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

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

B288904

(Los Angeles County
Super. Ct. No.17CCJP02114)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.L., et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles
County, Martha Matthews, Judge. Reversed and vacated.

Liana Serobian, under appointment by the Court of Appeal,
for Defendant and Appellant M.L.

Elizabeth C. Alexander, under appointment by the Court
of Appeal, for Defendant and Appellant J.L.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Stephen D. Watson,
Deputy County Counsel, for Plaintiff and Respondent
Los Angeles County Department of Children and Family
Services.

M.L. (Mother) and J.L. (Father) appeal from the juvenile court's jurisdictional order made after the court adjudged their infant daughter S.L. (born in 2017) a dependent under Welfare and Institutions Code¹ section 300. The parents contend the evidence is insufficient to establish that S.L. has suffered, or that there is a substantial risk she will suffer, serious physical harm or illness because of Mother's inability to provide regular care caused by Mother's "erratic behaviors." We agree and reverse.

FACTUAL AND PROCEDURAL HISTORY

The family, which consists of Mother, Father, and their baby daughter, S.L., live with the paternal grandparents in the grandparent's home in Redondo Beach. The parents share a bedroom, and the baby has her own bedroom.

On November 27, 2017, the family came to the attention of the Department of Children and Family Services (DCFS) based on allegations that Mother had subjected S.L., who was then four months old, to emotional and physical abuse. Specifically, the reporting party² claimed that Mother suffers from Asperger's Syndrome,³ post-partum depression, had "tantrums," yelled and screamed at the infant, slapped Father and did not allow anyone to see the baby.

When the DCFS social worker visited the family's home to investigate the allegations, she spoke to the paternal

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The parents believed that the paternal aunt made the referral following a verbal dispute with Mother during the aunt's visit to the family's home for Thanksgiving 2017.

³ Individuals who have Asperger's Syndrome have a form of high functioning Autism Spectrum Disorder; they have normal language skills and normal to high intelligence.

grandparents who denied that Mother yelled or screamed at the baby or that she ever verbally or physically abused anyone in the family. The grandparents also denied domestic violence between the parents and stated that both parents met the child's needs. They confirmed, however, that when frustrated, Mother would scream and yell out loud at no particular person. When asked if they had concerns about Mother's parenting skills, the grandparents expressed their view that Mother was "over protective" in that Mother did not want anyone other than Father to help with the child, and they felt the parents could benefit from parenting classes.

The social worker observed the infant asleep in her bassinet in her locked bedroom. The parents stated that they locked the room because they did not want anyone to disturb the baby's sleep. They pointed out that they had an audio and video monitor in the child's room, but they also agreed not to lock the room in the future. The social worker noted the baby appeared healthy, and without any marks or bruises. She also observed that the family had supplied the child with appropriate necessities, including a bassinet, diapers, a baby tub, bottles, formula, and clothing.

The Father told the social worker that he was unemployed and stayed home with Mother and child. Father denied the allegation that Mother screamed at the child or threatened to harm the child. Father acknowledged that Mother experienced periods where she would get stressed, and he would then talk to her to calm her down. Father reported that Mother received prenatal care and that S.L. was born six weeks premature. When hospital social workers observed Mother's frustration and anger, they instructed Mother to stay away from the child when she felt overwhelmed and advised Father to watch if Mother got frustrated around the child. Father described the plan the

parents used when Mother became overly frustrated and upset: Mother would give S.L. to Father or placed the baby in the bassinet and leave the room; Mother would express her emotions by screaming and hitting the walls of their bedroom. Father denied that Mother ever hit or slapped him.

When the social worker interviewed Mother, she denied the allegations. Mother said that the child was safe and that she and Father met the baby's needs. Mother acknowledged yelling and hitting the walls of her room but denied doing so in the baby's presence. Mother said that she wanted help to stop yelling, but was not taking medication or seeing a therapist. Mother reported that she suffered from post-partum depression, had been diagnosed with Asperger's Syndrome and claimed that her mother⁴ had abused her as a child, by forcing her to take medications.

Mother and Father agreed to allow the paternal grandparents unlimited access to the child, and the grandparents told the social worker they would continue to support the family and enforce all rules and recommendations of DCFS. The parents agreed to a safety plan where Mother was not left alone with the child, the grandparents would assist in the care of the child, and the parents would participate in a mental health assessment, and take the child for a forensic medical examination.⁵

⁴ Mother has no contact with the maternal grandmother.

