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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.B., et. al., Persons
Coming Under the Juvenile
Court Law.

B297379

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No.
19CCJP00810

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Kimberly Roura, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

S.B. (Mother) appeals from the juvenile court's jurisdictional findings under Welfare and Institutions Code¹ section 300, subdivision (b)(1), as well as the court's dispositional orders removing her two children from her custody under section 361, subdivision (c). Mother contends there was insufficient evidence to establish the children were at substantial risk of serious physical harm due to her mental health issues. Mother also contends removal was unwarranted, as other reasonable means of protecting the children's physical health were available.

We conclude substantial evidence supports the court's jurisdictional findings and dispositional orders. Thus, we affirm.

BACKGROUND

Mother and R.G. (Father)² are the parents of two children, M.B. and L.B. At the time the case was initiated, M.B. was 14 years old and L.B. was 12 years old. Mother and Father divorced in 2010 and shared 50/50 joint custody of the children. M.B. has been diagnosed with Asperger's syndrome. Mother reportedly began experiencing mental health issues in 2014.

In the early morning hours of December 23, 2018, police officers responded to a call from Mother's neighbor, who reported he had heard Mother and M.B. arguing, and that M.B. "yell[ed] for [Mother] to get away from him." M.B. reported he and Mother had gotten into an altercation when she woke him at around 3:00 or 4:00 a.m. and began "telling lies about [Father] and how he

¹ Unless otherwise specified, all further statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal.

has abused” M.B. and L.B. The incident prompted a referral to the Department of Children and Family Services (the Department).

On February 1, 2019, the juvenile court signed an order detaining the children from Mother and releasing them to Father. Three days later, the order was served on Mother and the children were placed in Father’s custody.

On February 6, 2019, the Department filed a petition under section 300, subdivision (b)(1). The petition alleged Mother “has mental and emotional problems, including auditory hallucinations, delusions, and a diagnosis of Depression and Bipolar Disorder, which renders [sic] [her] incapable of providing regular care for the children.” The petition also alleged Father “knew of [Mother’s] mental and emotional problems” and “failed to protect the children, in that [he] allowed [Mother] to reside in the children’s home and have unlimited access to the children.”

At the adjudication hearing held on March 27, 2019, the court found “there is a nexus . . . between [Mother’s] untreated mental health needs and risk of serious physical harm” to the children, and sustained the petition with two pertinent amendments. First, the court struck the allegations concerning Father’s failure to protect the children from Mother. Second, the court struck the allegation pertaining to Mother’s diagnosis of depression.

Proceeding to disposition, the juvenile court found, by clear and convincing evidence under section 361, subdivision (c), the children would be at substantial risk of danger if placed in Mother’s care. The court removed the children from Mother’s custody and placed them with Father. Further, the court ordered Mother to participate in an evaluation under Evidence Code

section 730, parenting classes, and mental health counseling. Mother timely appealed from the dispositional orders.

DISCUSSION

I. Standard of Review

We review a juvenile court’s jurisdictional and dispositional orders for substantial evidence. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992 (*Yolanda L.*)) Under this standard, “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.” (*Ibid.*) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 (*Dakota H.*))

“Substantial evidence must be of ponderable legal significance. It is not synonymous with ‘any’ evidence. [Citation.] The evidence must be reasonable in nature, credible, and of solid value. [Citation.]” (*Dakota H., supra*, 132 Cal.App.4th at p. 228.) “. . . “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.]” (*Yolanda L., supra*, 7 Cal.App.5th at p. 992.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. [Citations.]” (*Dakota H., supra*, 132 Cal.App.4th at p. 228.)

II. The Juvenile Court’s Jurisdictional Findings are Supported by Substantial Evidence

Under section 300, subdivision (b)(1), the juvenile court may exercise jurisdiction over a child if it finds “[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.” (§ 300, subd. (b)(1).)

“Although ‘the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection. [Citation.] A parent’s past conduct is a good predictor of future behavior. [Citation.]” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*T.V.*)). To establish a risk of harm at the time of the hearing, “[t]here must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 136 (*James R.*)).

