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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B293031
(Los Angeles County
Super. Ct. No. 18CCJP04886A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LAUREN P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Kim L. Nguyen, Judge. Affirmed.

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

Tarkian & Associates and Arezoo Pichvai for Plaintiff and
Respondent.

Lauren P. (mother) appeals from the juvenile court's orders declaring her son, S.D., a dependent child under Welfare and Institutions Code section 300, subdivision (b),¹ and releasing him to mother under various conditions. Mother contends (1) substantial evidence does not support the jurisdictional finding that mother's marijuana use placed S.D. at serious risk of physical harm or damage, and (2) the petition as amended and sustained is facially insufficient. We affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL HISTORY

In May 2018, DCFS received a referral alleging that 11-month-old S.D. (born June 2017, 14 months old by the time of mother's adjudication hearing in September 2018) was emaciated and neglected, that mother used methamphetamines, and that father used heroin.²

DCFS made an unannounced visit to the referral address on May 17, 2018. Mother was renting the home. Maternal aunt was present during the inquiry. Maternal grandfather lived in the back house. DCFS reported no evidence of drug or alcohol abuse in the home. Mother was cooperative, easy to engage, and affectionate and attentive to S.D.'s needs.

¹ Statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal, though he will be mentioned as necessary to discuss the issues on appeal.

Mother was forthcoming about her methamphetamine use. She said that she stopped before her pregnancy with S.D., but was a current user of marijuana to help with her insomnia. Mother stated that she used marijuana outside the residence after S.D. went to sleep, and that the other adults in the residence were available if supervision of S.D. was needed.

Mother denied the accusations of neglect. She admitted that father had a history of substance abuse, including methamphetamines and heroin. She said that they had separated a month earlier due to his continued drug use.

DCFS assessed S.D. to be developmentally on track. He had no visible marks or bruises, was nourished, and was actively crawling around the living room.

DCFS later received a call from paternal grandmother. She reported that when returning S.D. to mother's residence after a weekend visit, she smelled alcohol on the breath of maternal grandfather and mother. She also reported that maternal aunt, who resided with mother, had issues with substance abuse.

On May 31, 2018, DCFS made an unannounced visit to mother's residence. An adult male was sitting on the curb outside the home. He identified himself as S.D.'s father. He explained he had been living in his car and that although he visited S.D., he was not allowed inside the residence. Father stated that he had a criminal history and was testing randomly for the probation department. He reported that the maternal aunt was addicted to methamphetamine.

On May 31, 2018, DCFS interviewed maternal grandfather. He admitted to drinking two to four shots of liquor every other day, but denied getting drunk or driving while drunk. He claimed to have hit rock bottom and to be finished with heavy intoxication.

Subsequently, the maternal grandfather reported that mother had received a text message from the police stating father had tried to kill himself by hanging. The police reported that father suffered serious injuries but would survive. Father's probation officer reported that he tested positive for heroin and entered an inpatient facility for rehabilitation.

The court ordered S.D. removed from father's custody. On August 2, 2018, DCFS filed a petition alleging S.D. was at risk of harm under section 300, subdivision (b)(1) (failure to protect) as father abused various drugs, including heroin, which rendered him incapable of providing care and supervision of S.D.

The petition alleged a second count as to mother under section 300, subdivision (b)(2), as follows. Mother had a history of substance abuse including methamphetamine and was a current user of marijuana, which rendered her incapable of providing regular care for S.D. Further, on June 1 and June 15, 2018, mother had a positive toxicology screen for marijuana. On June 15, 2018, and on prior occasions, mother was under the influence of marijuana while S.D. was in her care and supervision. S.D. was of such a young age that he required constant care and supervision. Mother's substance abuse interfered with providing regular care and supervision of S.D. Mother's substance abuse endangered S.D.'s physical health and safety and

created a detrimental home environment, placing S.D. at risk of serious physical harm and damage.

