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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re IVAN M., a Person Coming
Under the Juvenile Court Law.

B277342

(Los Angeles County
Super. Ct. No. CK91251)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES et al.,

Appellants,

v.

JAYMEE C.,

Respondent.

APPEAL from an order of the Superior Court of
Los Angeles County, Teresa Sullivan, Judge. Reversed and
remanded.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, Julia Roberson, Deputy County

Counsel, for Appellant Los Angeles County Department of Children and Family Services.

Martha Matthews, under appointment by the Court of Appeal, for Appellant Ivan M.

Roni Keller, under appointment by the Court of Appeal, for Respondent Jaymee C.

The Los Angeles County Department of Children and Family Services (Department) and 11-month-old Ivan M. appeal the order dismissing the Department's petition to declare Ivan a dependent child of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (j).¹ The Department and Ivan contend the evidence presented at the jurisdiction hearing compelled a finding that Ivan was subject to dependency jurisdiction based on his mother's unresolved history of substance abuse. We reverse and remand for the court to conduct a disposition hearing based on Ivan and his mother's current circumstances.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Initiation of Dependency Proceedings and Detention of Ivan

Ivan was born in May 2016. A Department social worker was called to the hospital because Ivan's mother, Jaymee C., was incarcerated at the time of his birth with a projected release date in November 2016. The social worker interviewed Jaymee, who explained she had been convicted of evading police during a high-speed chase that occurred in December 2015 when she was four

¹ Statutory references are to this code.

months pregnant with Ivan. Jaymee reported that Ivan's father had been killed in a car accident in April 2016.

Jaymee, who has a lengthy history of drug abuse, stated she intended to enter a drug treatment program when she was released from jail.² She also told the social worker she had nowhere to live once she was released from jail and no means to provide for Ivan. Jaymee consented to the Department removing Ivan from her custody and signed an affidavit to that effect.

Hospital staff reported Jaymee said she intended for Ivan to go home with a paternal aunt and uncle, Jesenia M. and Randy M. However, Jaymee's sister, Denice G., came to the hospital and told staff Jaymee had executed documents granting Denice guardianship of Ivan.

According to medical personnel, Ivan was doing well and feeding appropriately but had a thyroid condition that prevented him from immediate discharge. Hospital staff further reported Jaymee acted appropriately with Ivan. Ivan was released from the hospital on May 17, 2016 and immediately detained by the Department, which placed him in the home of his paternal great-aunt and great-uncle, Luz C. and Cesar C.

On May 20, 2016 the Department filed a petition to declare Ivan a dependent child of the juvenile court under section 300, subdivisions (b) and (j), alleging Jaymee was unable to provide regular care and posed a risk of serious physical harm to him due to her history of illicit drug use and failure to reunify with four older children. The accompanying detention report recounted the social workers' interviews with Jaymee and hospital staff. The report also provided information regarding Jaymee's four older

² There is no evidence in the record that either Jaymee or Ivan was tested for illegal substances at the time of Ivan's birth.

children and her history with the Department. Each of those children had been removed from her custody, and her parental rights terminated.³ The eldest, Isaac G., now eight years old, was removed from Jaymee's custody in 2011 due to allegations of domestic violence between Jaymee and Isaac's father and emotional abuse by Jaymee. In 2013 Isaac's father was granted sole custody of Isaac, and the court's jurisdiction was terminated.

Jaymee's second child, Ezekial C., now five years old, was removed from Jaymee's custody upon his birth in 2012 because both he and Jaymee tested positive for methamphetamine. After Jaymee was found to be noncompliant with her case plan, family reunification services were terminated. Jaymee's parental rights as to Ezekial were terminated in 2013, and he was subsequently adopted by a nonrelative.

In 2013 Jaymee gave birth to now three-year-old twins Mary Jane P. and Romeo P. Jaymee and Mary Jane tested positive for methamphetamine at the time of the twins' birth. The twins were removed from Jaymee's custody, and no reunification services were ordered. Jaymee's parental rights as to the twins were terminated in 2014. The twins were subsequently adopted by a nonrelative.