⁵ The forensic examination revealed that the baby was healthy and showed no signs of abuse or neglect.

On November 29, 2017, DCFS filed a petition pursuant to section 300, subdivision (b), alleging S.L. was at risk of harm due to Mother's "erratic behaviors."⁶ The juvenile court found a prima facie case that S.L. was described by section 300, released the child to the parents under DCFS's supervision, and ordered DCFS to make unannounced visits to the home, provide the parents family maintenance services, and refer the child to Harbor Regional Center.

As reflected in the jurisdiction/disposition report, neither parent had a criminal history or was a prior dependent of the court. When re-interviewed by the social worker at the end of December 2017, the parents continued to deny the allegations in the petition. Mother acknowledged yelling and hitting the walls when people upset her in the past. Father said that Mother did not get angry or yell or hit walls in the child's room or her presence, although he conceded that the walls in the home were "thin" so that the baby might overhear Mother. Father reported that Mother asked for help when she was upset and then Mother went outside to calm down. Father did not feel that Mother was a threat to the baby.

The social worker observed the parents be loving and attentive to the child, who appeared healthy. Mother reported that the child was current with her immunizations and doctor

⁶ As sustained the petition alleged:

"[S.L.'s] mother [M.L.] has a limited ability to provide appropriate parental care and supervision for the child. On numerous prior occasions, the mother demonstrated erratic behaviors, including yelling and striking the walls, while in the presence of the child. Such a limited ability to provide appropriate parental care and supervision of the child, on the part of the mother, endangers the child's physical and emotional health and safety, and places the child at risk of serious physical and emotional harm, and damage."

visits. She was also developmentally on target, rolling over and sitting up and, therefore, Mother had asked the Harbor Regional Center close its case for S.L., which DCFS had initiated. DCFS reported that the parents appeared to be “apprehensive” about agreeing to participate in services because they did not think they had done anything wrong.

The social worker also spoke with the paternal grandmother about the parents and baby. The paternal grandmother reported she had not witnessed any issues and assured the social worker was she “keeping close tabs” on the situation. As to the allegations in the petition, the grandmother said that she had not observed any of the behavior alleged.

On March 7, 2018, the DCFS social worker made an unannounced visit to the parents’ home. The child appeared to have gained weight and looked healthy and happy. The parents reported that they had an intake appointment for individual therapy scheduled for April 3, 2018, and agreed to participate in services through their church. They also agreed to reopen the Harbor Regional Center case, even though they did not think there was a need for those services for the child. Although Mother had missed her originally scheduled mental health evaluation, Mother had rescheduled it. The parents were informed about family preservation and the parenting class, both of which were to take place at home and they agreed to participate.

On March 14, 2018, the court conducted the contested jurisdiction and disposition hearing. DCFS urged the court to sustain the section 300 petition and counsel for S.L. joined in the argument, while parents asked the court to dismiss the petition. The juvenile court observed that there was no evidence that Mother or Father had done anything to harm the baby. The court, nonetheless, found:

“The problem is that mother appears to have a behavior pattern perhaps related to a neurological or a psychological condition that could put a small baby at risk. [¶] . . . [¶] It doesn’t appear the parents have fully understood what the risk factors are. If for any reason a person taking care of a small baby experiences anger or frustration quickly or intensely, that can cause a risk of harm, because babies are infuriating. . . . [¶] . . . So, engaging in services now and addressing these risk factors could be extremely important in the long run, as well as prevent an immediate risk of harm.”

The court also expressed a concern that without the court-ordered supervision of the family, the parents would be free to move out of the paternal grandparents’ house, and that if they moved, the family would lose the supervision and assistance the grandparents provided.

The court sustained the petition, declared S.L. a dependent of the court, and ordered her to remain in the care of her parents under the plan of family maintenance. The court ordered Mother to participate in a mental health evaluation, parenting education, individual and conjoint counseling, and family preservation.

The parents timely filed this appeal.

