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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B277744

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK97316)

Plaintiff and Respondent,

v.

ANGEL W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Debra Losnick, Juvenile Court Referee. Affirmed.

Jamie A. Moran, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Jacklyn K. Louie, Principal
Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Angel W. appeals from the jurisdiction and disposition orders of the juvenile court declaring her toddler M. a dependent (Welf. & Inst. Code, § 300, subds. (b) & (j))¹ and removing him from her custody (§ 361, subd. (c)). She contends that the evidence does not support the finding that M. was at risk of substantial harm from her marijuana use or her physical abuse of M.'s sibling, E. She also contends that the court abused its discretion in including drug-testing as part of the disposition order, and that the removal order is not supported by substantial evidence. We conclude that the evidence supports the finding that M. is described by section 300, subdivision (j), and that the removal and drug-testing orders were a proper exercise of discretion. Accordingly, we affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Prior history*

Mother has two children, M. born in late 2014, and nine-year-old E.C. The Department of Children and Family Services (the Department) has received a series of child welfare referrals involving mother. Mother admitted to the New Jersey child protective services in 2010 that she used cocaine and regularly smoked marijuana. She tested positive for marijuana then.

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

A dependency involving E. was initiated in 2013 after mother physically abused the child and stabbed the maternal aunt and a visitor during an “altercation” in front of E., appeared to be under the influence, and to have “some mental health issues.” The victim aunt reported to the investigator that mother was using unprescribed Xanax, which drug made her “crazy and dangerous.” The juvenile court terminated its jurisdiction over E. in July 2014 (§ 361.2) after granting the non-offending mother, Brandie, full legal and physical custody of the child.² (See case No. B248162.) Ever since her detention, E. has been living with her other mother, Brandie, in Las Vegas and visiting mother, her biological mother, periodically. Neither E. nor Brandie is a party to this appeal.

When M. was an infant, mother’s then girlfriend punched mother who was holding M.

2. Child welfare incidents in 2016

In February 2016, mother became “‘upset and hysterical’ ” when she received an eviction notice. She maintained the family was “‘cursed’ ” by her pregnant sister, who resided on Skid Row. Mother claimed she (mother) was “‘possessed by ‘demons,’ ” and believed that M. was also possessed and had done “‘bad things.’ ” “Because of his demonic possession,” mother took M. to a church where “‘he began bleeding out of his mouth.’ ” At the same time, evil demons were urging mother to hurt M. and E. and she may

² Although the record from E.’s dependency is not contained in the record on appeal here, we note that the juvenile court took judicial notice of the petition, disposition, case plan, and minute orders in that earlier dependency. Additionally, mother appealed from the disposition order in E.’s case (case No. B248162) and we take judicial notice of our opinion in that appeal.

possibly be “‘forced’ to hurt the children,” although she did not want to. The Department determined that the allegation of emotional abuse was “[i]nconclusive.”

In May 2016, the Department received a referral alleging M. was at risk of emotional and physical abuse because the referring party learned from a third person that mother put M. inside a stove to “‘get the demons out.’” The deputy sheriffs dispatched to make a welfare check were unable to gain access to mother’s building. Mother appeared to the investigating social worker to be oriented and not under the influence of alcohol or drugs. M. had no marks or bruises. The Department decided, although the facts of the referral were not “unfounded,” that the allegations of abuse and neglect were “inconclusive.”

According to another social worker who had seen mother four days earlier, four different social workers had eight face-to-face visits with mother and found her to be coherent and able to engage in conversation. Mother did not seem to be “actively delusional” or “high” on drugs during any of these visits. In the past, mother had declined to test for drugs or to participate in a mental health evaluation.

Shortly before mother’s arrest, her cousin asked the maternal grandmother, Angelita, to check on M. because mother had reported seeing demons. Angelita felt that mother was “fine” and did not believe mother had a history of mental health issues. Rather, she described mother as “‘very aggressive,’” and “‘a hot head’” who had “‘a mouth on her.’”

3. Mother's arrest and M.'s detention

In early June 2016, the Department learned that mother had been arrested for “no bail warrant, child endangerment, and being under the influence” when deputy sheriffs found her “yelling” and “rambling” in a shopping mall parking lot while holding M. The deputies believed that mother was under the influence. She was not making any meaningful sense and was not stable enough to answer questions from the investigating social worker.

