

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re B.B.C., a Person Coming Under
the Juvenile Court Law.

B278294
(Los Angeles County
Super. Ct. No. CK75317)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.B.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Ernesto Paz Rey, 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.

Appellant B.B. (father), the presumed father of B.B.C., appeals from the juvenile court's jurisdictional findings under Welfare and Institutions Code section 300,¹ and its dispositional order. Father contends substantial evidence does not support the court's decisions to assert jurisdiction over B.B.C. as to him or to remove the infant from parental custody after finding the assertion of jurisdiction warranted by substance abuse by B.B.C.'s mother before and during her pregnancy. We affirm.

BACKGROUND

Detention and Section 300 Petition

B.B.C. came to the attention of the Los Angeles Department of Children and Family Services (DCFS) two days after her premature birth at 26 weeks gestation on June 18, 2016.² DCFS received a referral alleging that B.B.C.'s mother (who is not a party on appeal), tested positive for methamphetamine and amphetamine and admitted using these drugs while pregnant. B.B.C.'s toxicology test, then pending, later came back positive for methamphetamine and amphetamine. B.B.C. weighed only two pounds, had bandages covering her eyes, was septic and on antibiotics, and required feeding and oxygen tubes. It was expected that she would remain in the neonatal intensive care unit (NICU) for

¹ Undesignated code references are to the Welfare and Institutions Code.

² Unless otherwise noted, date references are to 2016.

about 12 weeks. Mother told a hospital social worker she had smoked methamphetamine a few days before B.B.C. was born. Mother said she and father had been in a romantic relationship for six years. She claimed father knew nothing of her drug use as she used drugs only when he was not around.

Mother met with a DCFS social worker on June 20, after being discharged from the hospital. She admitted having smoked methamphetamine once or twice a week until she learned she was five weeks pregnant. She started smoking again around her twelfth week of pregnancy, then stopped again until a few days before B.B.C. was born. Mother admitted she had a drug problem. She wanted to participate in a treatment program to get help, but did not want to enter a residential program as that would prevent her from visiting B.B.C. at the hospital.

Father also met with the social worker on June 20. He claimed to have had no idea mother had been using drugs, said she had not acted strangely and was surprised when she tested positive for methamphetamine. Father said he never saw mother under the influence of drugs, and never saw her use drugs or drink during her pregnancy. He was upset about the drug use, but was willing to get help for mother. A few days later, after reiterating that he had not known about mother's drug use, father contradicted that claim, saying mother had been clean for about a month. He denied any personal drug use, and said he drank no more than an occasional beer. Father submitted to voluntary drug tests, all of which were negative.

A social worker asked father if he believed he could keep B.B.C. safe, in the event it was determined that the baby could not safely remain in mother's custody. Father candidly responded that he did not want mother and child to be parted, and felt "en mi corazon' (in [his] heart) [that he] would not be able to keep the mother away from the baby." Father understood that drug use affected one's ability to parent, and that B.B.C. needed a parent "who does not use drugs," because a parent "under the influence [might] not react appropriately to the baby." However, mother had been drug-free for a month, so he thought she was "okay." The social worker did not believe father fully grasped the significance or severity of mother's addiction.

The parents had been evicted from their home not long before B.B.C. was born, and had been living with B.B.C.'s maternal aunt. Father told DCFS he had since found work as a painter, had almost enough money saved to rent a place and believed "everything was going to be okay." However, he also said that, if it was "a rule" that mother could not have custody of and live with the baby, he would abide by the rule. In that case, he planned to have the maternal aunt watch B.B.C. when he was at work. The social worker noted that father was conflicted about excluding mother from the home. She opined that father wanted to live with mother and the baby, and noted that he had said "they" were planning to move away from the area to get mother away from friends who influenced and led her to use drugs.

When mother and father met jointly with the social worker on June 20, mother disclosed that she had used drugs for years without

father's knowledge. The social worker recommended that mother enroll in an inpatient program. The parents did not want to accept that recommendation because such a program would keep them apart from one another and prevent mother from seeing B.B.C. The parents were not swayed by the social worker's reminder that the infant was well cared for in the hospital, and they should focus on mother's recovery. They insisted they could remain together and refused to consent to B.B.C.'s detention.

On July 11, DCFS filed a section 300 petition alleging, among other things, that mother's abuse of drugs throughout her pregnancy, which resulted in positive toxicology screens for herself and B.B.C., and mother's current use of methamphetamine and history of drug-related arrests and convictions,³ placed the infant at risk of serious physical harm. The petition also alleged that father knew or reasonably should have known about mother's drug use, and failed to protect B.B.C. (§ 300, subds. (b), (j).)