At the detention hearing on May 20, 2016 the court found a prima facie case for detaining Ivan and ordered him placed in the temporary custody of the Department with discretion to release him to an appropriate relative. After the hearing Ivan continued to reside with his paternal great-aunt and uncle.

³ Ivan's father was not the father of Jaymee's older four children.

2. The Jurisdiction/Disposition Report

In a June 14, 2016 jurisdiction/disposition report the Department provided additional details regarding the removal and termination of parental rights as to Jaymee's older children. This included excerpts from interviews with Jaymee conducted by Department social workers in 2012 and 2014, in which Jaymee stated she had begun using marijuana when she was either 13 or 15 years old and had started abusing methamphetamine around the age of 17 or 19. Jaymee denied using drugs during her pregnancy with Ezekiel except for smoking methamphetamine the day before he was born. Jaymee continued smoking methamphetamine once every few weeks after Ezekiel's birth, but she told a social worker in 2012 that she wanted to cease using drugs to benefit her children.

In a 2014 interview with a social worker Jaymee admitted to regularly using methamphetamine in 2013 while pregnant with twins Mary Jane and Romeo. She stated she did not receive regular prenatal care. Although she was aware of the risks to the twins from using drugs while pregnant, she smoked methamphetamine as much as several times per week during the pregnancy. However, Jaymee stated at the time of the interview she had been sober for the two months since the twins were born. Jaymee candidly told the social worker she had "used so much over the years she cannot truly quantify her use or give an accurate frequency of her use." She reported the longest she had remained sober since age 17 was roughly 60 days.

Jaymee was interviewed by a Department social worker in relation to this case on June 7, 2016. Jaymee again discussed her history of substance abuse and stated that, after Isaac was removed from her custody in 2011, she began smoking

methamphetamine every day. She was using methamphetamine once or twice per day when she became pregnant with Ivan but stopped using when she realized she was pregnant—about three or four months into the pregnancy. She stated the longest she had been sober was about three or four months in 2014. She had started treatment programs twice, in 2011 and 2014, but did not complete them, the first time because she moved and the second time because she needed surgery. Jaymee stated she had grown up since becoming pregnant with Ivan and had been starting to change her life when she was arrested. She said she had applied to participate in a drug treatment program during her remaining time in jail and was waiting to see if she would be accepted. She indicated she wished to reunify with Ivan and planned to live with Denice upon her release.

The jurisdiction/disposition report contains conflicting statements regarding Jaymee's childcare plan for Ivan. The hospital staff member who reported the case to the Department told the social worker Jaymee was adamant at the time of Ivan's birth that she did not want Denice to have custody. Jaymee reportedly said Denice had her sign the guardianship papers only a few days after the death of Ivan's father, and Jaymee had been distraught and unaware of what she was signing. Jaymee also said she thought Denice was trying to take advantage of her.

When asked about these statements during her June 7 interview, Jaymee denied making them and said she "never felt [Denice] was pressuring me and I never said that we didn't have a good relationship." Jaymee explained she initially wanted paternal uncle Randy to take the baby, but then learned he had a criminal record and might not be approved as the guardian. At that point she asked Denice to become the guardian once the

baby was born. Jaymee stated she did not have a problem with Ivan staying in his then-current placement with paternal relatives Cesar and Luz.

The Department recommended no reunification services be offered for Jaymee given the termination of parental rights as to her older children and her “extensive, abusive, and chronic use of drugs.”

