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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re ROY J., et al., Persons Coming
Under the Juvenile Court Law.

B285949

(Los Angeles County
Super. Ct. No. DK22633)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

A.R.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County. Robin R. Kesler, Juvenile Court Referee.
Affirmed.

Cristina Gabrielidis, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Aileen Wong, Deputy County
Counsel for Plaintiff and Respondent.

A.R. (mother) appeals from a judgment declaring her three children, Roy J. (born Mar. 2011); Aaliyah J. (born Mar. 2013); and Prince M. (born Sept. 2015) dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (d).¹ Mother contends that substantial evidence did not support the juvenile court's findings under count (d)(1). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family

The family consists of mother and her three children, who were ages six, four, and one at the time the petition was filed. R.J. is the father of Roy and Aaliyah. Darrell M. was found to be Prince's presumed father.²

The three children were occasionally cared for by maternal grandmother, Blanca, and maternal step-grandfather, Carlos. Blanca and Carlos have two teenage daughters, Joana and Kimberly.

Family history

A September 4, 1999 referral to the Department of Children and Family Services (DCFS) alleging that mother was the victim of ongoing sexual abuse by Carlos was substantiated. Mother was eight years old at the time. On numerous occasions, Carlos would go into mother's room at night and fondle and touch mother's vaginal area. In addition, Blanca and Carlos would hit mother on a regular basis. Mother did not tell Blanca that Carlos was touching her because Blanca was "so in love" with Carlos.

¹ All further statutory references are to the Welfare & Institutions Code.

² R.J. and Darrell M. are not parties to this appeal.

On September 18, 1999, DCFS received a second referral of general neglect because Blanca allowed Carlos into her apartment although DCFS had told Blanca not to allow Carlos near mother. This second referral was deemed unfounded.

In February 2002, a referral alleged that mother's brother, Francisco, then seven years old, and a classmate were fondling a female classmate's genital area. The referral was deemed unfounded.

In October 2004, another referral alleged general physical and emotional abuse of mother and Francisco by Blanca and Carlos. The caller suspected that mother, then 13 years old, had been sexually abused by Carlos. Mother and Francisco were disciplined by kneeling down and holding soda bottles for hours. Francisco had behavioral problems, and mother was not enrolled in school. The allegation was also deemed unfounded.

The referral and investigation leading to the current proceedings

On March 9, 2017, DCFS received a referral alleging that Roy, Aaliyah, and Prince were victims of general neglect by mother. Mother was residing in a motel with the children and engaging in prostitution under the name "Rose." Mother's pimp was an individual named "Darriel or Darrel M." Mother had been a prostitute since she was 13 years old. It was also believed that mother had used marijuana and ecstasy in the children's presence. On one occasion, mother slept for three days, though two of the children tried to wake her. The children would occasionally reside with Blanca and Carlos.

When a social worker went to the motel in search of mother, it was discovered that mother had been going to the motel for three or four years, but had been "red flagged" due to frequent physical fights with an unknown male.

When the social worker was able to contact mother by phone, mother stated that she was homeless. Mother agreed to meet the social worker at the DCFS office and gave permission to the social worker to interview the children, who were at Blanca's home.

At Blanca's home the social worker was told by then 16-year-old Kimberly that she resided there with Blanca, Carlos, and her 15-year-old sister, Joana. Mother's children were then in the home as well. Mother had not visited them for about a month, but called to speak with them. Kimberly had not witnessed any domestic disputes, but observed mother with a black eye. Mother claimed she had a fight with a girl, but Aaliyah stated that "Daddy" hit mother. Kimberly noted that the children referred to Darrell M. as "Daddy."

Aaliyah was interviewed. She did not know what drugs were, but she had seen mother smoking cigarettes. Aaliyah denied witnessing mother acting weird. She stated, "daddy hit mommy with a belt while she was in the shower." Aaliyah could not identify "daddy" by name.

On March 10, 2017, mother and Darrell were interviewed at the DCFS office. The social worker observed that mother's left eye was bruised and purple. Mother stated that she got in a fight with a girl for stealing two weeks earlier.

Mother explained that her employer had cut her hours and she could not afford rent. Mother had moved in with Blanca and Carlos, but the landlord complained so she left. She was homeless since that time.

