

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re KO. B. et al., Persons Coming Under
the Juvenile Court Law.

B230910

(Los Angeles County
Super. Ct. No. CK79426)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHELLE B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marilyn Mackel, Court Commissioner. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant Michelle B. (Mother) and Ronald B. (Father) are the parents of Kr. B. (male, born Feb. 1993), Ko. B. (female, born Jan. 1994), and Ke. B. (female, born Mar. 1995).¹ Mother appeals from the jurisdictional findings and order removing the children from their parents' custody. Father is not a party to this appeal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2009, Mother took Ke. to the hospital because the child had a panic attack. While there, Mother suffered a seizure. Mother tested positive for opiates and cocaine. Mother and Father, who had histories of substance abuse, were separated at the time. Ke. stated that she had stress and anxiety as a result of concerns about Mother and that Mother had refused to allow her to see a counselor.

On September 25, 2009, the Department of Children and Family Services (the Department) filed a petition as to all the children pursuant to Welfare and Institutions Code section 300, subdivision (b).² The juvenile court detained the children and placed them with Father. Mother was ordered to stay away from the home and the children's school and was allowed monitored visits. Father complied with all court-ordered programs, but Mother did not show that she participated or enrolled in any of the services that the court had ordered for her. She told the social workers that she was unable to care for the children due to her mental illness. However, she did want to visit them. Mother said she was suffering from bipolar disorder, fourth-stage cancer, and a seizure disorder. She was prescribed several pain medications. In February 2010, the court sustained the petition due to the parents' history of illicit drug use. On May 28, 2010, the court terminated jurisdiction, awarding physical custody to Father. The court ordered monitored visitation for Mother.

¹ Because the children's names begin with the same or similar letters, we used these initials for ease of reference. We intend no disrespect.

² All further statutory references are to the Welfare and Institutions Code.

On October 5, 2010, the Department received a referral because Ko., then 16 years old, had attempted suicide by drinking alcohol in conjunction with pain and cold medications. Father admitted that Mother had moved back into the family home in violation of the court's order and they had been fighting because he had left town to visit a girlfriend.

In an interview on October 6, 2010, Mother told the social worker that because she was taking a number of medications to treat her mental and physical maladies she could not care for the children. She denied using illicit drugs. The social worker observed Mother calling Ko. a "pathological liar." The social worker interviewed Father the same day. He said that he had asked Mother to check into "rehab" to deal with her mental health issues. They had argued because she was not going to follow his advice and he was seeing his girlfriend. In describing Mother's mental health issues, Father said, "One minute she is fine and the next minute she'll be mad at me for something that I did 30 years ago."

The Department filed a second petition on November 15, 2010, with allegations pursuant to section 300, subdivisions (a), (b), (c), and (j).

In the detention report, the social worker reported that Ko. said she did not want a relationship with Mother, alleging that Mother had choked and hit her with a belt. During an earlier visit, Ko. denied Mother had physically abused her. Later, Ko. stated the abuse occurred when she was in sixth grade but she could not remember the particulars. According to the social worker, at a Department team decision meeting on October 29, 2010, the children stated that things had been going well with Father, but when Mother moved back in, the environment became "unstable and chaotic." The children reportedly had issues at school. Father had been evicted from the home and said he could not provide for the children without the disability aid payments Mother was receiving. Everyone in the family voiced concern about Mother's substance abuse and Kr. told Mother directly, "[Y]ou need to go to rehab." Mother said she did not need "rehab," although she acknowledged that she had used cocaine a month and a half earlier. Mother threatened to "use crack" if she was not allowed to remain in the home with

Father and the children. The detention report noted that Mother had a criminal history dating back to 2005, with three convictions for misdemeanor burglaries. It also was reported that Mother had failed to comply with previous court-ordered services, including drug and alcohol testing and drug rehabilitation.