3. The Jurisdiction Hearing

Both Jaymee and Denice testified at the jurisdiction hearing on July 7, 2016. On direct examination Jaymee stated, when she was arrested, she had intended that Ivan’s father take custody of the baby when he was born. However, on cross-examination Jaymee said she initially intended Randy to have custody of the baby during her incarceration. Either way, after Ivan’s father was killed, Jaymee decided she wanted Denice to take custody. Jaymee testified she signed the document giving guardianship of Ivan to Denice because she recognized she had “a past history here with my drug use. And I know that my kid cannot be in my custody and I want to have my plan for my child.” Jaymee further testified she intended Denice to retain guardianship of Ivan after she was released from custody. Jaymee denied ever saying that she had not understood the guardianship document when she signed it or that Denice had tricked her into signing it. To the contrary, Jaymee testified she wanted Ivan to be placed with Denice and not with his paternal relatives. Finally, Jaymee testified she intended to enroll in a drug treatment program when she was released from custody.

Both Jaymee and Denice authenticated the guardianship document, which was titled “Appointment of Short-Term Guardian for Minor Child(ren) and Durable Healthcare Power of

Attorney” (Appointment). Denice testified she found the template for the Appointment on the Internet and filled it out with the applicable information. Denice then brought a notary with her to visit Jaymee in jail, and they executed the Appointment on April 10, 2016. The Appointment, which was admitted into evidence, states Jaymee appoints Denice to serve as “the short term guardian” for Ivan effective “immediately.”⁴ The Appointment further states it will “terminate upon the earlier to occur of (a) the revocation in writing of any parent/guardian, (b) as required by applicable law, or (c) . . . [¶] . . . on the 31[st] day of December 2019.”

At the conclusion of testimony the trial court heard oral argument on the petition. The Department urged the court to sustain the petition as pleaded because Jaymee’s extended history of substance abuse created a significant risk of harm to a child of tender age such as Ivan. The Department further argued the childcare plan put in place by Jaymee was insufficient to alleviate any risk because Jaymee would have unlimited access to Ivan once she was released from custody. Ivan’s attorney also argued the petition should be sustained and the proposed childcare plan was inadequate to protect Ivan.

The juvenile court dismissed the petition in its entirety. Although acknowledging Jaymee’s history of drug use “is pretty

⁴ Jaymee’s and Denice’s signatures on the Appointment, as well as the attached notarization, are dated April 10, 2016, which was one month prior to Ivan’s birth. However, Ivan’s name and birth date are filled in on the Appointment in the section designated for information about the minor(s) subject to the appointment. Neither the parties nor the trial court addressed this apparent discrepancy.

much stipulated,” the court found there was no “specific non-speculative and substantial risk” to Ivan because there was no evidence Ivan and Jaymee had any illegal substance in their systems at the time of Ivan’s birth. The court also found it probative that Jaymee had made arrangements for Ivan’s care. Specifically, the court found Jaymee’s testimony credible as to her desire for Denice to have custody of Ivan and found the Appointment manifested an intent Denice maintain custody until December 31, 2019.

DISCUSSION

1. Governing Law and Standard of Review

The purpose of section 300 “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; see *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) Section 300, subdivision (b), allows a child to be adjudged a dependent of the juvenile 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 or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” Section 300, subdivision (j), authorizes dependency jurisdiction when a child’s sibling has been abused or neglected as defined in subdivisions (a), (b), (d), (e), or (i), and there is a substantial risk the child will be abused or neglected. “The

Department has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300.” (*In re I.J.* (2013) 56 Cal.4th 766, 773; see § 355, subd. (a).)

Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child presently needs the court’s protection. (*Ibid.*) A parent’s “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

In addition, the Legislature has declared, “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.” (§ 300.2.) Exercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child is “of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; accord, *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

Generally, we review the juvenile court’s jurisdiction findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013)

215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) 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.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

When the Department has failed to carry its burden of proof, however, “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.’” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

2. *The Evidence Compelled a Finding of Jurisdiction as a Matter of Law*

The uncontroverted evidence submitted at the jurisdiction hearing established Jaymee has been a serious drug abuser throughout her entire adult life. Jaymee used methamphetamine as much as once or twice per day, including during the first three or four months of her pregnancy with Ivan, which “unquestionably endanger[ed] the health and safety of her unborn child.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.) Jaymee had not been sober for more than three or four months since she was a teenager, and her substance abuse caused or contributed to the permanent removal of her four older children within the past four years.

