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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.V., a Person Coming
Under the Juvenile Court Law.

B285702

(Los Angeles County
Super. Ct. No. DK18451)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Respondent,

v.

C.V.,

Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Joshua D. Wayser, Judge. Affirmed.

Landon Charles Villavaso, under appointment by the Court
of Appeal, for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Deputy County Counsel, for Respondent.

INTRODUCTION

Curtis V. (father) appeals from a finding of dependency jurisdiction pursuant to Welfare and Institutions Code¹ section 300 over his young daughter, A. Father contends his drug use, along with a drug-related incident in which he led police on a high-speed chase, do not constitute a current risk of harm to A., as there is no evidence that A. was exposed to any of the misconduct. He therefore argues that the court lacked sufficient evidence to sustain the jurisdictional allegations against him. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

A. *Prior Incident*

Father and Lorena C. (mother) have one child, A., born in 2015.² The family originally came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in 2016.

According to DCFS, in June 2016, father was driving with mother, A., and maternal grandmother, who was visiting. Mother was intoxicated and began to argue with maternal grandmother. The argument escalated and mother began to hit maternal grandmother. Father stopped the vehicle and mother

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

² Mother is not a party to this appeal. We therefore relate information regarding the allegations against mother only as necessary for background.

grabbed A., got out of the car, and attempted to run out into the middle of the street holding A. in her arms. Mother was arrested.

DCFS filed a dependency petition on behalf of A. in July 2016, alleging that mother's conduct created a risk of harm to the child. In September 2016, the petition was dismissed without prejudice to allow for informal supervision. Mother and father both signed a case plan in September 2016 agreeing to comply with court orders, appropriately parent A., abstain from illegal drugs, and remain law-abiding. The family remained under the voluntary maintenance plan until the time of father's arrest in January 2017.

B. *Current Incident, Detention, and Section 300 Petition*

On January 22, 2017, West Covina police officers attempted to pull father over for a routine traffic stop based on Vehicle Code violations. According to police, father then led police on a "very dangerous high speed pursuit in a residential neighborhood," during which father drove on the wrong side of the road and reached speeds up to 60 miles per hour. The chase ended when father's car collided head-on with another vehicle; father fled on foot and escaped. In his vehicle, officers found 27 jars filled with 17.16 ounces of marijuana, small blue containers, \$3,000 in cash in multiple denominations, and a digital scale. Father turned himself in to police the following day; he had a large gash on his face from the accident. He was arrested on charges of evading a peace officer, hit-and-run, and drug possession/possession for sale. Father told police that he fled because he was afraid. According to police, father also had a felony conviction from 2012 for possession of marijuana for sale.

DCFS learned of the incident on February 16, 2017, when a caller reported father's arrest. The reporting party was

concerned that mother “was not forthright that father was arrested and seemed to be covering this up.” The caller reported that mother and A. were not with father when he was arrested, but that they all lived together and “it is unknown if Father uses substances around the child or if Father drives with the child.”

DCFS social worker (CSW) Reeffer, who was working with the family under the voluntary family maintenance plan, spoke to the investigating social worker, CSW Wilson. Reeffer said he had no concerns about the family until he learned of father’s arrest during a routine background check. Reeffer stated that mother and father appeared bonded to A. and the family lived with paternal grandparents, who were supportive. Reeffer was concerned, however, that mother had not reported father’s arrest or that she had since moved out of paternal grandparents’ home.

CSW Wilson met with mother and A. at a DCFS office on February 22, 2017. Wilson noticed a “very strong odor of marijuana emanating from mother.” Mother indicated that she was living with a relative who smoked marijuana. Mother moved out of paternal grandparents’ home after father’s arrest. She denied any knowledge of father manufacturing, selling, or recently using drugs. A. appeared to be well groomed and well nourished, with no visible marks or bruises.

CSW Wilson also spoke with paternal grandmother on March 15, 2017. She stated she had no idea father was involved in any criminal activity and denied drug or alcohol abuse by father or mother. She reported that mother and father fought a lot but had no concerns about abuse. CSW Wilson also spoke with father in jail on March 20, 2017. Father stated he was “going through a little rough patch.” When the CSW asked about the jars of marijuana found in his car, father claimed it was for

personal use and responded, “I smoke a lot.” The CSW asked father to clarify, and he said he used that amount of marijuana in a day or two. When the CSW told father that amount would indicate father had a substance abuse problem, father “stated again that the marijuana was for personal use and maybe it would take him 3 days to smoke it all.” The CSW noted she did not believe father’s statements. Father said he felt “horrible” for the accident and he would do whatever he needed to do to get the DCFS case resolved. Father told the CSW that he was involved in a Christian men’s group while in jail and was trying to learn from his mistakes and be a better father.

