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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Y.J., a Person Coming Under the
Juvenile Court Law.

B247173
(Los Angeles County
Super. Ct. No. CK96270)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Tim Saito, Judge. Affirmed.

Roland Koncan, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

S.S. (Mother) appeals from the juvenile court's order of January 10, 2013, declaring her son, Y.J., a dependent of the court under Welfare and Institutions Code¹ section 300 and removing Y.J. from Mother's custody under section 361.

On appeal, Mother contends that substantial evidence did not support sustaining the petition against Mother or removing S.S. from Mother's custody. We affirm.

STATEMENT OF FACTS AND PROCEDURE

On November 2, 2012, the Los Angeles Department of Children and Family Services ("DCFS") filed a section 300 petition ("Petition") on behalf of Mother's then-7-year-old son, Y.J., alleging Y.J. had suffered, or there was substantial risk that he would suffer, serious physical harm or illness due to Mother's failure or inability to supervise or protect Y.J. adequately or because of Mother's inability to provide regular care for Y.J. due to Mother's mental illness, developmental disability or substance abuse. Specifically, in count b-1 the Petition alleged that Mother had a history of substance abuse, including methamphetamine, and was a current abuser of marijuana, rendering her incapable of providing regular care and that, on October 30, 2012 and on prior occasions, Mother possessed, used and was under the influence of illicit drugs while Y.J. was under her care and supervision. Count b-1 further alleged that Mother possessed a drug pipe in Y.J.'s home within access of Y.J. and that her substance abuse endangered Y.J.'s physical health and safety, created a detrimental home environment and placed Y.J. at risk of physical harm, damage and danger.

Also on November 2, 2012, DCFS filed a Detention Report stating that Y.J. had been placed in a foster home. The Detention Report stated Mother was the subject of an on-going criminal investigation into a robbery of a jewelry store and, on October 30, 2012, while executing a warrant at Mother's address, the Los Angeles Police Department observed in Mother's bedroom "open bottles of alcohol, a marijuana pipe, and on a mirror there was residue of a white powdery substance resembling methamphetamines, a

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

razor, and a couple of straws (commonly used to snort the drugs).”² Law enforcement reported that all the drug paraphernalia as well as the alcohol was within access of the children found to be residing in the home.³

According to the Detention Report, a DCFS social worker spoke to Mother while she was standing outside handcuffed and asked Mother if anything illegal would be found in her home. Mother responded, “[n]ot really . . . well just marijuana for my personal use.” Mother stated that she used the marijuana to ease the pain from two gunshot wounds and to help her sleep. Mother also admitted alcohol use but denied drug use other than marijuana. Mother also denied current gang affiliation, any mental health history and any domestic violence.

Y.J. was observed to be in good physical health. The social worker spoke to Y.J. and asked him “if he had seen any drugs. The child paused and stated ‘No. I don’t think so.’”

According to the Detention Report, Mother has “an extensive DCFS history.” The report listed six referrals for general neglect in August 2007 -- all alleging that Mother sold marijuana from the home, used marijuana in front of Y.J. and that Y.J. had access to and played with the marijuana – which were concluded as “unfounded” or “evaluated out.” A June 2008 referral’s allegations of general neglect were unfounded but substantial risk was “substantiated” as Mother tested positive for marijuana and methamphetamines. A July 2009 general neglect referral, containing substantially the same allegations as the August 2007 referrals, was evaluated out.⁴

² Mother was incarcerated for the duration of the juvenile proceedings at issue in this appeal. The record does not indicate if Mother was convicted.

³ According to the Detention Report, Mother’s friend and the friend’s two children also lived in the home.

⁴ The Detention Report referred to “photos” as attachments to the report, but the attached documents appear to be related to another case. It is unclear what attachments were presented to the juvenile court.

An Addendum Report was also filed on November 2, 2012. The Addendum Report recommended, *inter alia*, continued detention of Y.J. and gave as the reason for the recommendation, “mother has a history of substance abuse, including methamphetamine, and is a current abuser of marijuana.”⁵ The Addendum Report indicated that further investigation was needed to determine “if the powder found in the child’s home was methamphetamine.”

