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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B297839

(Los Angeles County
Super. Ct. No.
19CCJP01036A-C)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

JACKIE O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Stephen C. Marpet, Juvenile Court Referee.
Reversed in part.

Niti Gupta, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Veronica Randazzo, Deputy County Counsel, for Plaintiff and Respondent.

Jackie O., the mother of now-12-year old J.W. and 10-year-old twins Allyson W. and Lorelei W., appeals from the juvenile court's disposition order declaring the children dependents of the juvenile court to the extent it is based on the finding she had failed to protect them from their father's substance abuse. Jackie contends that jurisdiction finding was not supported by substantial evidence. We agree and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Petition and Detention of the Children

On February 15, 2019 the Los Angeles County Department of Children and Family Services (Department) filed a petition to declare J.W., Allyson and Lorelei dependent children of the juvenile court under Welfare and Institutions Code section 300, subdivision (b)(1).¹ The petition alleged the children's father, Donald W., had on more than one occasion driven a vehicle while under the influence of alcohol with the children in the car. The petition further alleged Donald had a history of substance abuse, was a current user of alcohol and had been under the influence of alcohol while the children were in his care. As to Jackie, the petition alleged she knew of Donald's substance abuse and had failed to protect the children from Donald's conduct.

¹ Statutory references are to this code.

At the detention hearing on February 19, 2019 Donald was found to be the presumed father of all three children. The children were detained from Donald and released to Jackie. Family maintenance services were ordered for both parents, and Donald was granted monitored visitation.

2. The Jurisdiction/Disposition Report

According to information provided in the March 27, 2019 jurisdiction/disposition report, Jackie and Donald had separated in 2014 after 11 years of marriage; their divorce became final in 2017. Custody of the children was governed by a stipulated judgment signed by the family law court on May 3, 2017 that provided for joint legal custody with Jackie having physical custody of the children approximately 75 percent of the time.

In an interview with a Department social worker J.W. reported Donald used to drink “all the time” but had recently told her he had stopped drinking. J.W. did not believe him because he still acted “the same as he used to when he would drink, moody and irritable.” J.W. had seen Donald pour alcohol into cans of sparkling water and then drink the alcohol while driving with the girls in the car. On two occasions J.W. took a sip from a can and said it tasted “gross and weird,” not like regular sparkling water. J.W. also reported she knows when Donald is drinking while driving because he “either drives too slow or too fast.” She stated she was afraid for her safety when he was driving with her.

Allyson and Lorelei also told the Department social worker they had seen Donald pour alcohol into cans of sparkling water and drink from them while driving with the children. Allyson once took a sip from one of the cans and said it tasted like it had alcohol in it. Allyson and Lorelei also said they could tell when

Donald was drinking while driving because he would drive erratically.

In his first conversation with the Department social worker Donald denied drinking and driving with the children in the car, accusing Jackie of fabricating the story. He said he had stopped drinking in December 2018. A few days after his initial interview with the social worker Donald admitted he had lied and acknowledged he had driven while drinking alcohol with the children in the car on multiple occasions. He said these incidents occurred between August 2017 and October 2018 during the time his mother had been ill and after she passed away.

Jackie reported she had longstanding concerns regarding Donald's alcohol use. She submitted a list of five therapists with whom she had discussed these concerns during and after the marriage. Jackie had also attended Al-Anon meetings during the marriage in an effort to get help and understand Donald's use of alcohol. After her daughters told her Donald had driven with them while consuming alcohol, Jackie called Mothers Against Drunk Driving and the California Highway Patrol to learn what she could do to prevent Donald's behavior. She was told nothing could be done unless Donald was detained by law enforcement while drinking with the girls in the car.

Jackie also brought her concerns regarding Donald's drinking to the attention of the family law court during her dissolution proceedings. In a 2014 declaration Jackie requested sole physical custody of the children based, in part, on Donald's alcohol use, which, she said, had recently "worsened significantly." Jackie explained she had repeatedly seen Donald begin drinking alcohol in the mid-morning and continue drinking all day, even occasionally when he was going to be responsible for

the children. Jackie also submitted to the Department an email from her family law attorney confirming she had raised Jackie's concerns with Donald and his attorney during the dissolution proceedings, but Donald had emphatically denied any wrongdoing. Regardless, Jackie had insisted the stipulated judgment include a provision prohibiting either parent from being under the influence of alcohol while caring for the children.

As recently as January 2018 Jackie sent an email to her family law attorney stating J.W. had told her Donald was drinking alcohol while driving the girls. Jackie asked the attorney, "What else can I do?" In a June 2018 email to her attorney Jackie asked whether an attorney could be appointed for the children because Jackie was concerned about their "safety when they are with [Donald] especially with his history of drinking and driving."

