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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re JACOB M. and ANNA M., Persons
Coming Under the Juvenile Court Law.

2d Juv. No. B241081
(Super. Ct. Nos. J1395726, J1395727)
(Santa Barbara County)

CHILD PROTECTIVE SERVICES,

Plaintiff and Respondent,

v.

JULIA M.,

Defendant and Appellant.

Julia M. appeals from the March 22, 2012 jurisdiction and disposition orders declaring her children, Jacob M. (age 12) and Anna M. (age 9) dependents of the juvenile court (Welf. & Inst. Code, § 300, subds. (b), (c), & (g))¹ and removing the children from appellant's custody and care (§ 361, subd. (c)(1)). Appellant claims the orders are not supported by the evidence and the trial court abused its discretion in ordering that appellant submit to drug testing before visitation. We affirm.

Facts and Procedural History

On January 3, 2012, Santa Barbara County Child Welfare Services (CWS) filed a dependency petition for failure to protect Jacob and Anna (§ 300, subd. (b)), serious

¹ All statutory references are to the Welfare and Institutions Code,

emotional damage (§ 300, subd. (c)), and no provision for support (§ 300, subd. (g)). The petition alleged that Jacob and Anna had not attended school since December 1, 2011, and that appellant and the maternal grandmother (the children's caregiver) would not disclose their whereabouts. School officials tried to contact appellant and the maternal grandmother for six weeks with no success. The children's uncle reported that the maternal grandmother, Pamela M., took the children to an undisclosed location.

The petition stated that Anna suffered from mental health issues (i.e., defecating and urinating under the kitchen table and tearing linens apart) and that appellant had not obtained mental health treatment for the child. Appellant told a case worker that Anna had anger and attitude issues, wants to "dress too adult," and that appellant feared Anna was becoming promiscuous. The maternal grandmother told the case worker that Anna had been defecating under tables and drapes and had smeared feces on the walls. Services were offered but appellant and the maternal grandmother refused to cooperate when CWS attempted to schedule a mental health assessment of Anna.²

Jacob suffered from autism, ADHD Inattentive Type Disorder, and asthma but refused to take his prescribed medication. It was a concern because Jacob had trouble concentrating and listening at school and avoided certain physical activities due to his asthma.

CWS reported that appellant's substance abuse and mental health problems affected her ability to provide for, care, and supervise the children. CWS had received nine referrals about appellant's substance abuse while pregnant, substance abuse in the presence of the children, and physical abuse and general neglect.³ Appellant's criminal history included arrests for crimes against children (lewd conduct), inflicting corporal injury on a

² Grandmother had a history of abusing the children. In 2011, grandmother became extremely angry at Jacob for not cooperating with an intake nurse and banged his head against a wall. In 2008, grandmother grabbed Anna by the hair tearing out a large chunk of hair on the left side of Anna's head.

³ The petition alleged that the whereabouts of the children's fathers was unknown, leaving Jacob and Anna without provision for support.

spouse, four arrests for possession of a controlled substance, possession of drug paraphernalia, and being under the influence of a controlled substance.

On January 3, 2012, after the dependency petition was filed, the Santa Maria Police served a protective custody warrant where appellant, the maternal grandmother, and the children lived. The house was littered with trash, personal belongings, chemicals, and spoiled food. Food was left out on the counters and stove as if someone had been there within the last couple of days. The house cat had defecated and urinated throughout the house and the bathrooms had un-flushed toilets. The stench was so strong that the police and CWS personnel had to retreat for fresh air.

CWS determined that the maternal grandmother fled with the children to Illinois. When a social worker and Illinois police detained the children, grandmother screamed at them and said that CWS wanted to take the children to live with child molesters. Grandmother refused to give CWS the children's personal belongings other than two changes of clothing and told the FBI that CWS had abducted the children.

After the children were placed in protective custody and flown back to California, appellant was offered visitation. Appellant feared that she would be arrested, said she was out of the area, and refused to disclose her whereabouts. On February 8, 2012, appellant was asked if she wanted to participate in services to reunify with the children. Appellant said "I won't do drug rehab" and wanted the children placed with their godmother. Appellant was offered visitation but refused to submit to drug testing before visits.

At a contested jurisdiction/disposition hearing, appellant submitted on the CWS reports and attachments. The trial court sustained the petition, declared the children dependents of the court, and removed the children from appellant's care and custody. The court ordered reunification services, a psychological evaluation of appellant, and visitation subject to the condition that appellant test drug free before scheduled visits.

