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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re MATTHEW G. et al., Persons
Coming Under the Juvenile Court Law.

B259428
(Los Angeles County
Super. Ct. No. CK53225)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

EDWARD G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Annabelle G. Cortez, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Chief Deputy County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Timothy M. O’Crowley, Deputy County Counsel, for Plaintiff and Respondent.

Edward G. (father) appeals from the juvenile court's jurisdictional order declaring that his three children—Matthew G. (Matthew), Amanda G. (Amanda) and Jazmin G. (Jazmin) (collectively the minors)—are dependents pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).¹ Father also appeals from the case plan requirements that he participate in domestic violence classes, a psychological assessment, a psychiatric evaluation, and drug and alcohol testing (plus a full rehabilitation program if any of the tests are missed or dirty).

We find no error and affirm.

FACTS

Matthew was born in October 2003, Amanda in July 2005 and Jazmin in April 2008.

The Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition under subdivisions (a) and (b) alleging that there was a risk of harm to the minors due to violent altercations between Mary G. (mother) and father, including times when he struck her in the head and pushed her into walls; due to an incident in which father hit Matthew with a flashlight and kicked him; due to father's alcohol and substance abuse; and due to father's mental and emotional problems. The petition alleged that Amanda and Jazmin were at risk of physical harm due to father's physical abuse of Matthew.² On September 2, 2014, the juvenile court sustained the petition with respect to all but one of the counts asserted under section 300, subdivisions (a) and (b). The allegations under section 300, subdivision (j) were dismissed in the interest of justice.

¹ All further statutory references are to the Welfare and Institutions Codes unless otherwise indicated.

² Mother gave birth to a boy named R. R. (R.) in 1996 and a boy named Frank L. (Frank) in 1999. R. was listed in the section 300 petition but later stricken from the petition because he was almost 18 and doing well in the home of his other parent. Neither child is the offspring of father or a subject of this appeal. The record indicates that the minors had an adult sibling named Rosie L. She also is not a subject of this appeal.

The evidence supporting the juvenile court's finding that the minors were dependents included the following.

Father had an extensive criminal history: grand theft (1988); inflicting corporal injury to a spouse (1992, 1997, 1999, 2008, 2010, 2011, and 2012); battery, noncohabitant former spouse (1997); battery on person (1998); petty theft (2000, 2001, 2002, 2003, 2008); contempt of court (2002); possession of controlled substance paraphernalia (2003, 2004); and violating a domestic violence court order. Los Angeles County Sheriff's Department records indicated that deputy sheriffs were called to the family home 18 times between November 2012 and March 2014. Father was arrested seven times for domestic violence in that time, and convicted twice.

In August 2003, the Department filed a section 300 petition on behalf of Frank alleging that there was a risk of harm to him because, among other things, mother was a frequent abuser of methamphetamine and father abused marijuana and methamphetamine in Frank's presence. The petition was sustained. Eventually, due to ongoing problems between mother and father, the juvenile court appointed the maternal grandmother as Frank's legal guardian.

In May 2004, Matthew was detained. The Department filed a petition alleging that there was a risk of harm to Matthew because mother and father engaged in violent altercations, and because mother and father failed to comply with a voluntary maintenance contract in which father promised to participate in an anger management program, and they both promised to participate in substance abuse counseling with random drug testing, individual counseling and parenting classes. Matthew was released to his parents in October 2005, and the juvenile court terminated jurisdiction over the case a year later.

In November 2013, father was drunk and argued with mother. He woke up Matthew and asked, "How does it feel to have a whore for a mother?" Matthew started crying, ran to his room and locked the door. Father kicked the door and "tore it to pieces." Then he grabbed mother and held her against a wall. Afterwards, he tried to get in his car and leave. When mother tried to stop him from driving while intoxicated, they

fought, and Matthew got in between them. Father pushed Matthew out of the way. Rosie L. tried to intervene, and father gave her a chest bump, pushing her back. The police responded to the scene but did not arrest father. He reported that he was homeless and visited the family on weekends. Mother said he had been arrested for domestic violence in the past. That month, mother moved in with maternal grandmother to get away from father.