Given Ivan's young age, Jaymee's history of substance abuse, in and of itself, "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.) If unrebutted, this evidence compelled a finding that dependency jurisdiction was warranted under Section 300, subdivision (b).

In dismissing the petition the juvenile court relied on two factors to justify its conclusion that Ivan was not at risk of harm because of Jaymee's substance abuse: the absence of evidence that Jaymee was using illegal drugs at the time of Ivan's birth and her arrangement for Denice to have custody of Ivan until 2019. Neither point is sufficient to permit the court to disregard the uncontroverted evidence that Jaymee's substance abuse warranted the exercise of dependency jurisdiction over Ivan.

That Jaymee was not using illegal drugs while she was incarcerated hardly supports an inference her substance abuse problems were resolved and no longer posed a substantial risk of harm to Ivan. Jaymee admitted to using methamphetamine daily until shortly before her incarceration, and there was no evidence her apparent sobriety at the time of Ivan's birth five months later was due to anything other than her lack of access to illegal substances while in custody. Given Jaymee's demonstrated inability to remain sober for more than a few months, her past failures to complete drug treatment programs and the fact that she was not enrolled in any treatment program at the time of the jurisdiction hearing, her enforced temporary abstinence while in custody is meaningless. (See *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806 [father's incarceration did not alleviate risk to children when "there is a possibility that father

would be released from custody, and there is every reason to believe that father would resume” his abuse of children].) Indeed, Jaymee herself acknowledged at the jurisdiction hearing she was not capable of providing Ivan with the safe, nurturing environment he needs.

Similarly, while Jaymee’s recognition of her limitations and desire to arrange for her son’s care are to be commended, under the circumstances of this case the childcare plan established by Jaymee does not contradict or refute the otherwise undisputed need for the exercise of dependency jurisdiction over Ivan. Jaymee stated her intent to live with Denice upon her release from custody, which would give her unlimited and unsupervised access to Ivan. In addition, although the court found Jaymee’s current intent was for the guardianship to continue until 2019, a finding to which we defer (see *T.W. v. Superior Court* (2012) 203 Cal.App.4th 30, 47 [“[w]e defer to the juvenile court’s findings of fact and assessment of the credibility of witnesses”]), the plain language of the Appointment allows Jaymee to revoke the guardianship unilaterally at any time. Thus, nothing prevents Jaymee from changing her mind and taking custody of Ivan regardless of her sobriety. Such an arrangement provides no real protection to Ivan from Jaymee’s unresolved substance abuse issues.⁵

⁵ The Department and Ivan urge us to find a parent’s implementation of an appropriate childcare plan cannot defeat dependency jurisdiction under Section 300, subdivisions (b) and (j), as a matter of law. We need not reach this issue here because, as discussed, we find the childcare plan in this case was not sufficient to alleviate the risk of harm to Ivan.

For these reasons we find the uncontradicted and unimpeached evidence is of such character and weight as to leave no room for a judicial determination that it was insufficient to support a finding of jurisdiction. (See *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) Upon remand the juvenile court will have the opportunity to craft a suitable disposition order, which both protects Ivan and takes into account Jaymee's current behavior and goals. This may include placing Ivan in the custody of Denice with appropriate visitation by Jaymee.

DISPOSITION

The trial court's July 7, 2016 order dismissing the petition is reversed, and the matter remanded to the trial court with directions to vacate its order dismissing the petition under Section 300, to issue a new order sustaining the Department's petition, to hold a disposition hearing pursuant to section 358 at which it considers Ivan's and Jaymee's current circumstances, and to conduct further proceedings not inconsistent with this opinion.

PERLUSS, P. J.

We concur:

SEGAL, J.

SMALL, J.*

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