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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re X.P. et al., Persons
Coming Under the Juvenile
Court Law.

B288955
(Los Angeles County
Super. Ct. No.
18CCJP00800)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

JOSE P.,

Defendant and Appellant.

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

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Jose P. (Father) appeals from the disposition order and challenges the sufficiency of the evidence supporting one of two jurisdiction findings against him (regarding his substance use).² We affirm.

BACKGROUND

Father had two children with Irma S. (Mother), a daughter named X.P., who was 10 years old at the start of the dependency proceedings, and a son named Manual P., who was eight. Mother also had a son named Saul P. from a prior relationship, who was 14 years old and lived with Mother, Father and his two half siblings. In or around early 2017, Mother and Father's relationship ended and Father moved out of the family home.

In mid-December 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a referral, alleging a history of verbal and physical altercations between Mother and Father.

Mother signed a safety plan with DCFS, stating she and Father would exchange custody of the children in a neutral

¹ Further statutory references are to the Welfare and Institutions Code.

² Father does not challenge on appeal the jurisdiction finding regarding his and Mother's history of domestic violence.

setting or through a third party due to their history of domestic violence. Mother also filed a petition in the family law court for custody of X.P. and Manuel.

In or around early January 2018, DCFS received another referral, alleging Father had physically abused Saul and Manuel, and Father had attempted suicide in the summer of 2017. Regarding the suicide attempt, the referral alleged X.P. observed Father on the floor with an extension cord around his neck, with Mother attempting to revive him.³

While DCFS's investigation of the referrals was in progress, Mother and Father participated in mediation and stipulated to a child custody order, granting Mother sole physical custody of X.P. and Manuel, with unmonitored visitation for Father and his two children to occur on Sundays from 7:00 a.m. to 8:00 p.m. and on Mondays from after school until 8:00 p.m.

On February 6, 2018, after interviewing Mother, Father, and the three children, DCFS filed a dependency petition under section 300, subdivisions (a), (b), and (j), alleging the children were at risk due to Mother and Father's history of domestic violence, Mother's and Father's physical abuse of Saul and Manuel, Father's mental and emotional problems, and Father's history of substance abuse and current abuse of methamphetamine and alcohol.

³ According to Mother's statements to a social worker, as set forth in the February 7, 2018 Detention Report, Father locked the door to Mother's bedroom and used an extension cord to hang himself from her bedroom closet. All of the children were home at the time. Saul and X.P. were present when Mother cut the cord and performed CPR on Father.

The same day, the juvenile court detained X.P. and Manuel from Father and ordered them placed with Mother (where they already resided). The court ordered Father to submit to weekly, on-demand drug testing and granted him monitored visitation with X.P. and Manuel.⁴

We focus our attention on the evidence in the record regarding Father's substance use because that is the evidence germane to the issues Father raises on appeal.

Evidence Regarding Father's Substance Use

Pre-detention interviews—December 2017

Saul told a social worker he observed Father “put mother in an ‘arm lock,’ ” while Father “was drunk.” According to Saul, this incident occurred in or around late 2016. Saul added he “did not like that [Father] drank alcohol,” but had never witnessed Father “act strange after drinking anything.” Saul stated Father drank three beers per day and did not use drugs. In a follow-up interview on January 10, 2018, Saul told the social worker he had once seen Father “‘slam his body’ sideways against the wall and did not know why.”

X.P. told the social worker Father drank beer and did not use drugs. “When questioned for details as to father’s alcohol use, X[P.] did not provide further information, but stated that she had seen father act strange.”

Manuel told the social worker Father drank beer. He “had not seen . . . father act strange after drinking.”

⁴ The juvenile court indicated at the detention hearing that it would not order unmonitored visitation until Father submitted proof he was taking medication and participating in therapy for his mental health issues.

Father told the social worker he drank three “big beers” once a week and “was intoxicated when he attempted suicide” in July 2017.⁵

In the Detention Report, DCFS addressed the social worker’s discussion with X.P. regarding Father’s suicide attempt: “X[P.] stated that she saw father when he tried to hurt himself. X[P.] stated that mother found father in her closet hanging. X[P.] described that she heard mother scream and that she and Saul walked into her mother’s room and mother asked for her knife. Per X[P.] she ran and grabbed a knife from the kitchen and gave it to her mother who then cut her father down from the closet where he was hanging. X[P.] stated she then saw father on the floor, unconscious, with the extension cord around his neck and mother was performing CPR and then the ambulance arrived at the home moments later. As X[P.] described what she saw, she was visibly emotional; shaking and crying.”

