Filed 9/25/12 In re Deshawn B. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re DESHAWN B., a Person Coming Under the Juvenile Court Law.	B238990 (Los Angeles County Super. Ct. No. CK89050)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Albert Garcia, Juvenile Court Referee. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

T.M. (mother) and Dwayne B., Sr. (father) are the parents of Deshawn B., born November 2011. On January 24, 2012, the juvenile court sustained a petition declaring Deshawn a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (j).[1] Mother appeals the jurisdictional order and findings as to her. We affirm.

FACTUAL AND PROCEDURAL HISTORY

I. The Prior Case Involving Deshawn's Siblings[2]

A. Petition and Detention

Deshawn has two older siblings: Dwayne B., Jr. (Dwayne, born Feb. 2004) and Damion B. (born Mar. 2006). The Department of Children and Family Services (DCFS or department) filed a juvenile dependency petition as to Dwayne and Damion on July 25, 2011, alleging the children were exposed to physical altercations between mother and father, giving rise to jurisdiction pursuant to section 300, subdivision (b).[3]

DCFS filed a detention report on July 25, 2011. It stated that the department received a referral on March 28, 2011, alleging general neglect of the children. A children's social worker (CSW) attempted unsuccessfully to locate the family between March 28 and May 28, 2011. On June 22, 2011, the CSW met with the receptionist of the apartment complex from which the family had recently moved. She stated that the family had been evicted in April 2011 because of criminal activity in the home, including two police raids. During the most recent police raid, the officers found weapons and

---

[1] All further statutory references are to the Welfare and Institutions Code.

[2] The facts set out in this section are taken from our prior opinion affirming the exercise of jurisdiction over Deshawn's siblings. (*In re Dwayne B., Jr. et al.* (May 16, 2012, B236586) [nonpub. opn.].)

[3] The petition also alleged jurisdiction pursuant to section 300, subdivision (a), but that allegation was dismissed by the juvenile court.

drugs and arrested father. The receptionist also reported that she had witnessed a violent altercation between father and mother in which father pulled mother's hair.

On June 22, 2011, the CSW spoke to Dwayne at school. He was neatly dressed and there were no visible marks or bruises on his body. Dwayne told the social worker he did not know about drugs or gangs and he denied witnessing any violence between his parents. He said he lived with mother and visited father on the weekends. He said he was not afraid of mother or father.

On June 24, 2011, the CSW met with mother and the children. Mother said that since April 2011, she and the children had been living with Ulysses D., a family friend whom she considered her "grandfather" or "godfather." She claimed not to know where father was living, but said he likely was staying with his grandmother, his aunt, or a friend. She said that when the children visited father, she supervised to be sure they were safe. She claimed father never exposed her or the children to drugs or gang activity, but she did not know what he did when he was not with her. She denied that she or father were neglectful.

Mother reported that she had a bad temper and an "anger problem." When she was younger, she went to anger management classes. She said she currently was three months pregnant with father's child and would like to resume a relationship with him, but knew he needed to change his lifestyle. She did not admit that father was in a gang, but said she did not like to leave the children alone with him.

The CSW also spoke to Ulysses D., who said he had concerns about father. Ulysses D. did not think father was a good parent because he did not have a job or otherwise take care of the children. Ulysses D. said he had known mother and her family for a long time and tried to help her as much as he could. He said he believed mother was afraid of father and he did not allow father in his home.

The CSW spoke to mother about services for the family, and mother agreed to a voluntary maintenance case. She signed a safety plan in which she agreed that the children would not witness any domestic violence or criminal activity and that she or a responsible adult would monitor father's visits with the children.

The CSW interviewed Ulysses D. again on July 5, 2011. He said he had for many years assisted mother with housing and jobs, but that mother had lost both the housing and the jobs. She lost her last apartment "due to the activity that father was bringing around the home such as too many people being there and drug sales." He was concerned about the children, but said they currently were safe.

The CSW interviewed mother on July 6, 2011. Mother again said that to her knowledge, father was not a gang member and did not sell drugs. She said that before she lost her apartment, father would come by on the weekends and sometimes they would have arguments that involved slapping and pushing. Mother was vague in her descriptions of these altercations and said, "no one's relationship is perfect." Mother acknowledged that father pulled her hair in front of the apartment manager, but she denied that she ever had visible injuries except for "maybe a scratch." She acknowledged that she had called the police to have father removed from the home and had sought a restraining order against him, but said that to get the restraining order, she "made stuff up and wrote it on there." She said father saw the children two to three times a week and she was able to set up the visits when father called her from someone else's phone. She and father would pick a location to meet and she would bring the children to see him. She denied being afraid of father.

