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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B278357
(Los Angeles County
Super. Ct. No. DK18686)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOSE M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, Stephanie Jo Reagan, Principal
Deputy County Counsel, for Plaintiff and Respondent.

J.M. and M.M., then ages 10 and 6, came to the attention of the Department of Children and Family Services (DCFS) after the police responded to their parents' home to quell a disturbance. The juvenile court sustained a Welfare and Institutions Code section 300, subdivision (b)(1)¹ petition based on father's conduct that placed the children at risk for serious physical harm. The children were removed from father's custody and permitted to remain with mother; both parents were to be provided services. Father alone appeals, challenging the sufficiency of the evidence to assert dependency jurisdiction over the children. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jose M. (father) came home one evening intoxicated and unruly. Afraid, G.M. (mother) locked herself and the children in a bedroom. Father was combative—yelling and kicking the bedroom door. Mother called the police, who arrived and calmed father down.

DCFS contacted the family the following week. Both parents agreed to submit to drug tests. Mother tested positive for alcohol in her urine; but she is diabetic, and that was an expected

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

result. Father tested positive for methamphetamine and amphetamines.

In interviews with social workers, father readily “admitted he drinks beer almost daily,” was a methamphetamine user for more than 10 years, and takes that drug “when he drinks.” He reportedly “snorts the drug and . . . usually does the drug in a public restroom and never in the children[']s presence.” Father added “he is willing to stop using drugs and is waiting to be asked to drug test regularly so that he will stop using.”

Father reported mother and the couple’s adult daughter, who also resided in the home, were aware of his drug use. He acknowledged his drinking and drug use created tensions between him and mother. They were in the midst of a period of marital discord, which exacerbated his alcohol and drug abuse.

Father also admitted auditory hallucinations. He told the social worker that voices “coming from the fan at his home . . . make fun of him” or suggest that mother has been unfaithful and wants him to leave.

Ten-year-old J.M. told the social worker he had seen father talk to himself. Both children told the social worker their parents verbally argued. The children denied physical abuse, although they were afraid when their parents argued.

By the time of the jurisdiction/disposition hearing, father had already moved out of the family home. No party offered testimony. All counsel presented arguments to the court. Father’s counsel asked the court to dismiss the petition. As to the first section 300, subdivision (b) count alleging father’s substance abuse placed the children at risk of serious physical harm, counsel argued, “father acknowledges that he has used methamphetamine, but he’s never used in the children’s

presence. So, you Honor, his argument to the court is that his children are safe. . . . [¶] . . . The mother . . . appears to make sure that the children are safe. We understand the [DCFS's] concerns, but my client does not believe that there is a nexus between his usage and an actual neglect of the children.

As to the second section 300, subdivision (b) count alleging father's unresolved mental issues, specifically auditory hallucinations, put the children at risk of serious physical harm, his counsel noted, "Although there are some concerns that the father may be experiencing auditory hallucinations, I don't believe he poses a risk to the children. [¶] It doesn't appear that he harmed them. It appears that they're always appropriately supervised when the mother was living in the home."

The juvenile court sustained both counts of the petition and removed the children from father's care. The children remained with mother in the family home. Father's visits were ordered to be monitored, but DCFS had discretion to liberalize them. Services were ordered for the family. Father timely appealed.

DISCUSSION

Relying on *In re Rebecca C.* (2014) 228 Cal.App.4th 720 (*Rebecca C.*) and *In re James R.* (2009) 176 Cal.App.4th 129 (*James R.*), father contends there was insufficient evidence that his alcohol and methamphetamine abuse and mental health issues placed the children at risk for serious physical harm. He aptly notes DCFS did not allege his conduct or mental health placed the children at risk for serious emotional harm (§ 300, subd. (c)). Appellate counsel also reiterates the point made by trial counsel that mother is the primary caretaker for the children.

As DCFS observes, however, the juvenile court need not wait until children have already been physically harmed before asserting dependency jurisdiction. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843; see also § 300.2 [the purpose of the [dependency] provisions . . . is to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm”].) Substantial evidence supported the finding that the children were at risk of serious physical harm.

Father drank alcohol to the point of intoxication and/or abused drugs almost daily, even though he maintained he could quit whenever he decided to. Mother was the primary caretaker, but she was afraid of father when he became inebriated; and on the one occasion when he was violent, she summoned the police to calm him down. Father’s admitted auditory hallucinations led to paranoid ideations that usually focused on mother. When mother found what appeared to be crystal methamphetamine on the floor in the home, she did not try to dispose of it, but merely attempted to hide it from father.

Unlike the situation in *Rebecca C.*, *supra*, 228 Cal.App.4th 720, there is substantial evidence father has created the risk that these children may suffer serious physical harm. Mother cannot control father’s drug and alcohol abuse or alleviate his mental health issues. However, unlike the family dynamic in *James R.*, *supra*, 176 Cal.App.4th 129, there is substantial evidence mother cannot protect the children from father. These facts are sufficient to affirm the juvenile court’s exercise of dependency jurisdiction over J.M. and M.M. (*In re R.T.* (2017) 3 Cal.5th 622; *In re M.R.* (2017) 7 Cal.App.5th 886, 896.)

DISPOSITION

The order is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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