Filed 8/14/17 In re J.L. CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

| | |
|---|---|
| In re J.L., et al., Persons Coming Under the Juvenile Court Law. | 2d Juv. No. B280435<br>(Super. Ct. Nos. J071101, J071102)<br>(Ventura County) |
| VENTURA COUNTY HUMAN SERVICES AGENCY,<br><br>Petitioner and Respondent,<br><br>v.<br><br>JENNIFER F.,<br><br>Appellant. | |

Jennifer F. (mother) appeals from a judgment declaring her two children, J.L. and A.L., dependents of the juvenile court pursuant to Welfare and Institutions Code section

300.[1] Mother contends that the jurisdictional findings are not supported by substantial evidence. We affirm.

*Factual and Procedural Background*

J.L. was born in 2008. In June 2016 A.L. (infant) was born prematurely "at only 32 weeks of gestation." Before infant's birth, mother was diagnosed as being RH negative. The juvenile court found that, because mother had "failed to obtain adequate and standard prenatal care," infant developed "Hydrops Fetalis, which includes symptoms of anemia." Mother missed three "of the last prenatal appointments." Mother said she had missed two appointments because she was visiting family in Arizona. She missed the third appointment "because she did not feel well."

Doctor James B. Schick opined: "[Infant's] medical problems are a direct result of a lack of timely and appropriate prenatal care." The problems could have been prevented if mother had received injections of RhoGam, an antibody. But she "chose to not get the injections and did not seek or obtain standard prenatal care." Doctor Schick explained that Hydrops Fetalis results in anemia that can cause "congestive heart failure and eventually death. . . . Mortality is about 50%. There can also be long term developmental problems."

Mother's and infant's urine tested positive for marijuana metabolites, amphetamine, and methamphetamine. "The infant appeared to be experiencing withdrawal symptoms." Infant suffered heart failure, which was "worsened" by mother's use of amphetamines.

In contrast to the urine test, infant's "meconium [first intestinal discharge] toxicology screen" was positive for

[1] All statutory references are to the Welfare and Institutions Code.

marijuana but negative for methamphetamine. Doctor Sue L. Hall explained that the negative result may have been due to the passage of some of the meconium "in utero" before infant was born, so that only a portion of the total meconium was collected. "'The single most important element of collecting meconium for drug and alcohol testing is obtaining the entire quantity of meconium that the newborn passes. . . . If only a portion of the total meconium is collected and sent for analysis, it may reflect a period of abstinence and a truly drug or alcohol exposed infant will be misdiagnosed as non-exposed.'"

When mother was admitted to the hospital to give birth to infant, hospital "staff was concerned that [she] had what appeared to be needle marks on her body. The maternal grandmother reported the marks . . . were due to bed bugs found in the father's home."

Mother has a medical marijuana card. Several weeks after infant's birth, mother said that she "smokes marijuana one to two times a day for anxiety and stress." She does not smoke it in the children's presence. She denied smoking marijuana during her pregnancy, but admitted that she had consumed "edible marijuana" for morning sickness.

Mother has no idea why infant tested positive for methamphetamine. She "offered the explanation that amphetamines and methamphetamines may have been contained in the marijuana edibles she ingested." "[M]other disclosed historical use of methamphetamines," but "stated the last time she had used meth was approximately 9 years ago." At the time of this statement, mother was 29 years old. She said that, while in high school, she had "'dabbled' in mushrooms, cocaine and methamphetamines."

After mother was released from the hospital where infant was born, she tested positive for marijuana on three occasions: August 10, 15, and September 1, 2016. She "tested negative for all substances" on September 19, 2016, twice in October 2016, and twice in November 2016.

On November 4, 2016, mother was evaluated by Marty Lythgoe, who described himself as a "Substance Abuse Professional." Lythgoe opined: "[Mother] does not have a substance use disorder and in no way meets admission criteria for a treatment program, even at the outpatient level of care." Lythgoe noted: Mother "has never been admitted to a treatment program of any kind for substance use disorder." However, "[s]he has been attending AA [Alcoholics Anonymous] meetings since August, 2016, on average twice weekly." She has a medical marijuana card "and reports that she 'medicates' . . . about twice a week to treat her anxiety and sleep problems."

