

Filed 9/5/18 In re Baby Boy M. CA2/8

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re BABY BOY M.,

a Person Coming Under the
Juvenile Court Law.

B285808

(Los Angeles County
Super. Ct. No. DK19686)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SONIA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County, Emma Castro, Commissioner. Affirmed.

Brian Bitker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

Sonia M. (Mother) appeals from a jurisdiction/disposition order declaring her infant son, Baby Boy M. (the child), to be a dependent child of the court and removing him from her custody. She contends there was no substantial evidence to support the juvenile court's jurisdictional finding that the child was at risk due to Mother's mental illness or homelessness. Mother also challenges the dispositional order based both on lack of jurisdiction and that it was not supported by substantial evidence. We disagree and affirm the order.¹

FACTUAL AND PROCEDURAL HISTORY

A. *The Dependency Petition*

On September 29, 2016, the Department of Children and Family Services (Department) filed a petition under Welfare and

¹ We take judicial notice of the juvenile court's May 17, 2018 minute order terminating parental rights and freeing the child for adoption and of Mother's appeal from that order. Because the juvenile court's jurisdiction to enter that order is dependent upon the outcome of this appeal, this appeal is not moot. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 413-414; *In re Kristen B.* (1986) 187 Cal.App.3d 596, 605.)

Institutions Code section 300, subdivision (b)(1),² alleging the child was at risk of serious physical harm or illness due to Mother's inability adequately to protect him. The petition alleged Mother had "a history of mental and emotional problems, including a diagnosis of Schizoaffective [D]isorder, which renders the mother incapable of providing regular care of the child. The mother failed to take [her] psychotropic medication as prescribed. Such mental and emotional problems on the part of the mother endanger the child's physical health and safety and place the child at risk of serious physical harm, damage and danger." The petition noted the child was detained in a hospital.

B. *The Detention Report*

The detention report filed with the petition indicated the Department received a referral after Mother gave birth to the child, who appeared to have been born prematurely at about the twenty-fifth week of gestation, weighing about two pounds. The child would not be discharged from the hospital for at least two months due to his premature birth. He was diagnosed with respiratory distress syndrome, sepsis, and other complications of premature birth. He would need extensive follow-up services after his discharge.

Mother and the father, Armando P. (Father), were both homeless and living in a tent near the intersection of Eighth Street and Maple Avenue in Los Angeles. Mother had been homeless for several years. When the hospital social worker discussed with Mother a plan for the child's care once he was

² All further statutory references are to the Welfare and Institutions Code.

discharged from the hospital, Mother stated she needed to talk to Father, but she planned on keeping the child with her and his father in their tent.

Mother had been arrested about eight years earlier for possession and sale of heroin and was incarcerated for four years, during which time she was diagnosed with Schizoaffective Disorder and received mental health services. She had not received any mental health services since her release from prison. Mother reported having an adult son in Texas. He had been detained at age two due to Mother's abuse of heroin and speed and the father's alcoholism; she never reunified with that son because he was placed in a good home. Mother stated she had been sober since 2004; the hospital confirmed that both Mother and the child tested negative for drugs.

Children's social workers met with Mother at the hospital on September 16, 2016. Mother reported she had not received any prenatal care because she did not know she was pregnant until two weeks prior to the birth when she felt the baby move. After her water broke and she started having contractions, she went to the hospital.

Mother denied having mental illness. She acknowledged she had been diagnosed with Schizoaffective Disorder at a time when she was experiencing hallucinations. At that time, she was ordered to and did take medication, but stopped taking it after she was released from prison because she did not like the way it made her feel. She was no longer experiencing hallucinations; she believed they could have been drug-induced. She had received a referral for a psychiatric assessment, but when she found out it would take several hours she decided not to go because she had other things to do.

Mother acknowledged she needed to find a different living situation because the child could not live in a tent due to his medical conditions. She agreed to get mental health services and a phone so she could keep in contact with the hospital and social workers.

Mother was discharged from the hospital on September 17, 2016. The hospital social worker notified the Department that Mother refused social work services and temporary shelter assistance. She said she would receive services through the Downtown Women's Center. As of September 26, 2017, Mother had only contacted the hospital once regarding the child. She had not seen him since September 16, 2017.

Children's social workers had not been able to speak to Father, because his whereabouts were unknown. The social workers recommended continued detention of the child based on concerns over Mother's noncompliance with her mental health needs, her and Father's whereabouts being unknown, and their failure to contact the social worker.

In an addendum report, the Department recommended Mother receive monitored visitation; participate in individual counseling; attend parenting classes; have a mental health evaluation; and submit to random drug testing. The Department also recommended a multidisciplinary assessment (MAT) for the family and a developmental assessment of the child.