Detention Hearing

At the detention hearing, the court ordered S.D. released to mother under the supervision of DCFS until the adjudication hearing. The court ordered mother and S.D. to live at the home of the paternal grandmother. Father was allowed supervised visitation, three times a week for three hours each.

Jurisdiction/Disposition Report

According to the Jurisdiction/Disposition Report, on August 14, 2018, CSW observed S.D. was dressed appropriately and did not have any marks or bruises. He appeared comfortable and well bonded in mother's presence. CSW found mother to be attentive and patient with S.D., and she watched him during the entire interview.

Mother stated that she used methamphetamines when she was 16, but not currently. She now used marijuana to treat her insomnia and the trauma she suffered from being with father. Mother stated, "I only smoke at night around 9:30 p.m. when [S.] is asleep or I'll be up all night." When interviewed, father denied that mother was using methamphetamines, and confirmed she was using marijuana.

DCFS reported that mother's reliability in following court orders was uncertain. She facilitated visits with father while he was under the influence. Further, mother lacked insight concerning her behavior and the effect it could have on the child's emotional well-being. DCFS

stated that maternal grandfather was an alcoholic, and maternal grandmother and maternal aunt were drug addicts. DCFS inferred there was a pattern of substance abuse among the maternal relatives.

Jurisdiction/Disposition Hearing

At the Jurisdiction/Disposition Hearing, father entered a no contest plea to the petition. However, at DCFS's request, the court continued the hearing as to mother to permit further investigation.

Before mother's adjudication hearing, DCFS submitted three Last Minute Information (LMI) reports. The first reported that maternal aunt was a user of methamphetamine and was residing in mother's home. Maternal aunt's boyfriend, who was a felon and drug user, was also staying at the home. Further, maternal grandfather was drinking daily to extreme intoxication. In S.D.'s presence, he engaged in loud, abusive, and violent altercations with mother's landlord, maternal aunt, and mother. Also, S.D. was present when law enforcement arrived to defuse the altercations. Mother did nothing to alleviate the situation, and failed to notify DCFS of the issues presented.

The second and third LMI requested a change in recommendation. Mother had been living with S.D. at the paternal grandmother's home as ordered, but on September 14, 2018, the paternal grandmother asked mother to leave. According to the paternal grandmother, mother had made negative comments about the home and was excessively drinking. According to mother, the paternal grandmother had been drinking and the presence of her husband made mother feel uncomfortable. Mother reported she was staying with a co-worker, but did not disclose the

address. Paternal grandmother reported that maternal grandfather picked up mother when she left the home and had driven her back to return the house key the following day.

DCFS alleged that mother was in violation of the court ordered safety plan for S.D. The address where mother was purportedly living with a co-worker was unknown. Mother and father were allegedly in communication despite being ordered not to visit together. Mother had not been forthcoming with DCFS. She was residing with the maternal grandfather, who is a severe alcoholic, and mother purposely did not inform DCFS that maternal aunt was also residing at the home.

Adjudication Hearing

On September 18, 2018, at the Adjudication Hearing, the court admitted all reports into evidence. Concerning the count of the petition against mother (count b-2), S.D.'s counsel contended DCFS failed to meet its burden to establish how mother's marijuana use placed S.D. at risk of harm. She argued there was no evidence that mother was using methamphetamines while the case was pending.

As to marijuana use, S.D.'s counsel contended that mother was living with other adults in the home, so the child had adequate supervision. To the extent that there was any risk of harm, she asserted that the issue was mother's choice of caretakers, not her marijuana use.

Similarly, mother's counsel argued that there was no evidence to demonstrate mother's marijuana use ever reached the point of abuse. She further asserted that the petition failed to allege any specific facts

showing that S.D. was at risk of harm from the persons who lived with mother.

