Filed 7/30/15 In re Ashley B. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Ashley B. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Lauren B., Defendant and Appellant.	B260659 (Los Angeles County Super. Ct. No. CK77250)

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

Lauren B. (mother) appeals a September 4, 2014 jurisdictional order declaring her four children juvenile court dependents. Mother contends the juvenile court's jurisdictional findings were not supported by substantial evidence because the only allegation of the petition—that mother was incarcerated and failed to make an appropriate plan for her children—was no longer true at the time of the jurisdictional hearing.

We conclude that although mother was no longer incarcerated at the time of the jurisdictional hearing, there was substantial evidence that the children remained at substantial risk of future harm. We therefore affirm the jurisdictional order.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Detention

Mother has four children: Ashley B. (born February 2004), Jeremiah B. (born April 2006), L.P. (born October 2009), and Aubrey B. (born March 2012). The Los Angeles Department of Children and Family Services (DCFS) initially became involved with the family in May 2009, when the juvenile court sustained a petition alleging that Ashley B., Jeremiah B., and unborn child L.P. were at risk due to mother's admitted use of marijuana while pregnant with L.P. In connection with that petition, the family received services from DCFS from May 2009 through July 2010. After services were terminated, DCFS received three subsequent reports of neglect in 2012 and 2013; each was found to be inconclusive or unfounded.

DCFS again became involved with the family on May 24, 2014, when it received a report alleging neglect by mother. A caller, later identified as G.S., reported that mother had left three of the children, Ashley B., L.P., and Aubrey B., in her care on May 20, 2014.[1] Mother had asked G.S. to watch the children for a few hours while she "[took] care of some business," but four days later, she still had not returned. G.S. called DCFS because she was running out of food and diapers and had not been able to contact mother.

[1] The fourth child, Jeremiah B., was with maternal aunt A.H., with whom he had been living since he was approximately two months old.

G.S. said the family was homeless and moved from one home to another. She believed mother was "selling her body (prostituting) and possibly using drugs."

An investigation revealed mother had been arrested for prostitution and incarcerated. Mother reported that she had been arrested on May 20, 2014, while on her way to pick up the children, but her criminal record indicated that mother actually was arrested two days later, on May 22, 2014, and released on May 27, 2014. DCFS's investigation also revealed that the family was homeless, and that mother had been arrested and convicted of misdemeanor theft in December 2013, for which she had been sentenced to 12 days in jail and three years probation. On the basis of all of these facts, DCFS evaluated the children at high risk for future abuse and neglect.

II.

Petition

On May 29, 2014, DCFS filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (j)[2] alleging: "On 5/20/2014 [mother] was incarcerated. The mother failed to make an appropriate plan for the [children's] care and supervision. The mother's whereabouts were unknown. The mother's failure to make an appropriate plan for the [children's] care and supervision endangers the children's physical health and safety and places the children and the children's sibling, Jeremiah, at risk of physical harm, damage and danger."

A detention hearing was held on May 29, 2014. Mother was present and denied the allegations of the petition. The court found a prima facie case for detaining the children and finding they were persons described by section 300, subdivisions (b) and (j). The court ordered the children placed in foster care, granted mother monitored visitation and family reunification services, and ordered mother to submit to weekly drug testing.

[2] All subsequent statutory references are to the Welfare and Institutions Code.

III.

Jurisdictional/Dispositional Hearing

As of June 27, 2014, mother's whereabouts were unknown and she had not visited the children since being released from jail. Mother ultimately was located in Las Vegas, Nevada, where she was interviewed by telephone by a dependency investigator on July 7, 2014. Mother said she left the children with G.S. so she could visit her father in North Hollywood. She said she had been arrested for loitering because she "was staying at a hotel," but claimed she did not know why law enforcement thought she was loitering. Mother also said she had no way to tell G.S. she was incarcerated because law enforcement took away her cell phone, and she was not allowed to make a collect call from jail.[3]

Mother admitted to a history of abusing alcohol and marijuana and said she had never completed a substance abuse treatment program. She said she was unemployed and did not receive welfare benefits. As of July 17, 2014, she had not had any visits with the children.