Father’s positive drug test

DCFS asked Father to take a drug test and he agreed. On January 17, 2018, Father tested, and the results were positive for methamphetamine and amphetamine.

On January 24, 2018, the social worker met with Father in-person to discuss the test results. Father denied recent drug use, claiming he had used methamphetamine on one occasion, between seven months and a year before the test. As stated in the Detention Report, he “blamed the clinic technician where he

⁵ After the suicide attempt, Father was prescribed medication to treat depression. In November 2017, Father was evaluated and received a diagnosis of major depressive disorder with schizophrenic features and audio and visual hallucinations.

drug test[ed] for being on the phone during the time of the test.” According to the social worker, Father appeared tired, fidgety, anxious, defensive, and upset during the discussion. The social worker “observed scabs on his face.” Father agreed to submit to another test on January 26, 2018. The social worker admonished him “that a no show would be equivalent to a dirty test.”

The social worker called Father on January 26, 2018 to remind him that he was supposed to take a drug test that day. Father “responded that he just woke up.” On January 30, 2018, the social worker received the test report, stating Father failed to show for the test.

On January 31, 2018, the social worker met with Mother, and they discussed Father’s positive drug test. As set forth in the Detention Report, Mother stated “she did not know that [Father] was using meth or any other drugs, and that she was disappointed to learn about his drug use.” Mother recalled that “when [Father] moved out of the home in February 2017, he weighed more and that he lost weight suddenly.” At the time, Father told Mother “he lost weight due to being involved in a motorcycle accident.” With hindsight, Mother suspected Father “was using drugs even then but she had no previous suspicion regarding the significant and sudden weight loss until now.”

Pre-Jurisdiction Hearing Interviews

The children’s statements regarding Father’s substance use, as set forth in the March 21, 2018 Jurisdiction/Disposition Report, were consistent with what they told the social worker in December 2016, as summarized above. X.P. and Manuel stated they wanted to remain in Mother’s care and have visits with Father.

On February 26, 2018, Mother told the dependency investigator: “ [Father] would drink on the weekends, socially when [they] had friends and company over. I never saw him doing drugs. I don’t know if he was under the influence the day of the nacho incident.^[6] I think that when he left is when he started doing drugs. I noticed weight loss, but I never thought it was drugs. He did have mood changes often and was irritable.’ ”

On March 5, 2018, Father told the dependency investigator: “ Yes, [one] year ago I used a drug, but I don’t know what it was. The [lab] worker informed me that my test came out positive but I have not accepted fault. The drug test location was an odd place and very unprofessional. The guy administering the test did not wear gloves, [and] he allowed me in to the restroom by myself. I asked for a hair follicle drug test but I can’t afford to pay for it.^[7] I am willing to take the hair follicle test if offered to me. I do drink every day, [but] I don’t get intoxicated, I don’t get drunk, I just drink one or two a day. I know it’s a problem to drink daily but it is not like I drive drunk or act drunk in front of my kids. It doesn’t affect my ability to care for my children.’ ”

⁶ Mother and Father engaged in an altercation at the children’s school Christmas pageant in December 2017. Mother claimed that during an argument, Father spit in her face. Father denied this. Father claimed Mother struck him in the face. Mother denied this. Mother admitted she threw a plate of nachos at Father. Father called the police, and Mother was gone when officers arrived. The officers interviewed Father. The police report from the incident states, “No drugs, alcohol or weapons were involved in the incident.”

⁷ At the detention hearing, Father requested a hair follicle test and was informed he would need to pay for it.

Adjudication/Disposition Hearing

At the March 21, 2018 jurisdiction/disposition hearing, in addition to contesting the other allegations in the petition, Father's and Mother's counsel urged the juvenile court to dismiss count b-7 regarding Father's substance abuse, arguing the children's statements demonstrated a lack of nexus between Father's substance use and any risk of harm to the children.

The juvenile court commented that Mother left the children alone with Father about a week before he tested positive for methamphetamine and amphetamine. The court also noted Father had two positive tests (including the no-show test).

