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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re M.G., a Person Coming
Under the Juvenile Court Law.

B283455

(Los Angeles County
Super. Ct. No. CK67917)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DONTRAE G.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed in part and reversed in part.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

Dontrae G. (Father) appeals from the juvenile court's jurisdiction findings and disposition order declaring his children dependents of the court pursuant to Welfare and Institutions Code¹ section 300, subdivision (b). Father contends the evidence was insufficient to support the juvenile court's finding that his criminal history and status a registered controlled substance offender placed his children at a substantial risk of harm. We agree and reverse the jurisdictional finding as to Father.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Section 300 Petition

Father and Chanae P. (Mother) are the parents of two girls—M.G. (born May 2004) and A.P. (born November 2006). Mother also has four other children with Roy V.—L.P. (born August 2008), L.V. (born August 2009), Ry.V. (born July 2011), and Rn.V. (born May 2014). The current matter came to the attention of the Department of Children and Family Services (DCFS) in October 2016 based on a referral alleging physical abuse and general neglect of the children by Mother. At the time of the referral, all six children were residing in the maternal grandmother's home. The reporting party alleged that Mother used methamphetamine and left the home for days at a time; that Mother sold her foods stamps and did not use the funds for the children; and that Mother had hit L.V. with a hanger causing welts.

On October 26, 2016, the case social worker interviewed the children in the maternal grandmother's home. M.G., who was

¹ Unless otherwise stated, all further statutory references are to the Welfare and Institutions Code.

then 12 years old, reported that Mother no longer resided in the home with the children. When Mother previously lived in the home, she would leave for days at a time. Mother also would use physical discipline on the children and hit them with objects such as shoes and hangers. M.G. stated that Father was very involved in her life and that she visited him often. M.G. also reported that Father had a good relationship with the maternal grandmother. In her interview, A.P., who was then nine years old, confirmed that Mother did not live with the children, but she occasionally would visit them. A.P. also reported that Mother would use belts and hangers to discipline them. A.P. stated that she had contact with Father, and that he visited the children at the maternal grandmother's home from time to time. Father never took the children to his home for a visit.

The case social worker also interviewed the maternal grandmother. She reported that Mother stayed in her home from time to time, but she did not know where Mother currently was residing. Mother previously had moved to Arizona with the children to get away from an abusive relationship with Father, but returned to California in 2016 because of a domestic violence incident with Roy V. Since returning to California, Mother had been using drugs, spending time on the streets, and not taking care of the children. Mother also had used physical discipline on the children and had hit L.V. with a hanger on one occasion. Following that incident, the maternal grandmother told Mother that she had to move out of the home.

On November 4, 2016, the case social worker conducted an interview with Mother. She admitted she was a current user of methamphetamine, and reported that she began using the drug in Arizona when she and the children were living with Roy V. In

March 2016, Roy V. was arrested after he choked Mother during a physical altercation, and he currently was incarcerated in Arizona. Mother also admitted to disciplining the children by spanking them with a belt or hanger. She denied that she ever neglected the children, and stated that she was able to care for them even when she was using drugs. During the interview, Mother agreed to a voluntary safety plan, which included allowing the children to remain in the maternal grandmother's home, submitting to on-demand drug testing, and enrolling in a substance abuse treatment program.

On November 10, 2016, the case social worker called Father and left a message on his voicemail, but did not speak with him. In its detention report, the DCFS noted that Father had a criminal record that included the following convictions: (1) a 2003 conviction for carrying a concealed firearm (former Pen. Code, § 12025, subd. (a)); (2) a 2006 conviction for possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)); (3) a 2006 conviction for infliction of corporal injury on a spouse (Pen. Code, § 273.5, subd. (a)); (4) a 2007 conviction for transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)); (5) a 2011 conviction for infliction of corporal injury on a spouse (Pen. Code, § 273.5, subd. (a)); (6) a 2015 conviction for driving under the influence of alcohol (Veh. Code § 23152, subd. (a)); and (7) a 2015 conviction for assault with a deadly weapon (Pen. Code, § 245, subd. (a)). The report also noted that, on September 9, 2013, Father was required to register as a controlled substance offender pursuant to Health and Safety Code section 11590.