The CSW interviewed Damion and Dwayne on July 6, 2011. Damion said he liked where he was living and enjoyed seeing father. He denied ever seeing his parents hit one another and said mother and father never fought with anyone. Dwayne similarly denied seeing his parents fight with one another and said he never saw guns or drugs at his old house. He said he felt safe in Ulysses's home.

On July 20, 2011, the CSW asked mother for more information about the history of domestic violence between her and father. Mother was vague and said father slapped her a couple of times a year ago but there were no bruises or bleeding. She said that in the course of their relationship, she and father had engaged in physical altercations seven or eight times. She admitted the children had been present two or three times, but claimed they were outside playing or in another room.

Based on the foregoing, DCFS detained the children from father and placed them with mother.

The court held a detention hearing on July 25, 2011. It found that continuance in father's home was contrary to the children's welfare and no reasonable means existed by which the children's physical or emotional health could be protected without removing the children from father's physical custody. It ordered the children placed with mother and granted father monitored visitation.

B. Jurisdiction and Disposition

DCFS filed a jurisdiction/disposition report on September 2, 2011. Father's whereabouts were still unknown. As of September 30, 2011, DCFS remained unable to locate father.

The court sustained the allegations of count b-1 of the petition, finding them established by a preponderance of the evidence. The court found that father posed a serious risk to the children and, although he "can't be found at this time, . . . there's no indication he's gone forever and that mother does not intend to associate with him." Further, the court found by clear and convincing evidence that there would be a substantial danger to the children if they were to return to father's home and there were no reasonable means by which the children could be protected without removing them from father's custody. The court ordered the children placed with mother and ordered mother to participate in a domestic violence support group and individual counseling to address case issues. The court further ordered that father was not to live in or visit mother's home without DCFS's permission. The court denied father reunification services because his whereabouts were unknown.

C. Prior Appeal

Mother appealed from the court's jurisdictional and dispositional findings, contending there was no substantial evidence that she failed to protect the children. We affirmed. We noted that a minor is a dependent if the actions of either parent bring him

within one of the statutory definitions of a dependent; thus, because mother did not challenge the sufficiency of the evidence to support the jurisdictional allegations as to father, the juvenile court would properly have exercised jurisdiction over the children even if mother's conduct was not an independent basis for jurisdiction. In any event, we found substantial evidence to sustain the allegations as to mother because domestic violence in the same household where children are living constitutes "'"a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it."'" (*In re Dwayne B., Jr. et al.*, *supra*, B236586 [at pp. 6-8].)

II. The Present Case

A. Petition

DCFS filed the present petition on December 13, 2011, two weeks after Deshawn's birth, alleging jurisdiction over him pursuant to section 300, subdivisions (a), (b), and (j). Counts a-1 and b-3 of the petition alleged that mother and father had a history of engaging in violent altercation in the presence of Deshawn's siblings and "[s]uch violent conduct by the father against the mother, and the mother's failure to protect the siblings, endanger[] the child's physical health and safety and places the child at risk of physical harm, damage, danger and failure to protect." Counts b-2 and b-3 alleged that mother had a history of illicit drug use and was a current user of marijuana, rendering her unable to provide regular care and supervision of Deshawn. Further, mother was alleged to have used marijuana during her pregnancy and "[o]n 11/30/2011, the child, [Deshawn], was born suffering from a detrimental condition consisting of a positive toxicology screen of marijuana. . . . Such substance abuse by the mother endangers the child's physical health and safety and places the child at risk of physical harm, damage and danger." Count j-1 alleged that father struck mother in the presence of Deshawn's siblings, who "are current dependents of the Juvenile Court due to the father's violent conduct against the mother and the mother's failure to protect the siblings." Father's violent conduct against mother, and mother's failure to protect the siblings, were

alleged to endanger Deshawn's physical health and safety and place him at risk of future harm.

B. Detention

The detention report, filed on December 12, 2011, stated that DCFS was notified when mother and Deshawn tested positive for marijuana at birth. Mother denied marijuana use and claimed that she mistakenly ate some brownies laced with marijuana. Deshawn was reported to be healthy and mother and baby were bonding appropriately.

On December 2, 2011, a CSW visited mother and Deshawn at the hospital. Mother and baby were resting on the bed and father was sleeping in a chair in the room. The CSW asked mother why she and Deshawn tested positive for marijuana and she said, "I had brownies one time and I did not know it had marijuana." Mother said she got the brownies from a friend whom she was visiting. Mother then showed the CSW a medical marijuana card, but said she was not taking her "medication" during her pregnancy. Father said he was not aware that mother ate marijuana brownies, but said she "never smoked marijuana while she was pregnant." He said he was homeless and did not visit his children because "I don't have anywhere to take them." He said he last saw the children when Ulysses D. brought them to the hospital to see their baby brother.

