

Filed 6/26/18 In re D.R. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.R., a Person Coming
Under the Juvenile Court Law.

B284476
(Los Angeles County
Super. Ct. No. DK21760)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Appellant,

v.

B.R.,

Defendant and Respondent.

APPEAL from an order of the Superior Court of Los Angeles County. Robert S. Wada, Commissioner. Reversed.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Sally Son, Deputy County Counsel, for Plaintiff and Appellant.

Law Office of Marissa Coffey, Marissa Coffey, under appointment by the Court of Appeal, for Minor and Respondent.

Law Offices of Danielle Butler Vappie, Danielle Butler Vappie, for Defendant and Respondent.

INTRODUCTION

When D.R. was two years old, his mother N.B. (mother) was shot and killed. At the time, D.R.'s father B.R. (father) was incarcerated. The Los Angeles County Department of Children and Family Services (DCFS) took temporary custody of D.R. and brought a dependency action on his behalf. The juvenile court dismissed the subsequent first amended Welfare and Institutions Code section 300¹ petition, and DCFS appeals.² We reverse.

BACKGROUND

I. Detention Report

On February 19, 2017, DCFS received a call reporting that mother had been murdered at her boyfriend's house and requesting that D.R. be picked up from the police station. When a DCFS social worker arrived at the police station, she was told D.R. had been taken to the hospital with a possible gunshot wound.

At the hospital, a doctor informed the social worker that D.R. had been shot in the back and that the bullet hit one of D.R.'s kidneys, as well as his pancreas, spleen, diaphragm, and

¹ All statutory citations are to the Welfare and Institutions Code.

² D.R. filed a respondent's brief opposing DCFS's appeal, father did not.

stomach. D.R. was taken to the operating room for emergency surgery. After the surgery, a doctor advised the social worker that D.R. was expected to recover fully and would be discharged in a few days.

Because mother was deceased and father's whereabouts were unknown, DCFS took temporary custody of D.R. Later, the social worker spoke with a police detective who provided mother's and father's names. The social worker learned father was incarcerated.

Once D.R.'s name was determined, DCFS's historical data was accessed and showed he had special needs prior to being shot. D.R. had been born with, and received surgery for, an esophageal condition.

Maternal grandmother told the social worker that father treated mother nicely at first, but "something happened" that she believed had to do with father's drug use. Father began beating mother and "things went downhill" from there. According to maternal grandmother, father and mother used methamphetamine, and father was in and out of jail.

II. The Section 300 Petitions

On February 23, 2017, DCFS filed a section 300 petition, alleging D.R. was at risk of harm because he had no parent to provide him with care, supervision, and the basic necessities of life, as mother was deceased and father was incarcerated (the b-1 and g-1 counts).³ The petition also alleged that father's history of

³ The b-1 and g-1 counts both read: "The child [D.R.] has no parent to provide care, supervision and the basic necessities of life including, but not limited to food, shelter, clothing and medical care for the child in that the child's mother, [N.B.] is

illicit drug use rendered him incapable of providing D.R. regular care and supervision, thereby placing D.R. at risk of harm (the b-2 count).

On February 23, 2017, the juvenile court made emergency detention findings against father and ordered DCFS to conduct a Pre-Release Investigation of D.R.'s relatives for his possible placement. DCFS reported that paternal grandmother lived with her daughter and son-in-law and their four children in a three-bedroom, two-bath house. No child safety concerns were observed. DCFS recommended that D.R. not be placed with paternal grandmother, however, because too many persons lived in the home and thus it would not meet Resource Family Approval standards. At the March 9, 2017, Pre-Release Investigation hearing, the juvenile court released D.R. to father with D.R. being placed with his paternal grandmother.

On March 20, 2017, DCFS filed a first amended section 300 petition. The amendment concerned only the b-2 count and added an allegation concerning father's conviction for battery with serious bodily injury, which rendered father incapable of providing D.R. with suitable care. In full, the amended b-2 count reads: "The child [D.R.]'s father [B.R.] has a history of illicit drug use, including methamphetamine, and a criminal history of convictions of 243(D) PC Battery with serious bodily injury for which the father is currently incarcerated which renders the father incapable of providing regular care and supervision of the child. The child is of such a young age as to require constant care and supervision and the father's substance abuse and violent

deceased and the child's father [B.R.] is incarcerated. Such lack of a parent endangers the child's physical health and safety and places the child at risk of serious physical harm and damage."

criminal history interferes with the father’s ability to provide regular care and supervision of the child. Such substance abuse and violent conduct by the father endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage, and danger.” (Emphasis omitted.)