At the July 11 detention hearing, the court found that father was B.B.C.'s presumed father, and the child was detained. Father was given unmonitored visitation. DCFS was ordered to provide him referrals for,

³ Mother's criminal history includes: Six arrests between 2013 and 2015 for, among other things, possession of controlled substances, possession of a controlled substance for sale and possession of unlawful paraphernalia. Mother has misdemeanor convictions in 2014 and 2015, respectively, for possession of a controlled substance and unlawful paraphernalia and remained on probation for the 2015 conviction when B.B.C. was born.

among other things, parenting and drug education programs, and to address the possibility of termination of juvenile court jurisdiction with a custody order.

Jurisdictional/Dispositional Hearing

B.B.C. remained hospitalized at the time of the August 29 Jurisdictional/Dispositional hearing. She was progressing well but remained “in a sensitive situation” and was not expected to be discharged for at least a week. DCFS’s investigation revealed prior dependency proceedings involving mother’s three older children (then ages 7, 8 and 12). Mother had a history of drug use during earlier pregnancies. The sustained allegations in one action indicated a six-year history of drug abuse, and that one child in addition to B.B.C. had been born with prenatal drug exposure. Mother’s parental rights as to that child were terminated in 2010, and the other two children were in legal guardianships.

By August 17, mother had entered a residential treatment program. She told DCFS she began using methamphetamine at age 19, but had been sober two years when she met father. Although mother told father she had a drug problem, he did not know what kind of drugs, nor did he know much about drugs at all. Mother claimed father never saw her use drugs. She did not think he suspected she used drugs before becoming pregnant. Father had seen her “high,” but did not know it. He had questioned her mood swings when she was under the influence, but did not suspect drug use. Mother used methamphetamine for a month before

B.B.C.'s premature birth, and last used the drug on June 15. Father was upset about her drug use, but wanted to stay with her and help her.

Father too claimed he had not known about nor suspected mother's drug use. Yet, he also told DCFS he and mother had agreed to move from Long Beach because of problems with her "bad friends," who were always looking for her, wanting her to use drugs with them. Father had seen crystal methamphetamine, but never saw mother with the substance. He denied having seen mother under the influence, but admitted he would not know what someone looked like when "high." He knew mother's other children had been removed from her for drug-related reasons, but did not know the specifics.

Father believed mother was better now and ready to change, and he believed B.B.C. "need[ed] to have her mother in her life." He wanted B.B.C. placed in both parents' care. DCFS did not think father appreciated the gravity of the circumstances or mother's addiction. The allegations regarding mother's long history with DCFS had been explained to him, but father still failed to grasp the severity of the problems his family faced. He was uneducated about drug use and its symptoms, and appeared "oblivious" about any instances or the extent of mother's drug use.

DCFS was concerned that, without appropriate education and services, father would continue minimizing mother's drug use and allow her unrestricted access to B.B.C., thereby creating a significant safety risk for the infant. Father's behavior also indicated that he might be more protective of mother's well-being than of B.B.C.'s. DCFS recommended

that father would benefit from parenting classes and an AA/NA program. On August 23 father began participating in an AA support group. He also reported (but provided no proof) that he had enrolled in a parenting program. DCFS recommended against the termination of juvenile court jurisdiction with a family law order granting father custody. Father had not embraced the idea of being the baby's primary caretaker willingly. He frankly revealed that he and mother remained involved and said it would be difficult for him to keep B.B.C. away from mother, whom he considered his only family.

At the August 29 jurisdiction hearing, the court received DCFS's reports in evidence and took judicial notice of mother's prior dependency actions. The court accepted father's stipulated testimony that he was working, had a home for B.B.C., and had plans and could afford child care for B.B.C. The court denied father's requests to have the petition's allegations stricken as to him and to return B.B.C. to his custody. The court found father's denial of knowledge of mother's drug use not credible. His denial was belied by his admission that the couple was essentially forced to move away from mother's friends who provided her with drugs. The court also found that father knew or had reason to know mother used drugs, and had an obligation to make an effort to take protective action (beyond merely moving away from mother's friends) to address the problem or persuade her to stop, but neglected to do so.

The court rejected father's assertion that "everything [would] be okay" now. Based on mother's long drug history and failed attempts at attaining sobriety, the court found that if mother relapsed in her current

program, father would, in all likelihood, give her access to B.B.C. because he wanted his family to be together. The court concluded that, because father had failed or refused to recognize the seriousness of the problems associated with mother's "long standing chronic well entrenched drug history and history of abuse of drugs and associating with known drug users, possibly known drug sellers[.]" the court had an obligation "to protect [B.B.C.] from . . . father." The petition was sustained as pled, and B.B.C. was declared a juvenile court dependent. (§ 300, subds. (b), (j).)

