Filed 2/14/17 In re Arielle C. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ARIELLE C. et al., Persons Coming Under the Juvenile Court Law.	B269784 (Los Angeles County Super. Ct. No. CK83298)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MARY C., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Julie F. Blackshaw, Judge. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

Mary C., mother of now four-year-old Arielle C. and three-year-old Jesse C., appeals from the juvenile court's jurisdiction findings and disposition orders declaring the children dependents of the juvenile court, removing them from the care and custody of Mary and presumed father Rodolfo G. and placing them with their maternal aunt under the supervision of the Los Angeles County Department of Children and Family Services (Department). Mary contends the court's findings were not supported by substantial evidence and, consequently, the disposition orders must be reversed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Detention of the Children*

On June 21, 2015 Mary was found wandering in a public park around 3:00 a.m. with her young children, dirty and barefoot, in tow. She told a responding police officer she and the children had been exposed to uranium and were "on fire and burning up." They were taken to a local hospital, where Mary was placed on an involuntary psychiatric hold under Welfare and Institutions Code section 5150.[1] The children were also detained from Rodolfo, who had been driven to the hospital by his adult son and appeared to be intoxicated. He admitted to a social worker he had been drinking at his son's house, ordinarily drank alcohol every day and was on probation for driving under the influence of alcohol.

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[1] Statutory references are to this code unless otherwise stated.

The investigation disclosed Mary and Rodolfo had previously been subject to dependency jurisdiction after Mary and Arielle had tested positive for methamphetamine when Arielle was born in May 2012. In that proceeding the juvenile court sustained allegations Mary had failed to protect Arielle from harm caused by her illicit drug use and mental illness, which was exacerbated by her failure to take prescribed psychotropic medications. The court also sustained a failure-to-protect allegation against Rodolfo based on his abuse of methamphetamine and alcohol. Both parents received reunification services and completed court-ordered substance abuse and parenting programs. Arielle was returned to the home of her parents in January 2014, and jurisdiction was terminated six months later.[2]

According to Mary's sister, with whom the children were later placed, Mary stopped taking her medication to nurse Jesse, who was born in April 2013. She had been managing her issues with drugs and mental health fairly well until shortly before she was found in the park.

On June 24, 2015 the Department filed a petition on behalf of Arielle and Jesse pursuant to section 300, subdivision (b), alleging Mary had mental and emotional problems, including bipolar disorder, and her failure to take her psychotropic medication as prescribed resulted in her involuntary hospitalization; Arielle and Jada were prior dependents of the

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[2] Mary's first child, Jada C., was detained from her mother in July 2010 based on Mary's history of violent altercations with her own mother and Jada's father, as well as her inconsistently treated mental illness. Jada now resides with her father and was not detained in this action.

juvenile court due to Mary's mental and emotional problems; Rodolfo had a history of substance abuse and was a current abuser of alcohol; and Mary had failed to protect the children from Rodolfo's substance abuse.

The court ordered the children detained and granted monitored visits for the parents.

2. *The September 22, 2015 Jurisdiction/Disposition Hearing*

At the contested jurisdiction hearing Mary testified her June 2015 involuntary hospitalization had resulted from an adverse reaction to medication she had been prescribed to treat bronchitis. On the way to the hospital, she explained, her cell phone had died; and she had asked a pedestrian if she could use his phone to call the emergency hotline. According to Mary, emergency room personnel placed Mary on a section 5150 hold only after they had spoken with her mother and learned of her earlier "mental issues." She claimed she had been compliant with her prescribed medication in 2014 and 2015, but testified inconsistently as to interruptions to her regimen caused by breastfeeding Jesse.

Asked if she remembered having been found in a public park with the children in the middle of the night, Mary began to describe a conflict with her mother earlier that day she attributed to her mother's distress that Mary had been reading the Koran. When the court attempted to redirect Mary to the question asked, Mary replied, "I'm so sick of this country," and interrupted the court to say, "Deuteronomy. . . . You have to consult God." She then testified she had been misdiagnosed with bipolar disorder (instead of post-traumatic stress syndrome resulting from childhood sexual abuse) and had never seen Rodolfo under the

influence of drugs or alcohol. Later, in response to the Department's urging the court to sustain the allegations under section 300, subdivision (b), because Mary did not have a full grasp of her mental health issues, Mary again interrupted to accuse her mother of beating her and failing to protect her from molestation.

Having heard Mary's testimony and the argument of counsel, the court sustained the petition, stating, "I did not find Mother's testimony reassuring in the least. She was not very articulate in her testimony. Her speech was slurred. She was confused on several occasions . . . and actually put the children in great risk for her to go out in the middle of the night . . . . By the time she got to the hospital, mentally she was extremely unstable. This is not a safe situation for children at all. And, as to her testimony completely denying any kind of alcohol use by the father, it just is completely not credible." When Mary again interrupted, the court excluded her from the courtroom.

The court continued, "There is significant evidence of father's drinking . . . [and he] arrive[d] at the hospital . . . intoxicated. So the court does find the children [to be] greatly at risk. These are two young children of tender age and neither parent appears to be capable of taking care of children." The court ordered Evidence Code section 730 evaluations for both parents and continued the disposition hearing.

3. *The December 4, 2015 Continued Disposition Hearing*

On October 28, 2015 the court-appointed Evidence Code section 730 evaluator notified the Department neither parent had responded to her repeated attempts to contact them. Mary also failed to respond to inquiries from her counsel, who asked the court to continue the December 4, 2015 hearing to allow him to

consult with his client. The court denied the request. Mary testified she was under psychiatric treatment and her doctors continued to adjust her medication to alleviate her principal symptom of anxiety. She agreed to submit to the Evidence Code section 730 evaluation. Asked what she believed was necessary for the children to be safe in her care, she answered, "My children have always been safe in my care. . . . I've made mistakes in the past, but I take good care of my children. And my children are now suffering, especially the young one . . . ."