In November 2010, Roland S. Jefferson, M.D., Mother's psychiatrist, reported that she had been a patient from June 1999 to May 2003 and from September 2004 to an undisclosed date. She had returned to see him on November 5, 2010. She had been treated for depression, impaired impulse control, and verbal rage and had been prescribed psychotropic medications. He never witnessed any incident that suggested she was abusive, manipulative, or inappropriate with the children. When the children were not living with her, Mother began to regress emotionally. The doctor believed it would hasten Mother's recovery if she was reunified with the children as quickly as possible.

In December 2010, the social worker interviewed the children and the parents. Each was asked to address the impact of the parents' arguments and Mother's drug use and mental health issues.

Kr. stated he "kind of thought" Mother had used drugs four or five years ago. He said the family knew Mother had stopped using drugs before they allowed her to return to the home. Kr. had seen his parents argue, but did not believe they argued often. He thought Ko. attempted suicide because she wanted her telephone bill paid and became upset when she did not get her way. Kr. opined that Ko. was just being selfish. He claimed to have no knowledge of Mother's mental problems; however, he knew that she took prescribed medication.

Ko. said that some years earlier she had seen Mother using a crack pipe. She was not sure if Mother abused prescription medication, but knew that earlier dependency proceedings resulted from Mother having a dirty drug test. Ko. stated she attempted suicide because she was "trying to prove a point to the parents." She was tired of their arguing and did not want to live in the home any longer. During an argument just prior to her attempted suicide, Ko. saw Father slash the tires on Ko.'s car to stop Mother from taking off and using drugs. She accused the parents of refusing to take responsibility for

their constant bickering. Father blames Mother because she uses drugs and Mother blames Father because he cheats on her. Ko. was aware that Mother had a bipolar condition. She stated, "I know she is not all there."

Ke. had never seen Mother use drugs. She was told Mother had used drugs in the past. She did not believe Ko.'s suicide attempt was due to the parents' arguments. Ke. knew Mother was bipolar. As a result of the state of her mental health, Mother recently had to stay in the hospital for a couple of days.

Father said Mother began using illegal drugs following their divorce when the court gave him custody of the children. He claimed she did not use drugs after he allowed her to return home. Father admitted to having "had a few verbal arguments" in the presence of the children. He asserted Ko.'s suicide attempt was due to her being upset with his demand that she attend school. Father acknowledged that Ko., who had been an honor student, began suffering academic difficulties after he and Mother began having problems and started arguing. Father was aware of Mother's mental health issues and said he and Ke. made sure she took her medication. However, he conceded Mother was hospitalized in October 2010.

Mother asserted she had last used drugs eight months ago. She alleged that a positive drug test for opiates in October 2009 was caused by her prescription medications. Mother admitted to having one argument with Father and claimed that Ke. was affected by it. She stated that Ko. is a "drama queen" and that she overdosed to get attention. Although Mother acknowledged she was bipolar, suffered from anxiety, and had multiple personality disorder, she believed she was not a danger to the children.

Mother told the social worker that although she did not enroll in parenting classes during prior dependency proceedings, she was going to do so now because she wanted to. The social worker noted that Mother had three negative drug tests since October 2010. However, she was a no-show for an October and a December 2010 test.

The social worker also noted that hospital reports stated that Kr. and Ko. were using marijuana and alcohol.

On December 15, 2010, the social worker interviewed Mother and Father at the motel where they were staying and saw many prescription medication bottles on the nightstand. Mother said she was on 21 medications and claimed they were all prescribed by doctors. She did not remember saying that she had used crack a month and a half prior to the October 2010 team decision meeting. Father conceded that Mother had made the statement, but asserted she did so because of the many medications she was taking. Mother's psychiatrist told the social worker that Mother was taking one medication. A second had to be discontinued because Mother had an adverse reaction to it. He had not spoken to Mother's general physician.

