

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

Jose B.,

Defendant and Appellant.

B256541

(Los Angeles County
Super. Ct. No. DK03012)

APPEAL from the orders of the Superior Court of Los Angeles County. Sherri Sobel, Juvenile Court Referee. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Melinda A. Green, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father Jose B. appeals from the juvenile court's jurisdictional findings under section 300, subdivision (b) of the Welfare and Institutions Code¹ that his substance abuse put his four children at risk of harm. The children are now 10-year-old Jon.B., eight-year-old Jas.B., seven-year-old Jad.B., and one-year-old K.B. Father also challenges the juvenile court's jurisdictional findings as to mother, who did not appeal from the jurisdiction and disposition orders. The Department contends that father lacks standing to challenge the findings as to mother, and in any event, jurisdiction was proper. We find substantial evidence supports the jurisdictional findings as to father and therefore affirm the orders below.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) when mother tested positive for methamphetamine at K.B.'s birth in December 2013. The test results for K.B. were pending at the time the referral was made, and K.B. was not exhibiting any withdrawal symptoms. Mother admitted using methamphetamine for one month before K.B. was born, and that she received no prenatal care. Later, it was determined that K.B. tested negative for drugs at birth.

The Department interviewed mother the day of K.B.'s birth. She admitted to using methamphetamine during the last month of her pregnancy, but stated that she had no other history of drug use. She started smoking "crystal meth" in November, and would use while father was at work and their older children were at school. Father worked at the children's school as a playground supervisor, and would transport the children to and from school. She denied ever using drugs in front of her family, and claimed that father did not know about her drug use. By the time father and the children returned home from school, mother was no longer high.

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

The family was living in a motel because they had been evicted from their apartment in November. Mother was formerly the legal guardian of now 18-year-old maternal uncle, but had “cut ties” with him because his fighting at the family’s old apartment complex had caused the family to be evicted. Mother was introduced to drugs at the apartment building by a woman named “Lacey.” Mother started using drugs because of the stress caused by the eviction. She felt “horrible” for jeopardizing her baby and other children, and for keeping her drug use a secret from father. She said she would never use again.

Mother explained she had not received prenatal care because she had problems with her Medi-Cal benefits. She had attempted, unsuccessfully, to obtain care from the doctor that provided prenatal care during her first three pregnancies. Mother told the Department social worker that her older three children were currently in the care of maternal grandmother, and that maternal grandmother did not know about mother’s drug use, or the Department’s involvement.

According to mother, Jon.B., Jas.B., Jad.B. all received regular medical care at the Breath Clinic on Fountain.

Mother was not employed. She quit working because of severe morning sickness during her pregnancy with K.B. However, mother was required to drug test at her last two jobs. Mother denied any criminal history, domestic violence, mental health problems, or other substance abuse. She denied that the children were abused or neglected.

On December 24, the Department interviewed the hospital social worker, Ms. Lee. During Ms. Lee’s intake interview with mother, mother admitted she had not received prenatal care, and that she used methamphetamine during her last trimester. Mother explained she was “hanging out with the wrong crowd” and was introduced to drugs by someone from her old apartment building. Mother told Ms. Lee she had no history of substance abuse, and this was the first time she used drugs. Mother appeared confused and did not explain to Ms. Lee why she was using drugs. According to Ms. Lee, father

did not know mother was using drugs. Mother told Ms. Lee she used while father and the children were at school. Ms. Lee believed that mother was remorseful.

The Department interviewed father the next day. Father told the Department that Jon.B., Jas.B., and Jad.B. were staying with maternal grandmother. Father is a playground supervisor with Los Angeles Unified School District. The children attend the school where he works, and after work, father will often volunteer in his children's classrooms. He transports the children to and from school.

Father had "no idea" mother was using drugs. While at the hospital, mother admitted to him that she used drugs with a former neighbor while he and the children were not home. He had never noticed that mother was high, and she "always seemed fine" around him and their children. He was "very upset" and "nervous" when he learned about mother's drug use.

Father believed mother had used drugs because she recently cut ties with maternal uncle after his fighting caused them to be evicted from their apartment. The family was residing at a motel, but he was in the process of finding an apartment.

Father reported that mother had no history of depression. He denied any criminal history, substance abuse, domestic violence, or abuse or neglect of the children.

Father was willing to take responsibility for all four children.