The CSW interviewed Dwayne and Damion on December 2, 2011. Both boys were neatly dressed in school uniforms and appeared to be healthy. The CSW did not observe any marks, bruises, or scratches on the body of either boy.

Dwayne said he did not know what drugs are and had never heard the word "marijuana" or "weed." He said alcohol was "[s]omething you drink" and that he had never seen his mother drink alcohol. Dwayne said his father lived with "granny" and that he talked to his father on the phone. He had last seen his father at the hospital. Dwayne said he had not seen his mother and father fight.

Damion told the CSW that he did not know what drugs are and that alcohol is something "[y]ou put . . . on your body." Damion said no one in his home drinks alcohol. He said his father used to live with him but now lives with "granny." He said father did

not visit him at home. When asked why father did not live with him anymore, Damion said, "At our old house the manager caught him fighting with momma."

DCFS held a team decision meeting on December 8, 2011. Mother said she tested positive for marijuana because she ate some brownies containing marijuana. She said she went to the hospital after eating the brownies on November 22 to be sure that her unborn son was fine. Mother said she has a medical marijuana card and had used marijuana in the past to help her eat and sleep, but did not use marijuana during her pregnancy. She agreed to randomly drug test. She said she had not yet taken part in court-ordered counseling and domestic violence sessions, but agreed to begin calling agencies to enroll in those sessions.

On December 13, 2011, the juvenile court found a prima facie case for detaining Deshawn but ordered him released to mother. Mother was ordered to drug test.

C. Jurisdiction and Disposition

DCFS filed a jurisdiction/disposition report on January 5, 2012. It stated that a dependency investigator met with mother on December 28, 2011, at her home. Mother held the baby during the interview, fed him a bottle, changed his diaper, and comforted him when he cried. When asked why she refused to sign the necessary paperwork so that her older children could be referred to the department of mental health for an assessment, mother said she did not feel the children needed mental health services and "it's too much to do. It is hard to keep appointments." Mother said she had enrolled in a domestic violence program the previous week, but had had difficulty finding individual counseling.

Mother denied domestic violence in her relationship with father, saying, "[T]o me there wasn't no [domestic violence] going on. Someone just called being in someone else's business. They don't like my kids' father anyway." She conceded that father has pushed her, slapped her, and pulled her by the hair, but said the children were outside or at their grandmother's house when the violence occurred and that "as far as him hitting me in my face or getting really strong with me, I have never had that experience like that with him." When asked about father's domestic violence conviction, mother said as

follows: "Last summer (2010) I separated from him and went to my brother's house because I heard he had another girlfriend. I ran into his girlfriend and she socked me in my face. Her friends jumped in and busted my face with a sock with locks in it. I called the police and basically lied and said it was him and got a restraining order. I dropped it when we went to Court, but the D.A. picked it up."

Mother denied drug abuse, saying as follows: "If I was using, I don't abuse marijuana. To me it is medication. It keeps me calm and makes me not think a lot. I don't use [it] to get high. I don't let it take over me. It doesn't affect the way I care for my kids. To me I think it helps me."

Based on the above, DCFS recommended that mother be provided with family maintenance services and Deshawn be declared a dependent of the court.

At the jurisdiction and disposition hearing on January 24, 2012, mother's counsel made a motion to dismiss pursuant to section 350, subdivision (c). Counsel urged that DCFS had not met its burden to show any current risk to the new baby, including any recent domestic violence between the parents, and noted that DCFS had not removed any of the three children from mother when it filed the current petition. After hearing argument, the court found DCFS had met its burden as to mother with regard to counts b-1, b-2, and j-1, and as to father with regard to counts j-1 and b-3. The court ordered that Deshawn would be allowed to remain in mother's home under DCFS supervision, but that father was not to live with mother without court permission. DCFS was ordered to provide mother with family preservation services.

Mother timely appealed.

STANDARD OF REVIEW

"We review the juvenile court's jurisdictional findings for sufficiency of the evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all

conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)" (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

DISCUSSION

Mother contends that the juvenile court erred in sustaining the petition as to her under section 300, subdivisions (b) and (j), because there was insufficient evidence that Deshawn was at substantial risk of neglect or serious harm. For the following reasons, we affirm the court's exercise of jurisdiction.