Mother allowed the minors to visit father on New Year's Eve 2013. She received a call at 3:30 a.m. from Amanda telling her that father repeatedly called mother a whore and said that she was on drugs. Amanda begged to be picked up. She said father pushed her in the chest and Matthew in the head, and he questioned the minors about mother's relationships and who she was spending time with. Mother went to pick the minors up, but he would not let her. Matthew was across the street, crying because he wanted to go with mother. When father went to retrieve Matthew, he kicked Matthew. Also, he tried to hit Matthew in the head with a flashlight but missed and made contact with his left shoulder, leaving a bruise. At some point, father threatened to hit the minors. Then he hit and tried to kick each of them because they all wanted to go with mother. Amanda called mother again, this time during New Year's Day, and mother decided to pick up the minors. She asked law enforcement to supervise the exchange. When father started yelling and cursing, an officer released the minors back to mother's custody.

In February 2014, the Department received a referral that there was a risk that father would emotionally abuse the minors and physically abuse Matthew. The Department investigated and interviewed the family multiple times. Per those interviews, mother was a victim of domestic violence for 13 years, and there were times when father punched her in the head and slammed her against walls. The domestic violence began when Matthew was born. Father was violent toward mother about two times a week after Jazmin was born. In 2009, father was diagnosed with bipolar disorder, and he did not take his medication as prescribed. When he was not smoking medical marijuana, he was violent. He would spit on mother, and would sometimes snatch a cell phone out of her hands. There was ongoing screaming and fighting in the family home. Father called

mother a whore, bitch, stupid, slut, fucker and asshole in front of the minors, and he would show his middle finger to mother. In 2013 and 2014, he smoked methamphetamines in the garage while the minors were at home.³ He constantly drank and smoked marijuana; he smoked in the garage, sometimes with other people; Matthew saw father do drugs; Matthew saw father with cigarette papers and “green Pepper” stuff, and Matthew smelled something “funny” in father’s room; Amanda saw father smoking something in the garage, and then saw something white fall out of his pocket. He yelled at the minors. One time, he spit in mother’s face, called her a whore and grabbed the steering wheel while she was driving a car with the minors inside. Mother obtained a restraining order against father in February 2014. Amanda felt sad when father lived in the family home; she did not want to live with father because he was always angry and tried to take the minors away from mother. Matthew and Jazmin were mad at father, and Matthew did not feel safe with father. Jazmin witnessed domestic violence in the home.

Father admitted to a social worker that he had been smoking marijuana since he was 14 years old. On March 12, 2014, he tested positive for Cannabinoids. Subsequently, he obtained a prescription for medical marijuana.⁴ Father informed a social worker that he used medical marijuana outside the presence of the minors for anxiety, pain and insomnia; he had ongoing health issues, including nerve damage, hip displacement, and right knee damage; he was physically disabled and required the use of

³ Father admitted smoking methamphetamine with mother in the past because she was selling it and providing it to him. He represented to a social worker, however, that he quit in 2004. In the Jurisdiction Report, the Department reported: “The mother states that the father smokes medical marijuana and has smoked methamphetamines in the garage while the children were present in the home in 2013-2014.” Mother and father both accused the other of being current methamphetamine users. When talking to a social worker, father said he believes mother’s new boyfriend is supplying her with the drug. Wherever the truth lies is not for us to decide. We note that this family appears to be plagued by issues of addiction as well as violence. We note further that R. admitted he was previously addicted to methamphetamines.

⁴ Father said he had a medical marijuana card for five years, and that he reapplied with a new doctor.

a cane; and he had a detached retina. On May 15, May 29, June 10, and July 11, 2014, he again tested positive for Cannabinoids. He did not show up for random drug testing on June 24, 2014, and July 31, 2014.⁵

During one of his interviews, father told a social worker that he was previously receiving treatment from Pacific Clinics for individual counseling and Prototypes for psychiatric care. Per father, he had been prescribed Citalopram HBR 40 mg (Celexa), Omeprazole DR 20 mg (Prilosec), Hydrochlorothiazide 12.5 mg, and Benazepril HCL 40 mg. However, he did not provide the Department with verification of his treatment or the name of his psychiatrist or therapist. He admitted to not taking the medication as prescribed. Further, he stated he prefers to use medical marijuana versus the medication to treat his anxiety.

