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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re H.A. et al., Persons
Coming Under the Juvenile
Court Law.

B283432

(Los Angeles County
Super. Ct. No. CK20700)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOAN D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Terry Truong, Referee. Affirmed.

Joseph D. Mackenzie, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

In her appeal from the disposition order of the juvenile court, mother Joan D. challenges the finding that her children, H.A. (age seven) and M.A. (age four), are defined by Welfare and Institutions Code section 300, subdivision (b).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The juvenile court sustained a petition alleging: “The children[’s] . . . mother, Joan D[.], has displayed mental and emotional problems and has been diagnosed with Paranoid Schizophrenia, which renders the mother incapable of providing the child[ren] with regular care and supervision. On 11/4/16, the mother was involuntarily hospitalized for the evaluation and treatment of the mother’s psychiatric condition. The mother failed to take the mother’s psychotropic medication as prescribed. . . . The mother’s mental and emotional problems and the father’s limited ability to protect the children endanger the children’s physical health and safety and place the children at risk of harm.”

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

Viewing the evidence according to the usual rules (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366),² it shows that mother was taken by police after she threatened her children. Mother called the police because she and father, Harvey A., got into an argument about whether mother could take the children to the store at 11:00 p.m. Although she was the one who called the police, mother refused to respond to their questions. Mother was “‘hyper verbal,’ ” had “‘pressured speech; [and] said people were out to get her.’ ” She “looked underneath the table and stated it was witchcraft.” Father did not know whether mother practices witchcraft. The officers advised mother to leave the house. Mother became “irate” and refused, stating: “if she had to leave the children, ‘my daughter and my son will be somewhere in Heaven or Hell.’ ” The police concluded that mother was a danger to the children. Father was “‘concerned the mother might hurt the daughter.’ ” The children watched these events. M.A. was afraid and cried.³

² Under the applicable standard of review, “our power begins and ends with a determination as to whether substantial evidence exists, contradicted or uncontradicted, supporting the dependency court’s determinations. We review the evidence in the light most favorable to the dependency court’s findings and draw all reasonable inferences in support of those findings. [Citations.] Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. [Citations.]” (*In re Noe F.*, *supra*, 213 Cal.App.4th at p. 366.)

³ At times, the report by the Department of Children and Family Services (the Department) appears to refer to M.A. as Joseph.

The Department received an immediate response referral because the police had arranged for mother to be involuntarily hospitalized under section 5150.⁴ The main reason mother was admitted was her statement that the children would be in Heaven or Hell if she were taken from them, a comment the Emergency Department physician found “alarming.” When mother arrived at the hospital, she was “irritated and upset,” “yelling and uncooperative.” The hospital gave mother a diagnosis of Psychosis NOS and prescribed medication for her.

Mother told the social worker that father threatened to call “‘the people’” on her. While insisting she would not hurt her children, mother never explained what she meant by “Heaven or Hell,” despite being twice asked by the social worker. Mother denied having visual or auditory hallucinations but insisted that father had people she did not know who were “out to get her.” Mother did not live with father, who she claimed, “plots against her and is out to get her.” The Department devised a family safety plan that precluded mother from having unmonitored contact with the children.

Father’s home was appropriate, clean, and had no safety hazards. He and the children lived there with the paternal aunt’s assistance. He came from a tight-knit family that was always available to lend a hand. Father is physically disabled and appeared to be cognitively delayed. Mother went back and forth between father’s house and the maternal grandmother’s

⁴ “Sections 5150 and 5151 permit a person to be taken into custody and detained for 72 hours when there is probable cause he or she is a danger to himself or others as a result of a mental disorder.” (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1552.)

residence. There was a time when mother did not go to father's house for approximately six months. Father reported that the maternal grandmother complained that mother was causing chaos, argued, did not bathe, and "just stayed on the couch." Mother always argued with father and made their relationship tense.

Once mother was released from the hospital, the social worker had difficulty making an appointment to see the parents to discuss the safety plan. Mother was agitated because she misplaced her medication. She accused father of stealing it. Father called the social worker because mother was threatening to take the children out of the house. The social worker could hear mother yelling and then mother disconnected the call. Mother also disconnected the call when father telephoned the police.

The police came to the house but did not take mother back to the hospital because the Psychiatric Emergency Team (PET) found she was not having homicidal or suicidal thoughts. However, PET found that father was "overwhelmed [by] mother's mental health issues" and was "walking on eggshells" in her presence.

The social worker went to the house the following day to discuss the safety plan. The children were present. Mother was agitated and angry. She yelled at the social worker because the safety plan prevented her from having unmonitored contact with the children. She declared she was going to take the children anyway. Then mother turned on father, accusing him of stealing her medication, hiding documents, and refusing to give her a divorce. When the social worker tried to intervene, mother yelled louder and threatened father that if she were taken away, "I'll

come right back here. Then I'll have something for you." Father went to call the police. Mother demanded he hang up. Distressed that father would not obey her, mother picked up a skillet and came toward father. The social worker called the police who took mother away again. Father was relieved that the social worker witnessed mother's behavior. As this was the third time the police had been called to the house for a domestic dispute in front of the children, the officers and the social worker told father he needed to take steps to protect himself and the children from mother.