DCFS filed the operative first amended petition on July 17, 2014. The allegations of paragraphs (b) and (j) were unchanged.[4]

Mother did not appear at the September 4, 2014 jurisdictional hearing, but through her attorney argued that the jurisdictional allegations should be dismissed. Mother's counsel argued that mother intended to leave her children for only two hours, but was unexpectedly arrested. After her arrest, mother was unable to call G.S. from the jail. Counsel urged that mother had left the children in G.S.'s care several times before without incident; further, because mother was no longer incarcerated and her criminal case had been resolved, the allegations of the petition were no longer true.

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[3] Mother had said previously both that she could not make a collect call from jail and that G.S. did not accept collect calls.

[4] The first amended petition added a new paragraph (b)(2), alleging domestic violence between mother and L.P.'s father. That allegation was not sustained, and therefore it is not relevant to this appeal.

Counsel for the children argued the court should sustain the allegations against mother. Counsel noted that although mother was no longer incarcerated, she failed to make an appropriate plan for the children during her incarceration, which led G.S. to call DCFS. Further, counsel said, "We do have the mother's history. This is not the first time, unfortunately, that the children find themselves somewhat in [an] abyss because of their mother's activities."

Counsel for DCFS joined in the argument of the children's counsel, adding that there was a lack of evidence that mother was able to take care of the children. Counsel noted that mother had not visited the children, had left the state, and was not present at the hearing. Counsel thus asked the court to sustain the petition because mother was in no better position to care for her children than she had been at the time of detention.

The court found by a preponderance of the evidence that the allegations of paragraphs (b)(1) and (j)(1) of the amended petition were true. Subsequently, the court ordered that the children remain placed in foster care, noting that "[mother's] behavior with the combination of going and not being stable is all a concern of the court with respect to safety, and although she was here on September 19th and July 7th, all her other court dates she has missed [and] has fled between Los Angeles and Las Vegas."

Mother timely appealed.

CONTENTIONS

Mother contends that the juvenile court's jurisdictional findings are not supported by substantial evidence because she was not incarcerated at the time of the jurisdictional hearing, and thus the sole factual basis on which the petition was sustained was no longer true.

DISCUSSION

I.

Standard of Review

When reviewing a juvenile court's jurisdictional finding or order, the appellate court must determine whether substantial evidence supports the court's conclusion. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) "In reviewing the sufficiency of the evidence on appeal, we look to the entire record for substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Instead, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. [Citations.]" (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387-1388.)

II.

General Principles

Section 300, subdivision (b) provides that a child is a juvenile court dependent if he or she "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 willful or negligent failure of the child's parent or guardian to . . . provide the child with adequate food, clothing, shelter, or medical treatment. . . ." Section 300, subdivision (j), provides that a child is a juvenile court dependent if "[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." Because the factual predicate for the petition's subdivision (b) and subdivision (j) allegations are identical, we consider them together.

" 'The basic question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.' " (*In re J.N.* (2010)

181 Cal.App.4th 1010, 1022, italics added.) For this reason, past harm, standing alone, does not support the exercise of dependency jurisdiction. (*Ibid.*) However, in determining whether the child is in present need of the court's protection, the court may consider past events to determine whether they are probative of future harm. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169.) "While past harmful conduct is relevant to the current risk of future physical harm to a child [citations], the evidence as a whole must be considered. '[P]revious acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]" (*In re J.N., supra,* at p. 1025.)

In evaluating current risk based on past conduct, "a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances." (*In re J.N., supra,* 181 Cal.App.4th at pp. 1025-1026.)

The Court of Appeal applied this standard to hold past events probative of future harm in *In re Petra B., supra,* 216 Cal.App.3d 1163. There, Petra was accidently burned on her face, neck, and upper chest, with burns covering four percent of her body. (*Id.* at p. 1167.) Petra's parents treated her at home with herbs, but did not take her to the hospital because they believed Petra's condition was not serious and God "created our bod[ies] to repair themselves." (*Ibid.*) Eight days later, a social worker took Petra to the hospital, where a doctor found the wounds were not healing and that Petra had an infection he believed was unlikely to improve without medical attention. (*Ibid.*) Petra was prescribed antibiotics and, because her wounds were too deep to heal without

intervention, skin grafts were performed by plastic surgeons to cover the wounds and prevent further infection. (*Ibid.*)

The San Diego County Department of Social Services filed a petition pursuant to section 300, subdivision (a), alleging that Petra should be declared a juvenile court dependent because her parents failed to provide adequate medical care and their alternative lifestyle placed her at risk of abuse or neglect. (*In re Petra B.*, *supra*, 216 Cal.App.3d. at p. 1167.) The court sustained the petition. (*Id*. at p. 1168.)

