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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re L.T. et al., Persons
Coming Under the Juvenile
Court Law.

B288014
(Los Angeles County
Super. Ct. No.
17CCJP01402)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

M.S. et al.,

Defendants and
Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Wada, Juvenile Court Referee. Reversed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant M.S.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant M.T.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ M.S. (Mother) and M.T. (Father) challenge the sufficiency of the evidence supporting the jurisdiction finding against them. We conclude the evidence presented at the adjudication hearing was insufficient to support jurisdiction and therefore reverse the finding as well as the disposition order.

BACKGROUND

Detention

At the time this family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS), Father, Mother and their three sons (ages 6, 3, and 18 months) resided in a back house on a property where Father's parents (the children's paternal grandparents) lived in the front house.

In October 2017, officers from a police task force came to the property at around 6:00 a.m., looking for a relative of Father.

¹ Further statutory references are to the Welfare and Institutions Code.

The man was on probation and his car registration listed the address of the home where the paternal grandparents lived (the front house, not the back house where Father, Mother, and their three children lived). The officers searched the property but did not locate the man. The paternal grandparents were present in the front house, and Father, Mother, and the three boys were present in the back house during the search.²

While standing at the front door to the front house, officers observed the doors to a nearby garage were open and the lights were on. The officers noticed a strong odor of marijuana coming from the garage. They could hear the hum of high-powered lights and a cooling system operating in the garage. Upon inspection, the officers found more than 150 marijuana plants in various stages of growth and the chemicals used to grow them. Outside the garage doors, several feet away, officers observed children's toys.

An officer walked to the back of the property and inspected a shed there, finding three computer hard drives, a black trash bag containing four bags of dried marijuana, and another sophisticated air conditioning and lighting system.

The paternal grandmother informed officers the marijuana plants belonged to her. According to the police report, she showed officers a medical marijuana card for her personal use, a

² After arriving at the property, officers learned Father also was on probation (apparently in an identity theft case, according to the police report regarding the present search). He told a social worker he had been arrested the week before for failing to provide the probation department his new address when he recently moved into the back house, according to the October 30, 2017 Detention Report.

medical marijuana card for her husband's personal use, and a third card (a medical marijuana amount limitation waiver) stating she requested to possess and produce marijuana "in the amount that is consistent with her medical needs," not in excess of 99 plants. Each of the three cards was issued by a medical doctor.

As stated in the police report, Father told officers he was aware of the marijuana on the property, but it did not belong to him. He further stated he did not allow his children to go into the garage, and he was unaware his children were not allowed to live near an area where marijuana was grown. He agreed with an officer's statement to him that "the conditions [at the property] were not suitable for the children." Officers did not find any evidence indicating Father or Mother used marijuana.

A DCFS social worker arrived at the property shortly after the officers. As set forth in the Detention Report, the social worker observed that the back house where Father, Mother, and the three children lived was around three feet away from the garage and shed. It appeared to the social worker "as if the children were able to access the garage and sheds easily due to the location of the property." Chalk drawings lined the wall leading to the garage where the marijuana plants were growing. "There was also a large amount of fertilizer pushed up to the back of the house." The social worker interviewed Mother, Father, their six-year-old son, and the paternal grandmother.

As stated in the Detention Report, Mother told the social worker she and her family recently moved into the back house (from another location), but she was unable to provide an exact date because they had moved in "gradually." Mother denied any knowledge of the marijuana on the property and stated she was

“shocked” to hear about it. She further denied ever going inside the garage or shed and stated Father and the children did not have access to the garage or shed. Mother told the social worker she was “always with her children.”

Father also denied ever going inside the garage or shed. He told the social worker “his children do not go near” the garage or shed. He stated his mother rented out the back house before he and his family moved in, and also rented out the garage and shed. He could not provide the exact date he and his family moved into the back house. He noted he and his children used to visit the property on weekends, before they moved there.

The paternal grandmother told the social worker everything found in the garage and shed belonged to her. She showed the social worker the medical marijuana cards for her and her husband. She stated Father, Mother, and the children recently moved into the back house, and she did not perceive any safety issues with the children living on the property with a marijuana grow. When asked what she did with the marijuana, she replied that she baked it. As the social worker pressed her for more details about how she baked the marijuana, the paternal grandmother terminated the interview.

