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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re CARMELO M., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DARRYL M.,

Defendant and Appellant.

B240507

(Los Angeles County
Super. Ct. No. CK92342)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Margaret Henry, Judge. Affirmed.

Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor and John M. Kennedy for Defendant and Appellant.

Office of the County Counsel, John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Darryl¹ M. (father) appeals from (1) a judgment declaring his son, Carmelo M., to be a dependent of the court pursuant to Welfare and Institutions Code² section 300, subdivision (b);³ and (2) a dispositional order removing Carmelo from father's custody pursuant to section 361, subdivision (c)(1).⁴ He contends that the evidence was insufficient to support a finding of jurisdiction and that the judgment should be reversed. As a result, he contends further, the trial court's removal order should be vacated. We disagree and will affirm both.

¹ Father's name is misspelled throughout the record as "Darril," "Darrly," and "Darrell." However, the correct spelling is "Darryl."

² All section references are to the Welfare and Institutions Code unless otherwise noted.

³ Section 300, subdivision (b) states, in relevant part, "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness"

⁴ Section 361, subdivision (c)(1) states, in relevant part, "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . ."

FACTUAL AND PROCEDURAL BACKGROUND⁵

Carmelo, born in June 2011, was approximately eight months old when these proceedings began. Marylou F. (mother) is Carmelo's mother. She and Carmelo resided in her apartment with father when father was released from jail in December of 2011.

On February 26, 2012, a referral was generated alleging that father was placed on psychiatric hold two days prior for being a danger to himself or others after becoming very emotional and locking himself in the bathroom at mother's apartment. Mother called the Psychiatric Mobile Response Team (PMRT) for assistance because father was unresponsive and she did not know what else to do. A Department of Children and Family Services (DCFS) social worker made an unannounced visit the next day and heard the parents yelling and screaming at each other in a dispute over mother's texting with an unknown person. Carmelo was reportedly present in the same room as the parents and was crying. DCFS interviewed both parents and filed a petition on February 27, 2012 alleging that Carmelo was at risk in his parents' care due to their engaging in verbal altercations and father's history of mental illness and recent decompensation event. At the detention hearing, mother's counsel reported that father moved out at mother's request.

In its jurisdiction and disposition report filed on March 23, 2012, DCFS reported it had again interviewed mother who denied any history of violence or engaging in

⁵ The factual and procedural background is drawn from the record, which includes a one-volume Clerk's Transcript, a supplemental Clerk's Transcript, an augmentation to the Clerk's Transcript and a one-volume Reporter's Transcript.

altercations with father. Mother stated to DCFS, “It’s never been nothing like that. I met him. I got pregnant. He went to jail and got out in December 2011. He wasn’t there during my pregnancy. We don’t have that. He has never hit me.” She denied any knowledge of father’s history of mental illness.

Also interviewed by DCFS, father denied any physical altercations with mother but admitted that they argued. He also stated that the two did not know each other very well as he was incarcerated shortly after they met. Prior to the recent psychiatric hold, father admitted to having received mental health services.

The trial court struck the allegations in the petition against mother and found her to be non-offending. As a result, mother is not a party to this appeal. With respect to father, the trial court amended the allegations against him and sustained the petition as amended. It ordered Carmelo released to mother and detained from father.

A “stay-away order” against father was also issued, requiring him to stay at least 500 feet away from mother and Carmelo. Father filed a notice of appeal on April 6, 2012.

CONTENTIONS

Father first contends that the evidence did not support the trial court’s finding of jurisdiction pursuant to section 300, subdivision (b) because DCFS failed to show that Carmelo suffered or was at risk of suffering severe physical harm or illness as a result of father’s mental illness. As a result, he asserts, the judgment must be reversed. Without a finding of jurisdiction, father next contends that the trial court’s removal order must be vacated.

DISCUSSION

1. Standard of Review

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences.

Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court. Evidence from a single witness, even a party, can be sufficient to support the trial court’s findings. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

2. Substantial Evidence Supports the Trial Court’s Jurisdictional Findings

Father contends that there was insufficient evidence to find that his mental illness caused Carmelo serious physical harm or illness or placed him at risk of suffering severe physical harm or illness. We disagree.

Section 300, subdivision (b), states that the following will cause a child to fall under the jurisdiction of the court and be adjudged a dependent of such court: “The 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” As there is no dispute over the fact that Carmelo has not suffered any harm or illness, the question at issue is whether he was at risk of suffering serious physical harm or illness.