On appeal, the parents argued that there was insufficient evidence to establish Petra needed the court's protection because by the time of the jurisdictional hearing she was no longer in danger of infection or other complications from the wound. (*In re Petra B.*, *supra*, 216 Cal.App.3d at p. 1169.) The Court of Appeal disagreed and affirmed. It explained that the issue before the court "was not merely whether the wounds had healed but whether Petra's parents were capable and willing to exercise proper medical care." (*Ibid*.) As to that issue, the court found substantial evidence supported the juvenile court's conclusion that at the time of the hearing, the parents were *not* willing to exercise proper medical care. It explained: "The evidence at the hearing indicated that the parents had known their herbal remedy was ineffective in treating Petra's wounds because they had observed the lack of healing of the deep wound yet they did not take Petra to a doctor. They were waiting to see if Petra's wounds would worsen or continue not to heal. Petra's mother stated she would have taken Petra to a doctor if the infection had grown serious or if 'the wound didn't heal for months and months.' . . . When Petra's mother was asked if, after hearing the doctor's comments about the infection risk, she would take her daughter to a hospital if a similar incident were to occur in the future, the mother answered yes—to avoid dealing with the Department again." (*Id*. at pp. 1169-1170.) Thus, the court concluded, the evidence was sufficient to support the juvenile court's assumption of jurisdiction because "at the time of the hearing, the parents continued to believe the herbal treatment was an adequate treatment despite their recognition it had been completely ineffective in healing Petra's deep wound and despite the doctor's statements about the risk of infection. This attitude of the parents and confusion about

proper medical treatment posed a then-existing threat to Petra's well-being and justified the court's assumption of jurisdiction." (*Id*. at p. 1170.)

In contrast, in *In re Savannah M.*, *supra*, 131 Cal.App.4th 1387, evidence of a single past event was held not to support the exercise of juvenile court jurisdiction because it was found not probative of future harm. There, parents left their two-year-old twins in the care of a family friend for 20 or 30 minutes while they went to the store. Upon returning home, they found the friend changing one of the children's diapers, which the mother thought strange because the child's diaper had been changed immediately before the parents left the house. (*Ibid.*) The parents went to the store two more times that evening, again leaving the children in the friend's care. (*Ibid.*) When they returned home the final time, they found the friend sexually abusing one of the children. The parents immediately called the police, who took the children into protective custody and arrested the friend. (*Ibid.*) Subsequently, the juvenile court sustained allegations under section 300, subdivisions (b) and (j), and the mother appealed.

The Court of Appeal reversed, finding substantial evidence did not support the juvenile court's finding that the *past* incident of sexual abuse put the children at risk of serious *future* harm. (*In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1395.) The court explained that the diaper-changing incident was insufficient to cause a " 'reasonably aware' " parent to foresee future sexual abuse, noting that parents should be permitted to trust a family friend who had never given them reason to doubt his good intentions towards their children. (*Id.* at pp. 1396-1397.) Further, the parents reacted appropriately when they found the friend sexually abusing the child: They immediately removed him from their home and called the police to report the incident. (*Id.* at p. 1397.) The court thus found that substantial evidence did not support the juvenile court's finding that "there was a substantial risk, *at the time of the hearing*, that [the child] will suffer, *in the future*, serious physical harm as a result of her parents' negligent failure to protect her from the conduct of a custodian or caretaker." (*Id*. at p. 1398.)

III.

Analysis

Mother contends the jurisdictional findings are not supported by substantial evidence because she was not incarcerated at the time of the jurisdictional hearing, and thus the factual basis for the jurisdictional findings was no longer true. The cases above make clear, however, that the question properly before the juvenile court was not whether mother was incarcerated at the time of the hearing, but whether her *past* failure to make an appropriate plan for her children during that incarceration suggested that the children *currently* were at risk of future serious harm. For the reasons that follow, substantial evidence supports the juvenile court's finding that the children were at risk of such future serious harm.