DISCUSSION

Here we consider whether substantial evidence supports the juvenile court’s order sustaining allegations under section 300, subdivision (b)(1), that Mother’s “erratic behaviors”—yelling and striking the walls in child’s presence—limited her ability to care for and supervise the child, which endangered the child’s physical health and safety and placed her at substantial risk of serious harm. “[W]e review both the jurisdictional and dispositional orders for substantial evidence. [Citation.] In doing so, we view the record in the light most favorable to the juvenile

court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. [Citation.] But substantial evidence 'is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] . . . "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." [Citation.]' [Citation.]" (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.)

A juvenile court may determine that a child is subject to the court's jurisdiction under section 300, subdivision (b)(1) if it finds by a preponderance of the evidence that "[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," the willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment, or the inability of the parent to provide regular care for the minor due to the parent's mental illness, developmental disability, or substance abuse. (§ 300, subd. (b)(1).)

As the court observed at the adjudication hearing, there was no evidence in the record that S.L. suffered actual harm as a consequence of Mother's behavior. Although the matter, which came to DCFS's attention as a referral from the paternal aunt after she argued with Mother during the Thanksgiving holiday, concerned emotional abuse of the baby and physical abuse of Father, the record is devoid of any evidence to substantiate that reported abuse. It is true that Mother yelled, screamed, and struck the walls of her bedroom when frustrated and angry; DCFS, however, did not present evidence to support the

allegation in the petition that Mother engaged in that behavior in the baby's presence. And even though Mother has Asperger's Syndrome, and suffered post-partum depression, the law is settled that harm may not be presumed from the mere fact of a parent's mental health challenges. (*In re A.L.* (2017) 18 Cal.App.5th 1044, 1050.)

Also, DCFS presented no evidence that Mother's mental health or developmental challenges had previously impaired her ability to parent. The family worked together to manage the situation, and their efforts were successful. In spite of Mother's conduct, the evidence was uncontroverted that S.L. was healthy, happy, well cared for, and loved by Mother and Father; the baby appeared to have no health, cognitive developmental, or emotional problems. The parents met all of the baby's needs and lived in a clean, organized, and appropriately furnished home supplied with food and other necessities and had support from the parental grandparents.

Rather than exercising jurisdiction based on prior injuries or actual harms, the court sustained the petition based on two concerns related to future risk. First, the court was concerned that the parents failed to appreciate the safety risks to the baby of Mother's behavior pattern; and, secondly, the court feared that without dependency supervision the parents might move out of the grandparents' home. These concerns about future risks, however, are based not on evidence in the record or reasonable inferences from that evidence, but instead entirely on speculation. The parents understood Mother's challenges and the risks of her behavior—they implemented a safety plan which they followed—when Mother became overly frustrated and upset, she would give S.L. to Father or placed the baby in the bassinet and leave the room so she could calm down. And when the dangers of keeping the baby in a locked room were pointed out to the parents, they agreed to keep the room unlocked, and the

social worker's follow-up visits confirmed they had complied with those instructions. The paternal grandparents closely monitored Mother. And although the parents were initially reluctant to do so, they ultimately agreed to participate in assessments and other services through their church. Thus, contrary to the court's observation, the evidence in the record showed that the parents appreciated the risks associated with Mother's behavior and had employed a plan to address them.

As to the court's second concern about the potential loss of housing support from the grandparents, there was no evidence that the family planned to move from grandparents' home at any point in the future. The parental grandparents consistently expressed support for the parents and their granddaughter; they willingly provided housing and other caretaking assistance to the family without limitation or reservation. In addition, it appeared that the family did not have the financial means to leave the grandparent's home at any time soon and that the parents appreciated the support and the safety-net the parental grandparents provided.

Indeed, "the circumstances under which the juvenile court is authorized to take jurisdiction of a child are narrowly defined." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) Here DCFS did not satisfy its burden of proof under section 300, subdivision (b)(1). In our view, the evidence before it did not justify the juvenile court's intervention because the baby was not injured and the family took steps to address concerns raised by DCFS. Nor is there any reason to believe that the family will be unable to safely handle any future problems. Thus, the juvenile court erred in asserting jurisdiction over S.L. and its jurisdictional finding must be reversed. "In light of our determination that the jurisdictional order must be reversed, the dispositional and all subsequent orders . . . are moot." (*In re Nicholas, supra*, 88 Cal.App.4th at p. 1137.)

DISPOSITION

The orders are reversed. The juvenile court is ordered to enter an order dismissing the dependency petition.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.