order removing her from his custody and requiring that his visitation be monitored. We find support for each order and affirm.

FACTUAL AND PROCEDURAL SUMMARY

Sade A. is father's first child. The mother, A.A., has a long and troubled history with the Department of Children and Family Services (the Department) which resulted in the termination of her parental rights as to her six older children. Mother suffered a serious brain injury in a car accident as a child and, as a result, continues to experience severe cognitive issues and seizures. She has a lengthy substance abuse and criminal history, which led to the sustained dependency petitions regarding her older children. All of the older children were fathered by men other than Ricky A. Mother does not appeal the juvenile court's orders as to Sade.

Sade was born healthy with negative toxicology tests in May 2011. A mandated reporter at the hospital contacted the Department to report that mother was guarded and reluctant to answer questions regarding her older children. Mother's hostility toward hospital staff was causing problems in her reunifying with Sade. Two social workers made an unannounced visit to mother in the hospital the next day. Mother allowed them to enter her room, but refused to speak to the workers until father arrived in response to her telephone call. Mother and father told the workers that they anticipated their visit, and produced a letter from a Salvation Army transitional housing program where they were receiving intensive services and classes.

Mother described her brain injury and seizure issues. Father said he had a "life threatening illness" and felt fortunate that the child does not have the same condition.

¹ Statutory references are to the Welfare and Institutions Code.

Nursing staff reported that mother had angry outbursts. Both parents reported a history of substance abuse, mainly cocaine. Mother claimed to have been sober for two years and father for about one year. Father is legally blind and told the social worker he was unable to care for Sade by himself. He told the worker: “I can’t see very well so I do have to have mother do certain things like changing the diaper because I want her to be clean.”” Mother told the social workers she was being treated unfairly and that she was now different. She was trying to have her sixth child (J.J.) returned to her custody. Father said he also felt mother had been treated unfairly. He said Sade was “his life.” Both parents said they were open to receiving services from the Department.

The Department detained Sade based on the termination of mother’s rights as to her older children, her unresolved brain damage and seizure disorder, parents’ history of substance abuse, and father’s inability to care for the child by himself. Sade was placed in a foster home and parents were to have monitored visits at a minimum of three times a week. The Department recommended that mother receive no reunification services pursuant to section 361.5, subdivision (b) because of her failure to reunify with her older six children.

On June 2, 2011, the Department filed a petition alleging that Sade was a child within the meaning of section 300, subdivision (b). The petition was sustained as amended, alleging mother’s history of substance abuse, cognitive limitations and seizures render her unable to provide care and supervision for Sade. The petition also alleged that five of mother’s other children had received permanent placement services due to mother’s issues, which endanger the health and safety of Sade. The same count alleged father’s history of drug abuse, including cocaine, which renders him unable to provide regular care and supervision of the child.

The jurisdiction and disposition report by the Department listed father’s extensive criminal history, including convictions for transporting or selling controlled substances, possession of controlled substance devices, and being under the influence of controlled substances. Mother also had an extensive criminal history. Father had been participating in services through the Salvation Army and had been attending Narcotics Anonymous

meetings. Father argued that mother was not treated properly in the prior dependency proceedings involving her older children. He said that mother was not at fault because of her brain injury. When asked by the social worker what mother needed to safely parent, father responded that she needed assistance, and that he would provide it. Father acknowledged that mother was “not normal” and “can’t think like us.” When the social worker discussed several sustained counts from mother’s previous petitions, father said the allegations were false and accused the social worker of taking the situation personally.

Father was voluntarily participating in an outpatient program, parenting classes, individual counseling and additional bi-weekly therapy through Volunteers of America. He had a 28-year history of crack cocaine use, but had been sober for “going on a year.” Father repeatedly refused to be separated from mother. A room in which the parents lived at a Salvation Army program was clean, neat, and well-stocked for a baby. Both parents continued to insist that mother’s history with the Department was based on hearsay and was irrelevant to Sade. During a visit with the child, the parents engaged in an altercation with the foster mother. Father admitted he became upset with the foster mother, who was no longer willing to facilitate visits.