At the November 2, 2012 detention hearing, Mother and Y.J. were present and represented by appointed counsel.⁶ Mother entered a general denial of the allegations. The juvenile court found a *prima facie* case to detain the child, including finding under section 319 that continuance in the home of Mother was contrary to the child’s welfare and presented a substantial danger to the physical and emotional health of the child.

In a December 11, 2012 Jurisdiction/Disposition Report, DCFS reported that Y.J. was interviewed and stated that Mother “smokes cigarettes and she drinks liquor. Sometimes she smokes something that stinks but I don’t know what it is. It smells like dirty diapers.” Y.J. denied ever witnessing Mother under the influence of drugs, saying Mother took good care of him and he was not fearful of her.

According to the Jurisdiction/Disposition Report, Mother admitted that she used marijuana, had a prescription for marijuana but had not had a chance to renew it. She denied leaving the marijuana within reach of Y.J., stating that the bedroom door was locked, and denied smoking marijuana while Y.J. was present in the home, stating she smoked while Y.J. was at school or with friends or family members. Mother denied methamphetamine use, stating “I don’t know where that came from.”

⁵ The Addendum Report also stated under “Toxicology Report”, “N/A [¶] The mother, child, father had positive toxicology screens, results for which are incorporated into the Detention Hearing report as attachments.” We assume that the first part of the answer, “N/A” is the intended response and the remaining line was included in error. As mentioned in a prior footnote, the attachments to the Detention Report are incorrect in the record and the Detention Report did not mention the attachment of toxicology reports.

⁶ Also present was Y.J.’s father, T.J., who is not a party to the Petition and who resides in San Bernardino. Y.J. was eventually placed with father.

The Jurisdiction/Disposition Report indicated that Y.J.'s father stated he had no knowledge of Mother's drug use, saw no evidence of it during his frequent visits with Y.J., and that Y.J. never reported that Mother used drugs. Maternal aunt, S.D., stated that she was supposed to keep Y.J. while Mother went to drug rehabilitation. S.D. "suspects mother has a drug problem" but did not know the extent and stated that Mother continued to deny any use of methamphetamines and marijuana. Brandy P., Mother's god-sister, reported that she saw Mother and Y.J. two to three times a week and never observed drug paraphernalia or Mother under the influence of drugs.

The Assessment/Evaluation section of the report noted that "Mother is currently user of marijuana and methamphetamines. The department believes mother may have some unresolved mental health issues that are the result of being shot in the face and in the knee."

At the January 10, 2013 trial, the juvenile court received into evidence, inter alia, DCFS's Detention Report and Jurisdiction/Disposition Report. Y.J.'s counsel stated the case was "somewhat of a close call in terms of whether [DCFS] has met its burden" but minor's counsel joined with county counsel to argue to sustain the petition, noting that Y.J. when interviewed said Mother "smoked something that stinks", which led counsel "to believe that . . . Mother has smoked in his presence." Mother's counsel requested the petition be dismissed, citing *In re Destiny S.* (2012) 210 Cal.App.4th 999 and *In re Drake M.* (2012) 211 Cal.App.4th 754, arguing that there was neither evidence that Mother had a history of substance abuse, including methamphetamine, and was a current abuser of marijuana, nor evidence that Mother has failed or been unable to adequately supervise or protect Y.J. because of her marijuana use. Mother's counsel also noted that Y.J. had no knowledge of any paraphernalia and that smelling smoke was not evidence of imminent physical harm. Also witnesses indicated that they had never seen Mother under the influence of drugs. County counsel argued that the drugs were within reach of Y.J. and if he ingested them it would pose a substantial risk and Mother had tested positive in the past for methamphetamine and marijuana.