Counsel for DCFS requested that the court sustain the allegation as pled. However, the court amended count b-2 to state mother had a history of illicit substance abuse, including methamphetamine, and is a current user of marijuana, which renders her incapable of providing regular care for the child. The court reasoned that mother indicated she is a frequent user of marijuana and places her child in the care of individuals who have used alcohol and engaged in domestic violence, thereby placing S.D. at substantial risk of serious physical harm. The court found S.D. to be a person described by section 300, subdivision (b), and ordered S.D. released to mother so long as she provided the address of a new residence. DCFS was instructed to do a walkthrough of the home and approve the individuals that will be living there. Mother was ordered not to monitor any visitations with maternal grandfather, paternal grandmother, and father. Maternal aunt was restricted from having contact with S.D.

DISCUSSION

I. Sufficiency of the Evidence

Mother contends the court's jurisdictional finding that S.D. comes within section 300, subdivision (b) is not supported by substantial evidence. We disagree.³

³ DCFS contends that mother's appeal is moot, because the petition was sustained as to father, thereby providing an independent ground for jurisdiction over S.D. However, because the court's finding as to mother

We apply well-settled rules of review. ““In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. ‘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.’ [Citation.] ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citation.]’ [Citation.]” [Citation.]” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1453.)

As here relevant, to support a jurisdictional finding under section 300, subdivision (b) the evidence must show three elements:

might adversely affect her in future proceedings, we exercise our discretion to consider mother’s appeal.

DCFS also contends that mother fails to challenge that portion of the sustained petition that alleged she abused methamphetamine. However, there was no substantial evidence demonstrating mother’s current abuse of methamphetamine or how such purported abuse put S.D. at risk. Further, the court sustained the petition on the express ground that mother’s inability to supervise and care for S.D. due to her marijuana use put S.D. at risk. Thus, we address mother’s contention that substantial evidence does not support the ground of jurisdiction expressly relied on by the court.

(1) neglectful conduct by the parent of the type described by the statute; (2) causation; and (3) “serious physical harm or illness” to the minor or “substantial risk” of such harm or illness. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)⁴ Here, the applicable category of conduct is “the failure or inability of [the] parent . . . to adequately supervise or protect the child.” (§ 300, subd. (b)(1).) “[T]he purpose of section 300, subdivision (b) is to protect the child from a substantial risk of *future* serious physical harm and that risk is determined as of the time of the jurisdictional hearing.” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1397.)

In the instant case, the evidence showed that S.D. was an infant, only 14 months old. Mother admitted that she regularly smoked marijuana outside the residence when S.D. was asleep, leaving him in the care of other adults who were present at that time. By the time of the hearing, mother had violated her court ordered safety plan. She was ordered to stay with S.D. at the home of the paternal grandmother. However, after being asked to leave that home by the paternal

⁴ As relevant, section 300, subdivision (b)(1) states: “The child has suffered, or there is 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 the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide or the child with adequate food, clothing, shelter, or medical treatment, 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.”

grandmother, she left with S.D., purportedly to live with a co-worker. Yet she failed to tell DCFS the identity of the co-worker or the address of the home.

Rather, the evidence supported the inference that mother used the excuse of living with a co-worker as a ruse to hide the fact that she actually had returned with S.D. to live at her original rental home. According to the paternal grandmother, when mother left, she was picked up by the maternal grandfather, who also drove mother back to return the key. Maternal grandfather lived at the rental home, and his presence there with mother and S.D. was extremely problematic. He was regularly heavily intoxicated. He was abusive and violent to the maternal aunt, mother's landlord, and mother in the presence of S.D. Besides maternal grandfather being present, maternal aunt lived at the residence. She was a known methamphetamine user and her boyfriend was a convicted felon.

In this context, when mother was outside the home smoking marijuana, she was unable to adequately supervise or care for S.D. Rather, she left S.D., a 14-month-old infant, under the supervision of other adults, including maternal grandfather and maternal aunt. But doing so presented a substantial risk of serious physical harm to S.D. Maternal grandfather was not a responsible caretaker, and he presented a clear risk of impeding other adults because he had a history of verbally and physically abusing the maternal aunt and mother's landlord. Moreover, maternal aunt, who regularly used methamphetamine, was not a responsible caretaker. Her regular illicit drug use increased the risk of harm to S.D.

