

Filed 5/23/17 In re Michael B. CA2/17

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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ERICA A.,

Defendant and Appellant.

B276923
(Los Angeles County
Super. Ct. No. CK66658)

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

Michael Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Steven D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Erica A. (mother) appeals from the juvenile court's jurisdictional order. We agree that the trial court erred in finding jurisdiction under Welfare and Institutions Code section 300, subdivision (g),¹ and otherwise affirm.

BACKGROUND

A nondetained petition filed January 29, 2016 alleged under section 300, subdivision (b) that mother endangered her minor children Michael (then 17) and Joshua (then 12) by allowing her 22-year-old adult son Angel to reside in the home and have unlimited access to the children. Angel abused drugs and alcohol, had mental and emotional problems, and struck mother in the minor children's presence. On January 21, 2016, he poured gasoline on mother and tried to light her on fire. The petition also alleged under section 300, subdivision (b) that mother abused alcohol, was under the influence in the children's

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

presence, and had a conviction for driving under the influence (DUI).

The Los Angeles Department of Children and Family Services (DCFS) received an immediate response referral on January 21. Joshua, then 12, called the police at 7:00 a.m. saying that his brother Angel had poured gasoline on his sleeping mother and was trying to light her on fire with a lighter. The police arrived to find mother drenched in gasoline, and arrested Angel for attempted murder. Less than two weeks earlier police had arrested Angel for robbery after he punched mother in the bathroom and demanded the keys to get alcohol and cigarettes; he was bailed out two days later. Angel was a known gang member, and although mother was aware of his violent tendencies, she still let him reside in the home, putting the younger children at risk.

Mother reported that Michael and Joshua lived in maternal grandparents' front house, but she slept in the garage with Angel, who had paranoid schizophrenia and had been in and out of mental hospitals. That morning, Joshua came into the garage and Angel ordered him out. Mother woke up when she felt a burning sensation on her face and smelled gasoline. Angel was standing over her holding a beer can and a lighter, yelling he was going to burn her because she was a witch. She screamed for someone to call the police.

Angel was involved in a gang, had been shot at many times, and recently started using drugs. Mother and Angel had been living across the street, but moved into the garage

to be closer to the minor children. Angel had no access to the front house where the children slept.

Mother acknowledged her DUI conviction, and admitted that before the social worker arrived she drank a wine cooler in the car to calm her nerves. She denied having a drinking problem or using drugs. She was disabled, received SSI, and had a large settlement from a work accident. Mother hoped to move out of maternal grandmother's (MGM) home with Joshua, but for now she had to take care of all her children, which is why she repeatedly bailed Angel out after he attacked her.

MGM's home was extremely clean and well maintained, and locks kept Angel out.

Michael reported that Angel was extremely dangerous and crazy, and no one, including Michael, felt safe around him. Mother was stuck in a cycle of abuse, constantly enabling Angel and not pressing charges when he became violent or unsafe. The police came to the house at least once a month because of Angel, who used any drug he could get, and Michael had given up on calling the police when Angel hurt mother because nothing would happen. Mother was an alcoholic who got sloppily drunk in the garage and passed out. Joshua was extremely attached to mother, who was unsafe and irresponsible, and Michael thought it would be great if mother and Angel would leave; MGM took very good care of Michael.

Joshua admitted Angel told him to leave the garage, and Michael made him call the police. Angel acted “not

good’, ” Joshua had seen him hit mother, and sometimes Angel told Joshua to leave the room before he hurt her: “ ‘I am 12 years old, I can’t save her life.’ ” About once a month mother called the police, but then she would bail Angel out. Joshua sometimes played video games with Angel, who had not hurt him: “ ‘He wouldn’t light me on fire.’ ” When he saw that mother was getting drunk, she would stop. Both Michael and Joshua felt safe in MGM’s home.²

Mother became agitated and upset when MGM said mother had a drinking problem, and refused to submit to on-demand drug testing. She agreed not to bail Angel out or allow him in the home, signing a safety plan stating that no one under the influence was allowed around the children.

MGM was concerned about mother’s drinking. The children lived with MGM, and mother took them to school and helped make their food. The children never were alone with mother or Angel.

Various members of the household, including Joshua, had called the police 37 times about Angel, who had a criminal history dating to 2006, including multiple batteries. The family had an extensive referral history with DCFS, including a 2014 referral alleging that mother failed to protect Michael and Joshua from Angel, who was verbally and physically aggressive, pushing and shoving her in front of the children. Mother had arranged for Angel to live with

² Joshua told the police he was sleeping in the garage.

his paternal grandmother, and mother and MGM claimed they would not allow him to return home.