On November 15, 2016, the DCFS filed a dependency petition on behalf of children pursuant to section 300,

subdivisions (a), (b), and (j). The petition alleged that (1) Mother had physically abused the children by striking them with belts, hangers, and other objects; (2) Mother and Roy V. had a history of drug use and were current abusers of methamphetamine; and (3) Mother and Roy V. had a history of engaging in violent altercations in the children's presence. The petition included a single count as to Father under section 300, subdivision (b). That count alleged that Father was a registered controlled substance offender and had a history of drug-related convictions, which endangered the health and safety of the children and placed them at a substantial risk of serious physical harm.

A detention hearing was held on November 15, 2016. Both Mother and Father appeared and were appointed counsel. The juvenile court found there was prima facie evidence that the children were persons described by section 300, and ordered that they be removed from parental custody and placed with the maternal grandmother pending an adjudication hearing. Father was granted unmonitored visitation with M.G. and A.P. in the maternal grandmother's home.

II. Jurisdiction/Disposition Report

For its January 24, 2017 Jurisdiction/Disposition Report, the DCFS interviewed the children about allegations in the petition. With respect to the allegations involving Mother, both M.G. and A.P. reported that Mother would physically discipline the children by hitting them with belts, shoes, and hangers. M.G. also stated that she had witnessed the domestic violence between Mother and Roy V. that had led to his arrest.

With respect to the allegations involving Father, M.G. reported that she had a good relationship with him. She stated that Father often visited the children, but she had not seen him

since the last court hearing. M.G. denied that she ever saw Father smoke, take pills, or appear to be under the influence of drugs. A.P. similarly reported that she had a good relationship with Father. She also denied ever seeing Father use drugs or show signs of drug use. When asked about Father's involvement in her life, A.P. stated, "[H]e would come and visit us often but I haven't seen him since we went to court."

During her interview with the DCFS, Mother was asked about the allegations involving Father. She responded: "[W]here does this stuff come from. This is his past. I don't get why it should be affecting his ability to get his kids because of his past. He did and was in juvenile hall and did time till he was grown but this is his past. He is registered because I know they make them do that but he wasn't using the drugs just selling them and he was selling those years ago, like 3 or 4 years ago."

The maternal grandmother also was interviewed about the allegations in the petition, but it does not appear she was asked about the allegations involving Father. The case social worker did ask the maternal grandmother about Father's visitation with the children. The maternal grandmother reported that Father was scheduled to visit the children on Thursdays and Saturdays from 5:00 p.m. to 6:30 p.m.; however, he had not visited the children since the detention hearing.

In its Jurisdiction/Disposition Report, the DCFS noted that it had attempted to contact Father for an interview, but had been unable to reach him. The case social worker twice called Father's cell phone, but received a busy signal each time. On December 27, 2016, the social worker sent a letter to Father requesting an interview about the petition. As of January 24, 2017, Father had not made himself available for an interview.

The jurisdiction hearing was continued to April 3, 2017 so that the DCFS could give proper notice to Roy V. and arrange for him to appear telephonically at the hearing. In a Last Minute Information Report filed on April 3, 2017, the DCFS noted that Mother had not enrolled in any services and had been inconsistent in her visitation with the children. No information was provided about Father.

III. Jurisdiction and Disposition Hearing

On April 3, 2017, the juvenile court held a jurisdiction and disposition hearing. The court admitted into evidence the various reports filed by the DCFS. No other evidence was offered by the parties. Roy V. appeared telephonically and pleaded no contest to the counts in the petition related to his history of domestic violence against Mother. Neither Mother nor Father appeared at the hearing, but both were represented by counsel.

Mother's counsel asked the court to dismiss the petition in its entirety. Counsel for the children and counsel for the DCFS joined in requesting that the counts alleged against Mother be sustained based on the evidence in the reports. Father's counsel asked the court to dismiss Father from the petition. His counsel noted that the children had reported that they have a good relationship with Father and that they never saw him engage in any drug use or inappropriate behavior. The children's counsel agreed that the single count against Father should be dismissed because there was no evidence in the record to establish a nexus between Father's criminal history and a risk of harm to the children. Counsel for the DCFS asked the court to sustain the count against Father because he had an extensive criminal record that included a number of drug-related convictions.