In its initial report the Department recommended the petition be sustained as written. However, in a last minute information report for the court dated April 2, 2019, the Department changed its position and recommended the court strike the allegation as to Jackie. This updated recommendation was reiterated in an April 18, 2019 last minute information report.

3. The Jurisdiction/Disposition Hearing

The jurisdiction/disposition hearing was held on April 23, 2019. Jackie's counsel, joined by the children's attorney, requested the juvenile court dismiss the allegation as to Jackie. Despite her client's most recent recommendation concerning Jackie, the Department's attorney requested the petition be sustained as pleaded, arguing Jackie "clearly did know of the alcohol abuse and therefore she is a failure to protect."

The juvenile court declined to strike the allegation against Jackie and sustained the petition as pleaded. The court ordered the children removed from Donald's custody and released to Jackie. The court further ordered family maintenance services for Jackie and enhancement services for Donald, with supervised visitation for Donald.

DISCUSSION

1. *The Jurisdiction Findings Are Reviewable*

Jackie does not challenge the juvenile court's jurisdiction findings as to Donald. Those findings provide an independent basis for affirming dependency jurisdiction over the children regardless of any alleged error in the finding as to Jackie. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [jurisdiction finding involving one parent is good against both; ““the minor is a dependent if the actions of either parent bring [him or her] within one of the statutory definitions of a dependent””]; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452; *In re Briana V.* (2015) 236 Cal.App.4th 297, 310-311.) As a result, even if we struck the finding as to Jackie, the juvenile court would still be authorized to exercise jurisdiction over the children and to enter all reasonable orders necessary to protect them, including orders binding on Jackie that address conduct not alleged in the petition. (*In re Briana V.*, at p. 311 [“The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.] In fact, there need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order”]; *In re I.A.*, at p. 1492 [“[a] jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on

that parent, once dependency jurisdiction has been established”]; see generally § 362, subd. (a) [the juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child”].)

Nonetheless, in limited circumstances reviewing courts have exercised their discretion to consider an appeal challenging a jurisdiction finding despite the existence of an independent and unchallenged ground for jurisdiction when the jurisdiction findings “serve[] as the basis for dispositional orders that are also challenged on appeal,” “could be prejudicial to the appellant or could impact the current or any future dependency proceedings” or “the finding could have consequences for the appellant beyond jurisdiction.” (*In re J.C.* (2014) 233 Cal.App.4th 1, 4; see *In re D.P.* (2015) 237 Cal.App.4th 911, 917; *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

Because the jurisdiction finding as to Jackie could have consequences for her in her family law case, we exercise our discretion to review that finding on the merits.

2. Substantial Evidence Does Not Support the Juvenile Court’s Jurisdiction Finding as to Jackie

The purpose of section 300 “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2; see *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) Section 300, subdivision (b)(1), allows a child to be adjudged a dependent of the juvenile court 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 of the failure or inability of

his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of a custodian with whom the child has been left”

Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court's protection. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216; *In re N.M.*, at p. 165.) A parent's “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In Kadence P.*, at p. 1384.)

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “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.] “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 I.J.* (2013) 56 Cal.4th 766, 773.) We review the whole record in the light most favorable to the judgment below to

determine whether it discloses substantial evidence such that a reasonable trier of fact could find that the order is appropriate. (*Ibid.*; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Jackie argues there was not substantial evidence she failed to protect the children from Donald's alcohol abuse. In lieu of a respondent's brief the Department filed a letter stating it has "no objection to the jurisdictional finding being reversed as it pertains to mother failing to protect the children."

The evidence in the record does not establish Jackie failed to protect, or would in the future fail to protect, the children from Donald's conduct. Both prior to and after her divorce Jackie discussed Donald's alcohol use with therapists and contacted various organizations for assistance. Jackie informed her family law attorney, Donald's family law attorney and the family law court of Donald's behavior. While Jackie ultimately stipulated to a family court judgment allowing Donald approximately 25 percent physical custody of the children, she had initially requested sole custody based, in large part, on Donald's drinking. In addition, the stipulated judgment was entered prior to Donald's admission to drinking and driving with the children in the car. Consistent with the Department's recommendation to the dependency court (although not its counsel's argument), the record establishes Jackie repeatedly tried to find the means to protect her children from Donald's behavior. Yet she was under a court order to allow Donald unmonitored contact with them. Under these circumstances the dependency court had no basis for finding Jackie had failed to protect her children from Donald's alcohol abuse. (See *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 120 [evidence did not support finding mother failed to protect children from father's violent conduct when she "took the

proper actions immediately after father attacked her” by going to police and otherwise acted reasonably].)

DISPOSITION

The jurisdiction finding as to Jackie is reversed. The juvenile court’s disposition order is affirmed in all other respects.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.