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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.S., a Person Coming
Under the Juvenile Court Law.

B280947
(Los Angeles County
Super. Ct. No. DK16959)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KEVIN S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Karin Borzakian, Judge. Affirmed.

Linda B. Puertas, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and William D. Thetford, Deputy
County Counsel, for Plaintiff and Respondent.

* * * * *

Father's challenges to the juvenile court's jurisdictional and
dispositional orders lack merit. We affirm.

BACKGROUND

In June 2016, the Los Angeles County Department of
Children and Family Services (DCFS) filed a Welfare and
Institutions Code section 300 petition identifying the children
E.E., then 13, and K.S., then three. E.E.'s father was not named
in the petition. K.S.'s father Kevin S. was named in the petition
and is referred to as father in this opinion.

It is undisputed that mother suffers from diabetes and
gastroparesis, a condition causing excessive vomiting. Mother,
who was 31 years old at the time of the petition, was diagnosed
with diabetes at the age of 13. In addition to the gastroparesis,
which caused mother tremendous pain, she suffered from
nephropathy and retinopathy, additional complications of
diabetes. Mother acknowledged that she did not take prescribed
medication, but claimed that the medication did not help her.

1. Petition

The petition as later sustained provided that mother "is
diagnosed with diabetes and gastro paresis, and mother has
failed to comply with medical treatment recommendations for the
mother's conditions," rendering her unable to care for the
children. Mother was hospitalized 11 times in six months.

Father knew of mother's medical condition rendering her unable to provide care and failed to protect his daughter K.S.

2. Social Worker's Detention and Jurisdiction Reports

The detention report indicated that on June 22, 2016, mother was taken to the emergency room with "extreme mental health symptoms." She was incoherent and threw herself on the floor. Three-year-old K.S. was with mother, but mother "could not identify the child with her." Eventually, father retrieved K.S. from the emergency room but it took him some time to locate her.

DCFS was contacted because K.S. was alone in the hospital. A social worker learned that mother had been to the emergency room numerous times. Mother's condition was so bad that the only way to avoid restraining her was to administer strong psychiatric medications. A nurse believed that mother repeatedly visited the emergency room because she wanted to obtain the drugs that they administered to her.

Father was interviewed by social workers, and he reported that he had no concerns regarding mother's parenting of K.S. Father did not believe mother's frequent hospitalization "interfered with her ability to provide care for the children."

Mother's 13-year-old daughter E.E. reported that mother was frequently ill, and E.E. had called an ambulance for mother several times. E.E. reported that mother did not follow her diet and said that "the food is so good she can't give it up."

Both mother and father ignored a social worker's efforts to contact them.

3. Jurisdiction Hearing Concerning Father

At a hearing on August 26, 2016, to determine jurisdiction, mother's counsel objected to hearsay evidence. Ultimately the court granted mother a continuance to allow her counsel to file

her objections in writing. The court proceeded with the portion of the jurisdiction hearing concerning father. Father's counsel did not object to his procedure. (Mother's counsel did.)

Father testified at the hearing. Father testified that he learned of mother's diabetes two or three years earlier. Father testified that during her pregnancy with K.S., mother suffered complications because of the diabetes. Father testified that he did not know that mother had been hospitalized 11 times in a six-month period. He knew of two hospitalizations and explained that on those two occasions, he had retrieved K.S. from the emergency room. Father acknowledged that 11 hospitalizations caused him concern. He also was concerned K.S. may have suffered emotional harm when she was forced to ride to the hospital in an ambulance with mother and when she was left alone in the hospital. Father testified that he was not inclined to "alter [his] way of living" but was willing to assist mother. He also testified K.S. could live with him.

The court concluded that father failed to protect K.S. from mother's endangering conduct. (It appears as father emphasizes, the court must have assumed at that stage of the proceedings that mother endangered K.S.) The court concluded that father had not taken action to learn how to protect K.S. The court denied father's later request for rehearing.

4. Addendum Report

In the time between father and mother's jurisdictional hearings, DCFS provided the court with additional information. A report dated August 29, 2016, indicated that father has a history of substance abuse. He had a convictions for child cruelty and for driving under the influence.