Mother denied any recent prostitution. The social worker informed mother that her criminal history showed she was arrested for prostitution as recently as January 2017. Mother claimed that since she had previously engaged in prostitution, she was arrested any time she was seen on Long Beach

Boulevard. Mother denied drug use, denied that she and Darrell engaged in physical altercations, and agreed to drug test. Mother stated that Darrell had ended their romantic relationship when he found out he was not Prince's father, but that he still helped her by paying for hotel rooms. Mother denied domestic violence and denied that her children had ever been sexually abused.

When interviewed, Blanca initially denied that Carlos sexually abused mother when mother was a child. She then added that mother claimed she had lied about the sexual abuse. Blanca said that to her knowledge, "everything was fine." Blanca was not interested in legal guardianship of the children due to her health and Kimberly's depression.

On March 15, 2017, mother failed to drug test. On March 29, 2017, mother called the social worker and reported she had been arrested on March 15, 2017, on a warrant for prostitution and fraudulent checks. Mother was released from custody on March 21, 2017. On March 31, 2017, mother tested positive for cannabinoids.

Darrell considered himself to be Prince's father, although the paternity test showed otherwise. Aaliyah and Roy called him "daddy" because they did not have a relationship with their father. Darrell acknowledged that he was on probation for domestic violence. Darrell also confirmed that he had been trying to keep mother from using methamphetamines. Mother last used the drug two months earlier.

Section 300 petition and detention

On April 11, 2017, the juvenile court issued a removal warrant for the children, and DCFS took the children into protective custody.

On April 25, 2017, DCFS filed a petition on behalf of the children pursuant to section 300. Under section 300, subdivision (b) (failure to protect), the petition alleged that (1) mother had a

history of methamphetamine and marijuana use; (2) mother failed to make an appropriate plan for the children in that she left them in the care of Blanca despite knowing that Carlos resided in the home, and that Carlos had molested mother as a child; and (3) R.J., father of Roy and Aaliyah, is a registered controlled substance offender with a criminal history including convictions for possession of a controlled substance and robbery. Pursuant to section 300, subdivision (d) (sexual abuse), the petition repeated the allegations that mother failed to make an appropriate plan for the children's care and supervision by leaving them in a home where Carlos resided, despite knowledge that Carlos had sexually abused mother as a minor.

At the initial detention hearing on April 25, 2017, the juvenile court found that DCFS had set forth a prima facie case that the children were individuals described under section 300, subdivisions (b) and (d). The children were ordered detained from their parents on an emergency basis. On April 27, 2015, the juvenile court ordered family reunification services and weekly monitored visitation.

Jurisdiction/disposition report and hearing

DCFS filed a jurisdiction/disposition report on June 6, 2017. When interviewed, mother admitted to past drug use, but denied current drug use. She admitted having "snorted methamphetamine" when she was seven weeks into her pregnancy with Prince, but then stopped. She resumed "snorting" methamphetamine when Prince was six months old. Mother admitted to smoking marijuana since the age of 10, but stopped during the pregnancy of each child. Blanca would watch the children while mother was under the influence of marijuana.

As to counts (b)(2) and (d)(1), which alleged that she inappropriately left the children in a home with Carlos, mother admitted these allegations were true. Mother acknowledged that

she was molested by Carlos for approximately one year. Mother was seven years old when the abuse began. Carlos would touch her breasts and vagina under her clothes. Mother recalled that Carlos left the home after DCFS became involved, but returned after DCFS closed its case. Mother said Carlos did not touch her again after the investigation, but from then on they had a strained relationship. At the age of 14 mother ran away from home and supported herself through prostitution.

Mother was aware that she was leaving her children at the home where Carlos lived. Mother claims to have spoken with Carlos and told him not to be alone with the children. When Blanca could not be there, Darrell would supervise. Mother denied the children were ever left under Carlos's supervision. Mother had no concerns about giving Carlos access to the children because she forgave him for sexually abusing her when she was a child.

Darrell was also interviewed. He was aware that mother had been sexually abused by Carlos and had confronted Carlos about it, saying that Carlos's sexual abuse of mother was "not right" and that he should not touch Roy, Aaliyah, or Prince. Darrell would "keep an eye" on Carlos, and he and mother made unannounced visits to the home. The children were always with Blanca, and Darrell never observed Carlos caring for the children.

In a July 21, 2017 supplemental report, DCFS reported that mother had entered a substance abuse program.