The Department’s pre-release investigation report in June 2011 stated that the parents were continuing to receive housing, meals, and other intensive services at the Salvation Army Alegria program. Father continued to state that he was not willing to live separately from mother, even in order to have Sade returned to his custody. The Department expressed serious concern about Sade’s safety if she was placed in the home of father. Father expressed little concern about mother’s ability to parent despite her extensive history with the Department. He continued to maintain that mother was the victim of the Department and that the events leading to the previous sustained petitions did not constitute abuse. Based on the infant child’s need for constant care and father’s legal blindness, the Department concluded that mother would have significant contact with the child which would place Sade at risk for abuse and neglect.

A last minute information for the court included a letter from a psychiatrist who was treating mother, regarding the dependency case involving Sade's half-sibling, J.J. The psychiatrist stated that the sequelae of mother's traumatic brain injury could be mistaken for psychiatric illness or substance abuse. She questioned whether "sufficient attention has been given to [mother's] traumatic brain injury history and her special needs." Based on her current evaluation, the therapist did not "see her as a danger to any of her children in a supervised setting. Alegria could help her build the necessary skills to care for her children in an ongoing fashion." A last minute information for August 9, 2011, informed the court that the parents continued to visit regularly without incident and that Sade was being transitioned to a new pre-adoptive home closer to parents to facilitate visitation.

The jurisdiction and disposition hearing was held on August 31, 2011. The court considered a Multidisciplinary Assessment Team (MAT) report. The assessor concluded that the parents were working hard toward the goal of reunifying with Sade. Father told the assessor that although he is legally blind, he can see large objects and can operate with ease in the community. The assessor observed him moving around the apartment and helping with household chores. The primary concerns were identified as the parents' history of substance abuse, mother's extensive and severe history with the Department, and her questionable ability to parent children due to her cognitive limitations. The assessor observed: "These are serious problems and raise very real concerns as to Sade's safety if she were to be reunified with her parents."

The MAT report lauded the parents' ongoing efforts to remain sober and participate in intensive programs. They had remained sober for "a notable length of time," although they were still in active recovery and in need of extensive support. The assessor characterized their progress as demonstrating "an impressive commitment to their recovery and to their reunification with Sade" in addressing substance abuse issues, receiving comprehensive support with activities of daily living and compliance with services. The assessor found the decision as to whether to reunify Sade with parents to be "challenging." He noted mother's extensive history with the Department, her sobriety

and participation in services, and the support offered by father. Father claimed he was “more than able to care for Sade and ensure her safety.” The assessor made recommendations to enhance Sade’s safety if she was reunified with parents. These included parents’ continuing participation in Alegria, a home-based parenting program, a care plan for Sade so she was not left alone with mother, and a plan to reconsider placement in the event either parent relapsed, engaged in criminal behavior, or left the Alegria program. The assessor concluded that “only close monitoring of this case by the courts, DCFS, and other community agencies can ensure Sade’s safety and healthy development.”

At the jurisdiction and disposition hearing, both parents argued there was insufficient evidence to support jurisdiction based on their histories of substance abuse as alleged in the petition because they were not currently using drugs. Counsel for father also argued that father had sought intensive services on his own. The Department acknowledged father’s commitment to addressing his issues and recommended that he receive reunification services. It recommended that mother not receive services. The juvenile court sustained the petition as amended as to mother and as pled as to father. Sade was found to be a person described by section 300, subdivision (b). Counsel for father asked the court to place the child in father’s home, or to grant father unmonitored visitation. Counsel for mother joined in these requests. Counsel for the child objected to placing Sade in the parents’ home, as premature. The juvenile court found by clear and convincing evidence that there was a substantial risk of danger to Sade if she were to be returned home to her parents. She was ordered removed and placed in the Department’s custody. Reunification services were ordered for the parents, including an unmonitored visit so the parents could participate in a home-based parenting program with Sade. In addition, the parents were given unlimited monitored visitation, with a minimum of three times a week. Father filed a timely appeal from these orders.

DISCUSSION

I

Father argues the jurisdictional finding under section 300, subdivision (b) must be reversed because there was no substantial evidence that he posed a substantial risk of harm to Sade.

“On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term “substantial evidence” means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]’ (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) ‘In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]’ (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)” (*In re E.B.* (2010) 184 Cal.App.4th 568, 574–575 (*E.B.*)).

The sustained petition against father alleged: “The child, Sade [A.’s] father, Ricky [A.], has a history of illicit drug abuse, including cocaine, which renders the father unable to provide regular care and supervision of the child. Such illicit drug abuse by the father endangers the child’s physical health and safety and places the child at risk of physical harm, damage and danger.”

“Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness caused by the parent’s inability to provide regular care for the child because of the parent’s mental illness, developmental disability or substance abuse. A jurisdictional finding under section 300, subdivision (b) requires: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* [(1991)] 1 Cal.App.4th [814,] 820.)’ [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of

serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) The focus of this inquiry is whether the circumstances at the time of the hearing subject the minor to the defined risk of harm. (*Id.* at pp. 135–136.) “Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*Id.* at p. 136.) “A dependency adjudication is a preliminary step that allows the juvenile court, within specified limits, to assert supervision over the endangered child’s care. But it is merely a first step, and the system includes many subsequent safeguards to ensure that parental rights and authority will be restricted only to the extent necessary for the child’s safety and welfare.” (*In re Ethan C.* (July 5, 2012, S107587) __ Cal.4th __ [2012 WL 2579998].)

The Department argues that it is unnecessary for us to consider father’s claim that the evidence was insufficient to support jurisdiction based on his conduct because mother did not appeal the sustained finding that she posed a risk to Sade. “[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [her] within one of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.’ [Citations.]” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161 [affirming dependency jurisdiction despite reversal of findings as to father where mother did not appeal findings based on her actions].) We agree that the finding as to mother’s conduct is a sufficient basis to affirm jurisdiction over Sade.

II

Father also challenges the disposition order removing Sade from his custody. The juvenile court “may not remove a dependent child from the parent’s . . . physical custody unless it finds, by clear and convincing evidence, that such action is necessary to protect

the child from serious harm. (§ 361, subd. (c).)”² (*In re Ethan C.*, *supra*, ___ Cal.4th ___.) While the juvenile court must find by clear and convincing evidence that removal is appropriate, we do not use that standard on appeal. “The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial. ‘Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 881.)” (*E.B.*, *supra*, 184 Cal.App.4th at p. 578 [applied to review of dispositional order].)

Father argues the evidence was overwhelming and uncontradicted that he was able to care for and protect Sade. Respondent agrees that the social worker reported that the room parents live in at the Salvation Army was appropriate for the care of Sade and acknowledges father’s participation in multiple services and commitment to his sobriety, observing that “[i]ndeed, reunification seems likely.” But father told social workers that he was unable to care for Sade without mother’s assistance because of his legal blindness. He insisted on remaining with mother rather than moving out, even if doing so would allow Sade to be returned to his custody. In light of mother’s very serious history of neglect and abuse of her other children, and father’s inability to parent alone, the court’s decision that the child should be removed from father’s custody is supported by substantial evidence. (See *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424–1425 (*Tracy J.*) [upholding removal of child with asthma from custody of parents

² Section 361, subdivision (c)(1) permits removal based on clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.”

with developmental disabilities, including cognitive impairments to father from head injury as a child].)

III

Father argues the court erred in denying him unmonitored visitation. He cites section 362.1, subdivision (a), which provides: “In order to maintain ties between the parent . . . and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent . . . any order placing a child in foster care, and ordering reunification services, shall provide as follows: [¶] (1)(A) Subject to subparagraph (B), for visitation between the parent . . . and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child. [¶] (B) No visitation order shall jeopardize the safety of the child.”

This argument also is based on father’s contention that substantial evidence supported return of Sade to his custody at the disposition hearing. He argues it is unclear why all his visits should not be unmonitored since there is no allegation he is currently using drugs, and the focus of the case has been on mother’s history with the Department and concerns about her ability to parent.

“We review an order setting visitation terms for abuse of discretion.” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.) The juvenile court in this case ordered monitored visits for parents a minimum of three times a week, and said that more could be provided as long as the visits were monitored. The Department was given discretion to liberalize visitation. We concur with the admonition of the *Tracy J.* court that family reunification services must be tailored to the particular needs of the family, including parents with special needs. (*Tracy J.*, *supra*, 202 Cal.App.4th at pp. 1425–1426.) The juvenile court here acknowledged the special needs of parents by ordering a weekly unmonitored visit with Sade for the purpose of participating in hands-on parenting classes with the child. We find no abuse of the juvenile court’s discretion in ordering monitored visits for father in light of his statements that he was unable to parent Sade without assistance because of his limited sight.

DISPOSITION

The jurisdictional, disposition and visitation orders as to father are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.