Proceeding to disposition, the court found reasonable efforts had been made to prevent or eliminate the need for the child's removal. B.B.C. was removed from parental custody. (§ 361, subd. (c).) Father was given unmonitored visitation, and directed to attend a parenting program, Alanon/Alateen and to acquire necessary medical training in order to care for B.B.C. upon her release. He appeals.

DISCUSSION

1. *Jurisdictional Findings*

Father contends there is insufficient evidence to support the jurisdictional findings as to him because "he had no idea or indication that Mother was using any drugs," and there is no evidence that his ignorance caused or is causing a substantial risk of harm to his child.

a. *Standard of Review*

We review a juvenile court's jurisdictional findings for sufficiency of the evidence, looking to see if substantial evidence, contradicted or

not, supports those findings.⁴ (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 184.) “Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. [Citation.]” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) “[W]e must uphold the court’s [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.]” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

⁴ Respondent points out that we have no duty to address father’s challenge to the jurisdictional findings. Dependency jurisdiction attaches to a child, not to his or her parents. As father acknowledges, “a jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent. [Citations.]’ [Citation.] ‘For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings” (*In re D.M.* (2015) 242 Cal.App.4th 634, 645.)

We may, however, exercise our discretion and address the merits of a parent’s challenge to jurisdictional findings if those findings potentially could prejudice the parent by impacting the current or future dependency proceedings, or could have other consequences beyond jurisdiction. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 (*Drake M.*.) In *Drake M.*, the court concluded the jurisdictional findings involving a parent’s use of medical marijuana could pose “far-reaching implications with respect to future dependency proceedings . . . and father’s parental rights,” and exercised its discretion to address the merits of the parent’s appeal. (*Id.* at p. 763.) For similar reasons, we address father’s challenge to the jurisdictional findings.

We will not substitute our deductions for those of the trier of fact. (*In re Albert T. supra*, 144 Cal.App.4th at p. 216.) Ultimately, the test is whether the trier of fact could reasonably have made the ruling in question in light of the whole record. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

b. *Substantial Evidence Supports the Jurisdictional Findings as to Father*

Jurisdictional findings require proof by a preponderance of the evidence. (§ 355, subd. (a); *In re Sheila B.* (1993) 19 Cal.App.4th 187, 198.) The juvenile court's exercise of jurisdiction is justified upon a showing that a child has suffered or there is a substantial risk that he or she will suffer serious physical harm. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) Although this determination is made in light of current circumstances, past conduct may also be relevant to a court's determination of whether a child is at risk. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) The court need not wait for a child to suffer serious injury to assume jurisdiction over and take steps to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.)

First, the record reflects mother has a lengthy history of drug abuse, and drug-related crimes. Her prior involvement in dependency proceedings involved a long-standing substance abuse problem that necessitated removal of three children, two of whom, like B.B.C., were exposed to drugs in utero. Mother revealed her addiction to father at the time their relationship began in 2010, and he also knew her other

children had been removed for drug-related reasons. Father also revealed to DCFS that, at some point before B.B.C.'s birth, he and mother felt it necessary to move out of town in order to remove mother from the sphere of influence of friends hounding her to do drugs with them. Further, during their six-year relationship, mother had six drug-related arrests and two convictions, and remained on probation for the latest (2015) conviction when B.B.C. was born. On this factual record, the juvenile court reasonably concluded that father's claim of ignorance regarding mother's drug use history lacked credibility.

Second, father contends the juvenile court "erroneously required [that he] prove a negative—the absence of harm to [B.B.C.] stemming from a failure to protect a fetus," and took "the next step and assumed harm to the baby where none was shown." It cannot reasonably be questioned that mother's prenatal drug abuse, which resulted in B.B.C.'s premature birth at just 26 weeks gestation and which required that the two-pound infant remain in the NICU for at least 12 weeks, septic and unable to breath except through a tube, "unquestionably endanger[ed] the health and safety of her unborn child." (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217.) In any event, even if B.B.C. could be considered unharmed in her medically fragile state, the court is not required to wait until a child has suffered serious injury to assume jurisdiction over and take steps to protect her. (*In re N.M., supra*, 197 Cal.App.4th at p. 165.)