The juvenile court sustained count b-7, which states: Father "has a history of substance abuse and is a current abuser of methamphetamine and alcohol, which renders [Father] incapable of providing regular care of the children. On prior occasions, [Father] was under the influence of alcohol, while the children were in [Father]'s care and supervision. On 01/17/2018, the father had a positive toxicology screen for methamphetamine and amphetamine. The children's mother knew of [Father]'s substance abuse and failed to protect the child. Such substance abuse on the part of [Father] and the mother's failure to protect the children endanger the children's physical health and safety and place the children at risk of serious physical harm, damage and failure to protect."

The juvenile court also sustained count b-1, which states: Mother and Father "have a history of engaging in violent altercations in the children's presence. On 12/13/2017, the mother struck [Father]'s face with the mother's hand and threw food at the father's head. On prior occasions, the mother pushed [Father]. On 12/13/2017, [Father] spat at the mother. On prior

occasions, [Father] pushed the mother. Such violent conduct on the part of the mother and [Father] endanger[s] the children's physical health and safety and places the children at risk of serious physical harm, damage and danger.”⁸

The juvenile court dismissed the other 14 counts alleged in the petition.

Regarding disposition, the juvenile court declared the children dependents of the court and removed X.P. and Manuel from Father's custody. The court ordered the children to remain placed with Mother and ordered monitored visitation for Father with X.P. and Manuel and granted DCFS discretion to liberalize his visits. The court granted Father enhancement services⁹ and ordered him to participate in a full drug and alcohol program with aftercare, drug and alcohol testing, anger management and parenting programs, conjoint counseling with Mother regarding co-parenting, individual counseling to address case issues (including domestic violence), and a psychiatric evaluation and medication compliance. The court admonished Father that he would not have unmonitored visits until he complied with his case plan.

⁸ As stated above, we do not set forth all of the evidence supporting this finding because Father does not challenge the finding on appeal.

⁹ Enhancement services are “ ‘child welfare services offered to the parent not retaining custody, designed to enhance the child's relationship with that parent.’ ” (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 212.)

DISCUSSION

Father challenges the sufficiency of the evidence supporting the jurisdiction finding regarding his substance use (count b-7). He recognizes we need not reach this issue because, even if we were to reverse the challenged finding, dependency jurisdiction would still exist based on the unchallenged finding regarding domestic violence. “‘When 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 [trial] 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.’” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) Father asks this court to exercise its discretion to review the jurisdiction finding regarding his substance use, arguing that absent this finding, the juvenile court would not have imposed the portions of the disposition order he challenges on appeal, requiring him to participate in a drug and alcohol program and have only monitored visitation with his children. We “generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding . . . serves as the basis for dispositional orders that are also challenged on appeal.” (*Ibid.*) Accordingly, we review the merits of Father’s appeal, with no opposition from DCFS to such review.

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making

that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

Jurisdiction under section 300, subdivision (b), requires proof “[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).) In deciding whether there is a substantial risk of serious physical harm, within the meaning of section 300, subdivision (b), courts evaluate the risk that is present at the time of the jurisdictional hearing. “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 627-629.)

Evidence in the record demonstrates Father exhibited violent and volatile behavior when he was intoxicated. Saul told the social worker he observed Father place Mother in an “‘arm lock’” when he was drunk. Father attempted suicide in the family home when the children were present, while he was drunk. Witnessing the aftermath of Father’s suicide attempt caused X.P. acute distress. At the time of the jurisdiction hearing, Father continued to drink alcohol daily. Moreover,

Father had a positive test for methamphetamine and failed to show for a second test when he was aware it was scheduled and had agreed to submit to it. Viewing the evidence in favor of the juvenile court's finding, as we must, the record demonstrates a nexus between Father's substance use and a substantial risk of harm to the children. When Father was intoxicated, he engaged in behavior that negatively impacted his ability to properly care for, supervise and protect the children from harm.

Our rejection of Father's challenge to the jurisdiction finding also resolves Father's challenge to the disposition order, which is based solely on his argument the court erred in sustaining count b-7 regarding his substance abuse. He argues, "Absent the erroneous finding, there are no grounds for a full [drug and alcohol] program and monitored visitation." We conclude the finding was not erroneous and affirm the disposition order.

DISPOSITION

The jurisdiction findings and disposition order are affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.