Filed 3/2/17 In re A.M. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.M., a Person Coming Under the Juvenile Court Law.	B275301 (Los Angeles County Super. Ct. No. DK14936)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.S., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Frank Menetrez, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

A.S. (Mother) appeals from the dependency court's jurisdictional and dispositional orders. We find that both orders were supported by substantial evidence and accordingly affirm.

BACKGROUND

This matter came to the attention of the Department of Children and Family Services (DCFS) on December 16, 2015, the day that Mother, then 16 years old, gave birth to baby girl A.M. The referral, from the hospital where Mother gave birth, stated that Mother tested positive for marijuana. A.M. was born full term and had APGAR scores of 9 and 9.[1] She was not tested for drugs.

Mother stated that she used marijuana once to treat contractions but denied other use of marijuana or other drugs. She initially received prenatal care only sporadically and stopped going to her prenatal appointments entirely when she was seven months pregnant.

Mother was a dependent of the dependency court herself and had been "detained at large" from her parents in May 2015. Mother had a history of running away from DCFS placement and her whereabouts had been unknown since April 2015. She was not attending school. When interviewed on December 16, 2015, Mother refused to provide information on her whereabouts during the previous eight months and stated she would not comply with future DCFS placement. She refused to provide information about the father of A.M., telling the social worker, "You don't need to know that." Mother also objected to signing consent forms for A.M., stating that the best thing for her and her child was to "be out of DCFS." When asked to

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[1] APGAR refers to a baby's "Appearance, Pulse, Grimace, Activity, Respiration." The test is used to evaluate a newborn's health one minute and five minutes after birth with a score from 0 to 10, with higher numbers demonstrating good health.

provide information about individual members of her support system, Mother replied, "You are not getting nothing out of me."

Mother had been diagnosed with ADHD, for which she was prescribed Adderall, but she stopped taking the medication when she found out she was pregnant. She had also been diagnosed with oppositional defiant disorder based on episodes of stealing and arguing with authority figures.

DCFS obtained the name of Father from hospital staff and was informed he was older than 21 years of age. DCFS was concerned that Mother's refusal to cooperate, her history of running away from placement, her drug use, and the possibility that she had been staying with her own mother (who had an open reunification case with Mother) or Father (who apparently engaged in an illicit sexual relationship with Mother) presented risks to A.M.

A.M. was ordered removed from Mother's custody on December 17, 2015, and was detained from her parents on December 23, 2015. Mother was granted monitored visitation and was ordered to engage in individual counseling, parenting classes, and drug testing. She was not to breastfeed without doctor's permission.

DCFS filed a section 300 petition alleging that Mother was a current user of marijuana, rendering her incapable of providing regular care for A.M. The petition further alleged that Mother used marijuana while pregnant and that A.M., being of a tender age, required constant care and supervision.

The DCFS jurisdiction/disposition report noted that Mother continued to refuse to provide information regarding Father. When asked about her drug use, Mother maintained she had used marijuana only one time, about three weeks before giving birth. Mother did not answer when the DCFS

social worker asked her why she stopped receiving prenatal care at seven months.

Mother was taken into custody on January 16, 2016, for agreeing to provide oral copulation to an undercover police officer. Mother's grandfather picked up Mother from the police station the following day.

As of early February 2016, Mother was enrolled in a drug and alcohol program, which included individual counseling and parenting classes. She stated she wanted to learn to be a good mother to her baby and that she would do whatever was needed to regain custody. Mother had also enrolled in "wraparound" services[2] and was observed to be improving her behaviors of aggression and anger toward authority figures. Mother's grandfather reported he was willing to provide a home for Mother and support for her. The social worker interviewed A.M.'s caregiver, who reported that when Mother visited she attempted to breast feed but was stopped as she did not have a letter from a physician clearing her to do so. Otherwise, Mother showed up on time for scheduled visits and was appropriate when holding A.M., though she was constantly "testing" the caregiver.

Mother was randomly drug tested as part of her program. On December 29, 2015, she tested positive for marijuana but subsequently tested negative on January 5 and February 2, 2016.

The jurisdiction and disposition hearing was held on February 29, 2016. Mother's counsel argued that the section 300 petition should be dismissed because there was no evidence of a risk of harm to the child. Counsel for A.M. and DCFS both argued that the petition should be sustained. The dependency court sustained the petition as pleaded, finding

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[2] The wraparound service program uses individualized services to provide children with an alternative to group home care. (*In re W.B.* (2012) 55 Cal.4th 30, 41, fn. 2.)

that because of the tender age of the baby and because Mother had just recently started her programs, there was sufficient evidence of a current risk to A.M.

As to disposition, Mother's counsel requested that A.M. be placed with Mother, arguing that because Mother was in a drug program and cooperating with services there were reasonable means to protect A.M. from risk of harm. Counsel noted that Mother had been living with her grandfather for over two months and had not run away from placement. Minor's counsel joined in Mother's request for a home of parent order, contingent on Mother's remaining at the grandfather's house, continuing to participate in all programs, and being subject to unannounced home visits. DCFS argued that A.M. should not be placed with Mother, noting that Mother was "AWOL" for the duration of her pregnancy and that she had only recently started services. The dependency court ordered A.M. removed, stating: "My concern is that if her child is returned, she and the child will disappear again. So as for the safety measures proposed, I just don't see that they mitigate that risk." The court found, by clear and convincing evidence, that there would be a substantial danger to A.M. if she were placed with Mother. Mother was to be provided with family reunification services and frequent visitation.