Mother and father signed a safety plan agreeing to release K.B. to father, that mother and father would submit to an on demand drug test by December 27, that mother and father would participate in a Team Decision Making (TDM) meeting by December 31, and that mother would not be alone with the children before the TDM. The Department also made an appointment to visit the family's motel, and meet with the three older children, on December 26.

On December 26, the Department social worker met with the family at a park. She interviewed the three older children. Jon.B., Jas.B., and Jad.B. each reported that they lived with mother and father, that they were never left alone, and that there was always food in their home. No one yelled at the children, and Jad.B. and Jas.B. denied ever being hit, whereas Jon.B. reported he had been spanked before, with an open hand,

over his clothes on his butt. The children denied being fearful of their parents, or that their parents fought in front of them. The children did not know what drugs were. There were no marks or bruises on any of the children, and all of the children were happy, clean and well groomed.

The social worker told mother and father they needed to submit to an on demand drug test on December 27. The parents agreed to test.

On December 27, mother called the Department social worker to report that the family had rented an apartment across the street from their motel, and would be moving in that day. Mother told the social worker she could visit the apartment later that day, after mother and father drug tested.

When the social worker visited the apartment that evening, she found it to be clean and neat with working utilities, although it contained minimal furniture because the family was in the process of moving. The children were staying with maternal grandmother during the move.

Mother and father drug tested on December 27. Mother's drug test was negative for all substances. However, father tested positive for amphetamines and methamphetamines.

On January 3, the Department social worker called father and discussed his positive drug test. Father reported he had been prescribed narcotic medication for back pain, but he did not know the name of the medication. The social worker informed father that she would need a copy of the prescription as well as contact information for father's doctor. He agreed to provide the information.

The Department social worker then contacted a lab technician at Pacific Toxicology to discuss father's test results. The technician was skeptical that father's positive test could be explained by narcotic pain medication, reasoning that narcotic pain medication would have resulted in a positive test for opiates, not for amphetamines.

Father provided medical documentation to the Department at the January 8, 2014 TDM. The documentation was from 2008, and noted that father had suffered a back injury. The documentation stated that father had "no active medications on file as of

7/16/2008.” However, the doctor’s notes indicated that “pain medicine” would be prescribed, but did not specify the medication.

During the TDM, father admitted to trying methamphetamine “a few times,” and he believed that was why he tested positive. Mother and father agreed to participate in a family maintenance case through drug court. They also agreed to submit to an on demand drug test that day. Their tests were negative for all substances.

The Department confirmed that mother and father did not have a criminal history, and that they had no other cases or referrals with the Department.

The children were not removed from the home, after the Department’s request for a removal order was denied.

At the January 13, 2014 detention hearing, the juvenile court ordered mother and father to submit to weekly on demand drug tests, and to participate in parenting classes.

The Department’s April 11, 2014 jurisdiction/disposition report contained additional information. On March 26, 2014, the Department interviewed maternal grandmother. Maternal grandmother reported that mother told her the Department became involved with the family because the family was homeless. The family had been evicted because maternal uncle had been hanging out with the “wrong crowd” and causing problems. Mother and father also may have had trouble paying their rent. Maternal grandmother believed the children were very well cared for by mother and father, and were never at risk of any harm. Mother and father are loving and caring parents. When maternal grandmother was asked whether she knew about any drug use by mother, she acted appalled, and stated, “No! Never!” She had never seen mother acting in a manner that would suggest she was using drugs.

Mother admitted to having “a lot of problems” in November 2013, and that she was “lonely and depressed” because maternal uncle caused the family to be evicted. She admitted that he had not lived with the family since he was 15, but claimed he had made friends in the building, and building management blamed mother and her family because he was visiting them. Mother also admitted they were behind in their rent payments.

The stress caused mother to use methamphetamine for the first time in the second week of November 2013. Mother began to smoke methamphetamine daily with a neighbor. When asked for a name, mother responded “Heidi,” but then corrected herself and said “Lacey.” Heidi was mother’s cousin, and was not the person mother used drugs with. Mother was unable to provide any contact information for “Lacey,” explaining Lacey had changed her phone number.

Mother smoked drugs daily at 10:00 a.m., and sometimes in the afternoon, from the second week in November until her water broke on December 20, 2013. She would take approximately three “hits” per day. Mother claimed she did not have to pay for the drugs, and would smoke them at Lacey’s apartment. The children and father were at school when mother used drugs. She was aware she was pregnant when she used.