At the September 29, 2017 detention hearing, neither parent was present. The juvenile court found a prima facie case for detention and ordered the child placed with the Department in hospital/shelter care. The court ordered a MAT assessment, and "HUB" medical services and a referral to the regional center for the child. The court ordered the Department to attempt to

locate Mother and Father and provide them with reunification services, and continued the matter to December 15 for adjudication.

C. *The Jurisdiction/Disposition Report*

Mother was interviewed on November 17, 2016. She now indicated she had been given psychotropic medication in prison because it was given to most inmates to help the staff keep them under control. After she remained problem free for a year, the staff agreed to take her off medication. She had not taken medication or participated in mental health treatment since she was released from prison. She was currently participating in therapy and was on a waiting list for mental health screening. She did not want to take medication again due to the side effects, but she said she would do whatever was necessary to care for the child.

Hospital staff members reported Mother had been visiting consistently with the child, she was bonding with him, and her interaction with him was appropriate. He was tolerating room air and was off medications, but he needed to be fed every three hours. The staff believed the child would need to be placed in a foster home until Mother had appropriate housing.

Mother recognized the family needed physical stability, to “be able to provide and maintain a household and not worry about how to make ends meet.” She needed to go to her classes and demonstrate her best efforts to do what she needed to do. She needed to continue bonding with the child and participate in his growth and development.

The Department remained concerned because although Mother agreed to get a mental health assessment and recognized

the child would need stable housing upon his discharge from the hospital, she had not followed through on getting an assessment and still did not have stable housing.

D. *The Interim Review Report and Subsequent Proceedings*

The Department reported the child had been discharged from the hospital on November 30, 2016 and placed in a foster home.

Father was interviewed on December 9, 2016. Father had come from Mexico and had lived in California for 10 years. He had no identification because it had been stolen, and he did not have the resources to get identification from the Mexican Consulate. He lost his job when his employer moved and was currently unemployed. He denied drug or alcohol abuse.

Father had no concerns regarding Mother's mental health. They had been in a relationship for almost five years. At the beginning of their relationship, Mother was impatient and took medication to calm herself down. As it appeared the medication was making Mother nervous, Father suggested she stop taking it. She did so, and was fine without it.

Father wanted to raise the child with Mother and understood they would need stable housing to do so. He was open to receiving government assistance but did not know where to go to get it, was undocumented, and had no friends or family to assist him in caring for the child.

Both Mother and Father appeared at the December 15, 2016 hearing. The juvenile court continued the hearing to February 27, 2017 and ordered both parents to appear in court for that hearing. It ordered that the child remain detained and granted the parents monitored visitation. It also ordered the

Department to provide the parents with referrals for appropriate housing, mental health services, and homeless family services.

Only Mother appeared at the February 27 hearing. Father apparently was in jail. The court ordered the Department to prepare a removal order and continued the hearing to April 25, 2017.

In a Last Minute Information for the Court filed on April 25, 2017, the Department reported Father had been arrested on January 16, 2017. He had had a verbal altercation with a driver who nearly hit him and Mother while they were crossing the street; when the driver attempted to leave, Father struck the driver in the face with a knife.

Mother reported she was participating in individual counseling at Joshua House. Mother was supposed to be obtaining assistance through the Department of Public Social Services (DPSS) to get a copy of her birth certificate, which she needed to get a referral for housing assistance. Mother stated she had not returned to DPSS because she needed someone to watch her belongings. She gave someone at Joshua House permission to watch her belongings but had been unable to connect with that person because Mother had no phone. Mother mentioned having a storage unit but then gave an involved explanation as to why she could not put her belongings there. Mother objected to solutions proposed by the child's social worker and dependency investigator, who tried to impress upon her the need to get her birth certificate so she could be referred for housing assistance.

The Department received a letter from Mother's therapist on April 24, 2017 verifying that Mother had completed "ten individual psychotherapy sessions for persisting depressive mood

symptoms and interpersonal concerns.” Mother appeared to be “motivated to attend and engaged in treatment as reflected by her attendance and adherence to the collaborative treatment plan.”

E. *The Jurisdiction Hearing*

Both parents were present at the April 25, 2017 jurisdiction hearing. Mother testified she had not had a mental health evaluation yet. When asked why not, she responded, “Mostly not because of lack of documentation.” When asked to explain, she gave a number of reasons why she had not obtained her identification, which was with her family in Fresno and which she needed for the evaluation. She was then asked whether she believed she had mental health issues. She said, “While being homeless, yes.” She stated she had an issue with stress.