With respect to mother, DCFS reported that mother had no new emergency room visits. A letter from a pastor indicated that members of mother's church were assisting mother. DCFS later reported that mother "made tremendous progress with her health."

5. Jurisdiction Hearing Concerning Mother

The court held a jurisdictional hearing as to mother on January 13, 2017. Mother did not testify. The court sustained the petition with respect to mother. The court concluded a current risk to K.S. continued to exist based on the mother's longstanding history of failing to manage her condition. The court assumed jurisdiction over K.S. and E.E. (Jurisdiction over E.E. is not challenged in this appeal.)

6. Disposition

E.E. remained placed in mother's home and K.S. was placed with mother and father.

DISCUSSION

Mother has not appealed the juvenile court's jurisdictional findings. Father properly recognizes the important appellate principle that "[a]n appellant must show prejudicial error affecting his or her interest in order to prevail on appeal." (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258December , 261.)

Father first argues that the juvenile court erred in holding separate jurisdictional hearings with respect to him and mother. Assuming the issue is preserved notwithstanding the fact that father did not object to the procedure, father cannot demonstrate prejudice. Although the allegations against father were intertwined with those against mother, the court ultimately concluded that mother posed a risk to K.S. The fact that the court initially assumed the risk when considering father's failure

to protect at this time is irrelevant. Father cannot demonstrate prejudice from any assumed error in the juvenile court's procedure.¹

Father's challenge to the sufficiency of the evidence to support jurisdiction also lacks merit. "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "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. [Citations.] "[T]he [appellate] court

¹ Father's reliance on *In re Joshua G.* (2005) 129 Cal.App.4th 189, 202, is misplaced. The *Joshua G.* court stated that holding separate jurisdictional hearings was improper. But its rationale was that "[i]f the allegations" against one parent "were true, it was irrelevant whether the allegations against" the other parent were also true. (*Ibid.*) *Joshua G.* explains that jurisdiction is appropriate if the allegations against either parent are sustained. Its holding does not assist father because jurisdiction was appropriate as to mother and she does not contest jurisdiction on appeal.

Our opinion should not be understood as sanctioning the separate jurisdictional hearings for mother and father. As father argues, that procedure required assuming unadjudicated facts. Although we conclude that father did not suffer prejudice in this case, the procedure could cause prejudice and should be avoided.

must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ ’ ’ ’ (In re I.J. (2013) 56 Cal.4th 766, 773.)

Applying this standard of review, the evidence supported jurisdiction. Mother was hospitalized 11 times in a six-month period. The fact that three-year-old K.S. was at the hospital, mother did not recognize her, and K.S. had no adult supervising her indicated that no appropriate plan was in place for K.S. Father’s emphasis on the fact that K.S. did not suffer any harm is not persuasive because the juvenile court could reasonably conclude that leaving a three-year-old alone in a hospital placed K.S. at substantial risk of harm. Further, father acknowledged that K.S. may have suffered harm being forced to ride in the ambulance with mother. The juvenile court was not required to wait until K.S. suffered more severe harm to assume jurisdiction and protect the child. (In re I.J., *supra*, 56 Cal.4th at p. 773.) Given the frequency of mother’s emergency room visits, the potential harm was not merely speculative.

Mother’s health problems were longstanding, and father knew that mother suffered diabetes-related complications when she was pregnant with K.S. Father also had retrieved K.S. at the hospital twice, which should have alerted him to the need for a plan in the event mother required another hospitalization. To show that reversal is required, father must show more than that the court could have reached a different conclusion. (In re M.R. (2017) 8 Cal.App.5th 101December , 108 “[W]e do not consider whether there is evidence from which the juvenile court could have drawn a different conclusion but whether there is

substantial evidence to support the conclusion that the court did draw.”].) Father fails to make the required showing.

Finally, father argues that because jurisdiction was improper, the court’s dispositional order also was improper. Father’s argument with respect to the dispositional order is premised on showing that the jurisdictional order was incorrect. As explained, father fails to demonstrate his premise—that the jurisdictional hearing was erroneous. Therefore, the remainder of his argument lacks merit.

DISPOSITION

The juvenile court’s jurisdictional and dispositional orders are affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.