According to mother, father sells his medication.

The juvenile court sustained the section 300 petition. At the jurisdictional hearing, it declared the minors dependents, removed them from their parents' custody, and ordered the Department to provide reunification services. Father's court-ordered programs included a 52-week domestic violence class, parent education for high-conflict parents and random drug and alcohol testing. If he missed any drug or alcohol tests, then father would be required to attend "a full program."⁶ Finally, father was ordered to submit to a psychological assessment and a psychiatric evaluation, and to take all prescribed medication. Following the hearing, the juvenile court issued a written court-

⁵ Father was supposed to be tested for amphetamine and methamphetamine. We presume that the missed tests were positive for those drugs. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1343 (*Jennifer A.*) ["Drug testing is an important component of the reunification plan, and we must consider the missed tests to be positive tests"].)

⁶ It is not clear what the juvenile court meant. The juvenile court said it was adopting the plan recommended by the Department. However, in the jurisdiction report, the Department recommended only that father submit to random drug testing. It did not recommend that father participate in a "full program," and it did not mention alcohol testing.

ordered case plan requiring father to, inter alia, submit to “[r]andom or on demand consecutive drug tests, if any test is missed or dirty, then full drug rehab program w/random testing.”

This timely appeal followed.

DISCUSSION

I. Jurisdiction.

Jurisdictional orders are reviewed under the substantial evidence rule. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 982.) Father contends that there was insufficient evidence to establish that the minors were at risk of harm and, therefore, the juvenile court erred when it determined that the minors were dependents. As we discuss below, father’s contention is unfounded.

A child is a dependent if the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent. . . . For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent . . . which indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

In our view, there was sufficient evidence to support jurisdiction based on a substantial risk that the minors would suffer serious physical harm in the future. The evidence showed that father gets jealous, enraged and violent. In November 2013, he woke Matthew up to ask a demeaning question about mother, which made Matthew cry and run to his room, and then father kicked Matthew’s bedroom door “to pieces.” Soon after, father pushed Matthew when he tried to get between mother and father during an argument. During the minors’ visit with father starting on New Year’s Eve 2013, father pushed Matthew in the head; pushed Amanda in the chest; threatened to hit the minors; hit the minors; kicked Matthew; tried to kick Matthew’s siblings; and tried to hit Matthew over the head with a flashlight but missed and hit him on the shoulder instead, leaving a bruise. At one point, father spit on mother and grabbed the steering wheel while she was

driving, which endangered the minors' lives. The foregoing occurred in the context of a man with a long history of domestic violence, criminal activity, mental health issues and alcohol and drug abuse. Until father tempers his violent outbursts, he poses a substantial risk of serious physical harm to the minors.

Given that there was substantial evidence to support jurisdiction under section 300, subdivision (a), the juvenile court's jurisdictional order must be affirmed. (*In re I.J.* (2013) 56 Cal.4th 766, 774 [a reviewing court can affirm jurisdiction if any alleged basis is supported by substantial evidence].)

Despite the existence of jurisdiction under section 300, subdivision (a), father asks us to review the juvenile court's findings with respect to section 300, subdivision (b), namely that the minors are dependents due to mother's and father's failure or inability to protect the minors from the risks associated with domestic violence; father's failure or inability to protect Matthew from father's violence; and father's inability to provide the minor's with regular care due to his substance abuse and his mental health problems.⁷ He points out that even if a reviewing court is affirming a jurisdictional finding on one statutory ground, it has the discretion to consider a juvenile court's jurisdictional findings on other grounds if they could be prejudicial in the present or future proceedings. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re I.A.* (2011) 201 Cal.App.4th 1484; *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) We opt not to reach these issues. Father suggests a domestic violence finding "could impact this or future dependency proceedings." This argument is too speculative and, in any event, we have affirmed the domestic violence findings under section 300, subdivision (a). A similar finding under