The juvenile court dismissed the count in the petition pertaining to Roy V.'s drug use, and sustained all the other counts as alleged. With respect to the count alleged against Father, the court stated it was sustaining that count because "the criminal activity of [Father] has far exceeded just activity when he was a juvenile into very recent time."

Turning to disposition, the juvenile court declared each of the children a dependent of the court pursuant to section 300, subdivisions (a), (b), (j), and ordered that they be removed from the custody of their parents and placed in the care and custody of the DCFS. For purposes of the disposition, the court considered Mother and Roy V. to be custodial parents to their children, and Father to be a non-custodial parent to M.G. and A.P. Mother was granted monitored visitation with the children, and was ordered to participate in various family reunification services. Father was granted unmonitored visitation with M.G. and A.P. in the maternal grandmother's home, and was ordered to submit to on-demand drug testing. Following the hearing, Father filed a timely notice of appeal.

DISCUSSION

On appeal, Father solely challenges the sufficiency of the evidence supporting the jurisdictional finding based on his criminal history. Father specifically contends the evidence was insufficient to support a finding that his history of drug-related convictions and status as a registered controlled substance offender placed his children at a substantial risk of harm.

I. Standard of Review

We review a juvenile court's jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Substantial evidence is “evidence that is reasonable, credible, and of solid value.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the juvenile court on issues of credibility of the evidence and witnesses. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.) We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court’s order, resolving all conflicts in support of its determination and drawing all reasonable inferences to uphold its ruling. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1124.)

II. Justiciability

We first address the DCFS’s argument that the juvenile court’s order should be affirmed without considering the merits of Father’s appeal because the jurisdictional findings as to Mother provide a valid uncontested basis for dependency jurisdiction over M.G. and A.P. The DCFS notes that Father was a non-custodial parent at the time of the jurisdiction and disposition hearing, and that he does not challenge the disposition order on appeal.

In general, “[a] jurisdictional finding against one parent is good against both.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 308.) “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.

[Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Nonetheless, in limited circumstances, reviewing courts have exercised their discretion to consider an appeal challenging a jurisdictional finding despite the existence of an independent basis for jurisdiction when the finding “could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings,” or “could have other consequences for [the appellant], beyond jurisdiction.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; see also *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613; *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1317.)

In this case, the jurisdictional findings as to Mother, which are not challenged on appeal, constitute a sufficient and independent basis for the juvenile court’s exercise of dependency jurisdiction over M.G. and A.P. without regard to any finding related to Father. Thus, even if we were to reverse the finding as to Father, the juvenile court would still be authorized to exercise jurisdiction over his children. While acknowledging that there may be circumstances where a parent is prejudiced by a single sustained count in a multi-count dependency petition, the DCFS argues that Father cannot show prejudice in this case because he is a non-custodial parent and is not challenging any aspect of the disposition order. However, the placement of the children was never a contested issue at disposition because the parties agreed that the children should remain in the home of the maternal grandmother where they had been residing prior to the initiation of these proceedings. Given Mother’s history of drug use, ongoing methamphetamine abuse, and physical abuse of the children, it is possible that Mother could fail to reunify with M.G. and A.P. and that Father could seek custody of the children in the future if,

for any reason, they are unable to remain in the maternal grandmother's home. In such a case, the jurisdictional finding based on Father's criminal history could negatively impact his ability to obtain custody of his children. Therefore, based on the specific family circumstances present in this case, we will exercise our discretion to consider the merits of his appeal.

III. Jurisdictional Finding as to Father

The juvenile court sustained count b-5 in the petition as follows: "The children [M.G. and A.P.'s] . . . father, Dontrae [G.], is a Registered Controlled Substance Offender. The father has a criminal history of convictions of Possession of Controlled Substance, Transport/Sell Narcotic Controlled Substance, Driving Under the Influence of Drugs/Alcohol. The father's criminal history of convictions endanger[s] the children's physical health and safety and place[s] the children at risk of serious physical harm and damage." On appeal, Father argues the evidence was insufficient to support the jurisdictional finding as to this count because there was no showing that his criminal history posed a substantial risk of harm to his children within the meaning of section 300, subdivision (b). We agree.

Section 300, subdivision (b) provides, in pertinent part, that a child comes within the jurisdiction of the juvenile court if "[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 or guardian's mental illness, developmental disability, or substance abuse." (§ 300, subd. (b).)

