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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.V., a Person Coming Under the
Juvenile Court Law.

B250246
(Los Angeles County
Super. Ct. No. CK 91220)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed in part; reversed in part.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant.

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

* * * * *

The Los Angeles County Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition after mother ingested her roommate's prescription medication while breastfeeding her infant daughter S.V. We affirm the juvenile court's jurisdictional order finding S.V. was a dependent of the juvenile court but reverse its dispositional order removing S.V. from mother's custody.

FACTS AND PROCEDURE

Mother has two children -- S.B. (born in approximately 2009) and S.V. (born in 2013). R.V. is S.V.'s father.

In 2011, mother's then-boyfriend S.T. physically abused S.B., and mother failed to protect S.B. As a result S.B. suffered from subconjunctival hemorrhaging and bruising on his face, head, neck, throat, chest, shoulders, arms and legs. Mother physically abused S.B. by hitting him on the legs and buttocks, and pulling on his ear and his hair. Mother medically neglected S.B. by refusing to obtain necessary medical care for him. In addition mother was adjudicated "a current abuser of marijuana, which renders the mother incapable of providing regular care for the child. On prior occasions, the mother was under the influence of marijuana while the child was in the mother's care and supervision. The mother's substance abuse endangers the child's physical health and safety, placing the child at risk of physical harm" ¹

Beginning in March 2012, mother lived in a facility run by SHIELDS for Families Healthy Start program (SHIELDS), a drug rehabilitation program. While in her drug rehabilitation program, mother took classes in parenting, domestic violence, relapse prevention, anger management, food and nutrition, alcohol and drugs, health education, and was enrolled in individual counseling. She had progressed to unmonitored visits with S.B. She visited him regularly and her visits reportedly went well. DCFS sought to allow mother overnight visits with S.B. All of mother's random drug tests were negative. Mother's case manager at the rehabilitation program and a social worker who visited mother observed that mother may suffer from a learning disability. DCFS reported that a

¹ The record on appeal does not include the record in S.B.'s case.

followup investigation was necessary to determine whether mother suffered from a learning disorder, but no such followup investigation was included in the record.

S.V. was born in February 2013, while the dependency court retained jurisdiction in S.B.'s case. Social workers made unannounced visits to mother after S.V. was born. Mother was told that the social worker would continue to make unannounced visits to confirm the safety of S.V. The visits indicated that S.V. was healthy. She did not have a diaper rash and had plenty of supplies. Mother took S.V. to the hospital for checkups and immunization shots. Mother and staff at SHIELDS took S.V. to the hospital when she developed a rash on her tongue.

In March 2013, mother ingested her roommate's prescription medication (either Ritalin or Reglan) while she was breastfeeding S.V.² Mother took two pills a day for three days. The medication changed mother's affect, causing her to become more temperamental. Mother told a social worker that she took the medication to have more breast milk and that she had to supplement her breast milk with formula. Another report indicated mother said she took the medication because she felt tired. As a result of taking the prescription medication, SHIELDS was evaluating mother to determine if she needed to attend the program for an additional three months, and DCFS recommended mother remain in the program for an additional six months.

On April 23, 2013, DCFS filed a petition, which as subsequently sustained alleged: "The child, [S.V.'s] Mother, [C.B.], has an unresolved substance abuse problem including, abusing prescription medication, which renders the mother incapable of providing regular care of the child. On prior occasions, the mother was under the influence of prescription medication that was not prescribed to the mother while the child was in the mother's care and supervision." The petition further alleged: "The child, [S.V.'s] Mother, [C.B.], has a history of unresolved substance abuse including, marijuana and is a current abuser of prescription medication, which renders the mother incapable of

² The social worker's report indicates mother ingested Ritalin. In contrast, testimony at the jurisdictional hearing identified the drug as Reglan.

providing regular care of the child. On prior occasions, the mother was under the influence of prescription medication while the child was in the mother's care and supervision. The child's sibling, [S.B.], is a current dependent of the Juvenile Court due to the mother's substance abuse. The mother's substance abuse endangers the child's physical health and safety, placing the child at risk of physical harm, damage and danger."

Anita Hill, the program manager at SHIELDS testified at the jurisdictional hearing. She testified that all of mother's drug tests were negative. She testified that mother took Reglan after her roommate told her it would help her produce more breast milk. Hill testified that Reglan is a prescription medication prescribed for mothers who need to produce more milk. After learning mother ingested a prescription medication prescribed to someone else, Hill immediately caused mother and S.V. to be taken to the hospital and examined. S.V. was not harmed by the Reglan.

The court sustained the petition and ordered S.V. placed with father, who was nonoffending. Mother was ordered to have monitored visitation with S.V.

DISCUSSION

1. The Petition States a Claim and the Evidence Supported Jurisdiction Under Welfare and Institutions Code Section 300, Subdivision (b)³

Mother argues that the petition failed to state a cause of action under section 300, subdivision (b). Mother argues that the record lacks sufficient evidence to support jurisdiction under section 300, subdivision (b). According to mother her negative drug tests and placement in a residential drug rehabilitation facility showed that she no longer had an unresolved problem with substance abuse.

A. The Petition States a Cause of Action

The petition is sufficient to state a cause of action under section 300, subdivision (b). Mother's argument that the "facts pleaded were not sufficient to link the alleged causation element to a risk of harm" is not persuasive.

³ All undesignated statutory citations are to the Welfare and Institutions Code.

“A facially sufficient petition ‘does not require the pleader to regurgitate the contents of the social worker’s report into a petition, it merely requires the pleading of essential facts establishing at least one ground of juvenile court jurisdiction.’” (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 108.) “Notice of the specific facts on which the petition is based is fundamental to due process because it enables the parties to properly meet the charges.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 131.)