“The existence of a mental illness is not itself a justification for exercising dependency jurisdiction over a child. [Citation.]” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 563 (*Joaquin C.*)). To prove jurisdiction is warranted, the Department must show the children have been or will be harmed due to the parent’s mental illness. (See *James R.*, *supra*, 176 Cal.App.4th at p. 136.)

Mother contends the juvenile court erred in exercising jurisdiction over the children under section 300, subdivision (b)(1), as the evidence was insufficient to support a finding that they were at substantial risk of serious physical harm due to Mother’s mental health issues. In support of her argument, Mother principally relies on *Joaquin C.*, *supra*, 15 Cal.App.5th 537, and *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*). We disagree with Mother’s argument.

At the outset, we find the present case is distinguishable from the cases on which Mother relies. In *Joaquin C.*, the court

held the Department failed to prove the mother's mental health condition "rendered her unable to adequately supervise, protect, or provide regular care for her son." (*Joaquin C.*, *supra*, 15 Cal.App.5th at p. 564.) The court observed that while the mother experienced paranoia and delusions due to schizophrenia, she had sought treatment for her condition, and there was no evidence of harm or neglect to the child; rather, the evidence reflected the mother provided her son with food, clothing, shelter, and medical treatment "in a clean, organized home with family support." (*Id.* at pp. 540, 562-564.) Similarly, in *Daisy H.*, the court reversed the juvenile court's jurisdictional findings and removal order, reasoning that although the father was reportedly "paranoid" and "hallucina[tory]," the record lacked evidence "linking [his] alleged mental disturbances to physical harm or a risk of physical harm to the children," as the evidence reflected the child residing with the father "'appeared healthy and well-groomed' and was 'not observed to be suffering from any visible and/or suspicious marks or bruises.'" (*Daisy H.*, *supra*, 192 Cal.App.4th at p. 718.)

By contrast, here, the record contains sufficient evidence to support the juvenile court's finding that there was a nexus between Mother's mental health issues and a substantial risk of physical harm to the children. Specifically, as set forth below, the evidence in this case demonstrates Mother has untreated mental health issues, which have manifested into erratic behaviors that have compromised her own safety and the safety of others, including her children. Mother, however, consistently refuses to acknowledge her mental health issues and is unlikely to obtain treatment to address her symptoms.

Father, M.B., and two of Mother's sisters reported Mother has been diagnosed with bipolar disorder. A close family friend reported Mother was "delusional" and has experienced "psychotic breaks." M.B. reported he was "fearful that [Mother] will want to harm herself," as she has disclosed suicidal thoughts to him in the past.

Mother's mental health issues led to her hospitalization on three occasions. In July 2014, Mother was hospitalized when she deliberately drove her car into a guardrail. When people tried to help her, Mother picked up a piece of glass, as she felt "threatened" by them and "thought they might try and rape her." In May 2015, Mother was hospitalized when she was "unable to function at her job," as she was experiencing "fixed delusions" in which she believed she was "physically ill with multiple conditions" and "the TV is hacked and sending [her] messages." At the time, Father said he "was afraid of what [Mother] will do if left alone or left with their children." Finally, around July 2018, Mother was hospitalized for two to three weeks while on vacation in Spain with the children and other family members, when she began sending e-mails to her family throughout the night, in which she expressed "extreme thoughts" on "very sensitive subjects." Due to the 2018 hospitalization, Father had to travel to Spain from the United States to bring the children home.

As noted above, on December 23, 2018, Mother's mental health issues caused her to engage in behaviors that gave rise to a physical altercation between her and M.B. At 3:00 or 4:00 a.m. that day, Mother and M.B. got into an argument when she woke him up to discuss her unfounded beliefs that Father was abusing him and L.B. Mother reportedly grabbed M.B. by the wrists and "dragged [him] everywhere," refusing to let go until he gave her

a hug. When he refused, Mother continued to grab M.B.'s wrists. At some point during the incident, Mother reported, M.B. "punch[ed] and kick[ed]" her, "slapped" her, and gave her "long red scratches on the inside of her right forearm."

