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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re D.L., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.C.,

Defendant and Appellant.

B278203

(Los Angeles County
Super. Ct. No. DK16739)

APPEAL from an order of the Superior Court of Los Angeles County, Lisa R. Jaskol, 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, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother appeals from a jurisdictional finding declaring her one-year-old daughter D.L. a dependent child based on mother's alleged marijuana abuse. (Wel. & Inst. Code, § 300, subd. (b).)¹ Mother contends the evidence was insufficient to support the finding, and argues the finding served as the basis for an unreasonable disposition order requiring her to complete a full drug rehabilitation program. In view of the child's tender years, and mother's admitted inability to cease using marijuana without intervention, we conclude the evidence was sufficient to support the drug abuse finding and disposition order. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Because resolution of this appeal turns upon the existence of substantial evidence supporting the juvenile court's finding, we state the facts in the light most favorable to the court's ruling. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.) We focus on the evidence supporting the substance abuse finding against mother and discuss the facts pertinent to other findings only as context requires.

On December 28, 2015, the Los Angeles Department of Children and Family Services (the Department) received a domestic violence referral regarding the family. According to the referral, during an argument the previous day, father slapped mother on the face and forcibly grabbed her arm. The one-year-old child was present during the altercation.

Mother and the child lived with the maternal grandmother. Father lived with his parents. Mother reported that she had a restraining order against father due to a prior domestic violence incident. However, despite the restraining order, the maternal

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

grandmother reported that father frequently stayed at her home with mother.

During her initial interview, mother admitted she used marijuana once per week. She maintained she smoked outside and away from the child. She denied using other drugs. She said father also smoked marijuana and took other medications. She suggested father took the medications to control a diagnosed bipolar disorder that contributed to his anger management issues. Father confirmed that he had a long-standing diagnoses of depression and bipolar disorder, and he used marijuana every day.

On April 7, 2016, the Department conducted an unannounced compliance visit. Mother said she had not had contact with father since the incident and believed he was incarcerated for a probation violation. When asked about drug use, mother admitted she used marijuana once or twice per week. She reiterated that she used marijuana away from the home and left the child in the maternal grandmother's care when she used the drug. Mother agreed to complete an on-demand drug test the next day, but failed to appear. She later claimed that she went to the testing location but her name was not on the list to test.

On April 22, 2016, mother submitted to an on-demand drug test. She tested positive for marijuana. The test also detected low urine creatinine levels, indicating a dilute sample likely caused by mother consuming a lot of water prior to the test.

On April 27, 2016, the Department filed a dependency petition on behalf of the child. As relevant to this appeal, the petition asserted one count, pursuant to section 300, subdivision (b), alleging mother was a current abuser of marijuana and that her use of the drug put the child at risk of serious physical harm due to the child's tender years. The petition also alleged two counts concerning the parents' history of domestic violence; one

count concerning father's drug use, and one count concerning father's mental health and emotional problems.

The court found the petition presented a prima facie case for dependency jurisdiction, and vested custody in the Department pending a full hearing. The court released the child to mother, subject to several conditions, including: (1) mother was to enforce the restraining order against father; (2) mother was not to use marijuana or other illicit substances; (3) mother was to drug test weekly, with her drug levels expected to decrease to zero; and (4) mother was to participate in family preservation services, including a domestic violence victims support group.

On June 10 and June 28, 2016, mother failed to appear for drug tests. On June 13, July 1, and July 5, 2016, she tested positive for marijuana. The tests showed decreasing levels of cannabinoids from 679 ng/mL to 109 ng/mL; however, the lower cannabinoid levels were accompanied by lower creatinine levels, indicating a dilute sample.²

On July 5, 2016, the Department interviewed mother and the maternal grandmother. Mother claimed she smoked marijuana because she had difficulty sleeping and to ease pain related to her caesarian section. She had not been evaluated by a doctor for the pain, but did produce a physician's letter certifying that she would benefit from medical marijuana. She spent \$25 to \$30 a week on the drug.