III. The Jurisdiction/Disposition Report

On May 4, 2017, DCFS filed its Jurisdiction/Disposition Report, which provided the following information.

Between November 28, 2015, and February 24, 2016, there were four child welfare referrals concerning D.R. All involved general neglect and emotional abuse. Three of the four referrals were based on the parents’ drug use, two of which identified the drug at issue as methamphetamine. The drug-use referrals were deemed inconclusive because the parents would not cooperate or could not be located.

DCFS reported father had an extensive criminal history between 2003 and 2016 that included petty theft, driving under the influence, assault and battery, and battery of a “spouse/ex.” Most recently, father had been arrested for possession of a controlled substance and battery arising from two separate incidents in May 2016, leading to father’s conviction for battery with serious bodily injury in October 2016. DCFS summarized police reports concerning both incidents.

With respect to the first incident, on May 22, 2016, police officers responded to a call concerning father and a female causing a disturbance. When an officer contacted father and asked if he was in possession of anything illegal, father responded that he was in possession of “some bud”—meaning

marijuana—and that he did not have a medical marijuana card or prescription.

When the officer asked father if he could search him to recover the marijuana, father immediately reached into his pocket and pulled out a small white plastic bindle that he threw on the ground. Father then voluntarily turned around and positioned himself so that he could be searched. In the search, the officer found a cylindrical glass pipe with a bowl end that was charred and had a white crystalline substance inside that resembled methamphetamine. Upon the officer's discovery of the pipe, father said, "I forgot that was in there." Father then admitted that he recently started using methamphetamine after losing his job and becoming homeless.

The officer recovered the plastic bindle and recognized its contents as methamphetamine (it later tested positive for methamphetamine). As the officer recovered the bindle, father said, "That's not mine." The officer explained to father that he had seen father take the bindle from the same pocket from which the officer recovered the pipe. Father responded, "Oh." The officer then arrested father.

At the police station, father admitted the glass pipe was his and that he had used it to smoke methamphetamine. Father said he had been using methamphetamine for the past couple of months after he lost his job and became homeless. He stated he used about a half a gram of methamphetamine a day. When the officer asked father about the bindle of methamphetamine the officer had found in his possession, father replied, "I wasn't aware that it was in there." When the officer explained that he had seen father remove the methamphetamine from his pocket, father still denied the methamphetamine was his.

With respect to the second incident, which occurred two days later on May 24, 2016, a police officer responded to a call concerning a battery at a church. A witness told the officer that he and a group of people were finishing a bible study when he heard someone outside yelling. The witness looked out the front doors of the church and saw father standing across the street. Father ran into the church and began yelling, “[W]hy you fooling, you know me.” Father was “acting very odd and appeared to be ‘spun out.’”

“[S]till acting very strange,” father ran and jumped onto a stage and attempted to remove a large cross. The victim attempted to calm the situation and asked father to stop moving the cross. Apparently believing there was “a problem” with father, the victim began praying over father. Father then punched the victim in the face. When a witness attempted to intervene, father swung both fists at him, grazing his right cheek. Father fled, but he was quickly apprehended and arrested. The police officer contacted the victim at the hospital. He had a swollen and crooked nose and swollen left eye.

While in custody, a social worker interviewed father. Father indicated that he initially tried to fight his battery case, stating “I don’t think I did this.” But, father explained he ultimately entered a plea and received a three-year sentence because he did not think he could win the case. Father reported he informally attended every program the jail offered, including anger management, parenting, and Alcoholics Anonymous, though he did not drink alcohol. He stated he would not receive a certificate for attending the programs because they were full and he was only “sit[ting] in.” Father indicated that he would likely be “going up state” for imprisonment in a couple of weeks, which

was a move he would appreciate because he had been told there were more “programs/services” offered at his destination. Father said he “would really like” to receive counseling because he wanted someone he could talk to and “get [his] thoughts out.”

Father also told the social worker that he had met mother three or four years earlier. He said it had been really stressful for him and mother after D.R. was born because D.R. had a “tracheoesophageal fistula,” which required surgery. Due to D.R.’s condition, father missed a lot of work which caused him to lose two jobs.

Paternal grandmother told the social worker that father became addicted to methamphetamine while he was in a relationship with mother. D.R. was born with a gastrointestinal birth defect and needed constant care. Paternal grandmother believed father and mother were incapable of caring for D.R. properly, which concerned paternal grandmother daily. Paternal grandmother was not aware of whether father was using drugs, but was “shocked and devastated” by his recent arrest.