Joshua's and Michael's fathers (who are not parties to this case) were in prison. Mother had attended counseling and classes on domestic violence, parenting, and DUI, but still did not understand the risks to her children.

DCFS recommended the children remain in the home under the direct supervision of maternal grandparents, with services for mother including a mental health assessment, counseling, and drug and alcohol testing and counseling, and mental health assessments for Joshua and Michael.

On January 29, 2016, the juvenile court made a prima facie finding that Michael and Joshua were at risk of harm, and released them to mother on the condition that Angel not reside in or visit the front house. Mother was to test randomly and attend weekly Alcoholics Anonymous meetings.

The March 2, 2016 jurisdiction/disposition report reported that Joshua and Michael said mother stopped drinking in front of them. Mother (who tested negative for drugs and alcohol on February 9) said Angel needed to be in the hospital, but he had a good brotherly relationship with Joshua and Michael and "a good heart." It was not Angel, but an old boyfriend who was stalking her, who poured gasoline on her. Joshua said he " 'kind of panicked and I said a lot of stuff. I don't really believe that [Angel] would do that.' "

On April 5, DCFS filed an ex parte application stating that in March, mother left Michael with MGM and got an apartment for herself, Joshua, and Joshua's paternal grandmother (PGM). When the social worker visited, mother was unusually quiet, and PGM did most of the talking. PGM called the next day to say, " 'I am scared. [Mother] is out of her mind.' " Mother talked to herself, left Joshua alone, and was " 'acting crazy, breaking doors.' " Mother then came to the social worker's office, shaking and with bruises on her wrist, and said PGM was gang affiliated, high on drugs, and didn't know what she was talking about. The court detained Joshua from mother and ordered Joshua and Michael detained with MGM, with monitored visitation and reunification services for mother.

An Interim Review Report on May 23 stated that Joshua was receiving therapy and Michael was about to turn 18. Mother had been arrested on April 11 for driving under the influence and was in custody in Nevada on a three-year-old Las Vegas probation violation. An amended petition filed May 26 added an allegation under section 300 subdivision (g) that mother was incarcerated and failed to provide the children with the basic necessities of life.

At the jurisdiction and disposition hearing on June 8, the court sustained the first amended petition as to Michael: counts b-1 (endangering the children by allowing Angel to reside in the home with access to the children); b-2 (history of alcohol abuse and current abuse rendering mother incapable of providing regular care and supervision due to

alcohol abuse, DUI convictions in 2011 and 2012, and the DUI arrest in 2016); and g-1 (failure to provide necessities due to current incarceration). The court placed Michael in MGM's home with no family reunification services, as he would turn 18 the next day.

At the continued hearing on August 22, the court ordered Joshua removed from mother, and sustained the allegations under section 300 subdivisions (b) and (g) as above. The court placed Joshua with MGM, and referred mother for counseling, parenting, drug counseling, and random testing.

Mother filed this timely appeal.

DISCUSSION

Mother does not challenge the jurisdictional finding under section 300, subdivision (b) regarding her recurring abuse of alcohol. As a result, we need not consider her challenge to the juvenile court's decision to sustain the count regarding her allowing the mentally ill and abusive Angel to remain in the home with access to the minor children. When a petition alleges multiple grounds for jurisdiction, we can affirm "if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence." (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) As mother does not dispute that sufficient evidence of alcohol abuse supported the jurisdictional finding, she acknowledges that jurisdiction was proper on that ground. "[M]other cannot expect a more favorable result, and we need not consider her appeal." (*Ibid.*)

We nevertheless will reverse the sustained allegation under section 300, subdivision (g) for lack of substantial evidence. (*In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1065.) As mother argues and DCFS admits, the sole evidence supporting the allegation that mother failed to provide the basic necessities of life was her arrest for DUI and her resulting incarceration in Nevada. MGM provided adequate support for Michael and Joshua, and “[t]hat [Mother] failed to contribute to that support does not justify jurisdiction under section 300, subdivision (g).” (*Ibid.*) The evidence showed that the children were well cared for, and subdivision (g) provides a basis for jurisdiction “only if that parent ‘cannot arrange for the care of the child’ ” while incarcerated. (*In re Andrew S.* (2016) 2 Cal.App.5th 536, 543.) Absent any evidence that Michael and Joshua lacked adequate food, clothing, or medical treatment, the finding of jurisdiction under subdivision (g) was error. (*Id.* at p. 542.)

DISPOSITION

The order sustaining the count under Welfare and Institutions Code section 300, subdivision (g) is reversed. In all other respects, the order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.