⁷ A child is a dependent under section 300, subdivision (b) if he or she "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." The relevant inquiry is whether the circumstances at the time of the jurisdictional hearing subjected the minor to a defined risk of harm. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

section 300, subdivision (b) is duplicative, and eliminating it would not inure to father's benefit in any demonstrable way. Next, father posits that "specific jurisdictional findings can determine the types of services [he] would need to complete in order to reunify." Once again, his argument is too speculative. What types of services would be altered if we determined that the counts under section 300, subdivision (b) had to be reversed? Father never says. And, more importantly, eliminating the counts under section 300, subdivision (b) would not prevent the juvenile court from requiring father to address such things as his parenting skills, his mental health issues or his apparent abuse of substances.

Because it is relevant to the case plan, it must be said that there is sufficient evidence that father abuses alcohol and marijuana, and that evidence supports the juvenile court's jurisdictional finding under section 300, subdivision (b) with respect to Jazmin because she was six years old at the time when the finding was made. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 (*Christopher R.*) [substance abuse is prima facie evidence of a parent's inability to provide regular care resulting in a substantial risk of harm to a child who is six years or younger].) Though father claims marijuana is prescribed to him by a physician (which we have no reason to doubt), and that he is merely using marijuana rather than abusing it, the record belies his claim. His constant marijuana intoxication establishes abuse rather than mere use, particularly given his history with methamphetamine, his excessive drinking, his mental health issues, and his admitted use of marijuana in lieu of the medication for his Bipolar disorder. Also, we easily conclude that constant drinking and marijuana use, when done together, establish a serious problem with both substances.

Citing *In re Drake M.* (2012) 211 Cal.App.4th 754, 766 (*Drake*), father suggests that a finding of substance abuse for purposes of section 300, subdivision (b) must be based on a diagnosis by a medical professional, or evidence that the parent has a substance abuse problem as defined in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-4-TR). But, as pointed out by the *Christopher R.* court, the *Drake* formulation "is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court[.]" (*Christopher R.*, *supra*, 225

Cal.App.4th at p. 1218.) We agree. Thus, like *Christopher R.*, “we are unwilling to accept [the] argument that only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM-IV-TR categories can be found to be a current substance abuser. [Citations.]” (*Ibid.*)

DSM-4-TR has been replaced by DSM-5. (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218.) For that additional reason, *Drake* is not a hard and fast rule.

Even if we applied the DSM-4-TR test, we would still conclude that there is sufficient evidence of substance abuse. “The full definition of ‘substance abuse’ found in the [DSM-4-TR] describes the condition as ‘[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)[; ¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)[; ¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)[; and ¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’ [Citation.]” (*Drake*, *supra*, 211 Cal.App.4th at p. 766.)

Father has a maladaptive pattern of substance use given that he is violent and threatening to mother and the minors, and he therefore failed to fulfill a major obligation at home of being a nurturing parent. Also, he had recurrent substance-related legal problems. The evidence, and reasonably deducible inferences, establish that father’s abuse of alcohol exacerbated his domestic violence, which resulted in repeated police intervention in the family home.

II. The Case Plan.

“[W]henever a child is removed from a parent’s or guardian’s custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child’s mother and statutorily presumed father or guardians.” (§ 361.5, subd. (a); Cal. Rules of Court, rule 5.695.) The juvenile court has broad discretion to fashion a dispositional order to best serve and protect a child’s interest. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104 (*Jose M.*.)

Child welfare services are services provided on behalf of, inter alia, dependent children. (§ 16501, subd. (a).) The services provided on behalf of each child represent a “continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services[.]” (§ 16501, subd. (a).)