A child of S.D.'s age requires careful supervision at all times by responsible and responsive adults who can keep the child safe from any number of risks that could cause substantial injury. Mother regularly abandoned the role of caretaker at the times she smoked marijuana, leaving S.D. under the care and supervision of other people under conditions demonstrating a serious risk that those persons could not provide a safe environment for S.D. On this basis, substantial evidence supports the court's determination that mother's use of marijuana placed S.D. at substantial risk of serious physical harm.

Mother relies upon *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 (*Destiny S.*), *In re Rebecca C.* (2014) 228 Cal.App.4th 720 (*Rebecca C.*), and *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*) to support her argument that DCFS failed to meet its burden of proof concerning the elements of causation and harm. These decisions do not change our analysis.

In *Destiny S.*, the child was 11 years old and the appellate court determined that DCFS failed to show the mother's drug use caused her to neglect the minor. In that context, the court held that marijuana use, without more, does not bring the minor within the jurisdiction of the dependency court. In *Rebecca C.*, the mother entered a drug program to treat her substance abuse, the child was 13 years old, and there was no indication of serious physical harm from mother's sporadic drug use.

In *Drake M.*, the father used marijuana before work and was no longer under the effects when he would tend to the child afterwards. The appellate court held that father's marijuana use did not place the

child at substantial risk of harm because there was no evidence that the father was unable to adequately supervise or protect his child. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 768–769.)

Unlike these decisions, in the instant case, jurisdiction is not based on a parent’s marijuana use alone, divorced from any indication in the record that such use puts the child at risk. Rather, here, when mother uses marijuana, she exits the home, and leaves S.D., an infant of 14 months, in the care of adults who are not responsible caretakers, thereby creating a serious risk of harm to S.D. given his tender years. “Exercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child 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.’ [Citation.]” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) That is the situation here.

II. *Sufficiency of the Petition*

Mother contends that the petition, as amended and sustained, failed to allege adequate grounds for jurisdiction under section 300, subdivision (b), because it did not allege how mother failed to protect S.D., and did not include facts concerning the maternal aunt and maternal grandfather residing in the home. We disagree.⁵

A section 300 petition need not “regurgitate the contents of the social worker’s report into a petition.’ However, a facially sufficient

⁵ Because mother raised the sufficiency of the petition at the adjudication hearings, we decline to treat the issue as forfeited.

pleading is nevertheless necessary. The petition should present essential facts necessary to establish at least one valid ground for asserting juvenile court jurisdiction.” (*In re Janet T.* (2001) 93 Cal.App.4th 377, 389, fn. omitted.)

As amended and sustained by the juvenile court, the allegations in the b-2 count against mother alleged the following: (1) mother was a current user of marijuana, which rendered her incapable of providing regular care for S.D.; (2) on June 1 and June 15, 2018, mother had a positive toxicology screen for marijuana; (3) on June 15, 2018, and on prior occasions, mother was under the influence of marijuana while S.D. was in her care and supervision; (4) S.D. was of such a young age that he required constant care and supervision; and (5) mother’s marijuana use interfered with providing regular care and supervision of S.D., endangered S.D.’s physical health and safety, and created a detrimental home environment, placing S.D. at risk of serious physical harm and damage.

These allegations suffice to state jurisdiction under section 300, subdivision (b). In essence, as amended and sustained, the petition alleged that mother was under the influence of marijuana while S.D. was in her care, rendering her unable to provide proper care in light of S.D.’s young age, and placing him at risk of serious physical harm and damage. These facts adequately state grounds for jurisdiction. That the petition did not allege specific facts regarding the maternal aunt and maternal grandfather being unable to provide adequate care and supervision does not render the petition fatally insufficient.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.