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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.B., a Person Coming Under the
Juvenile Court Law.

B236423
(Los Angeles County
Super. Ct. No. CK 89024)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

Appeal from orders of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

In this dependency appeal, the mother of D.B. contends the trial court erred in sustaining the allegations of the petition that her alcohol abuse endangered D.B.'s health and safety. D.B. was detained at age nine after his four-month-old sibling died at night while sleeping in bed with mother. The Department of Children and Family Services does not argue that we should affirm jurisdiction on the basis of the allegations of the first amended petition that the death of D.B.'s sibling demonstrates risk of harm to D.B. We therefore deem the Department has waived any argument that substantial evidence supports jurisdiction on any basis other than the risk of harm to D.B. created by his mother's alcohol abuse.

We recognize that mother feels she has been dealt a double blow of tragedy, with the loss of her infant daughter and the removal of her son from her care and custody. But we are bound to affirm jurisdiction because mother does not challenge the sufficiency of the evidence to support the jurisdictional findings as to father. Moreover, under the applicable standard of review, we are bound to find substantial evidence supports the jurisdictional findings that mother's alcohol abuse placed D.B. at substantial risk of harm.

Mother also challenges the court's disposition, placing D.B. with his presumed father while mother receives reunification services. We find no abuse of discretion in the disposition. Mother contended in her opening brief that the trial court failed to give proper Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) notice, but she conceded in her reply brief that ICWA compliance was not required since D.B. is placed with his father and the ICWA notice "remains pending." The Department continues to investigate D.B.'s Native American heritage in the event he is unable to remain in the home of a parent, so we will not address this issue further.

We affirm the trial court's orders.

DISCUSSION

When D.B. was initially detained from mother in July 2011, he was released to his father. At the jurisdiction and disposition hearing in September 2011, father did not contest the petition allegations of his own substance abuse. He has been convicted twice of driving under the influence, in 2006 and 2009, but satisfied the terms of probation,

including counseling, attending AA meetings, and random alcohol testing and was on summary probation at the time of the hearing. Jurisdiction was properly asserted as to father. Since the trial court had a proper basis for asserting dependency jurisdiction over D.B. based on father's conduct, we need not consider mother's claim that it was improper to assert jurisdiction based on her own conduct.

“[I]t is necessary only for the court to find that one parent's conduct has created circumstances triggering [Welfare and Institutions Code] section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is ‘ “good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.” ’ (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.)

In any event, there is substantial evidence to support jurisdiction because of mother's conduct. We recognize that D.B. has grown to be a healthy youngster in mother's custody, but there is substantial evidence that mother has abused alcohol for many years and has driven a car while under the influence of alcohol, with D.B. as a passenger, including on the night before the family came to the attention of the Department after his sibling's death. The substantial evidence was reported by D.B., his cousin who was with the family on the night before D.B.'s infant sibling died, the deputy county coroner who smelled alcohol on mother, and mother herself, who admitted she

had driven while under the influence of alcohol with D.B. in the car. That mother never actually harmed D.B. while driving under the influence does not mean he was not at substantial risk of harm. “We review the juvenile court’s jurisdictional findings for sufficiency of the evidence. [Citations.] We 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. [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Mother asks us to focus on the statements of those interviewed by the social workers who had not seen mother under the influence of alcohol, and ignore the considerable evidence that she was frequently under the influence and had driven her car with D.B. as a passenger while she was under the influence. “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) If supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

We also find substantial evidence supports the disposition order removing D.B. from mother’s custody. Though the trial court must find clear and convincing evidence of substantial danger justifying removing D.B., we review for substantial evidence to support the removal order, and we find there is substantial evidence. “The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial. ‘Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however

slight, and disregarding the appellant's evidence, however strong." [Citation.]' " (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

The disposition was supported by substantial evidence of mother's alcohol abuse and conduct while intoxicated, as well as her denial that she has a problem with alcohol. Mother told the social worker she had no concerns about D.B. being placed in father's care and that she believes he is safe in father's care. Although mother argued the court should not sustain the jurisdiction counts involving her behavior, and should strike those counts, mother did not object to the disposition order that D.B. be placed with his father. For these reasons, we also affirm the dispositional order.

DISPOSITION

The jurisdictional findings and disposition orders are affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.