Mother felt she was never under the influence of drugs around father or the children, as the drugs never “made her any different.” After smoking, she would cook, clean, watch television, and prepare for the children to arrive home from school. The drugs never affected her sleep, and mother “never stopped being a good mother.” Mother did not believe her drug use affected her parenting or affected the children in any way.

Father continued to deny that he knew mother was using drugs during her pregnancy. He believed mother was stressed out because they had been behind on their rental payments at their old apartment.

Jon.B. denied that father used drugs, but admitted that he did smoke cigarettes in the building’s hallway. He reported that father is “nice.”

Jas.B. denied that father smoked. Jas.B. feels safe with father.

Jad.B. denied any drug use by father, but admitted that he would smoke cigarettes with mother outside the apartment. Maternal grandmother was present when the parents smoked. Father is “fine” and everything in the family home is “good.”

Father denied ever smoking cigarettes. He had briefly smoked before having children. Mother had not smoked in 1½ years.

Mother admitted to smoking cigarettes prior to January 2013, but claimed she never smoked around the children.

Maternal grandmother reported that mother smoked before she had children, but never smoked after the children were born.

Mother “never imagined” that father was using drugs. She first learned about his drug use at the TDM. She never saw any signs father was using drugs. After the TDM, mother never asked father about the details of his drug use because she “just didn’t want to touch base with him . . . I didn’t want to talk about it.”

Father disputed that he was a “current” user of methamphetamine, contending he had not used drugs since the Department became involved with the family. He had never used drugs until he smoked methamphetamine in December 2013. He “experimented” with it two or three times. Father was under a lot of stress because the family had received an eviction notice, and a neighbor “Lacey” offered drugs and promised the drugs would help him forget about his problems. The first time it was free; the second time Lacey charged father \$5. Father denied maintaining contact with Lacey.

The drug caused father to stay awake for 24 hours after smoking it. He smoked it twice within a two- or three-day period. He never told mother, and she never suspected he used drugs. She did not notice he was awake all night because she was sleeping. He did not think the drugs otherwise affected him or changed his parenting style.

Maternal grandmother did not believe father used drugs because he worked for the school and was subject to drug testing. She believed him to be a “healthy and sober person.”

According to mother, father was aware she was not receiving prenatal care, and continuously told her to get it, but she failed to do so.

Father agreed that he was aware mother was not receiving prenatal care. He would ask her to go to the clinic, and she would promise to, but never did. He knew it was important to receive prenatal care, but it had not occurred to him to accompany her to the clinic.

The children were healthy and had no significant developmental delays. The children were doing well in school. They did not require any mental health services.

On March 24, the Department visited the family home, and found it to be clean, well organized, and stocked with plenty of food.

The Department believed that mother and father had minimized their drug use. The Department was skeptical of the parents' claim that they did not know about each other's drug use, even though they were obtaining drugs from the same person. The Department believed that mother's and father's responses to the Department's inquiries were "premeditated."

The Department reported that according to WebMD, methamphetamine is highly addictive. The high from the drug lasts between eight and 24 hours. Therefore, the Department was skeptical of mother's claim that she was not high around the children.

The Department believed mother had used drugs throughout her entire pregnancy, based on her failure to obtain prenatal care.

The Department recommended that the family receive family maintenance services.

A March 14, 2014 progress report noted that mother and father had attended seven of 16 parenting classes, had completed the 30 required NA/AA meetings, as well as the required relapse prevention, 12 step studies, and individual sessions ordered by the drug court. Father had submitted 22 negative drug tests, with no missed tests. Mother had tested negative 20 times, with no missed tests. Mother was described as taking "a high level of responsibility" for her drug abuse, and had learned to "cope well." Mother was noted to be committed to making positive life changes. Father was noted to be "highly cooperative and compliant with all program requirements."

At the April 11, 2014 adjudication hearing, mother and father argued they were not current users of methamphetamine, as they had consistently tested negative for all substances. The parents also argued there was no harm to the children based on their drug use, and that their ability to parent their children was never impaired.

Minors' counsel argued the court should assert jurisdiction "so that we can ensure that both of the parents continue to work on not using drugs." The Department argued that the parents' claims that they did not know about the other parent's drug use were not

credible, and “doesn’t speak well for their recovery with regard to admitting they have a problem.”