On March 27, 2017, DCFS filed a dependency petition naming A. under section 300, subdivision (b)(1).³ In count b-1, the petition alleged that father “placed the child in a detrimental and endangering situation in that a large quantity of packaged marijuana for sale, a large quantity of currency, and a scale were found in the father’s vehicle.” The petition noted father’s arrest on January 22, 2017 for evading a peace officer with disregard for safety, hit and run resulting in death or injury, possession of concentrated cannabis, and possession/purchase of cocaine base

³ Section 300 states, 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: [¶]. . . (b)(1) The 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 . . . substance abuse.”

for sale.⁴ DCFS alleged that this “detrimental and endangering situation” creates a “detrimental home environment, and places the child at substantial risk of serious physical harm, damage, danger, and failure to protect.”

In count b-2, the petition alleged that father’s history of substance use and current marijuana abuse rendered him unable to care for A. Given A.’s young age, father’s substance abuse and failure to protect the child endangered her health and safety and placed her at risk of serious harm.

At the detention hearing on March 27, 2017, the court found a prima facie case for detaining A. pursuant to section 300, subdivision (b). The court ordered A. to remain placed with mother.

B. *Adjudication*

DCFS filed the jurisdiction/disposition report on May 24, 2017. The report noted father’s prior conviction for possession of marijuana for sale in 2012, as well as his conviction for the incident in January 2017. Father was currently serving a two-year sentence on the recent conviction.

At the adjudication hearing on May 31, 2017, mother and DCFS indicated they had reached a settlement. Mother agreed to sign the court case plan and submit to jurisdiction as a nonoffending parent, and the court struck the allegations against her. Counsel for father argued that the remaining allegations in the petition should be dismissed for insufficient evidence. She noted that father was previously a nonoffending parent under the voluntary plan in 2016 and that his prior conviction for marijuana sales occurred before A. was born. She also argued

⁴ Ultimately, the court struck the reference to cocaine, as the police stated that allegation had been made in error.

that while “father engaged in activities that was [*sic*] definitely outside of his judgment,” neither mother nor A. were in the vehicle at the time. There was no evidence of any drug use or sales activity in the paternal grandparents’ home, where the family was living at the time; further, paternal grandparents confirmed father had a steady job and denied knowledge of drug use. Mother had acknowledged that father used drugs occasionally, but there was no evidence that he did so in A.’s presence or while caring for A.

The court noted its concern with father’s statement that the drugs found in his car were for his personal use. A.’s counsel agreed, stating that “normally in a situation similar to this where my client wasn’t around” during the incident she might agree with dismissal, but in this instance, she did not, given father’s history of marijuana sales and the “sheer quantity” of drugs he had when arrested, in addition to his statement regarding the drugs. The court acknowledged that it doubted father’s statements, adding: “It’s either one thing or another. Either dad was dealing a lot of pot . . . or he’s got a real problem, but either way I think it’s problematic.” The court continued, noting that father previously had custody under the voluntary family plan, but then he “exercised spectacular bad judgment. No, the minor was not with him, but under the circumstances he was clearly, in my mind, dealing pot. And also using marijuana.” The court further noted that father was living with A. and mother at the time. Counsel for DCFS argued that the court should find potential risk to A. based on father’s drug dealing, together with his past conviction for marijuana sales and his involvement “in a high speed drug chase, which resulted in a car accident and injuries.”

The court agreed and sustained the allegations as to father. The court found A. to be a dependent under section 300. Turning to disposition, the court found by clear and convincing evidence that there was a substantial risk of danger to A. and no reasonable means to protect her other than removal from father's custody; it ordered A. removed from father and continued A's placement with mother.

Father filed a timely notice of appeal.