Father and Mother allowed the social worker to interview six-year-old L.T. in private.³ L.T. stated he and his family had lived in the back house “for a long time,” and he could not remember living anywhere else. When asked about the garage and shed, L.T. responded, “‘they are not mines.’” He stated Father and the paternal grandparents went into the garage and

³ Three-year-old Ar.T. and 18-month-old Al.T. were too young to be interviewed about the matter.

shed “all the time.” He indicated his parents “‘are growing plants.’” He recalled going into the shed on one occasion, but stated he did not see any plants and could not remember what was inside. He “denied that anyone else ever c[a]me to his home.”⁴

The social worker also spoke with a police detective, who told her he believed the marijuana was for sale because there were “no items for personal use found in the home such as pipes.” The detective believed the children’s lives were endangered because “all of the areas in which the illicit items were found were unlocked and easily accessible to the children.” He stated the “various chemicals found on the property . . . if ingested could seriously harm or kill children.” Moreover, he indicated there was a “high propensity for marijuana grows to explode and catch fire.”

Father, Mother and the paternal grandparents were arrested for child endangerment and other crimes.⁵ Officers confiscated the marijuana. Father asked the social worker why Mother was being arrested when she had no knowledge of what

⁴ Presumably the social worker asked him if strangers or nonrelatives frequented the property.

⁵ All four adults were arrested for grand theft of electricity from the Los Angeles Department of Water and Power (DWP) because, during an afternoon search of the premises pursuant to a warrant, an investigator from DWP determined the power lines were manipulated to avoid DWP’s detection of electricity use. Father also was arrested for a probation violation. The paternal grandparents were arrested for identity theft, based on items found in the front house.

was in the garage or shed. Father conceded he knew what was in the garage and shed.

In addition to the concerns stated above, DCFS explained in the Detention Report that it recommended the children be detained from Father and Mother because the “known home drug environment” at the property “invited others to engage in criminal activity to include drug use, drug sales and possession of weapons.”^[6] Said environment invites a criminal element of associates that could bring unnecessary harm to the home and place the child at high risk for potential harm, injury and possible fatality. [¶] Per law enforcement, it is common practice in the drug world to seek restitution for the loss of product/money. The restitution owed to the father or mother’s friends/criminal associates can lead to violent retribution against the family if the illegal proceeds are not paid back and/or if there is a perception that the parents become cooperative with law enforcement and the prosecution as part of the criminal investigation. [¶] The father allowed for in and out drug trafficking from his home bringing a dangerous element of individuals that were likely armed and dangerous. This unnecessary risk and unfettered access to the home has demonstrated that the father is unable and/or unwilling to be

⁶ The record does not demonstrate drug use, drug sales, or possession of weapons occurred at the property. In the front house, officers recovered more than \$6,000 in cash in a drawer of an office end table and, on a patio between the front and back houses, “a pay and owes” ledger and 12 containers of marijuana inside a refrigerator. This indicates sales were occurring, but it does not show *where* those sales were occurring (at the property or at some other location(s)).

protective of his child. A drug deal gone wrong with the child present could have resulted in great bodily harm, injury and/or potential fatality.”

DCFS detained the children and placed them in separate foster homes, the oldest child in one home and the two younger children in another.

On October 27, 2017, DCFS filed a dependency petition under section 300, subdivision (b), alleging one count: “The children[’s] . . . mother . . . and the father . . . placed the children in a detrimental and endangering home environment by having the children reside at a property where over 150 marijuana plants, a large trash bag of marijuana, and chemicals used for growing marijuana were present, accessible to the children. The parents frequented the areas of the property where marijuana was growing. The parents did not protect the children from the detrimental environment. On 10/25/17, the mother and father were arrested for possession of drugs^[7] and child endangerment. Such a detrimental and endangering home environment established for the children by the mother and the father and parents’ failure to protect the children endanger the children’s physical health and safety, and place the children at risk of serious physical harm, damage and danger.”

At the October 30, 2017 detention hearing, the juvenile court detained the children from Mother and Father and granted both parents monitored visitation and reunification services. The children remained placed in foster care.

⁷ As set forth above, the police report indicates Father and Mother were arrested for grand theft of electricity from DWP, not possession of drugs.

On or about November 6, 2017, the juvenile court ordered the three children placed together at the home of the maternal grandparents.

Jurisdiction/Disposition

As set forth in the November 21, 2017 Jurisdiction/Disposition Report, a dependency investigator interviewed Father on November 2, 2017. He stated he and his family moved into the back house two days before the police came to the property. Father told the investigator he did not know about the marijuana and grow chemicals at the property and denied telling the police otherwise. When asked if he noticed the strong odor of marijuana at the property, Father agreed that he did, but stated he believed the odor came from people smoking marijuana “ ‘all around’ ” the property. He claimed the garage and shed were locked and he did not look inside because he believed his mother rented out the garage and shed to other people. Later in the interview, he told the investigator he “ ‘did see the computer servers in the garage’ ” and believed they were “ ‘for something illegal, but [he] did not ask.’ ” He told Mother about the computer servers. When asked about his son L.T.’s statement that his parents grew plants, Father stated L.T. was referring to a school project for which he grew a sunflower. Father showed the investigator L.T.’s poster board for the sunflower project. Father stated he would not allow his children to be “ ‘near marijuana’ ” or “ ‘put [them] in danger.’ ”