The following day, the social worker interviewed mother in jail. Mother “exhibited signs and symptoms of mental illness and/or substance abuse. Specifically, she appeared to have problems thinking, nervousness, unusual behavior, and sleep changes.” Mother also had difficulty concentrating and seemed to be hallucinating. For example, mother stated that she “got pregnant after drinking Gatorade.” Of her arrest, mother explained that she had locked herself out of the house the day before and so she and M. had slept at a neighbor’s apartment. She was arrested as she was standing in line in the locksmith’s store “voicing her frustration” about locking herself out. Insisting she was not under the influence of any substance when she was arrested, mother explained that it may have appeared that way because she felt “‘over-emotional’ ” and extremely tired as her “‘mind was running.’ ” Mother had a prescription for marijuana but did not identify her ailment. She described her marijuana use as occasional and admitted smoking it the day before her arrest. She denied that she smoked in front of M.

E. was visiting mother around this time and that child’s social worker conducted a follow-up investigation. E.’s social worker suspected that mother may have been “suffering from

mental health,” but did not have a *history* of mental illness because she was not “willing to address the issues.” Brandie confirmed that E. “‘has issues’” with mother and believed that the reason E. did not want to live with mother was that the child would never forget what mother had done to her.

In a Departmental interview a month after her arrest, mother agreed to submit to drug testing and to participate in parenting classes after her release from jail. The social worker believed mother was “very emotional.” Mother claimed to be misunderstood because she “‘talks about Jesus a lot’” which “‘people don’t like.’” Although mother denied having any mental health issues, the social worker noted mother’s rapid speech and scattered thoughts. After some questions about E.’s dependency, mother jumped up in the jail’s interview booth and shouted profanities into the phone.

Mother has a criminal history from 2004 to 2013, that includes convictions for theft and grand theft, and arrests for loitering, assault with a deadly weapon, and child cruelty. In July 2016, mother was sentenced to 270 days in jail for violating probation.

Mother identified M.’s father as Jonathan R., who was incarcerated. He told the social worker that he was aware that mother smoked marijuana. Father is not a party to this appeal.

The Department determined that mother’s mental health issues, unresolved drug use, and erratic behavior placed M. at “very high risk of future abuse and neglect.” Mother’s “substance abuse and mental health issues” created a detrimental home environment for M. The Department recommended that mother undergo, among other things, a psychological assessment and submit to random drug testing to ensure her sobriety and the

child's safety. By the time of the jurisdiction hearing, mother had been released from custody. She denied reports that she was living with M. and Angelita, insisting instead, without providing an address, that she was staying at a motel.

M. was happy, very friendly, and playful. A medical examination showed that he was healthy and had no marks or bruises. The juvenile court ordered the child detained. The Department placed him with Angelita.

4. The petition and adjudication

The operative petition alleged that mother had a history of substance abuse and was an abuser of marijuana, which rendered her incapable of providing regular care for the child, who was of such a young age that he required constant care and supervision. On prior occasions, mother was under the influence of marijuana while M. was in her care. Mother's substance abuse interfered with the child's physical health and safety, and placed him at risk of serious physical harm and damage. (Count b-1.) The petition also alleged that M.'s sibling E. was a dependent of the court because mother had physically abused her by striking her with a belt causing bruises and scratches, and had exposed E. to a violent confrontation with another adult. As mother failed to reunify with E., she lost legal and physical custody of that child. The petition also alleged that mother's conduct, and failure to reunify with E., endangered M.'s physical health and safety, and placed him at risk of physical and emotional harm and damage. (Count b-2.) The petition also contained a count naming father under section 300, subdivision (b), based on his violent criminal history. (Count b-3.)

After considering the evidence, the juvenile court amended the petition to change the allegations concerning E.'s earlier

dependency from a section 300, subdivision (b) count to a count under subdivision (j). As amended, the court sustained the petition and declared M. a dependent (§ 300, subds. (b) & (j)). The court removed M. from mother's custody (§ 361, subd. (c)) and awarded mother monitored visits and reunification services.

CONTENTIONS

Mother contends there is no evidence to support the jurisdiction and removal orders and the case plan was an abuse of discretion.

DISCUSSION

The petition need only contain allegations against one parent to support the exercise of juvenile court jurisdiction over the child. (*In re John S.* (2001) 88 Cal.App.4th 1140, 1143.) Father has not challenged the findings based on his conduct. Thus, the juvenile court properly took jurisdiction over M., irrespective of the allegations concerning mother. (*Ibid.*) However, if mother's appeal is successful, it would affect both the placement and reunification orders. Accordingly, we shall address mother's contentions.