First, although mother claimed she was arrested on May 20, the same day she left her children with G.S., the record suggests otherwise. Law enforcement records show that mother actually was arrested on *May 22*, two days later. The evidence thus supports the conclusion that mother voluntarily left her children for two days with a caregiver who had agreed to care for them for only a few hours, without adequate food, clothing, or diapers, and without notifying the caregiver that she would not return as expected.

Second, mother's May 22 arrest was not an isolated incident. Law enforcement records show that in addition to the May 22, 2014 arrest, mother had also been arrested in December 2013, and served 12 days in jail. These arrests suggest a pattern of illegal activity that put mother's children at future risk of being left without proper care or supervision.

Third, after being arrested on May 22, mother failed to contact G.S. or any other family member to make a care plan for her children. Although mother claimed she was not able to make a plan because her cell phone was taken from her and she was not allowed to make a collect call, there was no evidence to corroborate her statements,

which are inconsistent with the policy of the Los Angeles Police Department.[5] The juvenile court was free to conclude that mother's claim was not credible. (E.g., *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1463 [" '[S]o long as the trier of fact does not act arbitrarily and has a rational ground for doing so, it may reject the testimony of a witness even though the witness is uncontradicted.' "].)

Fourth, mother's conduct after she was released from jail was not consistent with protection of her children's well-being. Not only did mother fail to arrange care for her children *during* her incarceration, she failed to make an appropriate plan for the children *after* her release. Mother was released from jail on May 27, but did not contact DCFS until approximately July 7. In other words, mother waited almost six weeks before assisting DCFS in finding a placement for her children. During those six weeks, mother did not visit the children or provide DCFS with any information about their medical history; she finally provided DCFS with a medical history in July, but as of the date of the jurisdiction/disposition report, she still had not visited any of her children.

On the basis of this evidence, the juvenile court reasonably could conclude that mother was likely to engage in similar conduct in the future, again putting her children at risk of serious harm. As we have said, in evaluating current risk based on past conduct, the court may consider evidence "of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident." (*In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1025-1026.) Here, nothing in the record suggests mother has ever acknowledged the risk to her children caused by her illegal behavior—to the contrary, she

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[5] DCFS notes on appeal that the Los Angeles Police Department, Jail Division, Public Information Plan (Jan. 2010) provides that arrestees have the right to three free telephone calls within the local dialing area, or at their own expense outside the local area. An arrestee may call an attorney, a bail bondsman, or a relative or other person. <http://assets.lapdonline.org/assets/pdf/Jail_PublicInformationPlan_2010Final.pdf> [as of July 31, 2015].)

denied engaging in illegal behavior, claiming that she was arrested because she "was at the wrong place at the wrong time." And, nothing in the record suggests that mother has taken any steps to avoid future arrest or to ensure that her children are properly cared for in the event of an arrest.

For all these reasons, the present case is distinguishable from *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662 (*Maggie S.*) and *In re Noe F.* (2013) 213 Cal.App.4th 358 (*Noe F.*), on which mother relies. In *Maggie S.*, the mother was incarcerated at the time she gave birth to A.C., and the child was declared a dependent of the juvenile court. (*Maggie S.*, *supra*, at p. 665.) The Court of Appeal reversed the juvenile court's finding that the mother failed to arrange care for the child during her incarceration, noting that the mother had designated her godmother, who was willing to care for the child, as the child's caregiver. (*Id*. at p. 672.) The court therefore concluded that because the mother " 'could *arrange for* care of [the minor] during the period of her incarceration, the juvenile court had no basis to take jurisdiction in this case.' " (*Ibid*.) The court similarly concluded in *Noe F.*, finding that juvenile court jurisdiction was not appropriate because although mother was incarcerated, she identified two suitable placements for the child. (*In re Noe F.*, *supra*, at p. 366.)

The present case is distinguishable. The mothers in *Maggie S.* and *Noe F.* made appropriate plans for their children, thus ensuring that the children would be cared for during their incarceration. Here, in contrast, mother did *not* make an appropriate plan for her children: She left them with a caregiver who had agreed to care for them for only a few hours, and did not provide adequate food, clothing, or diapers to meet their needs. She also failed to assist DCFS in finding an appropriate placement for the children during and after her incarceration. *Maggie S.* and *Noe F.*, therefore, do not support reversal in this case.

DISPOSITION

The jurisdictional order is affirmed.

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EDMON, P. J.

We concur:

KITCHING, J.

ALDRICH, J.