The dependency investigator also interviewed Mother on November 2, 2017. She stated the family moved into the back house the day before the police came to the property. She denied knowing about the marijuana at the property, and added that she did not know what marijuana looked like or smelled like. She

told the investigator she never looked in the garage or shed because Father told her his parents rented them out to other people. She did not believe Father ever went inside the garage or shed, but she mentioned Father told her about the computers he saw in the garage. She discussed L.T.'s sunflower project when asked about L.T.'s statement that his parents grew plants. She stated they brought the sunflower with them when they moved into the back house. She told the investigator she always supervised her children when they were playing on the property, and “ ‘They did not go into the garage.’ ”

The dependency investigator interviewed L.T. on November 7, 2017. The investigator asked if he knew what drugs were, and he said he did not. When asked if he ever entered the garage or shed, he responded, “ ‘No, my mom didn't let me. I can only play in the house or outside (front yard and driveway).’ ” He told the investigator he had seen Father and the paternal grandparents enter the garage and/or shed, but not Mother. He believed Father grew plants in the garage and/or shed. When asked if Mother grew plants, he told the investigator about the sunflower project.

The dependency investigator also interviewed the maternal grandmother and a family friend. Both stated they had visited the property and had no reason to believe there was drug activity occurring there. They were unaware there was marijuana on the property.

The dependency investigator inquired about the status of the criminal case arising from the search of the property and was informed by the police department that the investigation was ongoing and the case had not been turned over to the district

attorney's office. Accordingly, no charges had been filed against Father or Mother.

DCFS recommended the children be removed from Father and Mother.

At the adjudication hearing, held on January 5 and 11, 2018, DCFS's counsel and the children's counsel asked the juvenile court to sustain the petition. Father's counsel and Mother's counsel asked the court to dismiss the petition. The court sustained the petition (count b-1 quoted above), finding Father's and Mother's claims that they did not know about the marijuana lacked credibility.

At the January 16, 2018 disposition hearing, the juvenile court declared the children dependents of the court, removed them from Father's custody, and released them to Mother on the condition she and the children reside with the maternal grandparents. The court also granted monitored visitation and reunification services for Father and family maintenance services for Mother.

At a July 17, 2018 review hearing, during pendency of this appeal, the juvenile court ordered the children placed with both Mother and Father, and further ordered the children were not to be with the paternal grandparents without a parent present (unless DCFS assessed the paternal grandparents and determined otherwise).⁸

DISCUSSION

Mother and Father challenge the sufficiency of the evidence supporting the jurisdiction finding against them.

⁸ On August 31, 2018, we granted DCFS's request for judicial notice of the juvenile court's July 17, 2018 minute order.

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

Jurisdiction under section 300, subdivision (b), requires proof “[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 or guardian to adequately supervise or protect the child” (§ 300, subd. (b).) In deciding whether there is a substantial risk of serious physical harm, within the meaning of section 300, subdivision (b), courts evaluate the risk that is present at the time of the jurisdictional hearing. “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 627-629.) “Jurisdiction ‘may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur.’” (*In re C.V.* (2017) 15 Cal.App.5th 566, 572.)

At the time of the adjudication hearing, there was no evidence of a substantial risk the children would suffer serious

physical harm or illness (and it is undisputed the children had not suffered past physical harm or illness). The marijuana grow at the property was defunct. The plants were confiscated by the police and the chemicals were removed. The risk DCFS cites—ingestion of marijuana or hazardous chemicals used to grow marijuana—had been eliminated before the adjudication hearing.

DCFS also cites Father and Mother’s lack of insight, dishonesty, and failure to take responsibility for placing their children at risk. None of these factors constitutes evidence of a substantial risk the children would suffer serious physical harm or illness *at the time of the adjudication hearing*. While “evidence of past conduct may be probative of current conditions,” here it was not. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.) Any suggestion Father and/or Mother would start a new grow operation was pure speculation, not evidence of a substantial risk to the children. The record does not indicate either parent had ever committed a past drug offense.

Father’s and Mother’s involvement in the marijuana grow or other criminal conduct at the property is a matter for law enforcement and/or the criminal court to sort out. Dependency jurisdiction is not punishment for parents’ past criminal conduct that does not pose a substantial risk to the children at the time of the adjudication hearing.

We reverse the jurisdiction finding because it is not supported by sufficient evidence. Because there was no basis for dependency jurisdiction, we also reverse the disposition order.

DISPOSITION

The jurisdiction finding and the disposition order are reversed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.