The juvenile court sustained the one-count petition. The court based its findings on Y.J.'s statements indicating that Mother drank liquor, smoked cigarettes and smoked something that smelled like "dirty diapers", suggesting Y.J. was distinguishing between marijuana smoke and cigarette smoke and was being exposed to the smoke; law enforcement's observation that methamphetamine on a mirror, open bottles of alcohol, marijuana pipe, razors and straws were within access of Y.J.; Y.J.'s age; and Mother's denial of drug use.

Mother then argued that Y.J. did not need to be removed from her care as he was with Father during her incarceration and therefore Mother has an appropriate plan in place for Y.J. "until Mother is able to be released from custody." County counsel noted that DCFS removed Y.J. from Mother and placed him with Father. The juvenile court declared Y.J. a dependent of the court and removed him from Mother's custody.

Mother filed a timely appeal.

DISCUSSION

On appeal, Mother argues that the evidence was insufficient for the juvenile court to sustain the single count in the Petition against Mother under section 300, subdivision (b). Specifically, Mother argues that there was insufficient evidence of a history of methamphetamine abuse, noting that this allegation was based on the white powdery residue police found at Mother's home but there was no evidence "as to what the residue of powder actually was" and DCFS's own report indicated that further investigation was necessary to determine if the substance was methamphetamine and the only positive methamphetamine test for Mother was in 2008 when Mother received services. Mother also argues that the evidence was insufficient to show that her possession of marijuana and paraphernalia and alcohol amounted to a substantial risk of harm or illness to Y.J. in the future. In addition Mother contends that the use of medical marijuana without more does not support a jurisdictional finding and DCFS must present evidence of a specific, non-speculative and substantial risk to Y.J. of serious physical harm.

We affirm.

“The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) “Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300” at the jurisdiction hearing. (§ 355, subd. (a).)

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “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.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

“On review, we employ the substantial evidence test, however bearing in mind the heightened burden of proof” at the trial level of clear and convincing evidence for the removal of a child. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

Under section 300, subdivision (b), the juvenile court may assert 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 or failure or inability of his or her parent or guardian to adequately supervise or protect the child” Here, the police reported that Mother’s bedroom contained open bottles of alcohol, a marijuana pipe, a mirror with residue of a white powdery substance resembling methamphetamines on it, a razor, and straws and that these items were accessible to Y.J. While a laboratory test of the white powdery residue was not included in the evidence, it was reasonable for the juvenile court to infer based on the drug paraphernalia that the powdery residue was methamphetamine. Although Mother claimed her bedroom door was locked, law enforcement reported that the open alcohol and drug paraphernalia were accessible to children and we do not reweigh the contradictory evidence. A child’s ingestion of an

illegal drug constitutes a serious physical harm, and therefore a substantial risk of the ingestion of drugs by placing them or leaving them in a location available to the child would support jurisdiction under section 300, subdivision (b). (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 825.)

Moreover, while Mother is correct that the use of medical marijuana without more is insufficient, again the accessibility of methamphetamine and drug paraphernalia to Y.J. distinguishes this case from *Destiny*, *supra*, 210 Cal.App.4th at page 1004 (“no drug paraphernalia was observed in the home”) and *Drake*, *supra*, 211 Cal.App.4th at page 761 (marijuana was “kept in a locked tool box on a shelf in the garage, far out of [minor’s] reach”).⁷

Accordingly, we conclude that the evidence warranted a finding of substantial risk of serious physical injury and it also appears to have supported a finding of clear and convincing evidence of a substantial danger to Y.J.’s health.⁸

We have considered Mother’s remaining contentions and find them without merit and affirm.

DISPOSITION

We affirm the juvenile court’s order.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.

⁷ Because we conclude that there was sufficient evidence that methamphetamine and drug paraphernalia were accessible to Y.J., we do not address Mother’s contention that there was insufficient evidence that she had a history of abusing methamphetamines.

⁸ To the extent Mother contends that she identified Y.J.’s father as a placement source and Y.J. could have been protected without removing him from her custody, we note that Y.J.’s placement was not based on Mother’s incarceration but on the drug abuse allegations.