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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re LAYLA O., a Person Coming Under
the Juvenile Court Law.

B241280
(Los Angeles County
Super. Ct. No. CK93108)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

HEATHER H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Steven R. Klaif, Juvenile Court Referee. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Navid Nakhjavani, Deputy County Counsel for Plaintiff and Respondent.

Heather H. appeals from the jurisdictional order (Welf. & Inst. Code, § 300)¹ in the dependency proceedings concerning her daughter Layla O. We affirm.

Facts

This family came to DCFS's attention on March 22, 2012, when Layla was nine months old. She and Mother were living with Mother's parents, and had been since her birth.

Mother was a recovering heroin addict and was in a methadone program. Layla's father (who is not a party to this appeal) was a heroin user, something which Mother knew. He had recently been released from prison, where he had been incarcerated on drug charges.

Mother sometimes took Layla to Father's home to visit, though she never left Father alone with Layla, and on March 22, 2012, while Mother and Layla were at Father's home, Father overdosed on heroin. An ambulance was called, as were police, and DCFS was notified. There were drugs and drug paraphernalia in Father's house.

The next day, DCFS interviewed Mother and maternal grandmother, and determined that Layla was happy, well-nourished, comfortable in her home, developmentally on target, and free from any sign of abuse. Layla's doctor soon confirmed that Layla was well-developed, showed normal growth, and was up to date on immunizations. The doctor had no concerns.

DCFS also spoke to Mother's case manager, at her drug program, and received a favorable report. Mother had begun the program when she was pregnant with Layla, was working toward recovery, was on a reduced dose of methadone, and was testing clean, though the tests were not monitored.

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

Mother agreed to test for DCFS, and on April 5 tested positive for opiates.² DCFS learned from a technician at the testing lab that although the test had not included a panel for heroin, the result could not have been caused by methadone, and was consistent with heroin use.

At an April 13 team decision meeting, Mother explained the test by telling DCFS that she had gotten "stressed out" and bought morphine pills from a friend.

DCFS set up a safety plan under which DCFS would seek court jurisdiction on a "non-detained" basis (that is, Layla was to remain with Mother) and Mother would agree to attend substance abuse classes and to have monitored tests. DCFS wrote, "This family has many strengths. Layla is well cared for, mother is enrolled in a methadone program, mother works, and there is family support."

DCFS filed a section 300 petition on April 19, 2012. Layla was detained and released to Mother on the condition that she remain in her program and that she drug test. Father's visits were to be monitored, not by Mother.

DCFS's report for a May 14 hearing included a new statement from Mother about her April 5 test. Mother said that she did not know why she had tested positive. Her earlier statement that she had bought morphine from a friend was false. She made the statement only because she felt bullied. She also said that twice in the past week and a half she had taken pain killers given to her by a friend. She would take these pain killers when she was depressed.

On May 14, the petition was sustained under subdivision (b) on factual findings that Mother "has a history of substance abuse including heroin and is a current abuser of opiates, methadone and morphine, which renders the mother periodically incapable of providing the child with regular care and supervision. On 4/5/12 and on prior occasions,

² There may also have been a missed test. In its brief, DCFS writes that on March 23, the social worker asked both Mother and Father to drug test. DCFS's own reports of its activities that day say only that Father was asked to drug test, but DCFS also reported that on April 5, the social worker learned that both Mother and Father failed to submit to a test.

the mother was under the influence of illicit drugs while the child was in the mother's care and supervision. The mother had a positive toxicology screen for opiates and morphine on 4/5/12. The mother's abuse of illicit drugs endangers the child's physical health and safety, creates a detrimental home environment and places the child at risk of physical harm, damage and danger." There was a similar sustained allegation against Father.

The court ordered Layla removed from Father's care, but placed with Mother, on the condition that Mother remain in the home of her parents, or another DCFS-approved home, take a parenting class, and participate in a drug program with random testing. Mother was also ordered to make Layla available for unannounced home calls.

Discussion

Mother challenges the substantial evidence for the jurisdictional finding.

A jurisdictional finding must be supported by a preponderance of the evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; § 355, subd. (a).) In reviewing a juvenile court's jurisdictional finding, we apply the substantial evidence test. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168; *In re V.M.* (2010) 191 Cal.App.4th 245, 252.) Under this standard, "we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) "It is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citations.]" (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.)

As Mother argues, a child may be made a dependent of the court under section 300, subdivision (b) only where "[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 . . . substance abuse." (§ 300, subd. (b).)

As Mother also argues, there was no evidence that Layla had been harmed by Mother's drug use. To the contrary, she was a happy and healthy baby. However, we do see substantial evidence for the finding that she was at risk of harm.

Mother's argument is that one bad test does not prove that she abused drugs and does not prove risk of harm, especially because there was no evidence that she was caring for Layla while under the influence. We are not persuaded. First, one test can indeed prove that Mother was abusing drugs, especially when the test is considered in light of the evidence that Mother had a history of drug use, and that she again resorted to drug use, variously described as morphine or pain killers, when she was depressed or stressed out. Mother's attitude toward drugs is also illustrated by the fact that she tolerated Father's drug use and brought Layla to his home.

There was also evidence that Mother was doing well in recovery, but that is not dispositive. She had been in that process for at most a year, and her tests in her program were not monitored.

Nor do we agree with Mother that the risk of harm to Layla is speculative. There was evidence that Mother's parents assisted her in caring for Layla, and as the juvenile court found, that increased Layla's safety, but Mother was at some points in physical control of Layla, and the harm that may befall a young child if a parent is using opiates is obvious.

Mother also cites DCFS's recommendation that Layla remain placed with Mother. A recommendation of placement with a parent is not in and of itself dispositive of the question of harm. The statutory scheme provides that a child who is made a dependent

child -- that is, where there is a finding of harm or risk of harm -- may be placed with the offending parent, if there are reasonable means to protect the child in that home. (§ 361, subd. (c).) The court found such means here. The placement with Mother was conditional on Mother living with her parents and participating in a drug program which included tests. We note in this regard that the purpose of testing is not just to detect drugs, but to deter drug use. DCFS's recommendation of placement with Mother, with appropriate safeguards, does not mean that the juvenile court lacked substantial evidence for the jurisdictional finding.

Disposition

The jurisdictional order is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.