Due to father’s incarceration, D.R., who had been released to father, remained in paternal grandmother’s care pursuant to father’s plan. Concerning his post-incarceration plans, father stated in a written affidavit that he and D.R. would stay together at paternal grandmother’s home while father tried to “find a stable career and stabilize my finances.” Father also stated that he might relocate once he gets stabilized in his job.

DCFS also filed a last minute information for the court on June 22, 2017. DCFS reported that a social worker spoke with father on May 17, 2017, about the allegations in the first amended section 300 petition. Father denied any substance abuse history whatsoever. Father also denied the incident that

led to his incarceration, claiming that “the charges against him are false.” Father stated that his anticipated release from jail is in March 2018 and that he intended thereafter either to reside with the paternal aunt or the paternal grandmother with D.R.

IV. The Adjudication Hearing

At the May 26, 2017, adjudication hearing, the juvenile court admitted into evidence the Detention Report and the Jurisdiction/Disposition Report. The court also heard testimony from Covina Police Department Officer Eric Pettinger regarding father’s May 24, 2016, battery with serious bodily injury at the church. Officer Pettinger testified that, as a result of father’s battery, the victim had plates surgically implanted in his left eye socket area, his left cheek bone area, and in the area above his teeth. After hearing argument from all parties, the juvenile court took the matter under submission.

On June 22, 2017, the juvenile court dismissed the first amended section 300 petition in its entirety. In dismissing the b-1 and g-1 counts, the court explained that father had made an appropriate plan for D.R.’s care while father was incarcerated by giving paternal grandmother custody of the child. With respect to the b-2 count, the juvenile court stated that DCFS had not established a nexus between father’s substance abuse or battery conviction and a risk of harm to D.R., stating, “So there is no showing that any of the substance abuse or the physical altercation that happened . . . has any nexus to the defined risk of harm to the child.”

DCFS timely appealed from the juvenile court’s order. DCFS also filed a petition for writ of supersedeas to stay the juvenile court’s order pending this appeal, which we granted.

DISCUSSION

On appeal, DCFS's challenge to the juvenile court's dismissal of the petition is limited to the juvenile court's conclusion that DCFS failed to establish jurisdiction as to the b-2 count. We hold the juvenile court erred in so concluding.

I. Standard of Review

"A juvenile court's jurisdictional findings are reviewed for substantial evidence. (*In re David M.* (2005) 134 Cal.App.4th 822, 828 [36 Cal.Rptr.3d 411].) Generally, '[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 [32 Cal.Rptr.3d 526].) "However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, '[w]hile substantial evidence may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence" [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].' [Citation.] "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.]" (*Id.* at pp. 1393-1394.)' (*In re David M.*, *supra*, 134 Cal.App.4th at p. 828.) DCFS has 'the burden of proving the "jurisdictional facts by a preponderance of the evidence.'" (*In re Drake M.* (2012) 211 Cal.App.4th 754, 768 [149 Cal.Rptr.3d 875]; see *In re D.C.* (2011) 195 Cal.App.4th 1010, 1014, 124 Cal.Rptr.3d 795.)" (*Los Angeles County Dept. of*

Children & Family Services v. Superior Court (2013) 215 Cal.App.4th 962, 966-967 (*LACDCFS*.)

At least one court has observed that when “the party with the burden of proof did not carry the burden and that party appeals, ‘it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment.’ (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 [103 Cal.Rptr.3d 538].)” (*LACDCFS*, *supra*, 215 Cal.App.4th at p. 967.) Thus, where the issue on appeal turns on whether there was a failure of proof before the trial court, “the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’” (*Ibid.*) Other courts in this situation have continued to employ the test of whether there is “substantial evidence that supports the determination of the trier of fact. [Citation].” (*Ibid.*)

We conclude the juvenile court erred under either standard.

II. Analysis

The purpose of the juvenile court law “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.) “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.” (*Ibid.*)

Under section 300, subdivision (b)(1), a child comes within the jurisdiction of the court when: “[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 inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” “Subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial risk of serious physical harm or illness.*’ [Citations.]” (*In re John M.* (2013) 217 Cal.App.4th 410, 418.)

Notably, a “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 physical harm.” (*In re Drake M., supra*, 211 Cal.App.4th at p. 767.) Furthermore, as a general matter, a juvenile court “need not to wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citations.] The court may consider past events in deciding whether a child presently needs the court’s protection. [Citations.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165-166.)