DISCUSSION

A. *Justiciability*

DCFS argues that father's appeal is moot because there are unchallenged jurisdictional findings against mother. On August 1, 2017, while this appeal was pending, DCFS filed a subsequent petition under section 342. The department alleged mother had mental and emotional problems, including suicide attempts. Mother also had a history of substance abuse and, in July 2017, was "under the influence of prescription medication to such a degree as to lose consciousness" while A. was in her care; mother remained incapacitated for three days. The court sustained the petition on October 2, 2017 and ordered A. placed with a relative.⁵

In light of these subsequent proceedings, father acknowledges that we are not required to reach the merits of his jurisdictional challenge, as the dependency court will maintain jurisdiction over A. based on the unchallenged findings regarding mother. "[A] jurisdictional finding good against one parent is good against both" because dependency jurisdiction attaches to the child, not the parents. (*In re Alysha S.* (1996) 51 Cal.App.4th

⁵ We granted DCFS's request to take judicial notice of the subsequent petition and October 2017 order.

393, 397.) However, he urges us to exercise our discretion to review the sustained allegations against him in counts b-1 and b-2.

Under the doctrine of justiciability, courts generally do not act upon or decide moot questions or abstract propositions, nor do they issue advisory opinions. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) “An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status.” (*I.A.*, *supra*, at p. 1490.) “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,” or is unchallenged. (*Id.* at p. 1492.) “However, we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as a basis for the dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citation]; or (3) ‘could have other consequences for the [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762 (*Drake M.*).

Here, father contends the section 300, subdivision (b) finding could prejudice him in future proceedings, as it “is the difference between the father being an ‘offending parent’ versus a ‘non-offending parent.’” As such, the “court’s jurisdictional findings as to Father, if erroneous, could have severe and unfair consequences to Father in future family law or dependency proceedings. [Citation.]” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.) In addition, the court’s jurisdictional findings led to

the disposition removing A. from father's custody. We accordingly exercise our discretion in favor of considering father's claims on the merits.

B. *Jurisdictional Findings Under Section 300*

We review the dependency court's jurisdictional findings and order 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.)

Section 300, subdivision (b) permits the assertion of jurisdiction where "[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 . . . to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." Where the child has not suffered actual harm, the evidence must establish "that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . ." [Citation.]" (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

"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 currently 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 [(*Christopher R.*)]).” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384.)

“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. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.’ (§ 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] health and safety.’ (*In re Rocco M., supra*, 1 Cal.App.4th at p. 824; accord, *Christopher R., supra*, 225 Cal.App.4th at p. 1216.)” (*In re Kadence P., supra*, 241 Cal.App.4th at p. 1384.)

C. *Substantial Evidence Supports the Jurisdictional Findings*

Father contends substantial evidence did not support the dependency court’s finding of jurisdiction over A. pursuant to section 300, subdivision (b). There are three elements required for a finding of jurisdiction: “(1) neglectful conduct or substance abuse by a parent in one of the specified forms, (2) causation, and (3) serious physical harm to the child, or a substantial risk of

such harm. [Citation.]” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724–725.) The dependency court noted that father was either abusing marijuana or selling it. Father argues that there was insufficient evidence to support either finding; in addition, he asserts that there was no link between any of his conduct and any present risk of serious physical harm. We disagree on both points.

First, father asserts that the record does not support a finding that he was a substance abuser, even assuming the court believed his statements that the drugs in his car were for his personal use. He relies on the definition of “abuse” adopted in *In re Drake M.*, *supra*, 211 Cal.App.4th 754 for this purpose.

In *Drake M.*, the Court of Appeal reversed a jurisdictional finding based on a father’s use of medical marijuana. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 757–758.) The court first distinguished between substance “use” and substance “abuse,” noting that “jurisdiction based on ‘the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . substance abuse,’ must necessarily include a finding that the parent at issue is a substance *abuser*. (§ 300, subd. (b).)” (*Id.* at p. 764.) Such a finding of substance abuse, the court concluded, must be based on either (1) a diagnosis by a medical professional of a “current substance abuse problem”; or (2) evidence sufficient to establish a “current substance abuse problem” as defined in “The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM–IV–TR).” (*Id.* at p. 766.) Under the latter definition, substance abuse is based on “clinically significant impairment,” as manifested by “failure to fulfill major role obligations at work, school, or home,” “recurrent substance use in situations in which

it is physically hazardous (e.g. driving an automobile . . . when impaired)”; “recurrent substance-related legal problems”; or “continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.” (*Ibid.*)

Other courts in this district have rejected the conclusion 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.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218; see also *In re Rebecca C.*, *supra*, 228 Cal.App.4th at p. 726 [“a finding that a parent has a substance abuse problem justifying the intervention of the dependency court” is supported by “a medical diagnosis of substance abuse” or “evidence of life-impacting effects of drug use”].) In *Christopher R.*, the court held that the mother’s use of cocaine “while in the final stage of her pregnancy, combined with her admitted use of the drug in the past and her failure to consistently test or enroll in a drug abuse program, justified the juvenile court’s exercise of dependency jurisdiction over her children,” without regard to whether she had been diagnosed as a substance abuser by a medical professional or fell within a specific DSM–IV–TR category. (*Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1218–1219 [noting that “the *Drake M.* formulation . . . is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court[.]”].)