1. *The evidence supports the order declaring M. a dependent under section 300, subd. (j).*

The Department has the burden to prove by a preponderance of the evidence that a child is a dependent of the juvenile court under section 300. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*), citing § 355, subd. (a).) We “ “ “ “review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence”’ [Citation.]” [Citation.]’ [Citation.]” (*I.J.*, *supra*, at p. 773.) “Evidence is substantial if it is ‘ “ ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such

findings.”’ [Citation.]” (*In re F.S.* (2016) 243 Cal.App.4th 799, 811-812.) The party challenging the court’s findings, mother here, has the burden to show there is no evidence of a sufficiently substantial nature. (*Ibid.*)

Section 300, subdivision (j)³ “has two prongs: (1) that ‘[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e) or (i)’; and (2) ‘there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.’ [Citation.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 566.)

When determining jurisdiction under section 300, subdivision (j), the juvenile court must “consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (§ 300, subd. (j).)

³ Section 300, subdivision (j) reads in relevant part, “A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

Here, M.’s sibling E. was a dependent of the juvenile court because mother physically abused her (§ 300, subd. (a)) and exposed her to domestic violence (*id.*, subd. (b)). Thus, for M. to be described by subdivision (j), the Department had the burden to show by a preponderance of the evidence that he was at substantial risk of being abused or neglected under subdivisions (a), (b), (d), (e), or (i).

The statutory definition of subdivision (b) of section 300 “‘consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, *or* a “substantial risk” of such harm or illness.’ (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820) The third element ‘effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]’ [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 829, italics added.)

Mother contends that there is insufficient evidence that M. is defined by section 300, subdivision (j) because the Department presented no evidence that she engaged in the domestic violence and physical abuse that triggered E.’s dependency.

However, section 300, subdivision (j) expands the grounds for the exercise of jurisdiction over a child whose sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i). (*I.J., supra*, 56 Cal.4th at p. 774.) Subdivision (j) “‘allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is

to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ [Citation.]” (*I.J.*, *supra*, at p. 774 [holding father’s sexual abuse of daughter supported determination that sons are at risk of abuse or neglect].)

Here, viewing the totality of the record, it supports the juvenile court’s finding under section 300, subdivision (j), irrespective of whether mother’s marijuana use is sufficient by itself to justify jurisdiction of M.⁴ The evidence shows that mother was using a variety of illicit drugs and had mental health problems when E. was detained. She admitted using cocaine and smoking marijuana, and tested positive for the latter in New Jersey. Her abuse of unprescribed Xanax in 2013 made her “crazy and dangerous.” As these issues remained untreated by the time of the jurisdiction hearing, mother’s encounters with child welfare services have been increasing in frequency. Mother

⁴ Focusing on the marijuana use allegations in count b-1 and citing *In re Drake M.* (2012) 211 Cal.App.4th 754, mother contends that the evidence does not support the finding under section 300, subdivision (b) that M. is at risk of harm from her admitted marijuana use. We need not address mother’s challenge to the b-1 count. We may affirm a juvenile court’s jurisdictional order if any one of the statutory bases for jurisdiction alleged in the petition is supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

admitted smoking marijuana the day she locked herself and M. out of their apartment, suggesting that her marijuana use did interfere with her care of M. The arresting deputy sheriffs concluded that mother was under the influence when they found her roaming around a parking lot with M., as she was yelling and rambling. Mother also exhibited undiagnosed irrational and erratic behavior, a factor the juvenile court is directed to consider under section 300, subdivision (j) (“The court shall consider . . . the mental condition of the parent . . .”). She has variously presented difficulty thinking, inability to concentrate, rapid speech, and scattered thoughts. She claimed her mind was running and she appeared to be hallucinating in jail. Most disturbing, believing M. was possessed by demons, mother put him in a stove to exorcize them and reported that evil demons were urging, and maybe forcing, her to hurt her children. The combination of mother’s drug use and mental condition generated very disturbing behavior that, at the time of the jurisdiction hearing, clearly continued to put M. at serious risk of harm.

We are aware that there is no evidence that mother has abused M. “But section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose of these provisions ‘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, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction

and take the steps necessary to protect the child.’ [Citation.]” (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

In sum, the record amply supports the juvenile court’s finding that M. was a dependent under section 300, subdivision (j) based on E.’s prior dependency and M.’s risk of harm under subdivision (b).

2. *The dispositional order was a reasonable exercise of juvenile court discretion.*

a. *Removal*

To remove children from parental custody, the juvenile court must have clear and convincing evidence that there is or would be a substantial danger to the children’s physical health, safety, protection, or physical or emotional well-being if returned home, and there are no reasonable means to protect the children’s physical health without removing them from the home. (§ 361, subd. (c)(1).) “The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917), and “the parent’s response to the conditions that gave rise to juvenile court intervention.” (*In re Maria R.* (2010) 185 Cal.App.4th 48, 70, disapproved on other grounds in *I.J.*, *supra*, 56 Cal.4th at pp. 780-781.)

While clear and convincing evidence of abuse or neglect is necessary for a juvenile court to remove a child from a parent’s physical custody, on appeal we apply the substantial-evidence

standard to determine whether there is clear and convincing evidence to support the removal order. (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

Mother argues that the removal order was not supported by substantial evidence. Noting that M. was happy and healthy in her care, she argues removal was unnecessary to protect the child because she is “capable of safely caring for” him. We have already determined that substantial evidence supports the juvenile court’s jurisdictional finding, with the result that there is prima facie evidence supporting removal. (§ 361, subd. (c)(1).) Mother failed to demonstrate otherwise. Mother’s unstable and strange behavior, whether induced by drugs or not, her psychological state and hallucinations urging her, and possibly forcing her, to hurt her children, along with her past abuse of E., more than amply support the order under section 361, subdivision (c), removing M. from her custody.

b. *The case plan*

In its disposition plan, the court ordered mother, among other things, to submit to random or on-demand, consecutive drug screens. If she misses any test or produces a positive result, she must enter a full drug program with random, witnessed, on-demand, consecutive, weekly drug testing and counseling. Mother contends, based on her challenges to the jurisdictional finding concerning her marijuana use, that the record does not support the drug-testing portion of her case plan, absent evidence of a danger to M. from her use of medical marijuana.

Whenever a child is removed from a parent’s custody, the juvenile court must order child welfare services to facilitate reunification of the family. (§ 361.5, subd. (a).) “The court has broad discretion to determine what would best serve and protect

the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.]’ ” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 454.) The reunification plan “ ‘ ‘ ‘must be appropriate for each family and be based on the unique facts relating to that family.’ ” [Citation.] . . . The [D]epartment must offer services designed to remedy the problems leading to the loss of custody. [Citation.]’ [Citation.]’ ” (*Ibid.*; § 362, subd. (d).)

Under the abuse of discretion standard, we “ ‘ ‘ ‘must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court's ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child.’ ” [Citation.]” (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 186-187.) “ ‘We cannot reverse the court's determination in this regard absent a clear abuse of discretion. [Citation.]’ ” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 454.)

The juvenile court's order requiring mother to submit to drug testing is a reasonable exercise of discretion. Mother does not deny she smokes marijuana. Mother's marijuana use in combination with her bizarre and erratic behavior *is* the problem that led to the loss of custody.⁵ Even if the facts about mother's

⁵ Mother's reliance on *In re W. O.* (1979) 88 Cal.App.3d 906 and *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322 is unavailing. *In re W. O.* involved the question of removal from parental custody. (88 Cal.App.3d at p. 909.) At issue in *Jennifer A. v. Superior Court* was whether reunification services were properly terminated. Regardless of whether the mother there had tested positive, she had completed her program. (117 Cal.App.4th at pp. 1342-1343.) *In re Jasmin C.* (2003) 106 Cal.App.4th 177, cited by mother, is also distinguished

marijuana use alone were insufficient to sustain the petition under section 300, subdivision (b), the court's authority to fashion a dispositional order is not limited to the jurisdictional findings. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008.) "[W]hen the court is aware of other deficiencies that impede the parent's ability to reunify with [her] child, the court may address them in the reunification plan." (*Ibid.*) Given the problems associated with mother's admitted drug use in the past, and the circumstances that triggered the present dependency, the court reasonably concluded that mother's drug use was a potential obstacle to successful reunification. Hence, the court would have been remiss had it failed to address all of the problems that led to M.'s removal from mother's custody.

Finally, assuming mother could produce a doctor's prescription for medical marijuana, legal use can nonetheless present a risk of harm to a child. As we stated in *In re Alexis E.*, *supra*, 171 Cal.App.4th 438, "[w]e cannot fathom that the Legislature intended that negative effects on children from marijuana smoke would be unacceptable if it were being smoked outside the medical marijuana law, but acceptable if the person smoking the substance in their home were doing it legally." (*Id.* at p. 452.) Mother has failed to demonstrate that the drug test requirement was an abuse of discretion.

because the order that the mother attend parenting classes was not necessary to avoid a repetition of the *father's* emotional and physical abuse of the children. (*Id.* at p. 180.)

DISPOSITION

The orders appealed from are affirmed.

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BACHNER, 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.