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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.C.M. et al., Persons Coming
Under the Juvenile Court Law.

B287478

(Los Angeles County
Super. Ct. No. 17CCJP00401)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Rudolph Diaz, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal,
for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County
Counsel, Kristine P. Miles, Acting Assistant County Counsel, and

Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

J.M. (Father) appeals the juvenile court's jurisdiction findings and disposition order concerning his two daughters, N.C.M. and N.S.M. The juvenile court asserted jurisdiction over the girls based on both parents' drug use and the parents' history of domestic violence. We consider Father's claim that reversal is required because no substantial evidence supports the jurisdictional allegations sustained against him.

I. BACKGROUND

N.C.M. was born in September 2013 and N.S.M. was born in August 2017. The Los Angeles County Department of Children and Family Services (the Department) began an investigation of the two girls' welfare when both Mother and N.S.M. tested positive for amphetamines when N.S.M. was born.

On September 19, 2017, i.e. when N.C.M. was almost four years old and N.S.M. was one month old, the Department filed a five-count petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1). Counts a-1 and b-3 of the petition alleged Mother and Father "have a history of engaging in violent altercations in the presence of [N.C.M.]." Counts b-1 and b-2 alleged N.S.M. tested positive for amphetamines at birth and Mother "has a history of substance abuse and is a current user of cocaine, amphetamines, methamphetamines and marijuana." Count b-4 alleged Father "has a history of substance abuse and is a current user of marijuana."

In advance of the juvenile court's jurisdiction and disposition hearing, the Department submitted reports describing incidents of domestic violence between Mother and Father and discussing both parents' drug use.

A. Domestic Violence Between Mother and Father

The Department's Jurisdiction/Disposition Report summarizes and attaches police reports describing two physical fights between Mother and Father over the course of their four- or five-year relationship: one in November 2014 and another in January 2016.

Regarding the former incident, Mother was upset Father left her at a bar without telling her he was leaving. Father arrived at their home the following morning, and he and Mother began arguing while N.C.M. slept in another room. Mother repeatedly struck Father and scratched his neck. Father pushed Mother and "pinned her to the ground so she could calm down" and "to avoid being hit" (Mother had no visible injuries). Father then tried to prevent Mother from leaving, so she "jump[ed] out the living room window" and called the police to help her remove her belongings from the apartment. Mother was arrested and convicted of a misdemeanor domestic violence offense as a result of this incident.

Regarding the latter altercation, which occurred roughly a year-and-a-half before the Department filed the petition in this case, the fight began when Mother discovered a bottle of liquor she wanted to drink was empty. Mother and Father argued, Father dumped the contents of Mother's purse on the floor, and Mother threw items around the apartment. According to Father, he "grabbed [Mother] in an attempt to keep her from destroying more property"; according to Mother, Father grabbed her by the arms, began to shake her, and then "threw her to the bed where he held her down." Mother suffered "lacerations and bruising" as a result of the struggle. A roommate separated Mother and

Father, and Mother overturned a table and threw a bottle at a wall before leaving the apartment. Mother later returned with a crowbar, which the roommate took from her.

In connection with this incident, Father was arrested as the dominant aggressor (ultimately, he was not charged with a crime). Mother was arrested for violating an existing restraining order (entered after the earlier November 2014 domestic violence incident) requiring her to keep away from Father. N.C.M. was staying with her maternal grandmother when this fight occurred.

In the course of investigating these prior instances of violence between Mother and Father, the Department obtained from the Covina Police Department call logs associated with Mother and Father's address. The logs detailed several instances in which the police were called as a result of yelling coming from within Mother and Father's apartment. Among these instances were four reports made in April 2017 (four months before the filing of the Department's petition) of a male subject yelling inside the home and overheard loud profanity,¹ plus a May 2017 report that Mother was overheard being verbally abusive toward N.C.M. The Department's jurisdiction and disposition report also recounted Father's admission to a social worker that (in the report's words) "he and [Mother] have issues and they both have to work on their anger."