On November 22, 2016, a social worker wrote: "Both [children] have been observed in the home on multiple occasions. They have been observed to be clean, happy and comfortable in the presence of their parents." The social worker reported that mother had taken infant to "all her medical appointments."

On November 29, 2016, the dependency court found that (1) infant had developed Hydrops Fetalis as a result of mother's failure "to obtain adequate and standard prenatal care," (2) "infant's urine was confirmed positive for methamphetamines and amphetamines," (3) infant's "meconium tested positive for marijuana," and (4) mother "has substance abuse issues, including but not limited to methamphetamine and marijuana." The court concluded that mother's actions "place the [children] at significant risk of harm and neglect." In addition, the children

have "suffered, or there is a substantial risk that [they] will suffer, serious physical harm or illness." The court stated: "I can't, right now, do more than speculate -- maybe a little more than speculate -- about mom -- what mom's use [of methamphetamine] is. It appears, based upon all the other evidence, that this is not . . . currently a chronic problem, but I can't get away from the fact that I had a positive test, . . . and it looks like mom had, I guess, possibly a one-time relapse." The court noted that mother's credibility was "undermine[d]" by her recent conviction of a felony.

The court declared the children dependents of the juvenile court. It ordered that they be released to their parents under the supervision of the Ventura County Human Services Agency (respondent).

*Relevant Statutes*

The relevant statutes are subdivisions (b)(1) and (j) of section 300. Subdivision (b)(1) provides that a child may be adjudged a dependent of the juvenile court if "[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 . . . to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate . . . medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse."

Section 300, subdivision (j) provides that a child may be adjudged a dependent of the juvenile court if "[t]he child's sibling has been abused or neglected, as defined in

subdivision . . . (b), . . . and there is a substantial risk that the child will be abused or neglected, as defined in [that] subdivision[]."

*Standard of Review*

Respondent "has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300. [Citations.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.) "'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . , we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." . . . "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] "'[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact'"'" could make the jurisdictional findings by a preponderance of the evidence. (*Ibid.*) "The parent has the burden on appeal of showing there is insufficient evidence . . . ." (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138.)

*Substantial Evidence Supports the Jurisdictional Findings Based on Infant's Positive Drug Tests and Mother's Substance Abuse*

In *In re Christopher R.* (2014) 225 Cal.App.4th 1210, the appellate court was presented with a situation similar to

ours. The juvenile court declared that four children were dependents of the court. The court found that the mother, Crystal, had a substance abuse problem that endangered the children's physical health and safety. The youngest child, Brianna, was an infant, and the oldest child was seven years old. When Brianna was born, both she and Crystal tested positive for cocaine. Brianna also tested positive for amphetamine and methamphetamine. "Crystal admitted she had started using cocaine when she was 16 years old (seven years before the filing of the dependency petition . . .) but insisted she had stopped when she was 17 and had not used the drug since that time." (*Id*. at p. 1213.) Crystal "[e]ssentially" conceded that "dependency jurisdiction was proper as to Brianna" because she "was born with a positive toxicology screen for cocaine and other illicit drugs . . . ." (*Id*. at p. 1215, fn. omitted.) But Crystal claimed that "the evidence of her sporadic drug use was insufficient to support the findings she was a current substance abuser and [her other three children] were at substantial risk of serious physical harm justifying the exercise of the juvenile court's jurisdiction." (*Ibid*.)

The appellate court concluded that substantial evidence supported the jurisdictional findings as to all four children. The court reasoned: "Crystal used cocaine (and, based on the positive toxicology screen for Brianna at birth, amphetamine and methamphetamine) while she was pregnant, unquestionably endangering the health and safety of her unborn child. She also admitted she had used cocaine in the past although claiming she had stopped using when she was 17 years old. Given her initial false denial of any cocaine use in the days before Brianna was born, the juvenile court reasonably

disbelieved Crystal's portrayal of limited, sporadic drug use. . . . This evidence, taken together with Crystal's unstable lifestyle and cavalier attitude toward childcare . . . fully supports the juvenile court's finding that Crystal's substance abuse endangered all four children's health and safety." (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.)