At the adjudication hearing on July 21, 2017, mother admitted that she made an inappropriate plan for the children, but asked the court to dismiss count (d)(1) only because the children were not at substantial risk of sexual abuse. The children's counsel agreed with mother that count (d)(1) should be dismissed and indicated that the allegations were more

appropriately pled under count (b)(2). The juvenile court found that mother did not sufficiently ensure that when she left her children with Blanca, Carlos would not offend again. Further, the court noted that Carlos had not done anything to show that he was unlikely to offend again.

The juvenile court sustained amended allegations under section 300, subdivisions (b) and (d). Under both (b)(2) and (d)(1), the court sustained allegations that mother failed to make an appropriate plan for her children in that she left them in the home where Carlos resided, which placed them at risk of harm.

Disposition and appeal

The juvenile court declared the children dependents of the court under section 300, subdivisions (b) and (d). The children were removed from parental custody. The court ordered family reunification services for mother and Darrell, denied family reunification services to R.J., and ordered monitored visits for mother and Darrell.

On July 28, 2017, mother filed a notice of appeal from the court's July 21, 2017 order sustaining count (d)(1).

DISCUSSION

I. Mother's challenge is not justiciable

The juvenile court sustained allegations against both mother and R.J. Further, the court sustained allegations against mother under section 300, subdivision (b) for both drug use and for her failure to provide an appropriate plan of care for the children. The juvenile court's decision to take jurisdiction over the children was a result of these jurisdictional findings as well as the jurisdictional finding made pursuant to section 300, subdivision (d)(1). In challenging the juvenile court's finding under section 300, subdivision (d)(1), mother does not challenge the court's overarching decision to take jurisdiction over the children.

Because mother does not challenge the alternative reasons for jurisdiction, we need not address the evidentiary support for count (d)(1). (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 (*I.A.*.) This is particularly true where, as here, identical allegations were sustained under subdivision (b)(2). Any decision we might render on the allegations sustained under (d)(1) “will not result in a reversal of the court’s order asserting jurisdiction. The juvenile court will still be entitled to assert jurisdiction over the minor on the basis of the unchallenged allegations.” (*Ibid.*) Further, the court will still be able to retain jurisdiction over mother and adjudicate her parental rights. (*Ibid.*) As set forth in *I.A.*:

“Under these circumstances, the issues [mother’s] appeal raises are “abstract or academic questions of law” [citation], since we cannot render any relief to [mother] that would have a practical, tangible impact on [her] position in the dependency proceeding. Even if we found no adequate evidentiary support for the juvenile court’s findings with respect to [her] conduct, we would not reverse the court’s jurisdictional and dispositional orders nor vacate the court’s assertion of personal jurisdiction over [her] parental rights.”

(*I.A.*, *supra*, 201 Cal.App.4th at p. 1492.)

The rule stated in *I.A.* is in accord with article VI, section 13 California Constitution, which provides that no judgment shall be set aside unless “the error complained of has resulted in a miscarriage of justice.” Our Supreme Court has interpreted this language to permit reversal “only if the reviewing court finds it reasonably probable that the result would have been more favorable to the appealing party but for the error. [Citation.]”

(*In re Celine R.* (2003) 31 Cal.4th 45, 59-60.) The doctrine applies in juvenile dependency matters. (*Ibid.*)

Because the juvenile court's jurisdiction over the three children is justified under section 300, subdivision (b), counts (1), (2) and (3), mother's appeal of the finding under section 300, subdivision (d) is not justiciable.

II. The exception does not apply

An appellate court may address the merits of the jurisdictional findings against one parent where “the finding (1) serves as a basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*)). In contrast to *I.A.*, the *Drake M.* court decided to consider the merits of the father's appeal, because at issue was a single jurisdictional finding regarding father's use of medical marijuana. Because the single jurisdictional finding was the difference between father being an “offending” or a “nonoffending” parent, the appellate court addressed the merits of the appeal. (*Drake M.*, at pp. 762-763.)³ There was no evidence that the father had a substance abuse problem or that the father was unable to supervise or protect his

³ We note that in *In re R.T.* (2017) 3 Cal.5th 622, the Supreme Court determined that section 300, subdivision (b) does not require a determination of parental fault. Thus, the question of whether a parent is offending or non-offending is not relevant to a court's decision to assert jurisdiction over a child.

child. (*Id.* at pp. 767-769.) The jurisdictional finding regarding the father was therefore reversed.⁴ (*Id.* at p. 771.)