DISCUSSION

I. Jurisdiction

Mother argues that the dependency court's jurisdictional findings were not supported by substantial evidence. "The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child who is the subject of a petition comes under the juvenile court's jurisdiction." (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859.) We review a challenge to the sufficiency of the evidence supporting jurisdictional findings by determining

whether substantial evidence, uncontradicted or not, supports the findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

As relevant here, jurisdiction is proper under section 300, subdivision (b)(1), if a "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 . . . her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse." Thus, there are three elements to a finding of jurisdiction under section 300, subdivision (b): "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

While a parent's past acts alone may not provide a basis for jurisdiction (*In re James R.* (2009) 176 Cal.App.4th 129, 136), the dependency court is not required to "wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216). "'[P]ast conduct may be probative of current conditions' if there is reason to believe that the conduct will continue." (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.)

We conclude substantial evidence supported the dependency court's finding of jurisdiction under section 300, subdivision (b)(1). "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." (§ 300.2.) Mother asserts that the record lacks evidence that she used marijuana on more than a single occasion. While, in most situations, a parent's infrequent use of marijuana is not enough by itself to justify jurisdiction (see *In re David M.* (2005) 134 Cal.App.4th 822, 829-830; *In re Drake M.* (2012) 211 Cal.App.4th 754, 768-769), substantial evidence in this case supported a finding of substantial risk to A.M. posed by Mother's drug use and related behavior.

Mother used marijuana while pregnant. Exposing her unborn child to the drug demonstrated a lack of concern for the child's health. Moreover, it was evidence of a substantial risk of harm to A.M. "[A] child's ingestion of illegal drugs constitutes 'serious physical harm' for purposes of section 300." (*In re Rocco M.*, *supra*, 1 Cal.App.4th 814, 825.) As the court in *In re Christopher R.* explained, a mother's use of cocaine during the last months of pregnancy "confirmed her poor judgment and willingness to endanger her children's safety due to substance abuse." (225 Cal.App.4th 1210, 1219.)

Children of "tender years," like A.M., face "an inherent risk to their physical health and safety" if they are not adequately cared for or supervised. (*In re Rocco M., supra,* 1 Cal.App.4th 824.) In matters involving young children, "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 physical harm." (*In re Drake M., supra,* 211 Cal.App.4th 754, 767.)

Moreover, the dependency court's finding of a substantial risk of serious physical harm to A.M. was additionally supported by Mother's repeated failures to demonstrate an ability to provide sufficient stability for

an infant. Although she herself was a dependent of the court, for almost the entirety of her pregnancy Mother was absent from placement and failed to disclose her whereabouts to DCFS. Mother stopped receiving prenatal care after seven months and gave no explanation why. When she was located at the hospital, Mother refused to disclose where she had lived the previous eight months. Mother also initially refused to cooperate with DCFS, stating that the best thing for her and her child was to "be out of DCFS." And, after A.M. was detained, Mother was taken into custody for a possible prostitution-related offense. Based on the evidence presented, the dependency court could reasonably infer that Mother's reckless behavior was related to her marijuana use and posed a substantial risk to A.M.

Mother argues that *In re Rebecca C.* (2014) 228 Cal.App.4th 720 supports reversal here. That opinion found that a parent's use of methamphetamine and marijuana alone were insufficient to support a finding of risk of physical harm. (*Id.* at pp. 727-728.) Unlike the instant matter, where A.M.'s young age requires a heightened degree of responsibility, the child at issue in *In re Rebecca C.* was a teenager. (*Id.* at p. 722.) Furthermore, there were no concerns with the mother's or child's living situation other than the drug use. (*Id.* at pp. 727-728.) Here, Mother engaged in behavior up through the time of the jurisdiction hearing that demonstrated a risk to A.M.

This matter is also distinguishable from *In re David M., supra,* 134 Cal.App.4th 822, another case relied on by Mother. The appellate court there found that, although the mother's "use of marijuana on at least one occasion while pregnant . . . and her failure to obtain prenatal care at an earlier date in her pregnancy were unquestionably neglectful acts," these acts were insufficient by themselves to support jurisdiction. (*Id.* at pp. 829-830.)

However, the home environment in *In re David M.* was stable, the mother had tested negative for drugs 18 times between detention and jurisdiction, and the social services agency responsible for handling the proceeding failed to investigate current circumstances and relied almost entirely on the record from a previous dependency matter. (*Id.* at pp. 830-831.) None of these facts is present here. Although Mother appears to be doing a commendable job of attempting to remedy the situation that brought her child into the dependency system, by the time of the jurisdiction hearing she had not yet demonstrated she could provide regular care for A.M.

In sum, substantial evidence supported the dependency court's jurisdiction determination.

II. Disposition

Under section 361, subdivision (c)(1), a child may not be removed from a custodial parent unless the dependency court finds, by 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." We review the lower court's dispositional findings for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161; *In re Lana S.* (2012) 207 Cal.App.4th 94, 105.) On appeal from an order subject to a clear and convincing evidence standard ""'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.]' [Citation.] 'We have no power to judge the effect or value of the

evidence, to weigh the evidence [or] to consider the credibility of witnesses . . . ." (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581, fn. omitted.)

The substantial evidence that supported the dependency court's jurisdiction finding also supported the findings that there would be substantial danger to A.M. if she were returned to Mother's care and that there were no reasonable means to protect her other than removal. The dependency court also gave an additional reason why removal was necessary—if A.M. were returned to Mother, it was likely that "she and the child will disappear again." Other than a brief period prior to the jurisdiction and disposition hearing, Mother demonstrated no willingness to cooperate with DCFS, including with placement. Given the vulnerability of the young child, if Mother "AWOLed" again, the results were likely to be tragic. The dependency court properly determined, at this early stage of the proceedings, that placement of A.M. with Mother was not sufficiently safe. Thus, there is no cause to reverse the removal order.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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GOODMAN, J.*

We concur:

CHAVEZ, J., Acting P.J.

HOFFSTADT, J.

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* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.