The juvenile court struck the allegations that the parents were current users of methamphetamine, and sustained the following allegations:

“[Under section 300, subdivision (b):] The children[’s] . . . mother . . . has a history of illicit drug use of methamphetamines, which renders the mother incapable of providing regular care of the children. On 12/20/2013 and on prior occasions in 2013, the mother was under the influence of methamphetamines, while the children were in the mother’s care and supervision. The mother used methamphetamines during the mother’s pregnancy with the child [K.B.] On December 20, 2013, the mother had a positive toxicology screen for amphetamines, while the mother was pregnant with the child [K.B.] Such illicit drug use on the part of the mother endangers the children’s physical health and safety and places the children at risk of physical harm and damage. [¶] . . . [¶]

“[Under section 300, subdivision (b):] The children[’s] . . . father . . . has a history of illicit drug use of methamphetamines, which renders the father incapable of providing regular care of the children. On 12/27/2013, the father was under the influence of methamphetamines, while the children were in the father’s care and supervision. On 12/27/2013, the father had a positive toxicology screen for methamphetamines and amphetamines. Such illicit drug use on the part of the father endangers the children’s physical health and safety and places the children at risk of physical harm and damage.”

The juvenile court explained, “I am concerned about the parents, . . . the parents were in a really, really difficult situation financially and somehow or another managed to pay for drugs I do know that when you are having difficulties, using drugs is not the answer, and then saying, afterwards, we really are not users is also not the answer.” The court expressed that it had the same concerns as the Department expressed.

This timely appeal followed.

DISCUSSION

Father challenges the jurisdictional findings as to himself and mother, contending they are not supported by substantial evidence, reasoning the children were well cared for, and there was no substantial risk of harm to the children. The Department contends that father lacks standing to challenge the jurisdictional findings as to mother, reasoning “father’s personal rights were not affected by those findings.” We need not decide

whether father has standing to challenge the findings as to mother as we conclude that substantial evidence supports jurisdiction as to father. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490-1491 [“a jurisdictional finding involving one parent is ‘ “good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.” ’ [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.”].)

“In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court’s order, and affirm the order even if there is other evidence that would support a contrary finding. [Citation.] . . . [Citation.] The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916.)

Under section 300, subdivision (b), the juvenile court may adjudge a child to be a dependant of the 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 or guardian to adequately supervise or protect the child.” There must be evidence of “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Father likens this case to our recent opinion, *In re Rebecca C.* (2014) 228 Cal.App.4th 720. In that case, we reversed the juvenile court’s jurisdictional findings that the mother’s drug use put her teenage daughter at risk. Following a general neglect referral, the mother tested positive for marijuana and methamphetamine, and admitted to having a substance abuse problem. (*Id.* at pp. 722-723.) Rebecca denied any

knowledge of the mother's drug use. After the Department's involvement with the family, the mother enrolled in drug treatment, but kept testing positive for marijuana. (*Id.* at p. 723.) We concluded there was ample evidence that the mother suffered from a substance abuse problem, but nonetheless determined that there was insufficient evidence that the mother's substance abuse caused a substantial risk of harm to Rebecca. (*Id.* at p. 727.) "[T]he family residence was inspected by the investigating social workers, it was clean, free of hazards, stocked with food, and clear of drugs and firearms. Rebecca denied any physical or emotional abuse, did not show any signs of physical abuse, and was not fearful of Mother. Rebecca was up to date on medical and dental checkups. Mother enrolled Rebecca in special education during the fourth grade; Mother regularly attended individual education plan meetings on behalf of Rebecca. When confronted with her positive drug test, Mother committed herself to a program." (*Ibid.*)

This case is readily distinguishable. Here, father was aware that mother had not received prenatal care for K.B. The trial court agreed with the Department's assessment that mother's and father's claims of ignorance as to the other's drug use were not credible. There is substantial evidence that father was aware mother was using drugs while pregnant with their child, and that he did nothing to protect K.B. (and, in fact, likely used drugs with mother). Moreover, father initially lied about his drug use, and later minimized it, but the family's circumstances painted a different picture. The family was evicted and suffering financial problems, yet mother and father still found money to buy drugs. What is more, father tested positive for drugs *after* the Department became involved with the family, when he was entrusted with the care and protection of the children from mother. Although the parents' recent positive efforts to maintain sobriety are significant, we cannot say that under these circumstances, the risk of harm to the children was speculative.

DISPOSITION

The orders are affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.