Mother argues that the court's finding under count (d)(1) could impact future proceedings in this matter as well as possible future family law proceedings. Mother fails to articulate in what way it could possibly impact any such proceedings, particularly where she has declined to challenge the identical findings under count (b)(2). Mother's vague assertions that putting her children at risk of sexual abuse is "very serious" do not assist her cause. The serious nature of the allegations is not a factor that a court may consider pursuant to the legal test set out in *Drake M.* in the absence of specific information as to how the findings could cause prejudice. Further, mother's mere restatement of the facts of the case, without concrete examples of a real risk of future consequence, does not lead to a conclusion that mother is at risk of prejudice from the finding set forth in count (d)(1).

The cases cited by mother are not helpful to her. Mother relies heavily on *In re M.W.* (2015) 238 Cal.App.4th 1444 (*M.W.*.) In *M.W.*, the mother did not challenge all the jurisdictional findings against her, but only challenged the finding that she knowingly exposed her children to a substantial risk of physical and sexual abuse. The finding stemmed from allegations that the mother knew or should have known about the father's criminal conduct, including the father's status as a registered sex offender due to convictions for forcible rape and oral copulation. The *M.W.* court chose to address the allegation because the notion that

⁴ Similarly, in *In re Anthony G.* (2011) 194 Cal.App.4th 1060, the contested finding under section 300, subdivision (g) for leaving a child without any provision for support was the sole count alleged against the father, who appealed and prevailed because the evidence did not support a finding under section 300, subdivision (g).

mother subjected her children to a risk of sexual abuse was “pernicious” and carried “a particular stigma.” (*Id.* at p. 1452.) The court further reasoned that the findings appeared to have motivated part of the juvenile court’s dispositional order, and “could potentially impact the current or future dependency proceedings.” (*Ibid.*)

We disagree with the *M.W.* court to the extent that it held that the nature of the charges alone are relevant in applying the exception set forth under *Drake M.* Further, we find the case unpersuasive in that it failed to articulate any specific way in which the findings at issue might affect the current or future proceedings.

Mother also relies on *In re D.C.* (2011) 195 Cal.App.4th 1010 (*D.C.*), in which the Court of Appeal considered a challenge to a jurisdictional finding under section 300, subdivision (i), which permits jurisdiction where a parent has directly subjected the child to acts of cruelty. The court found that the appeal was not moot, despite mother’s failure to challenge other bases for jurisdiction. Like *M.W.*, we find the *D.C.* case unpersuasive due to its superficial treatment of the issue. In agreeing with mother’s position that the ruling could be prejudicial to her if she is involved in future dependency proceedings, the *D.C.* court stated simply: “We agree that the ruling, if it is erroneous, has the potential mother cites and, therefore, shall consider the merits of her appeal. [Citation.]” (*D.C.*, *supra*, at p. 1015.) In the absence of reasoning that can be applied in mother’s situation, the case does not assist mother’s position in this matter.

In order to meet the standard set forth under *Drake M.*, an appellant must articulate the way in which the finding is

prejudicial or could create consequences for the appellant beyond jurisdiction. Mother has failed to meet that standard.⁵

III. Substantial evidence supports the juvenile court's decision to assert jurisdiction under section 300, subdivision (d)

Even if mother's claims were justiciable, we would find that substantial evidence supports the juvenile court's determination that the allegations set forth under count (d)(1) were true.

A. Standard of review

When reviewing a juvenile court's jurisdictional finding, we use the substantial evidence standard of review. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 (*Savannah M.*)) Under this standard, we look to the entire record to support the findings of the juvenile court. (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387 (*A.M.*)) We review the record in the light most favorable to the judgment and affirm the order even if there is evidence supporting a contrary finding. (*Id.* at pp. 1387-1388.)

B. Analysis

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (d) if the juvenile court finds by a preponderance of the evidence that "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her

⁵ Mother's assertion that the finding that mother put her children at risk of sexual abuse resulted in her having her children removed from her care and being limited to monitored visitation is inaccurate. The two other counts sustained, including mother's history of drug use and failure to protect her children from Carlos, also contributed to these dispositional orders. Mother's vague assertion that the jurisdictional finding could affect future family law proceedings is too speculative to meet the standard requiring that the parent show prejudice.

household, or the parent of guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

In this case, the allegations under subdivision (d)(1) stated that mother left the children in Blanca’s home when she knew that Blanca’s male companion, Carlos, resided in the home with the children, and that Carlos had sexually abused mother when she was a child. Mother submitted to very similar language under count (b)(1). In her interviews, mother admitted the underlying acts that were found true by the juvenile court in rendering its decision to sustain count (d)(1).