Despite her hospitalizations and the December 23 incident, Mother has persistently denied having any mental health issues. Mother has repeatedly refused to take medications as prescribed, as she always stopped taking her medications once she stabilized. Further, Mother has not sought therapy or other treatment on a regular basis.

On this record, the juvenile court could reasonably infer Mother's mental health issues will remain untreated and cause her to engage in behaviors that could impair her ability to care for or supervise her children, thereby placing them at substantial risk of physical harm. (See *In re Travis C* (2017) 13 Cal.App.5th 1219, 1226-1227 [affirming jurisdictional findings where mother threatened suicide in the children's presence, drove alone with the children while experiencing symptoms of her mental illness, and refused to consistently seek treatment].) Accordingly, substantial evidence supports the court's jurisdictional findings.

III. The Juvenile Court's Dispositional Orders Are Supported by Substantial Evidence

The juvenile court may remove a child from the custody of a parent if it finds, by clear and convincing evidence, "[t]here 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 . . . physical

custody.” (§ 361, subd. (c)(1).) The court must also “make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor,” and must “state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).) “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]” (*T.V., supra*, 217 Cal.App.4th at pp. 135-36.)

Mother contends the court erred in removing the children from her custody because it failed to state the facts on which it relied in finding the children would face substantial danger if they were returned to Mother, and because the record lacks evidence to support such a finding. We disagree.

We acknowledge Mother correctly observes the court did not expressly state the facts on which it relied in finding there would be substantial danger to the children if they were returned to Mother. A court’s failure to expressly state its findings on the record does not require reversal, however, where, as here, the findings may be implied, and the record contains substantial evidence to support such findings. (See *In re Andrea G.* (1990) 221 Cal.App.3d 547, 554-555.) In this case, jurisdiction and disposition were addressed at the same hearing. The same evidence cited by the court in support of its jurisdictional findings also constitutes substantial evidence to support the court’s finding—just moments later—that, by clear and convincing evidence, the children would face substantial risk of detriment if returned to Mother.

Mother also contends removal was improper because the court failed to make a finding about whether reasonable means short of removal were available, and because “less drastic

alternatives” to removal could have been used to protect the children from harm. Again, we disagree.

As an initial matter, we observe the juvenile court did not fail to make a reasonable means finding, as Mother contends. Rather, the court expressly made this finding in its March 27, 2019 minute orders.³

Moreover, on the record in this case, the juvenile court could reasonably infer unannounced visits and Mother’s compliance with the Department’s case plan—Mother’s proposed alternatives to removal—would not have been sufficient to protect the children. As discussed above, the evidence reflects Mother has denied having any mental health issues, refused to take medication as prescribed, and declined to seek treatment on a regular basis. Based on this evidence, the court could reasonably find Mother’s compliance with the case plan, which required her to participate in counseling and take all prescribed medications, was far from certain. (See *T.V.*, *supra*, 217 Cal.App.4th at p. 133 [“A parent’s past conduct is a good predictor of future behavior. [Citation.]”].) The evidence also reflects Mother’s erratic behaviors occurred in the late hours of the night and early hours of the morning, when the Department would not be available to conduct a visit. This evidence supports the reasonable conclusion that unannounced visits would be ineffective in safeguarding the children from harmful behaviors stemming from Mother’s mental health issues. (See *In re A.F.* (2016) 3 Cal.App.5th 283, 293 [“Unannounced visits can only assess the situation . . . at the time of the visit.”].) Accordingly, substantial evidence supports the juvenile court’s finding that

³ The juvenile court entered separate minute orders for M.B. and L.B.

there were no reasonable means of protecting the children from harm other than removal.

Finally, we note the juvenile court plainly viewed the removal order as an interim measure. Addressing Mother directly, the court noted Mother's untreated mental health issues, and stated: "[I]t's far too premature to release the children to you." After noting Mother's desire to reunify with her children, however, the court urged Mother to avail herself of services and visit with the children as often as possible. The court set the matter for a further progress hearing. The parties have not supplemented the record with information about whether there have been further developments in the juvenile court proceedings.

DISPOSITION

The removal order and jurisdictional findings are affirmed.

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CURREY, J.

WE CONCUR:

WILLHITE, Acting P.J.

COLLINS, J.