At the jurisdiction and disposition hearing held by the juvenile court, Father testified. On direct examination, he answered "Not a[t] all" when asked whether there had been "any other problems" since the last physical altercation he had with

¹ One of these reports to the police department indicated the yelling had been going on for "the past few hours."

Mother (the November 2016 fight). On cross-examination, Father confirmed he and Mother planned to remain a couple, and when asked whether he thought he and Mother were “working out issues of domestic violence from last year,” he answered, “We have been working it out.”²

B. Mother’s Drug Use

About a month after N.S.M. was born with amphetamines in her system, Mother told a Department social worker that, before she knew she was pregnant with N.S.M., she had gone out with friends and used cocaine laced with methamphetamine. She assured the social worker she had not used drugs since then and agreed to an on-demand drug test. Mother also agreed to comply with a “safety plan,” the terms of which required her to abstain from drug use and from any physical or verbal altercations with Father during the Department’s child welfare investigation.

The results of Mother’s on-demand drug test were positive for methamphetamine and marijuana. When confronted with the test results, Mother told a social worker she had “[p]artied a few times” after giving birth to N.S.M. and “knew that she was going to test positive.” The social worker told Mother her test results violated the terms of the safety plan she previously agreed to, and the social worker put a new safety plan in place whereby N.C.M and N.S.M.’s paternal aunt would stay with the children

² Father agreed when asked if he thought counseling would help him, and the Department’s reporting indicated he had enrolled in “Anger Management/Individual Counseling.” By the time of the November 2017 jurisdiction and disposition report, however, Father had attended only two classes.

and Mother while Father was working to ensure the children's safety.

The Department social worker also questioned Father and the paternal aunt about what Father knew of Mother's drug use. Father said he had "partied" with Mother sometimes but only witnessed her using marijuana on a few occasions; he added he would be very upset to learn she used anything "harder" than that. In contrast to Mother's own admissions to the Department, Father denied that Mother went out sometimes with friends (telling the social worker he and Mother do not have that many friends) and Father further denied Mother "partied" after giving birth to N.S.M. (telling the social worker that Mother was a very responsible mother). The paternal aunt similarly told the social worker that Father was oblivious to any drug use by Mother beyond marijuana.

C. Father's Drug Use

When the Department began its investigation into N.C.M. and N.S.M.'s welfare, Father agreed to take a drug test and he tested positive for marijuana use. He continued to test positive for marijuana use for approximately five weeks thereafter, but a single drug test approximately a month before the juvenile court jurisdiction and disposition hearing was negative for marijuana use.

Father (age 26) told the Department he had been smoking marijuana for the last 20 years on a daily basis. According to the Department's jurisdiction report, Father smoked marijuana twice a day after coming home from work "for anxiety[,] as he does not want to use opiates due to his job [a union laborer for motion picture studios]." Father claimed he would "step[] outside of the

home” to smoke and the children were not allowed outside while he smoked. Father told a social worker he was able to supervise the children after smoking marijuana (including infant N.S.M.) because Mother was also present to help supervise.

Father produced to the Department a physician-signed medical clinic form authorizing him to use marijuana for medicinal purposes. Among other things, the printed physician statement on the form stated Father had been “strongly advised” not to use marijuana with alcohol and had also been informed not to drive, operate heavy machinery, or engage in any activity that requires concentration while using marijuana.

At the juvenile court jurisdiction and disposition hearing, Father testified concerning his marijuana use. He clarified he first started smoking marijuana at age 13 (i.e., 13 years before the hearing) and began smoking on a daily basis at age 18 after getting his “medical card.” Father testified he believed it was safe for him to supervise N.C.M. and N.S.M. after using marijuana and he also claimed it was safe for him to drive after smoking marijuana. He acknowledged, however, he would not smoke marijuana if Mother was not present at the family home so as to avoid having to care for the girls by himself.