Mary's counsel urged the court to return the children to their parents over the objections of counsel for the Department and the children. The court acknowledged Mary had been "a bit more coherent today," but found she "still ha[d] no understanding or appreciation for why her children were removed from her care and the concerns of the court." The court pointed out the children had not been safe in Mary's care and would not be safe until Mary understood and addressed her mental health issues "in an honest, forthright and committed way." The court found there remained a substantial danger to the children's physical and emotional well-being if they were returned to the parents' home and ordered them suitably placed. The court also ordered the Department to provide reunification services to the parents with monitored visits and directed the parents to undergo random drug testing, participate in individual counseling and submit to an Evidence Code section 730 evaluation.

DISCUSSION

1. *The Jurisdiction Findings Are Reviewable*

Mary does not challenge the juvenile court's jurisdiction finding that Rodolfo's history of substance abuse and current

abuse of alcohol placed Arielle and Jesse at substantial risk of physical harm within the meaning of section 300, subdivision (b), a finding that provides an independent basis for affirming dependency jurisdiction over the children regardless of any alleged error in the finding as to Mary. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [jurisdiction finding involving one parent is good against both; ""'the minor is a dependent if the actions of either parent bring [him or her] within one of the statutory definitions of a dependent'""]; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452; *In re Briana V.* (2015) 236 Cal.App.4th 297, 310-311.) As a result, even if we struck the section 300, subdivision (b), finding as to Mary, the juvenile court would still be authorized to exercise jurisdiction over Arielle and Jesse and to make all reasonable orders necessary to protect them. (*In re Briana V.*, at p. 311 ["The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.] In fact, there need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order"]; *In re I.A.*, at p. 1492 ["[a] jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established"]; see generally § 362, subd. (a) [the juvenile court "may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child"].)

Nonetheless, in limited circumstances reviewing courts have exercised their discretion to consider an appeal challenging a jurisdiction finding despite the existence of an independent and unchallenged ground for jurisdiction when the jurisdiction findings "could be prejudicial to the appellant or could impact the

current or any future dependency proceedings" or "the finding could have consequences for the appellant beyond jurisdiction." (*In re J.C.* (2014) 233 Cal.App.4th 1, 4; see *In re Drake M.* (2012) 211 Cal.App.4th 754, 763 [when the outcome of the appeal could be "the difference between [mother]'s being an 'offending' parent versus a 'non-offending' parent," a finding that could result in far-reaching consequences with respect to these and future dependency proceedings, it is appropriate for reviewing court to exercise its discretion to consider appeal on its merits]; *In re D.P.* (2015) 237 Cal.App.4th 911, 917 [same].)

Because Mary was alleged to be an offending parent in this section 300 petition, we exercise our discretion to review her appeal of the jurisdiction findings against her on the merits.

2. *Substantial Evidence Supports the Juvenile Court's Jurisdiction Findings*

"'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."'" (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We 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. (*Ibid.*; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Section 300, subdivision (b)(1), authorizes the court to adjudge a child a dependent 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." Courts have frequently summarized subdivision (b) as requiring proof of: "(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; accord, *In re Jesus M.* (2015) 235 Cal.App.4th 104, 111; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395-1396.) While this much-used shorthand description is helpful, reference to the actual statute details "'the specified forms'" or grounds for dependency jurisdiction in the subdivision. (*In re David M.* (2005) 134 Cal.App.4th 822, 829.) That statutory language makes plain that a substantial risk of harm to a child as a result of the inability of a parent to adequately supervise or protect that child is a basis for dependency jurisdiction without regard to any willful or negligent conduct of a parent. The first clause of section 300, subdivision (b)(1), requires nothing more.

As to the third element of the familiar description of the requirements for a true finding under subdivision (b), it "'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.'" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) Cases finding a substantial physical danger to a child "tend to fall into two factual patterns. One group involves an *identified, specific hazard* in the child's environment—typically an adult with a proven record of abusiveness. [Citations.] The second group involves children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety." (*In re Rocco M., supra,* 1 Cal.App.4th at p. 824.) As numerous courts have recognized, a juvenile court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (See, e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.)

There is no doubt the Department and the court were mindful of Mary's lengthy history with the juvenile court and documented mental instability when faced with the decision to detain her young children and then to exercise jurisdiction over them. Although Mary attempted to minimize the conduct that led to the June 2015 section 5150 hold, her own statements at the jurisdiction hearing led the court to conclude that she was not sufficiently stable to care for her very young children and that she failed to appreciate the risks her mental instability posed to them. The court articulated its concerns in detail, noting Mary's confusion and denial of Rodolfo's alcoholism. Mary's conduct during the hearing became so disruptive the court was forced to order her removal.

Under these circumstances there was more than sufficient support for the court's jurisdiction findings. Because Mary's

significant mental health history amplified the risk posed by her current instability, the court correctly concluded her young children required ongoing Departmental supervision. (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216 [a parent's ""[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue""]; *In re N.M.*, *supra,* 197 Cal.App.4th at p. 165 [the court may consider past events in deciding whether a child presently needs the court's protection].) On this record we find no error.

3. *The Court's Disposition Orders Were Proper*

As explained, Mary's prior history and the sustained allegations against Rodolfo provided the court with ample authority to impose appropriate disposition orders. (See *In re Briana V., supra,* 236 Cal.App.4th at p. 311; § 362, subd. (a).) In any event, Mary's challenge to the disposition orders is limited to her contention the jurisdiction findings against her were not supported by substantial evidence, a contention we have rejected.

DISPOSITION

The orders of the juvenile court are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.