“The goal of both reunification and maintenance services is to address the circumstances which required agency and court intervention into a family’s life.” (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 166.) Section 362, subdivision (d) provides: “The program in which a parent . . . is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” A juvenile court’s orders regarding reunification services will not be reversed absent a clear abuse of discretion. (*Jose M., supra*, 206 Cal.App.3d at pp. 1103–1104.)

Father urges us to conclude that the juvenile court erred when it designed the portion of the case plan that pertains to him. We could conclude that he forfeited his challenge because he did not object below. (*In re A.E.* (2008) 168 Cal.App.4th 1.) Nonetheless, we opt to examine the merits.

We find no abuse of discretion regarding the domestic violence class. Though father argues that there is no evidence that he has “an issue with domestic violence,” the record is replete with evidence that he has a long history of domestic violence against mother and allowed it to adversely impact the minors. For example, father hit mother and the minors, they heard the fighting between mother and father, and their lives were

placed in danger when father grabbed the steering wheel of a car containing the minors while mother was driving.

According to case law: ““[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ [Citation.] 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” [Citation.]’ [Citation.]” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) “[P]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of these relationships. . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

In light of the facts and the law, it is apparent that father poses a risk to the minors unless he gets control of the jealousy, rage and violence that have plagued his relationship with mother. The domestic violence class prescribed by the juvenile court is designed to assist father in getting that control.

Next, father claims a psychological assessment, a psychiatric evaluation and medication management⁸ were improperly ordered. The premise is that he does not have a mental health issue that poses a risk to the minors. He stated that he is treating his Bipolar disorder with medication.

Once again, no abuse of discretion appears.

This case paints a picture of a man who is out of control and at the mercy of jealousy, rage and violent tendencies. And the record suggests a perfect storm of conditions and behaviors that rob father of control, i.e., constant drinking, constant

⁸ By “medication management,” we presume father is referring to the order that he take his prescribed medication.

marijuana smoking, use of methamphetamines, failure to take prescribed psychotropic medication for his diagnosed Bipolar disorder, and problems with anger management. Under these circumstances, the juvenile court reasonably ordered a psychological assessment and a psychiatric evaluation to gain further insight into father's domestic violence and fitness as a parent. In addition, the juvenile court was well within reason to order father to take prescribed medication.

Last, father assigns error to the order that he participate in drug and alcohol testing with the proviso that he complete a full drug and alcohol treatment program if he misses a test or tests dirty.⁹ He maintains that he smokes marijuana to treat pain resulting from a disability, and that there is no indication that he has a problem with drinking. He points out that there is a difference between substance use and substance abuse, and that only the latter can possibly give rise to jurisdiction due to inability to provide regular care under section 300, subdivision (b). (*Drake, supra*, 211 Cal.App.4th at p. 764.) In father's estimation, his case is analogous to *Drake*. In that case, the reviewing court found that a parent's use of medical marijuana based on a doctor's recommendation was not, without more, sufficient to show that a child was a substantial risk of serious physical harm or illness. (*Id.* at p. 768.)

Because of father's erratic behavior, his constant use of alcohol and marijuana, his past history of abusing methamphetamine, and evidence that he used that drug while the minors were present in the home, we cannot find fault with the juvenile court's exercise of discretion in requiring random alcohol and drug testing, and a rehabilitation program if father had a dirty or missed test. *Drake* does not persuade us otherwise. There was no evidence presented in *Drake* that the parent had mental health issues or a long history of domestic violence, drug abuse and criminal activity. And the issue in *Drake* was

⁹ Once again, it is not clear from the record that the juvenile court ordered father to participate in an alcohol treatment program if he tested positive for alcohol and/or drugs. This is what father presumes. If that is what the juvenile court ordered, we find no fault given evidence of father's "constant" drinking.

jurisdiction, not the appropriateness of the case plan. For those reasons, we consider *Drake* inapposite.¹⁰

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT

¹⁰ In its brief, the Department defends the juvenile court's decision to remove the minors from father's custody, and the order requiring father to attend parent education for high-conflict parents. Father does not challenge either ruling. Consequently, we have no reason to reach those issues.