Finally, substantial evidence supports the court's conclusion that father knew mother used drugs during her pregnancy, yet made no

effort to intervene (e.g., by trying to get her into a program or to see a substance abuse counselor) or to persuade mother to stop. Indeed, father acknowledged as much, telling DCFS the day after B.B.C. was born that mother had not used drugs for approximately one month. This concession alone constitutes sufficient evidence to support the finding that father placed B.B.C. at significant risk of harm. (See *In re J.C.* (2014) 233 Cal.App.4th 1, 6 [father who knew mother was taking drugs while pregnant and did nothing to intervene to protect unborn child from mother's misconduct placed child at risk of harm].) The court found father was not credible in insisting that, before B.B.C.'s birth, "he had no idea or indication that mother was using any drugs." Resolving evidentiary conflicts, assessing witness credibility and evaluating the weight of the evidence are matters reserved for the juvenile court. (*In re Albert T.*, *supra*, 144 Cal.App.4th at p. 216.) Substantial evidence supports the jurisdictional findings as to father.

2. *Dispositional Order*

Father maintains there is insufficient evidence to support the dispositional order because the court failed to consider if there were reasonable alternative means to protect B.B.C. short of removal from his custody.

A child may not be removed from a parent absent clear and convincing evidence of "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 . . . physical custody.” (§ 361, subd. (c)(1).) We review the juvenile court’s dispositional orders under the “substantial evidence” standard. (*In re T.V.* (2013) 217 Cal.App.4th 126, 136.)

As discussed above, a ““minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.]” (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126; *In re T.V.*, *supra*, 217 Cal.App.4th at p. 135.) The court’s jurisdictional findings represent *prima facie* evidence that the child cannot safely remain in the home. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*); *In re T.V.*, *supra*, 217 Cal.App.4th at p. 135.) In making its determination whether a child may safely be left in a parent’s physical custody, the court may consider the parent’s past conduct and current circumstances, and the parent’s response to the conditions that gave rise to dependency court intervention. (*Cole C.*, *supra*, 174 Cal.App.4th at p. 917.) Here, the juvenile court essentially deemed that father’s willful ignorance (“ostrich–like” behavior) regarding mother’s drug use before and during her pregnancy, and his failure to grasp the effect that such abuse would continue to have on B.B.C.’s health and physical safety constituted sufficient evidence to support the removal order.

Father argues there is insufficient evidence that the court considered any less drastic alternatives before removing B.B.C. from his custody. Specifically, he claims the court should have considered an

order requiring mother to leave the family home, and permitting him to retain custody of B.B.C. However, that is the principal solution DCFS explored.⁵ Nevertheless, after discussing the conditions which must necessarily attend such a custodial placement, the agency ultimately recommended rejection of the option. DCFS concluded father was either oblivious to the extent of mother's drug abuse, or was unable to comprehend the severity and ramifications to B.B.C.'s health and safety of mother's addiction, even after her substance abuse problem was explained to him. DCFS opined that father's primary concern was his commitment to mother. He did not convince DCFS he was prepared to place his daughter's needs above his devotion to mother. Nor did father legitimately seem willing to isolate the medically fragile infant for any length of time from contact with mother in order to protect B.B.C.'s physical safety and prevent her from exposure to mother's unresolved and potentially dangerous substance abuse problem. Father consistently expressed a naïve belief that the medically fragile newborn needed to remain with her nuclear family despite mother's history of drug abuse and relapses, and his acknowledgment that a parent using drugs could present a real danger because she might "not react appropriately to the baby." As a result, DCFS concluded that father's steadfast commitment to mother indicated that allowing B.B.C. to

⁵ DCFS considered but rejected the maternal aunt as a placement for B.B.C. The aunt had three children under 10 years of age (two of whom were under age five), and was pregnant with a fourth child.

remain in father's custody would place the baby at continued risk of harm.

The court reasonably concluded that father's continuing denial of (or failure to recognize) the harmful impact of mother's drug problem reflects that his judgment is compromised and the child remains at risk. This case is unlike *In re Hailey T.* (2012) 212 Cal.App.4th 139 (*Hailey T.*), and *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*), on which father relies. In those cases, the juvenile court failed to consider less drastic alternatives to removal. (See *Hailey T.*, *supra*, 212 Cal.App.4th at pp. 147-148; *Ashly F.*, *supra*, 225 Cal.App.4th at p. 809.) Not so here. DCFS explored the viability of alternatives to removal. However, father balked at the idea of being B.B.C.'s primary caretaker, if that meant isolating the infant from mother during her nascent effort to attain sobriety, even in the face of her history of persistently failed attempts to remain drug free. Father views mother as his only real "family" and believes "in [his] heart" that B.B.C. needs to be with mother. In the face of that deeply held belief, and his admission that it would be very difficult to keep mother and child apart, the court reasonably concluded that removal from parental custody was the only viable alternative for B.B.C.

The record contains substantial evidence that less drastic alternatives to removal were considered, and that the court found, by clear and convincing evidence, that B.B.C. would be at significant risk of harm if permitted to remain in father's custody.

DISPOSITION

The jurisdictional findings and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.