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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B270386
(Los Angeles County
Super. Ct. No. CK93642)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Tricia T.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Nichelle L. Blackwell, Commissioner. Affirmed.

Joseph D. MacKenzie, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Kim Nemoy, Principal Deputy
County Counsel, for Plaintiff and Respondent.

* * * * *

Tricia T. (mother) argues that the juvenile court erred in asserting dependency jurisdiction over her three children and thus should not have removed them from her and granted their fathers full legal and physical custody. We conclude that her appeal is moot as to her eldest child, and that substantial evidence supports the jurisdictional finding as to her two younger children. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Mother has three children with two different men. With Ruben M., she had Gabriel (born 1998). With William G., she had Alexis (born 2001) and Aaron (born 2002).

In July 2015, mother took a friend and Alexis with her to a clothing store. All three tried on clothes and left the store. Mother's friend then re-entered the store, grabbed some of those clothes, walked out without paying, and got into a stolen rental car in which Mother and Alexis were waiting. The three drove off. Mother admitted to knowing of her friend's intentions.

In November 2015, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to assert dependency jurisdiction over all three children because mother's conduct in having Alexis accompany her while shoplifting and driving a stolen vehicle placed Alexis, and thus her siblings, at risk of serious physical harm. (Welf. & Inst. Code, § 300, subds. (b) & (j).)¹

At the combined jurisdictional and dispositional hearing, the Department presented evidence (1) of the 2015 shoplifting

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

incident; (2) of a similar 2013 incident in which mother and a friend brought Gabriel along with them while shoplifting; (3) of mother's arrest in November 2015, for possessing a firearm while on probation; (4) that Gabriel was not enrolled in high school and that Alexis and Aaron had excessive absences and tardies from school; and (5) that the mother may still be using methamphetamines, despite her protestations to the contrary, because 10 people had recently been arrested at her house on drug charges.

The juvenile court sustained the petition, citing mother's "repeat history of this shoplifting-type of event" with her children. The court removed all three children from mother and terminated dependency jurisdiction with an exit order (1) placing each child with their father, (2) granting those fathers full legal and physical custody, and (3) ordering that mother have monitored visitation.

Mother timely appeals.

DISCUSSION

Mother argues that there was insufficient evidence to support the juvenile court's implicit finding that her conduct placed her children at "substantial risk" of suffering "serious physical harm," as required by section 300. As a result, mother contends, the court erred in asserting dependency jurisdiction and in issuing its exit orders.

I. As to Gabriel

Gabriel is now 18 years old. Because Gabriel is not currently under the juvenile court's jurisdiction, we lack the power to grant Mother any effective relief as to Gabriel. (Cf. § 391, subd. (c)(1)(A) [juvenile court may continue to exercise its jurisdiction over a "nonminor" unless the "nonminor" requests

no further jurisdiction].) Because we cannot grant mother relief, her appeal is moot as to Gabriel. (*In re E.T.* (2013) 217 Cal.App.4th 426, 436 “[a]n appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the reviewing court to grant effective relief”].) Even if we reached the merits of mother’s appeal as to Gabriel, her challenge fails for the reasons detailed below.

II. As to Alexis and Aaron

The juvenile court exercised dependency jurisdiction over the children pursuant to section 300, subdivisions (b) and (j). Under subdivision (b), jurisdiction over a child is appropriate if, among other reasons, 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 . . . to adequately supervise or protect the child.” (§ 300, subd. (b)(1).) Under subdivision (j), jurisdiction over a child is appropriate if “[t]he child’s sibling has been abused or neglected” or “there is a substantial risk that the child will be abused or neglected,” as defined in various subdivisions of section 300, including subdivision (b). (§ 300, subd. (j).) Risk of harm is not certainty of harm, and a court “need not wait until a child is seriously abused or injured to assume jurisdiction.” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.) What is more, past is prologue: The court “may consider past events in deciding whether a child currently needs the court’s protection” (*id.* at pp. 1383-1384), and “[a] parent’s past conduct is a good predictor of future behavior” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133). Our review of the juvenile court’s jurisdictional findings is limited; we ask only whether they are supported by evidence that is ““reasonable, credible, and of solid value,”” and do so while

viewing that evidence in the light most favorable to those findings. (*In re F.S.* (2016) 243 Cal.App.4th 799, 811-812; *In re Lana S.* (2012) 207 Cal.App.4th 94, 103.)

The juvenile court’s finding that mother placed Alexis—and, by extension, Gabriel and Aaron—at substantial risk of serious physical harm is supported by substantial evidence. The court had before it video surveillance from the clothing store, mother’s admission, and the police report. Together, this evidence established that Mother took Alexis with her to the store, knew her friend shoplifted items, and then drove away from the store with those stolen items—and in a stolen car—with Alexis as a passenger. This conduct put Alexis at substantial risk of serious physical harm. To be sure, mother did not end up in a violent altercation with store personnel outside the store or in a high-speed chase fleeing from the store. But that risk was there, and it was not insubstantial. As the United States Supreme Court has noted, “traffic stops may be dangerous encounters” (*Maryland v. Wilson* (1997) 519 U.S. 408, 413), particularly where, as here, “evidence of a more serious crime”—here, possessing a stolen vehicle—“might be uncovered during the stop” (*Arizona v. Johnson* (2009) 555 U.S. 323, 331-332).

Mother raises three arguments in response. First, she notes that the District Attorney did not ultimately charge her with any crime arising out of the July 2015 shoplifting incident. This is irrelevant. At best, the District Attorney’s charging decision reflects her conclusion that prosecutors could not prove the case against mother beyond a reasonable doubt. However, this conclusion does not preclude a juvenile court from finding, by a preponderance of the evidence, that mother engaged in the uncharged criminal conduct. (*In re Coley* (2012) 55 Cal.4th 524,

557 [so noting]; *In re I.J.* (2013) 56 Cal.4th 766, 773 [preponderance of the evidence standard applies to jurisdictional findings].)

Second, mother contends that there is not substantial evidence that the children are *currently* at risk of harm. We disagree. As the juvenile court stated, mother has a “repeat history” of placing her children at risk by bringing them along while she and her friends shoplifted; she did it with Gabriel in 2013, and she did it again with Alexis in 2015. This pattern of past behavior amply demonstrated a continued risk of the same and a continued risk of danger to her children.

Lastly, mother argues that many of the other facts that the Department argued at the combined jurisdictional and dispositional hearing—namely, her failure to ensure the children’s regular school attendance and her past drug use—do not support the exertion of dependency jurisdiction. This argument is well taken, as applied to the older children in this case. (See *In re Janet T.* (2001) 93 Cal.App.4th 377, 388-389 [failure to ensure school attendance does not create substantial risk of serious physical harm]; *In re Drake M.* (2012) 211 Cal.App.4th 754, 766-767 [drug abuse alone does not create substantial risk of serious physical harm, at least for children not of tender years].) However, the inability of these further facts to support a jurisdictional finding does not in any way undermine our conclusion that there is sufficient evidence to support jurisdiction due to mother’s inclusion of her children on her shoplifting sprees. One basis for jurisdiction is enough. (*In re A.F.* (2016) 3 Cal.App.5th 283, 289.)

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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