Father asserts that DCFS failed to identify any specific defined risk resulting from his mental illness and that any finding of risk was purely speculative. In supporting his contention, father relies on *In re David M.* (2005) 134 Cal.App.4th 822.

In *In re David M.*, the trial court asserted jurisdiction over two minor children⁶ pursuant to section 300, subdivision (b).⁷ (*In re David M.*, *supra*, 134 Cal.App.4th at p. 825.) The mother (1) had an “unresolved” history of substance abuse but tested positive for marijuana only once while pregnant and tested negative throughout the dependency proceedings; and (2) was diagnosed four years earlier as being “delusional” but there was no evidence there had been a current evaluation of mother’s mental condition and she had never been hospitalized or involuntarily committed due to her mental disorders. (*Id.*, at pp. 826-827.) The father suffered from social and anxiety disorder and depression. (*Id.*, at p. 827.) The appellate court reversed, stating, “Whatever mother’s and father’s mental problems might be, there was no evidence those problems impacted their ability to provide a decent home for [the children].” (*Id.*, at p. 830.) In other words, there was no nexus between mother’s limited usage of

⁶ The mother in *In re David M.* had previously been involved with DCFS. Her oldest child, the half-sibling of the two children in *In re David M.*, was declared a dependent of the court in 2001, four years before *In re David M.* was decided.

⁷ Although the findings were pursuant to both subdivision (b) and (j) of section 300, we limit our discussion of this case to its analysis under subdivision (b), as it is the only provision that applies here.

marijuana and her and father's history of mental illness and any risk of harm to the children. The facts of this case differ dramatically.

While it is true, as father asserts, that a risk of harm cannot generally be presumed because a parent suffers or has suffered from a mental disorder, the record before us clearly supports the finding that Carmelo was at risk of harm or illness from the manifestation of father's mental illness. Carmelo came to the attention of DCFS after father was hospitalized involuntarily. Mother reported that father was upset, crying and yelling and locked himself in the bathroom of her apartment. She reported not knowing what to do because father was unresponsive, so she called the PMRT. Father was placed on a psychiatric hold but later released because the PMRT found him to no longer be a threat to himself or others.

The individual who contacted DCFS reported that father stated he had witnessed his friend's being killed and that he could hear his deceased friend speaking to him. Father disclosed to the reporter that he suffered from post-traumatic stress disorder. The reporter also stated father explained he often has thoughts of harming Carmelo when Carmelo cries but that he does not act on those feelings. Mother reported that father was easily agitated over the previous two months.

DCFS interviewed father. He denied stating that he had thoughts of harming Carmelo but he admitted that he had been involuntarily hospitalized. He stated that he could not remember what happened because he "blacked out" during the incident. He also denied knowing what caused the incident. He admitted that he heard voices, specifically the voice of his deceased friend who talks to him and tells him "everything

will be okay.” Father stated he was diagnosed previously with “emotional depression,” while he was incarcerated in 2011 for possession of a firearm and had been hearing voices since 2008. He also stated that he has been emotional and has struggled with anger management over his entire life.

Although father was agreeable to psychotherapy and medication, if needed, and he had been seeing a psychiatrist twice weekly by the time of the hearing, there was no evidence presented showing that father’s issues had resolved. As a result, the record supports the inference that father’s mental illness was not yet under control. An illness that manifests as auditory hallucinations, thoughts of harming Carmelo and incidents of “blacking out” combined with a history of an arrest involving a firearm is sufficient to support the finding that Carmelo is at risk of suffering serious physical harm or illness at father’s hands without dependency court jurisdiction. Unlike in *In re David M.*, here there is substantial evidence linking father’s mental illness with a risk of harm to Carmelo and we will affirm the finding of jurisdiction on that basis.

3. *Father Fails to Raise Any Other Challenge to the Trial Court’s Removal Order*

Father only challenges the trial court’s removal order on the basis that its finding of jurisdiction was not supported by substantial evidence. (See *In re James R.* (2009) 176 Cal.App.4th 129, 137; *In re David M.*, *supra*, 134 Cal.App.4th at p. 833.) As we will affirm the trial court’s finding of jurisdiction, father’s argument here is unpersuasive and we will also affirm the trial court’s removal order.

DISPOSITION

The judgment and dispositional order are affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.