“Under section 300, subdivision (b), a child is subject to juvenile court jurisdiction if the child has suffered, or there is substantial risk that the child will suffer serious physical harm or illness, by the willful or negligent failure of the parent or legal guardian to provide the child with adequate food, clothing, shelter or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability or substance abuse.” (*In re Kaylee H., supra*, 205 Cal.App.4th at p. 108, fn. 16.)

Here the petition incorporated this language. It alleged that mother has an unresolved substance abuse problem, which renders her incapable of providing regular care for S.V. The court appears to have inadvertently deleted the following language, which was included in the petition: “The mother’s substance abuse endangers the child’s physical health and safety, placing the child at risk of physical harm, damage and danger.” Nevertheless, the court sustained the identical language in the section 300, subdivision (j) count. Mother had notice that DCFS alleged her substance abuse endangers S.V.’s physical health and safety and placed S.V. at risk of physical harm because it was alleged with respect to both the section 300, subdivision (b) and the subdivision (j) counts. The trial court sustained that language against mother. Although it would have been better to sustain it on both counts, mother does not show the petition was insufficient to state a cause of action. Had mother raised this issue in the trial court, it could have easily been corrected.

Mother challenges the sufficiency of the section 300, subdivision (j) count stating that the petition does not mention S.V.’s sibling and that S.V. was not at risk of harm. The petition, however, contains both of these items.

B. Jurisdiction Is Supported by Substantial Evidence

“In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court’s findings. Evidence is “[s]ubstantial” if it is reasonable, credible and of solid value. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 133.)

“Although ‘the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection. [Citations.] A parent’s past conduct is a good predictor of future behavior. [Citation.] ‘Facts supporting allegations that a child is one described by section 300 are cumulative.’ [Citation.] Thus, the court ‘must consider all the circumstances affecting the child, wherever they occur.’ [Citation.]” (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 133; see also *In re David M.* (2005) 134 Cal.App.4th 822, 829 [§ 300, subd. (b) requires showing at the time of the jurisdictional hearing that there is a substantial risk of physical harm in the future].)

The record supported jurisdiction. Although mother had consistently tested negative for marijuana, after a year of a residential drug treatment program mother failed to understand the detrimental consequences of ingesting foreign substances as indicated by her use of her roommate’s prescription medication while breastfeeding S.V. Mother stopped using the Reglan (or Ritalin) only because staff at the treatment program noticed a change in mother’s behavior and reported her. Absent such intervention, the record suggests mother would have continued using the prescription medication, potentially jeopardizing the health of S.V. Mother’s use of Reglan (or Ritalin) undermines her numerous negative drug tests.

Mother's challenges to jurisdiction under section 300, subdivision (j) lack merit. Mother argues to support jurisdiction under section 300, subdivision (j), the record must show mother would abuse S.V. in the same manner as S.B. Her argument has been rejected by our Supreme Court. (*In re I.J.* (2013) 56 Cal.4th 766, 774.) Mother also states that S.V.'s sibling was eliminated from the petition but her assertion is incorrect.

2. The Dispositional Order Was Not Supported by Substantial Evidence

Before removing a child from a parent with whom the child resides the juvenile court must find by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).)

Under the substantial evidence test (*In re T.V.*, *supra*, 217 Cal.App.4th at pp. 135-136), the dispositional order must be reversed. Mother's ingestion of a prescription medication to facilitate lactation was insufficient to justify removal of her infant child from her custody in this case in which mother's progress during the reunification period with S.B. was remarkable.

Rita L. v. Superior Court (2005) 128 Cal.App.4th 495 is instructive. In that case, the mother's son was born with amphetamine in his system and was taken into custody. (*Id.* at p. 498.) Mother performed well during the reunification period, completing a residential drug treatment program and consistently testing negative for methamphetamine. (*Id.* at p. 499.) Mother's son was scheduled to be released into her custody, when she took a prescription tablet of Tylenol with codeine. (*Id.* at p. 501.) The appellate court concluded that the ingestion of the prescription Tylenol was a setback but the "ingestion of a single prescription pain killer to combat a headache—in the absence of any prior listing of prescription drug abuse—was simply insufficient to justify the court's conclusion that Blaine [Rita's son] could not safely be returned to her custody." (*Id.* at p. 506.) Mother had performed in an exemplary manner and the single dirty test did not support the finding that it was unsafe to return Rita's son to her custody. (*Id.* at p. 506.)

Like the mother in *Rita L.*, here mother had performed in an exemplary manner. She entered a drug rehabilitation program and consistently tested negative for marijuana. Mother took numerous classes to assist her in parenting S.B. Mother had progressed to unmonitored visits with S.B., and DCFS even recommended overnight visits. Mother acknowledged the use of her roommate's medication and did not attempt to avoid blame. S.V. was evaluated and was not harmed by the use of the prescription medication. Mother did not relapse using her drug of choice but instead took medication in an effort, albeit misguided, to assist S.V. Following mother's use of the prescription medication, Ms. Hill had counseled mother on the consequences of taking medication not prescribed for her and mother understood those consequences. Mother had not taken any other prescription medication.

Less restrictive means to protect S.V. were available in this case. (See *In re James T.* (1987) 190 Cal.App.3d 58, 64 [removal improper where reasonable alternatives are available].) The court could have ordered mother remain in SHIELDS for another six months as DCFS recommended. While she was there Ms. Hill observed her every day. Social workers could have continued to make unannounced visits. DCFS failed to make a sufficient showing that removal from mother's custody was necessary to protect S.V.'s safety.⁴

DISPOSITION

The juvenile court's jurisdictional order is affirmed. The juvenile court's dispositional order is reversed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

⁴ If subsequent circumstances warrant removal of the child from mother's care, the juvenile court retains the authority to order such removal under section 364, subdivision (e).