There is manifest evidence that father has a substance abuse problem with methamphetamine, and there is no evidence that the problem has been remediated or that father has even taken steps to address the problem. According to maternal grandmother, father and mother used methamphetamine. According to paternal grandmother, father became addicted to

methamphetamine while he was in a relationship with mother. Between November 2015 and February 2016, DCFS received four separate child welfare referrals for D.R. related to mother's and father's drug use. On May 22, 2016, when contacted by police officers, father removed a plastic bindle of methamphetamine from his pocket and threw it to the ground. A search of father disclosed a cylindrical glass pipe with a charred bowl end that contained a substance that resembled methamphetamine. In that encounter with the police and later at the police station, father admitted he used methamphetamine. He said he had used methamphetamine for a couple of months, he used the glass pipe to smoke methamphetamine, and he used about a half a gram of methamphetamine a day.

The record compels a finding that father has a substance abuse problem.⁴ The only indication in the record arguably contrary to such a finding is paternal grandmother's surprise that father was arrested because she was not aware he was using drugs again, father's denial to the police that the methamphetamine in his possession was his, and father's denial to the social worker of any substance abuse history whatsoever. But none of the foregoing constitutes substantial evidence or is otherwise of such character and weight to support a finding other than father having a substance abuse problem. That paternal grandmother was unaware of father's continued drug use is not inconsistent with father's abuse of methamphetamine, and,

⁴ Indeed, it appears the juvenile court so found, as the court explained its dismissal of the b-2 count was based on an inadequate showing that father's "substance abuse . . . has any nexus" to the risk of harm to D.R., not the absence of a substance abuse problem.

indeed, her surprise at his arrest shows why her lack of knowledge of his current drug habit carries little or no meaning. Likewise, father's denial that the bundle of methamphetamine was his is not inconsistent with him using methamphetamine, particularly when he acknowledged the pipe he possessed was his and was used to smoke methamphetamine. Finally, while father's denial of any substance abuse history might otherwise constitute evidence that he does not abuse methamphetamine, in context, a single, self-serving statement cannot support a contrary finding in light of the entire record indicating father abuses methamphetamine, including unimpeached statements of family members and father himself, as well as father's uncontroverted possession of methamphetamine and a pipe used to smoke it. (See *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652 ["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] A formulation of the substantial evidence rule which stresses the importance of isolated evidence supporting the judgment, . . . risks misleading the court into abdicating its duty to appraise the whole record"] (internal quotation mark omitted).)

Moreover, the record before the juvenile court indicates that father's substance abuse remained untreated. Father claimed that he attended every program the jail offered, including anger management, parenting, and Alcoholics Anonymous. Such claims are subject to doubt, as father's claimed participation was only informal by his own account and there is no evidence he received any certification for actively participating in them. But even crediting father's claims of participation, none of the programs address methamphetamine abuse or any other

form of drug rehabilitation. Indeed, by the time of the juvenile court's adjudication ruling, father denied any substance abuse history and the battery for which he was incarcerated, which, of itself, indicates father's substance abuse issues remained unresolved. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge"].)

In light of father's untreated methamphetamine abuse, DCFS, at the very least, adduced "prima facie evidence" that father was unable to provide care to D.R., resulting in a substantial risk of harm. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) There is no evidence in the record to the contrary. Rather, the record here contains even more. There is also substantial evidence that father is violent when under the influence of methamphetamine. Maternal grandmother said that father treated mother well at the beginning of their relationship, but "something happened" and father began beating mother. Maternal grandmother attributed the change in father and mother's relationship to father's drug use. Consistent with maternal grandmother's account, on May 24, 2016, two days after father was found in possession of methamphetamine and a methamphetamine pipe, father committed the battery at the church. Father appeared to be "spun out" and his behavior was described as "very odd" and "very strange." Father's unprovoked attack left the victim with serious injuries requiring surgery. When a witness attempted to intervene, father attempted to strike that person.⁵

⁵ The most—if not only—reasonable inference is that father's attack was due to his being under the influence of methamphetamine. In the alternative, if not drug-induced, father's unexplained susceptibility to inflict unprovoked violence

Based on father's unresolved methamphetamine problem and history of violence linked to his substance abuse, the record compels a conclusion that father poses a substantial current risk to D.R. upon release from custody. Indeed, father indicated that his post-incarceration plan is to live with D.R., thereby exposing D.R. to certain risk of harm from father's unabated drug addiction. Accordingly, the trial court erred in dismissing the b-2 count.

on others would also compel a finding that D.R. is at substantial risk of harm.

DISPOSITION

The order is reversed, and the case is remanded to the juvenile court for further proceedings consistent with this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.