The court and counsel for the child questioned Mother about being homeless. She said she had been homeless for three years but was looking for vacancies in nearby shelters. She had been in an aftercare facility following her release from prison, but had conflicts of interest with other people in the facility, so she left. The court tried to get her to say where she lived, but she would not give a direct answer, saying only that although she had a tent, she would “just stay outside,” sleeping “[m]ostly in the same spot.” She told the court she remained on the streets by choice, but a lot of places she had been looking at required identification, “[a]nd without that, their services that they offer you are limited.” The court added, “Unless you ask your family to send you your I.D.?” Mother stated, “I understand that.”

Mother acknowledged the Department had been trying to assist her in getting a copy of her birth certificate, and that she

had some appointments with DPSS, but she had not been able to complete that process because “I have property that I have with me, that’s being unsupervised, and I feel that . . . at times, I’m unable because of people wanting to steal your stuff or people removing your stuff without consent and I don’t want them to take my stuff.”

Counsel asked Mother if the child were released to her, where would she live. She responded, “Mostly, I would end up trying to find placement” in one of the local facilities. She said, “We’ve contacted them and they’ve ended up wanting to talk with the social worker to see if they have openings or vacancies there. But they need to have more permanent information, like when he would be placed and for how long or, like, to some type of intake interview with me.” She acknowledged she had not gone to an intake interview.

When asked about parenting classes, Mother said she had enrolled, but she had not gone to any classes yet because, “She says that the classes haven’t started.” The court pointed out that the petition was filed seven months earlier and asked when Mother enrolled. She responded, “The last three months.”

After argument, the court found that “Mother has made a choice to live, for the last three to five years, on the streets, being homeless.” Now, “only because she is very aware that this is not the lifestyle for an infant, who was born premature and is in fragile medical condition, referring to homelessness on the streets, the mother today testifies that she is willing to look for a more structured type of housing outside of living on the streets.”

Mother “received a mental health diagnosis many years ago.” Mother “has not provided evidence to convince the court that she currently does not have a mental health diagnosis that

interferes with her ability to provide proper care and supervision for an infant child.” The court noted that while mother was receiving counseling, it was not with a psychologist or psychiatrist “with certification to assist people with mental health issues.” Although Mother was aware the court had asked her for a mental health assessment, she had not obtained one. Mother said she did not go because she did not have her documents, but “[t]his case has been pending for six months and time is moving forward and your child is growing and getting older with every month that passes. These months are critical in a child’s development, bonding, and attachment. And visiting the child for one hour, two times a week is not going to create a strong bond or attachment with the child.”

The court believed “that Mother’s unresolved mental health problems [are] interfering with her ability to present herself as an appropriate parent with the skills and ability and the tools to take care of an infant child, given Mother’s testimony today.” The court found the petition true as amended to reflect “that the mother has an unresolved and untreated history of mental and emotional problems.”

The court ordered an Evidence Code section 730 psychological evaluation for Mother. It urged Mother’s counsel to assist Mother in navigating the mental health system so she could receive mental health counseling. It told Mother to get her identification from her family. Her counsel agreed to allow Mother to use her address as a permanent mailing address. It ordered the Department to provide Mother with referrals for homelessness services and a licensed therapist.

The court found by a preponderance of the evidence that the child was a person described by section 300, subdivision (b).

It continued Mother's disposition hearing. As to Father, the court denied reunification services pursuant to section 361.5, subdivision (e)(1).

F. *Disposition as to Mother*

In a Last Minute Information for the Court filed on June 1, 2017, the Department reported on efforts to obtain housing and a licensed therapist for Mother. The Department also noted the MAT assessment for the child had been completed. The assessment, which was done while the child was still in the hospital, noted, "Mother is very resourceful and resilient. She shared [a] wealth of knowledge in availability of resources around [the] downtown Skidrow area. Mother showed great love and commitment toward [the child]. Mother cared for [the child] by holding him for hours during the day and carefully responding to all his cues. Mother and [the child] have attached well. Mother can recognize different cues that [the child] communicates and respond appropriately." The assessment also noted that the parents needed "to make efforts to find stable employment and safe housing . . . in order to provide [a] secure environment" for the child. Additionally, the child would need to be monitored for common medical problems experienced by premature babies as well as for developmental concerns.

The matter was continued for receipt of the Evidence Code section 730 evaluation. In that evaluation, the doctor noted Mother was wearing a heavy coat and a sweatshirt hood over her head, although the temperature was in the 80s. The doctor was "not sure if this is the result of mental illness or simply that she is homeless with so few resources." Otherwise, Mother "appears to be relatively rational and quite pleasant." She did not exhibit

symptoms of Schizoaffective Disorder or thought disorder, and she did not appear to be depressed or show irritability associated with mania. The doctor believed it possible that the previous diagnosis was due to substance abuse.