D. The Juvenile Court’s Ruling

The juvenile court sustained the Department’s petition in full, although it modified the allegation regarding Father’s drug use to reflect he “has a history of substance abuse” and to strike the language stating he was “a current abuser” of marijuana (in light of his most recent drug test). Specifically remarking on the drug use allegation against Father, the court opined “[b]oth parents need to be sober,” there was a risk to the children, and

“[i]f [Father] were sober, maybe he would have noticed Mother being under the influence.” The court emphasized: “Bear in mind this is about risk. We do not have to wait until something serious happens before the court takes jurisdiction.”

The court ordered Father to participate in a full drug rehabilitation program, parenting classes, individual counseling to address case issues, domestic violence counseling, and conjoint counseling with Mother, assuming they intended to remain a couple. The court ordered the same family reunification services for Mother.

II. DISCUSSION

Father asks us to reverse the juvenile court’s jurisdiction findings regarding domestic violence (counts a-1 and b-3) and his history of drug abuse (count b-4). He does not contest the juvenile court’s finding that it had jurisdiction over N.C.M. and N.S.M. based on Mother’s drug abuse (counts b-1 and b-2).

We hold reversal of the juvenile court’s order assuming jurisdiction over the girls is unwarranted given the unchallenged jurisdiction findings against Mother. We further explain that even if we exercised our discretion to review the juvenile court’s findings against Father, the result would be the same. Focusing on the marijuana use allegations sustained against Father in count b-4, there is substantial evidence supporting the juvenile court’s ruling. Father is a long-time, prolific marijuana smoker—using twice a day, every day, once arriving home from work. He disregarded the physician warnings on the medical marijuana authorization form he obtained: stating it was safe for him to drive while high, drinking alcohol notwithstanding his regular marijuana use, and using marijuana despite an activity that

undeniably requires concentration—parenting two young children, one who was just an infant at the time. Further, it is reasonable to infer Father’s drug use blinded him to Mother’s even more serious methamphetamine and cocaine use, but even putting that aside, Father’s marijuana use undeniably foisted the children solely on Mother (at least for the times he was smoking alone)—someone who has an undisputed substance abuse problem and who Father admittedly knew to be a marijuana user too.

A. *The Uncontested Counts Against Mother Establish Juvenile Court Jurisdiction Over N.C.M. and N.S.M. Is Proper*

Where, as here, a dependency petition alleges multiple grounds for its assertion that a minor comes within the juvenile court’s jurisdiction, we may affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction in the petition is supported by substantial evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) In addition to its findings against Father, the juvenile court sustained the petition’s allegations that Mother’s substance abuse puts the children at substantial risk of serious physical harm. Mother has not appealed these findings, which are amply supported by the evidence, and Father does not challenge them in this appeal.

Although we “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, 1492; accord, *In re Briana V.* (2015) 236 Cal.App.4th 297, 308), here we opt to include a brief

discussion of why Father’s argument for reversal would fail even if we exercised our discretion to review whether jurisdiction over the children was appropriate when considering solely the dependency allegations against him.

B. Substantial Evidence Supports the Juvenile Court’s Finding That Father’s Marijuana Use Presents a Substantial Risk of Serious Physical Harm to the Children

Section 300 authorizes a juvenile court to assume dependency jurisdiction over a child when “[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)(1); see also *In re R.T.* (2017) 3 Cal.5th 622, 629 [first clause of section 300, subdivision (b)(1) “requires no more than the parent’s ‘failure or inability . . . to adequately supervise or protect the child’”].) Here, the petition includes section 300, subdivision (b)(1) counts based on both Mother and Father’s drug use.

“In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them.” (*In re R.T.*, *supra*, 3 Cal.5th at p. 633.) “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. [T]he [appellate] court 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, internal

quotation marks and citations omitted.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*Ibid.*)

There was substantial evidence before the juvenile court that Father’s marijuana use presented a substantial risk of serious physical harm to his daughters. Children of “tender years,” like N.C.M. and N.S.M., face “an inherent risk to their physical health and safety” if they are not adequately cared for or supervised (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), which regular, ongoing use of marijuana can inhibit (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219-1220 [whether or not the father’s unemployment and “repeated scrapes with the law” were directly related to his chronic marijuana use, juvenile court justified in assuming jurisdiction over three-month-old child]). Not only are these generalized principles of law applicable here, there are additional facts and indicia of poor judgment on Father’s part that establish there was a particularized risk of harm to four-year-old N.C.M. and three-month-old N.S.M.