Similarly, here, there was substantial evidence from which the court could conclude that father had a substance abuse problem at the time of the jurisdictional hearing. Father told the social worker that the marijuana in his car (over a pound) was for his personal use, that he smoked “a lot,” and would smoke that

amount in one to three days. When the social worker responded that father's level of consumption was indicative of a substance abuse problem, father did not deny the problem; rather, he continued to insist that he personally used that amount. Further, the extent of father's purported drug use had other significant affects on his life and family. Most notably, his desire to evade law enforcement detection of the drugs in his car led to extremely reckless behavior that endangered other people and resulted in physical injury to father. This evidence, together with A.'s very young age, was sufficient to establish jurisdiction under section 300, subdivision (b). (See, e.g., *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.)

Second, father notes that the court did not believe father's statement that the marijuana in his car was for his personal use. Instead, the court concluded that father was likely selling the drugs. Given this finding, father argues that there was insufficient evidence linking father's conduct in selling drugs to a substantial risk of harm to A. We are not persuaded.

To establish a defined risk of harm at the time of the hearing, there "must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]" (*In re James R.* (2009) 176 Cal.App.4th at p. 136.) Leaving drugs or drug paraphernalia where a child can access them is an example of negligent conduct that will support section 300, subdivision (b) dependency jurisdiction. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651 [drug paraphernalia]; *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825 [jurisdiction supported where parent allowed "access to drugs, with nothing to prevent [child] from succumbing to the temptation to ingest them"].)

For example, in *In re Yolanda L.* (2017) 7 Cal.App.5th 987, the father was the subject of a drug trafficking investigation and was arrested after law enforcement found three pounds of methamphetamine in his truck. The father challenged dependency jurisdiction, arguing that there was no evidence his drug trafficking activities put his children at any risk of harm because they had not been exposed to the narcotics in his truck. (*Id.* at p. 994.) The court disagreed, noting that the truck was registered at the family home and father was the children's primary caretaker. Thus, "[u]nder these circumstances, it was reasonable for the juvenile court to infer that father's use of the truck to engage in large scale drug trafficking exposed the children to a risk of harm because they were sometimes in the truck." (*Ibid.*) The investigation of father for drug trafficking and his admission that he had transported narcotics once before also supported the trial court's conclusion that the conduct was likely to reoccur and was thus sufficient to support dependency jurisdiction. (*Ibid.*)

Similarly, here, there was substantial evidence from which the trial court could conclude that father's drug dealing activities were not a one-time occurrence and posed a risk of harm to A. This was father's second conviction for marijuana sales; moreover, he continued to engage in selling drugs while the family was already under DCFS supervision. By his own admission, he engaged in a "spectacular" lapse in judgment by fleeing from the police, and did so because he was afraid of getting caught with the drugs in his car. As a result, he led police on a high-speed pursuit through a residential area, ending only when he collided with another car. At the time of this extremely reckless behavior, he lived with A. and mother and

was a caretaker for the child. When the social worker questioned father about the drugs in his car, he insisted that they were for his personal use and attempted to explain the large quantity by stating that he smoked “a lot.” Under these circumstances, there was substantial evidence supporting the court’s conclusion that these were not merely past problems, but represented an ongoing risk of harm that required continued involvement of the dependency court.⁶

Father suggests that paternal grandparents spent the most time caring for A. and “[a]s a result, it is reasonable to conclude the father did not drive with [A.] as a passenger in his car.” This inference is not supported by the record. Indeed, A. was with father in his car at the time of the 2016 incident that precipitated DCFS involvement.

As such, we conclude that the dependency court’s finding of jurisdiction under section 300, subdivision (b) is supported by substantial evidence.

DISPOSITION

The jurisdictional order is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.

⁶ Given the evidence here, we need not reach father’s argument whether the act of drug dealing alone would be sufficiently dangerous to establish jurisdiction.