We begin by noting that, as in her prior appeal, mother does not suggest that the juvenile court erred in sustaining counts b-3 and j-1 of the petition as they relate to father. We stated in the prior appeal that "'[a] minor is a dependent if the actions *of either parent* bring [him] within one of the statutory definitions of a dependent. (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554; see 2 Cal. Juvenile Court Practice (Cont.Ed.Bar Supp. 1996) Initiating Dependency Proceedings, § 15.5, p. 13.) This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. (See, e.g., *In re Malinda S.* (1990) 51 Cal.3d 368, 384.)' (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397, italics added.)" (*In re Dwayne B., Jr. et al., supra,* B236586 [at p. 6].) Accordingly, because mother does not challenge the sufficiency of the evidence to support the jurisdictional allegations as to father, the juvenile court would properly have exercised jurisdiction over Deshawn even if mother's conduct was not an independent basis for jurisdiction. (See, e.g., *In re Maria R.* (2010) 185 Cal.App.4th 48, 60.)

In any event, we find that there is substantial evidence to sustain the section 300, subdivision (b) allegations as to mother. That section provides that a child is within the jurisdiction of the juvenile court if, among other things, "[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 . . . ." As we said in our prior opinion, "'"[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Children can be "put in a position of physical danger from [spousal] violence" because, "for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg . . . ." (*Ibid*.) [¶] "Both common sense and expert opinion indicate spousal abuse is detrimental to children."' (*In re E.B.* (2010) 184 Cal.App.4th 568, [576].)" (*In re Dwayne B., Jr. et al., supra*, B236586 [at p. 7].)

In the present case, substantial evidence supported the juvenile court's finding that domestic violence between mother and father put Deshawn at risk of future harm. First, the juvenile court found—and mother does not contend otherwise—that father behaved violently towards mother in the past. Substantial evidence supported that finding: the receptionist of the apartment complex from which mother had been evicted reported seeing a violent altercation between father and mother in which father pulled mother's hair; mother admitted that she and father had arguments that involved slapping and pushing, and said that in the course of their relationship, she and father had engaged in physical altercations seven or eight times; and mother admitted that the children had been present during two or three of these altercations, although she claimed they were outside playing or in another room. Next, mother does not view father's acts of violence against her as a serious concern; she told the CSW that although father has pushed her, slapped her, and pulled her by the hair, there "wasn't no [domestic violence] going on" because "as far as him hitting me in my face or getting really strong with me, I have never had that experience like that with him." Finally, although mother and father are not currently living together, mother told a social worker that she would like to resume a relationship with father, and she permitted father in her hospital room after she gave birth to Deshawn. Thus, substantial evidence supports the juvenile court's conclusion that

mother and father are likely to resume a relationship and expose the children to future acts of domestic violence that will endanger their health and safety.[4]

Further, prenatal drug exposure is a legally sufficient basis for the juvenile court to exercise jurisdiction under section 300, subdivision (b). (*In re Troy D.* (1989) 215 Cal.App.3d 889, 897; *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378-1379; *In re Stephen W.* (1990) 221 Cal.App.3d 629, 639.) As the court noted in *In re Troy D.*, section 355.1, subdivision (a) provides, "Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300." Where a child is born with a "detrimental condition" (prenatal drug exposure) caused by a mother's use of drugs while pregnant, a legal presumption thus is created that the child is a person described by section 300, subdivision (a), (b), or (d). In the present case, it is undisputed that Deshawn was exposed prenatally to marijuana. He thus is presumptively within the juvenile court's jurisdiction because mother has not rebutted the section 355.1, subdivision (a) presumption.

Mother contends that her marijuana use is not a basis for jurisdiction because "the 'mere use of marijuana by a parent will not support a finding of risk to minors'" (quoting *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452-453). While she is correct that marijuana use, by itself, will not support juvenile court jurisdiction, marijuana use *will* support jurisdiction if it creates a risk of harm to children. In *In re Alexis*, the court found that father's marijuana use was a basis for jurisdiction because father used marijuana while his children were in his home. Accordingly, "[t]he trial court could reasonably find that Father's use of marijuana constituted a risk of harm to the minors because of Father's

---

[4] For this reason, the present case is distinguishable from *In re J.N.* (2010) 181 Cal.App.4th 1010 and *In re B.T.* (2011) 193 Cal.App.4th 685, on which mother relies. In each of those cases, the court found no substantial risk of future harm to the children.

failure to protect the minors from the marijuana smoke. . . . [T]he risk to the minors here is not speculative. There is a risk to the children of the negative effects of secondhand marijuana smoke." (*Id*. at p. 452.) Similarly, in the present case, the trial court reasonably could conclude that mother's marijuana use had an adverse effect on Deshawn because the marijuana entered his body in utero.

For all of the foregoing reasons, substantial evidence supported the juvenile court's exercise of jurisdiction over Deshawn pursuant to section 300, subdivision (b).[5]

DISPOSITION

The juvenile court's January 24, 2012 jurisdictional order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.

---

[5] Because we have concluded that substantial evidence supported the juvenile court's jurisdictional finding under section 300, subdivision (b), we need not consider mother's subdivision (j) claims.