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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B287049

(Los Angeles County
Super. Ct. No. CK49743)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.G.,

Defendant and Appellant.

APPEAL from findings and an order of the Superior Court
of Los Angeles County, Joshua D. Wayser, Judge. Reversed.

Christine E. Johnson, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsell, Mary C. Wickham, County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant S.G. (Mother) challenges the juvenile court's finding that her daughter M.D. is a dependent child under Welfare and Institutions Code section 300, subdivisions (b)(1) and (j),¹ as well as the order removing M.D. from her physical custody. The Los Angeles County Department of Children and Family Services (the Department) has conceded, by letter filed in this court, there is insufficient evidence to support dependency jurisdiction over M.D., who never resided with Mother and had limited contact with her. We accept the concession and hold jurisdiction and removal were unwarranted under the circumstances.

I. BACKGROUND

The Department filed a petition alleging 10-year-old M.D. and her seven-year-old half-brother, J.C.,² were dependent children under section 300, subdivisions (b)(1) and (j) because Mother was an amphetamine and methamphetamine user, which prevented her from properly caring for and supervising her children. The petition also alleged the juvenile court should assume jurisdiction over J.C. on account of his father's drug use. J.C. and M.D. did not share the same father, and the whereabouts of M.D.'s father were unknown.

Mother had seven children including M.D. and J.C. Two of the others were removed from Mother, and ultimately adopted,

¹ All statutory references that follow are to the Welfare and Institutions Code.

² Findings and orders regarding J.C. are not at issue in this appeal.

because of Mother's substance abuse. Mother gave her mother (Grandmother) legal guardianship over the other three children.

Grandmother took M.D. home from the hospital after she was born and has cared for her without interruption since that time. J.C. was Mother's only child currently living with her.

At a detention hearing on the Department's petition, the juvenile court found there was a prima facie case for taking jurisdiction over both M.D. and J.C. The court ordered M.D. to "continue to reside with [Grandmother]," and it placed J.C. with his paternal grandmother.

A dependency investigator interviewed M.D., who confirmed she had been living with Grandmother since birth. According to M.D., Mother visited her at Grandmother's home "every couple of months," the visits never extended overnight, and Mother never took M.D. out of Grandmother's home. M.D. said she did not "know what drugs [we]re" and had never seen Mother or J.C.'s father smoke, drink alcohol, have baggies or other containers holding "white rocks, powder, and/or green leafs [sic]" or act as though they were under the influence. M.D. wished to continue living with Grandmother and for Grandmother to become her legal guardian. Mother wanted the same for M.D.

At the jurisdiction and disposition hearing, Mother's attorney argued the petition should be dismissed as to both M.D. and J.C. because there was insufficient evidence Mother's drug use placed the children at risk of harm. Mother's attorney emphasized M.D. never lived with Mother and had no knowledge Mother used drugs.

The juvenile court asked the Department's attorney whether there was a sufficient "nexus" supporting jurisdiction

over M.D. The Department acknowledged there was “a valid argument” for not adjudicating M.D. a dependent child because she was living with Grandmother but the Department maintained that asserting jurisdiction over M.D. would allow Grandmother to receive “help through the system . . . to be able to adequately take care of [M.D.]” Counsel for M.D. responded that “the court [was] not designed to be a funding stream to assist caretakers” and the Department could assist Grandmother without “necessarily need[ing] jurisdiction over [M.D.]”

The juvenile court sustained the petition without amendment and found “a nexus [as to M.D.] under [the] circumstances for the reasons suggested by the Department.” The court removed both M.D. and J.C. from their parents pursuant to section 361 and directed that they remain in the care of their respective grandparents. After Mother filed an opening brief in this appeal, the Department submitted a “concession letter,” stating it was not opposed to reversal of the jurisdiction findings as to M.D. because those findings are not supported by sufficient evidence.

II. DISCUSSION

M.D. never lived with Mother, M.D. had only limited interaction with Mother, and Mother wanted M.D. to continue to live with Grandmother. Under the circumstances, there is no substantial evidence Mother’s substance abuse exposed M.D. to past or future harm. As noted by M.D.’s attorney in the juvenile court, a need for services is not a basis for finding dependency jurisdiction. (See § 300 [“this section is not intended to limit the offering of voluntary services to those families in need of

assistance but who do not come within the descriptions of this section”].) As we shall briefly explain, we will vacate the jurisdiction findings regarding M.D. and reverse the order removing her from Mother’s custody.

Section 300, subdivision (b) allows the juvenile court to adjudicate a child a dependent upon finding “[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)(1).)

Section 300, subdivision (j) allows for dependency jurisdiction if the court finds that “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”³ A juvenile court must consider “the circumstances surrounding the abuse or neglect of the sibling . . . and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (§ 300, subd. (j).) Section 300, subdivision (j) permits jurisdiction over a child at risk of abuse or neglect under any of the enumerated subdivisions even if the child’s sibling was found to have been abused or neglected under a different subdivision. (*In re I.J.* (2013) 56 Cal.4th 766, 774.) “The provision thus accords the trial court greater latitude to exercise jurisdiction as

³ In this list of statutory subdivisions, only subdivision (b) is possibly relevant here.

to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’

[Citation.]” (*Ibid.*)

If a child who has been adjudicated a dependent was not living with his or her parents at the time a section 300 petition was initiated, the juvenile court may remove the child from his or her parents’ custody only if it “finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent’s right to physical custody, and there are no reasonable means by which the child’s physical and emotional health can be protected without removing the child from the child’s parent’s physical custody.” (§ 361, subd. (d).)

We review jurisdiction findings and removal orders “to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court . . .” (*In re R.T.* (2017) 3 Cal.5th 622, 633.) The evidence regarding M.D. was uncontroverted in this case, and uncontrovertedly insubstantial.

There were no facts before the juvenile court that amount to substantial evidence supporting jurisdiction over M.D. under subdivision (b) or (j) of section 300. M.D. never lived with Mother. She saw Mother only about six times a year for short periods of time at Grandmother’s home. M.D. never saw Mother use drugs. Mother indicated she had no desire or intention to remove M.D. from Grandmother’s care. There was no substantial evidence Mother’s substance abuse caused M.D. “serious physical harm or illness” in the past, and no evidence Mother’s conduct

was likely to put M.D. at risk for future harm. (§ 300, subd. (b)(1); see also, e.g., *In re Isabella F.* (2014) 226 Cal.App.4th 128, 140-141 [father's mental illness did not place daughter at substantial risk of harm where father was not involved in daughter's life, daughter had not seen him in years, and daughter did not know of father's mental condition] (*Isabella F.*).) There was also insufficient evidence that the treatment of M.D.'s siblings threatened M.D.'s well-being within the meaning of section 300, subdivision (b). (§ 300, subd. (j).)

The lack of evidence supporting dependency jurisdiction over M.D. requires reversal of the associated removal order as well. (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 565; *Isabella F.*, *supra*, 226 Cal.App.4th at p. 141.)

DISPOSITION

The juvenile court's jurisdiction findings are vacated as to M.D. and the order removing her from Mother's custody is reversed. The matter is remanded to the juvenile court with directions to dismiss the dependency petition as to M.D.

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BAKER, Acting P. J.

We concur:

MOOR, J.

JASKOL, J.*

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