In a report filed with the court in February 2011, the social worker noted that Mother told her not to contact Mother's psychiatrist. According to Mother, her psychiatrist wanted to terminate her treatment following the social worker's telephonic contact with him in December 2010. Mother said that she would request a progress report from him for the upcoming hearing. She claimed she was regularly seeing her psychiatrist and taking her medications, but was unable to provide the date of her last session. Mother said she would not see any other mental health provider, even if the provider offered in-home care. Father said that Mother had not seen her psychiatrist in awhile. He claimed Mother was taking her medications, adding he would not be able to live with her if she were not. Mother also said that she had not enrolled in a parenting education class because she has had numerous seizures and required an escort to leave home.

The court was advised in a last minute information report that Mother tested positive for cocaine on January 7, 2011, and failed to show up for a drug test scheduled for January 19, 2011.

A contested jurisdiction and disposition hearing was held on February 8, 2011. The court received the Department's reports into evidence. Following argument by counsel, the court sustained the section 300, subdivisions (b) and (c) allegations.³ It

³ The allegations pursuant to subdivisions (a) and (j) were dismissed.

found the children's physical and emotional health and safety were endangered by Mother's substance abuse and mental health issues, and Father's decision to allow Mother back into the home placed them at risk of further physical and emotional harm. It also found that the parents' history of arguments constituted emotional abuse of Ko., resulting in her depression and suicide attempt, thus placing her at substantial risk of suffering serious emotional damage. It ordered the children removed from the home pursuant to section 361, subdivision (c)(1). Both Mother and Father were awarded reunification services and allowed to have monitored visits.

Mother appeals, contending there is insufficient evidence to support the court's jurisdictional findings and its order removing the children from her custody.

DISCUSSION

I. Substantial Evidence Supports the Court's Jurisdictional Findings

A. Section 300, Subdivision (b) Findings

A juvenile court may determine that a child is subject to its jurisdiction if it finds by a preponderance of evidence that "[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 the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." (§ 300, subd. (b).)

Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be something more than mere speculation that the alleged conduct will recur. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394.) On

appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. (*Id.* at p. 1393.)

Mother contends there is no evidence that her substance abuse or mental health issues were the cause of any harm or risk of harm to the children. Mother also contends that Father's act of allowing her to return to the home in violation of the court's order did not create a risk of harm to the children. We disagree.

The evidence established that Mother had an untreated substance abuse problem even though she denied it. Despite Mother's long history of substance abuse, she had not completed any programs to conquer that problem. She said in the presence of social workers that she had recently used cocaine and she threatened to continue doing so. She tested positive for cocaine the month before the jurisdictional hearing and missed the next test. Mother also was taking an extremely high number of prescription medications, which her psychiatrist had not prescribed. Father and the children recognized that she still had a problem and needed to seek help. Father's statements that Mother was not currently using illicit drugs were not credible given Mother's admission and dirty drug tests.

The harm to the children resulting from this untreated substance abuse was clear. The children and Father were arguing with Mother about seeking treatment. All were in agreement that the family conflict was causing stress and anxiety. Ke. had a panic attack, and Mother refused to let her see a counselor. Ko. attempted to commit suicide. There was evidence that two of the children were using drugs and alcohol. All the children were having difficulties at school. Despite Mother's protests to the contrary, the juvenile court reasonably concluded that the chaos caused by Mother's substance abuse placed the children at risk of suffering physical or emotional harm.

Mother's mental instability also contributed heavily to the risk of harm to the children. Mother admitted to the social worker that she could not care for the children due to her mental state. She had not committed to any regular psychiatric program and refused to allow the social worker to continue communicating with her psychiatrist to ascertain the nature or severity of her condition. Although she claimed to be seeing her

psychiatrist, she was unable to tell the social worker the date of her last visit. In addition, in the report filed for the February hearing, Father acknowledged that Mother had not seen her psychiatrist in awhile. In light of Mother's admission that she cannot care for the children while suffering from her mental health issues, the evidence demonstrating she was not seeking treatment makes obvious the risk of harm she poses to them.