At the police station, mother acted erratically, argued, yelled, and threatened father. The social worker was afraid for the children's safety. Mother was again involuntarily hospitalized (§ 5150) because she was deemed a danger to others. This time, doctors diagnosed paranoid schizophrenia.

H.A. told the social worker that she was scared when mother " 'screamed' " and the police came. She was scared when her mother " 'grabbed a skilly and was going to hit my dad with it.' " She felt happy and safe now that the police had taken mother away because mother was " 'not nice.' " Once, mother had become angry at H.A., locked the child in her room, and threatened turn off the lights and leave the child alone in the dark.

The Department detained the children from mother and filed its petition. At the jurisdiction hearing, mother claimed she did not have a mental condition that required medication. She stated she was not taking medication. She was confused and did not follow up with appointments for treatment.

The juvenile court sustained the petition. The court removed the children from mother's custody, placed them with

father, and ordered services for the family. The court awarded mother monitored visitation. Mother appealed.

DISCUSSION

1. *This appeal is not moot*

After this appeal was filed, a juvenile court referee issued orders awarding father physical custody of the children and terminating its jurisdiction. As termination of the court's jurisdiction made this appeal arguably moot (see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431), we requested the parties provide us with letters briefing whether we should dismiss the appeal. The Department responded that it was unable to determine whether mother or her attorney was served with copies of the referee's order so as to render it final. (Cal. Rules of Court, rules 5.538(b)(3) & 8.406(a)(2).) In the absence of evidence that the order terminating juvenile court jurisdiction was final, mother's challenge to the jurisdictional findings is not moot.

2. *No error in taking jurisdiction over the children*

At the jurisdiction hearing, the juvenile court determines whether the children are described by section 300. (§ 355.) We review the court's findings at this stage for substantial evidence. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1432; *In re Noe F.*, *supra*, 213 Cal.App.4th at p. 366.) “[S]ubstantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]” (*In re J.K.*, at p. 1433.)

A child is defined by 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 inability of the parent or guardian to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse.” The Department has the burden to “demonstrate three elements by a preponderance of the evidence: (1) one or more of the statutorily specified omissions in providing care for the child (. . . inability to provide regular care for the child due to mental illness, developmental disability or substance abuse); (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘*substantial risk*’ of such harm or illness. [Citations.]” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561, italics added.)

Mother contends that there is no evidence to support the juvenile court’s jurisdictional findings. She observes that the children were well cared for, adequately fed, clothed, sheltered and were current with medical treatment.⁵ Mother contends that the Department offered no evidence of a “discernable nexus” between her mental illness and a risk of harm to the children in that there is no evidence that her mental health problems harmed the children or put them at risk of future serious physical harm or illness. Not so.

⁵ Actually, H.A. had not been to the dentist for so long that she had eight cavities and tooth decay requiring general anesthesia. In any event, given mother often did not live in the family home, the juvenile court could conclude from this record that father and the maternal aunt, not mother who reportedly does not keep herself clean, were responsible for the children’s general health and cleanliness.

The record supports the juvenile court's finding that the children are at risk of harm from the consequences of mother's paranoid schizophrenia. Although risk cannot be presumed from the mere fact of mental illness (*In re Jaime M.* (1982) 134 Cal.App.3d 530, 540), it is not the fact of mother's psychosis that places the children at risk but her behavior as the result of her illness. Mother was involuntarily hospitalized *twice* in a single month for *threatening the children* and father. The very reason she was hospitalized the first time was because she made the threat that if she had to leave them, the children "will be somewhere in Heaven or Hell." Mother argues the meaning of this outburst is ambiguous and subject to interpretation. Yet, not only did the police and father, who heard mother make the statement, understand it to be a threat to the children, but so did the social worker, the doctors, and the trial court. Additionally, mother locked H.A. in her room and warned she would turn off the lights to leave the child alone in the dark. She turned on father, who is mentally and physically disabled and struggling to protect the children, by coming after him with a skillet. The children were in the room at the time and could have been inadvertently hit. (See *In re E.B.* (2010) 184 Cal.App.4th 568, 576 ["Children can be 'put in a position of physical danger from [spousal] violence' because, 'for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg.'"].)

Although mother had not yet harmed the children at the time of the hearing, she came sufficiently close that H.A. was already scared of mother's outbursts and felt safe and happy only after the police took mother away. Moreover, the juvenile court had other ample, nonspeculative evidence that mother placed the

children at substantial risk of serious future harm. When she was unmedicated, mother's agitation, paranoia, and anger grew worse, and her acting out became more physical. Not only was the juvenile court unsure that mother even understood that she suffers from mental illness, but mother often loses her medication, and has not yet begun counseling. That neither child had actually been harmed yet is not determinative given that "the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child[ren]." (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.) Nor need the Department predict precisely how mother's illness will harm the children. (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226.) The evidence amply supports the juvenile court's finding that mother's mental illness put these children at substantial risk of serious harm. Therefore, the children are defined by section 300, subdivision (b)(1).

DISPOSITION

The order is affirmed.

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KALRA, J.*

WE CONCUR:

EDMON, P. J.

LAVIN, J.

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