There was strong evidence, unchallenged by anyone on appeal, that Mother had substance abuse problems involving methamphetamine and cocaine, not just marijuana, that impacted her ability to care for her daughters. When the Department inquired about Mother’s drug use, Father professed to be unaware of Mother’s “harder” drug use. Even if credible in that regard, the juvenile court reasonably inferred Father’s chronic, twice a day marijuana use could negatively impact his ability to recognize any signs of drug use exhibited by Mother, and this, of course, hindered his capacity to protect his children from harm. Plus, irrespective of what Father actually knew, it was undisputed Father depended on Mother’s supervision of the

children to engage in his longstanding marijuana habit, and thus, in a very direct sense, Father's marijuana use exposed the children to the undisputed substantial risk of serious harm presented by Mother's unchallenged substance abuse. Not only that, Father's dependence on Mother to facilitate his marijuana use was problematic even focusing just on what Father admitted he *did* know—which was that Mother also used marijuana. When testifying, Father effectively conceded it was unsafe (or at least imprudent) to smoke marijuana if he were responsible for supervising the children alone, but he nevertheless smoked when Mother was the only other supervising adult despite knowing she too was a marijuana user.

For these reasons, the circumstances at issue here are meaningfully different from the cases on which Father relies to argue for reversal of the findings against him—cases in which reviewing courts held there was not a sufficient link between a parent's substance use and a risk to a child's safety. (See, e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754, 764-765, 767 [father's medical marijuana use did not support dependency jurisdiction because there was no showing that the father was the sole source of the child's supervision while under the influence and because there was no showing the father failed to otherwise provide regular care to his child due to substance use] (*Drake M.*))

Unlike the father in *Drake M.*, who demonstrated that he used marijuana regularly but was never the child's caretaker when under the influence and no other sober adult was present (*Drake M.*, *supra*, 211 Cal.App.4th at p. 761), Father was regularly under the influence when serving as the caretaker of the young children while Mother—another drug user—was the only other adult around. In addition, Father's admissions, both

to the Department and in court, established his marijuana use was anything but responsible. The medical marijuana authorization Father obtained from a physician stated Father had been informed he should not use marijuana when engaged in activity that requires concentration, and that surely applies to parenting and supervising both a young child and an infant—as cases like *In re Christopher R.*, *supra*, 225 Cal.App.4th 1210 involving children of “tender years” recognize. But Father used marijuana anyway, twice daily. The medical marijuana authorization stated Father had been informed he should not drive when using marijuana, but when asked during the jurisdiction hearing if he felt he was safe to drive after smoking marijuana, his answer was yes. And the medical marijuana authorization strongly advised Father not to use alcohol with marijuana—advice he apparently disregarded, as he admitted he had been drinking at a bar at the time of the 2014 domestic violence episode. Father’s use of marijuana under the circumstances here is thus not remotely similar to *Drake M.* (where there was no evidence the father disobeyed the terms of a medical marijuana recommendation he obtained from a physician) or other cases in which appellate courts have concluded marijuana use could not justify a section 300, subdivision (b)(1) dependency finding (compare, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003-1005 [evidence of a parent’s drug use, without any indication of child abuse or neglect, was not sufficient to support jurisdiction over *eleven*-year-old child]).

Because we conclude the juvenile court’s finding as to count b-4 is supported by substantial evidence, we dispense with any discussion of the remaining jurisdiction findings against Father

and accordingly express no view on whether the count a-1 finding was justified. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

DISPOSITION

The juvenile court's jurisdiction findings and disposition order are affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

JASKOL, J.*

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