Mother was aware that leaving the children in the home where Carlos resided put the children in danger of sexual abuse. Mother admitted that she was sexually abused by Carlos over the course of a year when she was seven years old. Because mother and Darrell were aware of the risk that Carlos would sexually abuse the children, Darrell spoke to Carlos and told him not to be alone with the children. Further, when Blanca was unavailable, Darrell would supervise Carlos and the children, and mother and Darrell would make unannounced visits to the home to ensure that Carlos was not alone with the children. This evidence demonstrates that mother knew she was putting the children at risk of sexual abuse by leaving them at a home where Carlos resided, and is sufficient to support the juvenile court’s finding under count (d)(1).

Mother points to DCFS’s action and inaction in the past, which she asserts belie the notion that mother put her children at risk of sexual abuse by leaving them in a home where Carlos resided. Mother highlights the fact that in 2004, when a second allegation that Carlos sexually abused then 13- year-old mother was made, DCFS took no action. Mother reasons that because

DCFS took no action in 2013 to protect mother from Carlos, and took no action to protect the two minor maternal aunts from Carlos, that DCFS must not view Carlos as presenting a threat of sexual abuse.

These facts do not undermine the substantial evidence supporting the juvenile court's decision. Mother's own experience of abuse, along with the continuing suspicion both she and Darrell felt regarding Carlos's presence in the house with the children, support a finding that the children were at risk.

Nor does the lapse of time since Carlos molested mother dictate a reversal of the juvenile court's findings. Despite the passage of time, mother and Darrell remained concerned for the children while in Carlos's home. Further, as the trial court noted, Carlos had not done anything to show that he is unlikely to offend again. Under the circumstances, the lapse of time does not suggest that there is insufficient evidence in the record to support the trial court's findings.⁶

Our role is not to reweigh the evidence, but to review the record for any evidence to support the juvenile court's decision. (*Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1393-1394.) We must "draw all reasonable inferences in support of the findings, view the record favorable to the juvenile court's order and affirm

⁶ *In re Alysha S.* (1996) 51 Cal.App.4th 393 (*Alysha*), is distinguishable. In *Alysha*, there was an allegation that, on one occasion, the mother observed the father touching the minor infant in an inappropriate way. The court concluded that because the petition did not allege that any such touching continued beyond that single instance, "the petition, over one year later, does not establish that the minor is currently at any risk of serious physical harm." (*Id.* at pp. 398-399.) As described above, the evidence regarding Carlos was very different, including prolonged molestation that lasted over a year and continued suspicion as to his propensity to engage in such acts.

the order even if other evidence supports a contrary finding. [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) Under this standard, the record provides ample evidence supporting the juvenile court’s findings under count (d)(1).

In re B.T. (2011) 193 Cal.App.4th 685 (*B.T.*) [abrogated on other grounds in *In re R.T.* (2017) 3 Cal.5th 622]), is distinguishable and unhelpful to mother. In *B.T.*, the mother, an adult, was the perpetrator of sexual abuse against B.T.’s father, who was a minor. Although the mother showed poor judgment in having sexual relations with the minor father, she had an exemplary record of childrearing and there was no evidence of any abuse or neglect of mother’s older children. (*B.T.*, at pp. 687, 692-693.) Under the circumstances, the evidence did not support the juvenile court’s finding that mother would sexually abuse her children, or that the older children’s father had failed to protect them.

Here, mother was not accused of sexual abuse but failure to protect her children from sexual abuse by an individual whom she admitted had sexually abused her in the past. Further, mother has not exhibited the “exemplary” behavior that the mother in *B.T.* otherwise exhibited. She has other issues justifying the juvenile court’s jurisdiction, such as substance abuse.

Mother compares her situation to the older children’s father in *B.T.*, who was accused of failing to protect the children from sexual abuse by their mother. However, the evidence in that case revealed that the father “had no reason to protect B.T., or the other children, from [the mother.] She posed no danger to them.” (*B.T.*, *supra*, 193 Cal.App.4th at p. 696.) Here, the evidence supported a finding that Carlos posed a danger to the children, and that mother was aware of this danger. Thus, we find the outcome of *B.T.* unpersuasive.

In sum, the evidence supports the juvenile court's finding that mother failed to protect her children from a risk of sexual abuse by Carlos. The court did not err in sustaining the allegation pursuant to section 300, subdivision (d).

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST