Filed 11/29/12 In re Riley R. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re RILEY R., a Person Coming Under the Juvenile Court Law.	B239636 (Los Angeles County Super. Ct. No. CK89919)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. SHAWN R., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Valerie Skeba, Juvenile Court Referee. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent.

Shawn R. (father) appeals from the orders and findings of the juvenile court adjudicating now 18-month-old Riley (born May 2011) a dependent, and removing him from parental custody. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Riley came to the attention of the Department of Children and Family Services (DCFS or the Department) when he and his mother, D.S. (mother),[1] tested positive for marijuana at his birth. Father, appellant herein, self-reported past marijuana use and a mental health diagnosis of antisocial personality disorder. Father indicated that he used marijuana to manage his anxiety. He previously had a marijuana prescription, but it had expired in February of 2010. The Department and Riley's parents entered into a Voluntary Family Maintenance Plan under which the parents were to drug test and participate in family preservation services. Father was also to obtain an assessment of his mental health due to the self-reported diagnosis. For the five-month period that the parents participated in the voluntary plan, a family preservation worker visited the home for two hours each week.

Although he was initially compliant with the case plan, father failed to drug test or to obtain a mental health assessment. For this reason, DCFS categorized Riley as "very high" risk for future abuse and, accordingly, filed a non-detained Welfare and Institutions Code, section 300, subdivision (b)[2] petition on behalf of Riley on November 8, 2011, when Riley was six months old. The petition alleged that the mother's and father's past and current use of marijuana rendered them incapable of providing regular care and supervision of their child. The allegation against father stated that "Remedial services failed to resolve the family problem in that the father failed to regularly participate in random drug testing." The allegation continued: "The father's illicit drug use endangers

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[1] Mother is not a party to this appeal.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the child's physical health and safety, placing the child at risk of physical harm and damage."

At the arraignment on the petition, the juvenile court ordered Riley to remain released to his parents, and ordered DCFS to provide family maintenance services and referrals to the parents regarding weekly, random and on-demand drug testing; parenting education; and individual counseling. The court also ordered the Department to assist father in obtaining a mental health referral, and to provide the parents with bus passes for purposes of drug testing.

On November 23 and December 8, 2011, father tested positive for marijuana; on November 26, he failed to show up for drug testing. On December 16, 2011, the social worker received mother's positive drug test for methamphetamine and cannabinoids. Mother denied using methamphetamine, but could not explain the positive test result. In addition, the social worker was not able to assess Riley's well being, as father refused the social worker access to the home in order to assess the home environment. The social worker's multiple attempts to make unannounced visits to Riley in the home were all unsuccessful. The social worker determined that Riley was not safe in the home, and sought to remove him from the parents and place him in protective custody. A warrant to remove Riley from the parents was issued on December 20, 2011.

When the social worker and a law enforcement officer went to the home to serve the warrant, the paternal grandfather opened the door. A strong odor of marijuana emanated from the home. The grandfather permitted entrance to the home, where a large bag of what appeared to be marijuana was observed on the coffee table. Father then appeared from the bedroom; he indicated that Riley was with mother, and that he did not know her whereabouts. When the social worker requested a contact number, father become agitated and claimed he did not have one. The social worker observed a "filthy" home that appeared not to have been cleaned in weeks, with clothing strewn about, a litter box filled with feces, and the kitchen sink full of dirty dishes and food. Father responded to the social worker's request that he call her regarding Riley and mother's whereabouts with anger, belligerence and profanity.

Mother called the social worker later that day. Mother was "enraged," and reported that father had threatened to shoot the social worker because DCFS was trying to remove Riley from the home. The social worker eventually convinced mother to bring Riley into a DCFS office, which she did the following day. Riley was placed in foster care.

DCFS filed an ex parte section 385 application on December 27, 2011. At the hearing on that date, the court ordered Riley detained, ordered family reunification services and monitored visits for the parents as well as drug testing, parent education and individual counseling, and ordered DCFS to assist father in obtaining a mental health referral.

The contested adjudication hearing on the section 300 petition was conducted on January 26, 2012. The court admitted the following documents into evidence: the jurisdiction/disposition report and an addendum report, both dated January 11, 2012; a detention report and an addendum report, both dated November 14, 2011; a detention report dated December 27, 2011; the ex parte application pursuant to section 385; an addendum report dated January 26, 2012; and all attachments to the foregoing reports. The dependency investigator testified that her observations of father while he visited with Riley were positive; he did not appear to be under the influence of drugs and was appropriate with the child. The same was reported by the family preservation workers, who had met with the family weekly while the Voluntary Family Maintenance Plan was in effect. Those workers never reported safety concerns with the home, or observed father to be under the influence of drugs. Similarly, the social worker testified that father did not appear to be under the influence of drugs during the three visits which she observed, and that father was "very attentive" to Riley during those visits.

Mother pled no contest to the amended section 300 petition; the juvenile court sustained the petition and declared Riley a dependent of the court under section 300, subdivision (b). The jurisdiction hearing was continued as to father.

At the continued contested hearing on February 6, 2012, father presented no further evidence. He argued that his occasional marijuana use did not support an

allegation of neglect, and that Riley should be returned to his custody, and mother ordered to move out of the family home.

The juvenile court sustained the allegation of the petition as to father, based on his history of illicit drug use and current use of marijuana, which "endangers the child's physical health and safety, placing the child at risk of physical harm and damage." The court based its ruling on the evidence, among other things, of father's self-reported antisocial personality disorder (which was consistent with his hostility towards DCFS and his behavior in threatening to shoot the social worker) and his refusal to obtain a court-ordered mental health evaluation, as well as his self-medication of his anxiety with marijuana and his failure to drug test. The court ordered Riley placed under the supervision of DCFS and ordered DCFS to provide father with family reunification services, parenting classes, weekly and random drug testing, and monitored visits. The court further ordered a psychiatric assessment for father to address psychotropic medication and individual counseling needs.

Father timely appealed the jurisdiction and dispositional orders.

DISCUSSION

1. *Jurisdiction order*

The juvenile court's jurisdiction order is reviewed for sufficiency of the evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Thus, we review the record to determine if there is any substantial evidence which supports the juvenile court's decision. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) "All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) "'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394.)

Section 300, subdivision (b) provides, in pertinent part, that a child comes within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, . . . 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." Proof of current risk of harm at the time of the jurisdiction hearing is not required to support jurisdiction pursuant to section 300, subdivision (b), but may be satisfied by showing the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or abuse. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.)

Father does not challenge the juvenile court's factual findings, but instead claims that the evidence of his marijuana use was insufficient to find jurisdiction under section 300, subdivision (b). Specifically, father maintains that DCFS failed to establish that his "occasional marijuana use" posed a risk of harm to Riley, and that no evidence suggested that father used marijuana in Riley's presence, or that he was under the influence while caring for his son. We disagree.

Father's history of substance abuse was well-documented. Father acknowledged that he had used marijuana over a significant period of time to self-medicate his anxiety. On December 21, 2011, when the social worker arrived at the home to assess Riley's well-being, a strong odor of marijuana emanated from the home, and a large bag of what appeared to be marijuana was observed on the coffee table. Despite agreeing to comply with a voluntary case plan with DCFS, father refused to participate in random, on-demand drug testing; on the few occasions when he did drug test, father tested positive for marijuana. "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.)

Father relies on *In re Alexis E.* (2009) 171 Cal.App.4th 438 to support his position that his "periodic marijuana usage," without more, could not support the juvenile court's finding of serious harm or serious risk of harm to Riley. The *Alexis E.* court agreed with the juvenile court that the father's use of medical marijuana presented a risk of harm to his children, specifically citing the fact that the father's marijuana usage had a negative impact on his demeanor towards the children and others. Here, when the social worker appeared at father's door with the smell of marijuana in the air, father flew off the handle,

cursing at the social worker; he later told mother he would shoot the social worker if Riley were removed from the home. Contrary to father's claim, in this instance, marijuana did not have a calming effect on him.

In sum, DCFS had sound reasons for suspecting that Riley would be at risk of physical harm in father's care: father suffered from chronic anxiety so severe that it apparently interfered with his ability to hold a job. ("My last job was at Shakey's Pizza five years ago.") DCFS urged father to seek professional medical assistance (in fact, the juvenile court ordered a mental health assessment) and medication to address his anxiety and antisocial personality disorder, but father did not follow through. Rather, he reported to the social worker that "he had gone to mental health services but the line was so long he got tired of waiting and went back home." Most importantly, DCFS was unable to observe Riley in his home environment, because the parents resisted the Department's attempts at home visits. The juvenile court did not err in asserting jurisdiction.

2. *Disposition order*

As with jurisdiction, the standard of review for removal of children from their custodial parents at disposition is the substantial evidence test. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) At disposition, the juvenile court is governed by section 361, subdivision (c)(1), in determining whether to remove a child from his or her parent's custody. The court must find, by clear and convincing evidence, that "[t]here is or would be substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to appropriately care for the child, as well as proof of a potential detriment to the child if he or she remains with the parent. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1137.) There is no requirement that the parent be actually dangerous or the child suffer actual harm prior to removal; the focus of the removal statute is on averting harm to the child.

(*Ibid.*) The juvenile court has broad discretion to determine what is in the child's best interest in fashioning a disposition order. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

We conclude that the juvenile court acted well within its discretion in removing Riley from father's custody. At the time of the disposition hearing, notwithstanding that the Department had been working with father to ensure Riley's safety for approximately eight months, father had yet to comply with court-ordered drug testing or to obtain a mental health assessment or treatment, continued to self-medicate his chronic debilitating anxiety, and left his antisocial personality disorder untreated. Father's refusal to address his mental health issues and his continued reliance on marijuana to alter his mental state provide substantial evidence to support the juvenile court's disposition order.

DISPOSITION

The orders are affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

KRIEGLER, J.