“The three elements for a section 300, subdivision (b) finding are: ‘(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.’ [Citation.] 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. . . . [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395-1396.) “Although evidence of past conduct may be probative of current conditions, the court must determine ‘whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citations.] . . . There must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135-136; see also *In re Savannah M.*, *supra*, at p. 1397 [“purpose of section 300, subdivision (b) is to protect the child from a substantial risk of *future* serious physical harm . . . determined as of the time of the jurisdictional hearing”].)

Here, the evidence was insufficient to support the juvenile court’s finding that Father’s criminal history, including his status as a registered controlled substance offender, placed his children at substantial risk of harm. While it was undisputed that Father had a number of prior convictions for drug-related offenses, there was no evidence that Father was ever under the influence of drugs or alcohol in the presence of the children, or engaged in any criminal activity while they were in his care. Nor was there any evidence that Father was using or selling drugs at the time of the jurisdiction and disposition hearing. In their interviews with the DCFS, both M.G. and A.P. denied that they ever saw Father smoke, take pills, or exhibit signs of being under the influence of

drugs. Mother told the DCFS that Father's drug-related activity was "in his past," and that he had not sold drugs for three or four years. Mother also stated that she did not believe Father's criminal history "should be affecting his ability to get his kids."

The record before the juvenile court contained very little evidence about Father's role in the children's lives at the time of the hearing. The only evidence about Father's relationship with M.G. and A.P consisted of the children's statements to the DCFS. Both children reported that they had a good relationship with Father. They also stated that, prior to the initiation of the dependency case, Father often visited them at the maternal grandmother's home. There was no indication that the children or the maternal grandmother ever expressed any concerns about Father's visits to the DCFS. There also was no evidence that Father ever visited the children outside the maternal grandmother's home, or took them any place where they would be exposed to alcohol, drugs, or other inappropriate activity. According to A.P., Father never picked up the children or took them to his home for a visit.

At the jurisdiction and disposition hearing, counsel for the DCFS argued that Father's 2015 conviction for driving under the influence of alcohol, which was two years after he registered as a controlled substance offender, showed that Father "doesn't care" and "he's going to go about business with his addiction." However, there was no evidence that Father had a drug or alcohol addiction at the time of the hearing. Moreover, a parent's use of drugs or alcohol, standing alone, is insufficient to support a jurisdictional finding under section 300, subdivision (b). (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 764 ["mere usage of drugs by a parent is not a sufficient basis on which dependency

jurisdiction can be found”]; *In re James R.*, *supra*, 176 Cal.App.4th at p. 137 [“mere possibility of alcohol abuse . . . is insufficient to support a finding [a child is] at risk of harm within the meaning of section 300, subdivision (b)”].) Rather, to support a finding of jurisdiction based on a parent’s drug or alcohol use, the DCFS must “present evidence of a specific, nonspeculative and substantial risk to [the child] of serious physical harm.” (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.)

In this case, the record is devoid of any evidence showing that Father’s prior drug-related activity placed his children at a substantial risk of harm at the time of the hearing. In its respondent’s brief, the DCFS argues that Father’s status as a controlled substance offender under Health and Safety Code section 11590 was sufficient to support a finding that his past criminal conduct was likely to recur. However, “[t]he purpose of [Health and Safety Code] section 11590’s registration requirement is to deter recidivism by facilitating the apprehension of past offenders. [Citation.]” (*In re Luisa Z.* (2000) 78 Cal.App.4th 978, 983.) The fact that Father was required to register as a controlled substance offender in 2013 does not, in and of itself, show that he engaged in conduct that posed a substantial risk of harm to his children in 2017 or that any such conduct was likely to recur. Instead, the only evidence before the juvenile court demonstrated that, as of the April 2017 jurisdiction and disposition hearing, Father had a good relationship with the children, had not used drugs or alcohol in their presence, and had not engaged in any inappropriate conduct during his visits. Accordingly, on this record, the juvenile court’s jurisdictional finding based on Father’s criminal history was not supported by substantial evidence.

DISPOSITION

The jurisdictional finding based on Father's criminal history as alleged in count b-5 of the section 300 petition is reversed. In all other respects, the juvenile court's jurisdiction and disposition orders are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.