In the instant case, mother used marijuana, amphetamine, and methamphetamine "while she was pregnant, unquestionably endangering the health and safety of her unborn child." (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.) She admitted that she had previously used methamphetamine, but claimed to have stopped using it approximately nine years earlier. Mother's and infant's positive test results for methamphetamine proved that mother was lying. Moreover, hospital staff noticed "what appeared to be needle marks on [mother's] body." Although the maternal grandmother said the marks "were due to bed bugs," the juvenile court was not required to credit her explanation. Doctor Schick stated that "mother had . . . antibodies to red cell antigens which are caused by blood exposure from incorrect matched blood or *shared needles* in the past." (Italics added.)

During her pregnancy, mother displayed a "cavalier attitude" toward the care of her unborn child. (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.) In notes concerning a prenatal visit on February 26, 2016, mother's doctor stated that she "'[u]nderstands importance of prenatal care as well as labs, will have recommended as needed.'" (Italics omitted.) Yet, mother missed three "of the last prenatal appointments." Based on the doctor's notes, the juvenile court found that "at the end of February" mother "was told how important prenatal care was."

Thus, the evidence "fully supports the juvenile court's finding that [mother's] substance abuse endangered [the] health and safety [of both infant and her sibling]." (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.) "Indeed, [mother's] use of [marijuana, amphetamine, and methamphetamine] during the last months of her pregnancy confirmed her poor judgment and willingness to endanger her children's safety due to substance abuse." (*Id.* at p. 1219.) "In addition, because the children were [eight years old and five months old] at the time of the jurisdiction hearing - children of 'tender years' in the language of [*In* re] *Rocco M.* [(1991) 1 Cal.App.4th 814, 824] - 'the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm' [citations]." (*Ibid.*) Section 300.2 provides, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child."

Mother argues that her "confirmation testing confirmed she was positive for marijuana, but regarding the amphetamines, the lab stated there was an invalid result due to the specimen temperature." We disagree. A "final" Quest Diagnostics "amphetamines confirmation urine" test report (page 47 of the Clerk's Transcript) shows that mother tested positive for amphetamine (1,760 nanograms per milliliter) and methamphetamine (3,160 nanograms per milliliter). Doctor Schick stated: "Regarding drug testing there was some questions about results of the first maternal test. The confirmatory test was positive [for] Methamphetamines, amphetamines and Marijuana Metabolites."

Mother asserts, "There was no evidence that [infant's] meconium sample was not a sufficient quantity and quality" to accurately test for infant's exposure to amphetamine and methamphetamine. Again, we disagree. Doctor Hall explained: "The obstetrician reported seeing meconium staining of the amniotic fluid [fluid in which the fetus is suspended], which even premature babies can pass in utero when subjected to serious stress, as this baby was due to the severe anemia, hydrops and heart failure she demonstrated at birth." Doctor Hall noted, "[If] the baby did pass meconium in utero, this could be responsible for negative results regarding methamphetamine exposure on the meconium toxicology screen."

Because the evidence is sufficient to support the jurisdictional findings based on infant's positive drug tests and mother's substance abuse, we need not consider whether the evidence is sufficient to support the finding that mother "failed to obtain adequate and standard prenatal care during her pregnancy," resulting in "infant's development of Hydrops Fetalis." "When [as here] a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

*Disposition*

The judgment declaring the children dependents of the juvenile court is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Tari L. Cody, Judge

Superior Court County of Ventura

---

Jack A. Love, under appointment by the Court of Appeal, for Appellant.

Leory Smith, County Counsel, Joseph J. Randazzo, Assistant County Counsel, for Petitioner and Respondent.