Given Mother's substance abuse and mental instability, it is also clear that Father's decision allowing her to return to the family home placed the children at risk. All the children agreed that the living situation became chaotic after Mother returned. Ko.'s suicide attempt occurred shortly thereafter.

Mother relies on *In re David M.* (2005) 134 Cal.App.4th 822, in which the Court of Appeal concluded that mother's substance abuse problem and the parents' mental health issues did not place the children at risk of harm. (*Id.* at p. 830.) The court found, "The record on appeal lacks any evidence of a specific, defined risk of harm to either David or A. resulting from mother's or father's mental illness, or mother's substance abuse. . . . [¶] The evidence was uncontradicted that David was healthy, well cared for, and loved, and that mother and father were raising him in a clean, tidy home." (*Ibid.*)

Similarly, in *In re James R.* (2009) 176 Cal.App.4th 129, also relied upon by Mother, there was evidence that the mother had been drinking a beer when the social worker visited the home and had been struggling with mental health issues for many years. (*Id.* at p. 133.) The court stated, "The evidence showed the minors were healthy, well cared for and never unsupervised. . . . The parents communicated well with each other, had an organized home and had the support of extended family members. The parents loved their children and were meeting their medical and academic needs. There was no evidence of a specific, defined risk of harm to the minors resulting from [the mother's] mental illness or substance abuse, and no evidence [the father] did not or could not protect them." (*Id.* at p. 137.)

Here, by contrast, Mother's conduct caused the children to suffer undue stress and emotional harm. Even Father, who had a financial interest in having Mother remain in the home because he needed her aid check, conceded that it was a constant battle to get

Mother to seek help. He acknowledged the ongoing arguments were not healthy for the children. We conclude that substantial evidence supported the section 300, subdivision (b) findings.

B. Section 300, Subdivision (c) Findings

Section 300, subdivision (c) provides for juvenile court jurisdiction if “[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian”

Ko. told the social workers that she attempted to commit suicide because she was sick of the fighting and chaos that ensued when Mother returned home. Mother argues that she was not the cause of Ko.’s suicide attempt and that Ko. was a troubled youth who was seeking attention.

The other children validated Ko.’s characterization of the family environment. Father’s act of slashing the tires on Ko.’s car was a desperate attempt to control Mother at Ko.’s expense. This act demonstrates the intensity and violence of the family conflict. Yet, Mother failed to see that the constant arguments affected the children. She blamed Ko. for the suicide attempt and minimized the severity of the incident. Earlier, Mother had refused to let Ke. seek counseling for her anxiety, resulting in a panic attack and a trip to the hospital. The court had substantial evidence upon which to base its finding that Mother’s substance abuse, mental illness, and return to the home caused emotional harm to Ko.

Mother argues the jurisdictional findings could not be applied to Kr. and Ke. because they did not attempt to commit suicide. However, the record shows that the subdivision (c) findings were made only as to Ko.

II. The Removal Order Was Proper

Section 361, subdivision (c)(1) states that the juvenile court may remove physical custody of the child if it finds clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor”

Mother asserts there is no evidence the children were at risk if they were returned home. We have set forth the harm suffered by the children while they lived with Mother and Father and conclude they are in substantial danger of continued harm if not removed from the home. Mother’s denial of her substance abuse problem and failure to seek comprehensive psychiatric care for her mental health issues will undoubtedly cause the problems that have plagued this family to continue.

Finally, Mother claims the removal order was not necessary because reasonable alternatives existed. She argues that her “return to her psychotherapist could have been mandated, as well as her strict compliance with her medication regimen.” She ignores the fact that she had been previously ordered to complete programs to address her substance abuse and mental health issues and failed to comply. She must demonstrate she can effectively deal with her problems before she can hope to have the children returned to her.

DISPOSITION

The jurisdictional findings and dispositional orders removing Ko., Ke., and Kr. from Mother's custody are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.