The doctor noted that Mother “seems to feel quite stuck at a very elementary stage of just getting her basic documents (Social Security, California ID, and birth certificate). Similar individuals have qualified for Social Security Disability and this would give her the opportunity to have Section 8 housing. She might look quite different if she had more social service support and regular housing. She seems to accept that she can’t go back to living in a tent with the father, of course, the father is now in custody and may be deported.”

In a Last Minute Information for the Court filed on July 13, 2017, the Department reported Mother was no longer going to therapy because she had no one to watch her belongings. The children’s social worker had not received responses to the referral requests she made for therapy and housing, so she was going to follow up on those.

A contested disposition hearing was held on July 13, 2017. Counsel for the child argued the child should remain in his placement because Mother had made no progress in obtaining her documents or shelter. Because of the child’s special needs, it would be detrimental to his health and safety to release him to Mother then.

Counsel for Mother argued “Mother believe[d] the only bar to this child being returned to her is homelessness, which, as the court knows, is neither jurisdictional [n]or grounds to not release to Mother.” Counsel urged the Department to make efforts to find housing for Mother and to “facilitate in finding a therapist

for [Mother] that's accessible to her in her unique situation." Counsel also noted the psychological evaluation indicated "that Mother is asymptomatic of the mental concerns that this court relied on to sustain the petition against her." Counsel assured the court that Mother was "willing to participate in anything this court sees necessary to strengthen her relationship with her son."

On July 18, 2017, the court found by clear and convincing evidence that there would be a substantial danger to the child's health, safety, and physical and emotional well-being if returned to Mother, and there was no way of protecting him without removing him from Mother's custody. The court explained that while Mother was smart and articulate, "the stresses of her life prevent her from being a capable parent at this time. While she's in a contained environment, such as a hospital, is being given meals and provided with a room, she's able to relate to her infant child, as was reported during the time of the child's NICU care." Once Mother left the hospital, however, she was living in a tent with Father. Once he was arrested, she did not know where she would be living, and she refused to go to a shelter. Because of the child's medical issues, the court was "not inclined to release the child to the streets of Los Angeles." Counsel for Mother stated Mother was adamant that she never intended to take the child to her tent and was willing to go to an appropriate shelter. The court responded that Mother never testified to that, and if that were the case, Mother should have testified that she was now willing to go to a shelter.

The court declared the child to be a dependent child of the court under section 300, subdivision (b), and placed him in the Department's custody for suitable placement. Mother timely appealed.

DISCUSSION

A. *Standard of Review*

“We review the juvenile court’s jurisdictional findings and disposition orders for substantial evidence. [Citations.] Under this standard ‘[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.’ [Citations.]” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216, fn. omitted; accord, *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.) “Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value. [Citations.] . . . [I]ssues of fact, weight and credibility are the provinces of the juvenile court. [Citations.]” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941; accord, *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 920.) “‘The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record. [Citations.]’ [Citation.]” (*In re D.P.* (2015) 237 Cal.App.4th 911, 918; *In re Alexzander C., supra*, at p. 446.)

The appellant bears the burden of demonstrating that the evidence was insufficient to support the findings and orders. (*In re Alexzander C., supra*, 18 Cal.App.5th at p. 446; *In re M.R.* (2017) 8 Cal.App.5th 101, 108.) The question is not “whether there is evidence from which the juvenile court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. [Citation.]”

(*In re M.R.*, *supra*, at p. 108; accord, *In re F.S.* (2016) 243 Cal.App.4th 799, 813.)

B. *The Jurisdictional Findings*

A dependency petition may be sustained under section 300, subdivision (b)(1), 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 . . . mental illness” (*Ibid.*) This “requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future.” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

“[H]arm may not be presumed from the mere fact of a parent’s mental illness.” (*In re A.L.* (2017) 18 Cal.App.5th 1044, 1050; accord, *In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226.) However, when a parent’s mental illness causes the parent to make choices which jeopardize the child’s safety, the court may find a risk of harm. (See *In re Travis C.*, *supra*, at p. 1226; see also *In re R.T.* (2017) 3 Cal.5th 622, 633 [“a parent’s conduct—short of actually creating the danger a child faces—may still satisfy the standard required under . . . [§] 300[, subd.](b)(1)”].) “[T]he court may consider the parent’s past conduct and current circumstances, and the parent’s response to the conditions that gave rise to juvenile court intervention. [Citation.]” (*In re Maria R.* (2010) 185 Cal.App.4th 48, 70, disapproved on another ground in *In re I.J.* (2013) 56 Cal.4th 766, 780-781.) Additionally, in considering whether the child is at risk of harm, the court must

consider the child's age and physical condition. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