Substantial Evidence

Appellant contends that the jurisdiction and disposition orders are not supported by the evidence. In a sufficiency of the evidence appeal, we determine whether there is any substantial evidence, contradicted or uncontradicted, to support the trial court's

findings. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) We may not substitute our deductions for those of the trier of fact. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, the reviewing court can affirm the judgment if any one of the statutory bases for jurisdiction enumerated in the petition is supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

The evidence shows that the children are at substantial risk of suffering serious physical harm because of appellant's failure to supervise, provide for, or protect the children. (§ 300, subds. (b), (c) & (g); see e.g., *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) Appellant claims that the maternal grandmother is a suitable caregiver but the children, while under grandmother's and appellant's care, missed school, suffered behavioral and medical problems, were not provided cooked meals, and did not receive therapy or prescribed medication. The grandmother fled with the children while the dependency investigation was ongoing, was the subject of prior referrals for child sexual abuse, and had a history of not cooperating with CWS.

Substance Abuse

It is settled that a parent's substance abuse may present a substantial risk of severe physical harm, warranting the exercise of dependency jurisdiction where evidence of past substance abuse is probative of current conditions and the parent fails to adequately supervise, protect, and care for the child. (*In re Alexis E, supra*, 171 Cal.App.4th at p. 452 [parent's marijuana use posed risk of harm to child]; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1651 [parent's use of cocaine or methamphetamine posed risk of harm].)

Appellant has a long history of substance abuse and tested positive for mehtamphetamines a month before the dependency petition was filed. The substance abuse is consistent with CWS referrals dating back to 2001 in which appellant reportedly used drugs while pregnant, a 2002 referral for using drugs in front of Jacob, a 2005 referral for shooting up "crank" in front of the children and yelling at and pushing two-year-old Anna, and a 2005 referral that appellant's boyfriend was molesting Anna, In September 27, 2011, CWS received a referral that appellant was buying drugs on the street in front of the

children. It was reported that appellant frequently kept the children out late at night and took them to a riverbed where appellant kept drugs.

Appellant was offered services but refused to submit to drug testing, claiming that "someone will spike my urine as positive for drugs." Appellant said that she had Lupus, Chronic Fatigue Syndrome, and "Anthrax" and said the only way CWS could know about her criminal history was by stealing files from her house. Appellant told the case worker that the FBI "buried" her criminal history long ago, that her criminal history is "majorly confidential," and that the FBI had warned her not to open the front door because she was "in danger" from local law enforcement.

Appellant failed to supervise, care, and protect the children and concealed their whereabouts after the maternal grandmother fled with the children to Illinois. Appellant's house was littered with trash, rotting food, cat feces and urine, and the children had to eat whatever was in the refrigerator because no one cooked for them.

All of it had a toll on the children. The foster parents reported that the children were emotionally neglected, that Jacob had to be reminded daily to brush his teeth and shower, and that Jacob hugged and touched Anna in an inappropriate manner. Jacob was diagnosed as suffering from adjustment disorder with depressed mood, child neglect and sexual abuse attention deficient/hyperactivity disorder, and a learning disorder.

The foster parents reported that Anna suffered from hygiene problems, exhibited sexualized behaviors and liked to play "doctor" with other children, engaged in manipulative/lying behaviors, and claimed that she was molested by a teacher. Anna was diagnosed as suffering from adjustment disorder child neglect and sexual abuse, and emotional abuse, and is at risk of developing more symptoms if she does not receive therapy and treatment.

Substantial evidence supports the jurisdiction order and disposition finding that there is or will be a substantial danger to the children's physical or emotional well-being if the children are returned home. (§ 361, subd. (c)(1) *In re Javier G.* (2006) 137 Cal.App.4th 453, 462.) A removal order is proper where " 'it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor

if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]" [Citations.]" (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

Drug Testing

Appellant asserts that the trial court abused its discretion in ordering that appellant test drug free before supervised visits. The juvenile court, in fashioning a reunification order may impose drug testing requirements where the parent suffers from substance abuse. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) "The record shows, and mother never claimed otherwise, that she has a substance abuse problem. Accordingly, requiring her to be drug and alcohol free before she could visit with her children [is] reasonable to protect their well-being. [Citations.]" (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Jack A. Love, under appointment by the Court of Appeal, for Appellant

Dennis A. Marshall, County Counsel, County of Santa Barbara and Maria
Salido Novatt, Senior Deputy, for Respondent.