In *In re Isabella F.* (2014) 226 Cal.App.4th 128, which Mother cites for the proposition the risk of harm must be present at the time jurisdiction is exercised, the father had serious mental illness that had resulted in his being placed on an involuntary psychiatric hold two years earlier. He no longer lived in the home with the mother and child. The juvenile court sustained the section 300 petition under subdivision (b)(1), on the ground "that if he comes back, he is a threat to her." (*Id.* at p. 140.) The appellate court concluded, "If [the] father returns to [the child's] life and there is evidence that he poses a risk to [her] well-being, the Department may of course file dependency proceedings in order to protect her best interests. But where [the] father was not alleged to have caused [the child] any harm and there was no evidence presented that he was likely to do so in the future, sustaining the petition's allegation under section 300, subdivision (b) was reversible error." (*Id.* at pp. 140-141.)

The situation here differs. Although Mother's particular diagnosis of Schizoaffective Disorder was made a number of years earlier and may no longer have been valid, the juvenile court had before it evidence Mother presently had unresolved and untreated mental and emotional problems rendering her incapable of caring for the child. In particular, she demonstrated she was incapable of taking the basic steps necessary to provide adequate housing and care for a medically fragile infant. Although she recognized the child could not live in a tent on the street, Mother had not, in the six months the case had been pending, done what she needed to do to get housing, even with the Department's assistance. Mother would not even give the

court a direct answer as to where she was currently living. She had not taken any parenting classes, and gave a vague and unsatisfactory answer when asked why she had not done so.

Mother suggests the evidence supporting the juvenile court's jurisdictional findings based on mental illness was speculative, in that "[t]here are a host of explanations for her failure to access services that have nothing to do with her mental health." The question before us, however, is not whether there was evidence to support a different conclusion but whether substantial evidence supports the findings the court did make. (*In re M.R.*, *supra*, 8 Cal.App.5th at p. 108; *In re F.S.*, *supra*, 243 Cal.App.4th at p. 813.) We conclude it does.

Because of the child's health issues, returning the child to Mother, to live with her in a tent on the street, would create a substantial risk of serious harm or illness to the child. Therefore, substantial evidence supports the court's jurisdictional findings.

Mother also argues the court's "apparent reliance on Mother's lack of housing in justifying jurisdiction was improper and violated Mother's due process rights." (Bolding and capitalization omitted.) Mother is correct that "[a] parent's homelessness is not a valid reason to assume dependency jurisdiction over a child, nor is it a legitimate basis for refusing an otherwise fit parent custody of his or her child. (See, e.g., § 300, subd. (b)(1) ['A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family']; *In re P.C.* (2008) 165 Cal.App.4th 98, 103-108 . . . [reversing termination of parental rights where offending parent had resolved all issues that initially led to jurisdiction and later findings of detriment were based exclusively on her homelessness].)" (*In re Joaquin C.*

(2017) 15 Cal.App.5th 537, 565, fn. 10; see also *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1212 [“poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction”].)

Here, however, the juvenile court’s jurisdictional findings were not based solely on Mother’s homelessness. The findings were also based on the child’s medically fragile condition, Mother’s refusal to consider staying in a shelter, and her inability to take the steps necessary to obtain appropriate housing for the child and herself. That the court considered Mother’s homelessness in addition to other factors does not invalidate the jurisdictional findings.

C. *Disposition Order*

Mother contends that even if the court’s jurisdictional findings are supported by substantial evidence, there is no substantial evidence to support its disposition order removing the child from her custody. We disagree.

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] “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.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.]’ [Citation.]” (*In re Alexzander C.*, *supra*, 18 Cal.App.5th at p. 451.)

In addition to the evidence supporting the jurisdictional finding of risk of harm, the evidence before the court included that Mother had stopped going to therapy and had failed to take

parenting classes. She had also failed to take any steps to obtain her identification so that she could obtain housing for the child and herself, despite the Department's efforts to assist her and the trial court's reminders to her that she needed to do so. Mother's failure to comply with these elementary tasks as part of her reunification plan demonstrated continued risk of harm and potential detriment to the child if he were to be placed with Mother. (See *In re Alexzander C.*, *supra*, 18 Cal.App.5th at p. 452.) Substantial evidence supports the removal order.

DISPOSITION

The order is affirmed.

GOODMAN, J.*

We concur:

BIGELOW, P. J.

GRIMES, J.

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