Mother admitted she began smoking marijuana in the 10th grade, and she smoked marijuana every day with father during their relationship. She stopped smoking when she learned of her pregnancy, but resumed after the child's birth. She said she

² The screen cut-off for a positive marijuana test is 50 ng/mL.

currently smoked every night, outside the home. When asked what problem the family needed to resolve, mother responded, “ ‘Within myself I need [to] stop smoking. It’s not easy. If I could stop I would stop.’ ”

The maternal grandmother said mother “ ‘loves to smoke marijuana’ ” and frequently smoked in the morning and evening. She reported that mother had also smoked with father on numerous occasions when the maternal grandparents left the house to run errands. She also said father smoked inside the home while mother and the child were present. She reported that mother left the home at 10:30 a.m. and returned around 10:30 p.m. every day. She did not know whether mother had a job, and she believed mother had become forgetful due to her persistent marijuana use.

Referring to the child, the maternal grandmother reported, “ ‘When [mother] goes out I look after [her] very closely. I do everything for her.’ ” She added that, although she and the maternal grandfather discussed moving to Mexico, “ ‘We can’t leave her. We’re not confident to leave her with [mother].’ ” In the Department’s assessment, the maternal grandmother was the only person providing for the child’s needs.

On July 14 and August 3, 2016, mother failed to appear for drug tests. On July 29, August 11, August 24, and September 12, 2016, mother tested positive for marijuana. Three of the tests showed decreasing cannabinoid levels; however, the second test showed an increase.

On September 20, 2016, the juvenile court held a combined jurisdiction and disposition hearing. Mother submitted on the domestic violence counts, but argued there was insufficient evidence of a nexus between her marijuana use and a risk of harm to the child. The child’s counsel agreed the substance abuse count should be dismissed. The Department argued the

count should be sustained, stressing mother's violation of the court order to cease using marijuana. The Department also emphasized the maternal grandmother's statements concerning mother's frequent use of marijuana with father, including his use in the child's presence and when the grandparents were away from the home. The court sustained the substance abuse count.

With respect to disposition, mother objected to the Department's recommendation that she participate in a full drug program, but she accepted the recommendation that she continue to drug test. The Department argued a drug program was necessary because mother had proved unable to stop using marijuana of her own volition, despite the court's order. The court agreed, and ordered the child to remain in mother's physical custody while mother participated in a full drug program, with aftercare and random or on-demand drug testing.³

DISCUSSION

1. *The Substance Abuse Finding Is Supported by Substantial Evidence*

Mother contends the marijuana abuse finding is not supported by the evidence. She acknowledges that reversal of the finding will not affect the existence of dependency jurisdiction, as she does not contest the jurisdictional findings pertaining to domestic violence or father's substance abuse. Nevertheless, mother argues we should review the finding on its merits because it served as the basis for the dependency court's order to complete a full substance abuse program, which she maintains is unreasonable. (See *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229 ["the juvenile court's discretion in fashioning reunification orders is not unfettered[;] [i]ts orders must be 'reasonable' and 'designed

³ The court sustained the jurisdictional allegations against father and removed the child from his physical custody.

to eliminate those conditions that led to the court's finding that the child is a person described by Section 300' ”]; § 362, subd. (d).)

The Department contends the marijuana abuse jurisdictional finding is not necessary to justify the court-ordered substance abuse program. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 [“when the court is aware of other deficiencies that impede the parent’s ability to reunify with his child, the court may address them in the reunification plan” even if not among the bases for jurisdiction].) While the Department’s contention has some merit, we will exercise our discretion to review the finding. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762 (*Drake M.*) [“we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding . . . serves as the basis for dispositional orders that are also challenged on appeal”].)

“The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (§ 300.2.) Thus, section 300, subdivision (b), creates juvenile court jurisdiction where it is shown that a “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 . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.”

The exercise of dependency jurisdiction under section 300, subdivision (b) is especially appropriate when children are “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; see also *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 (*Christopher*

R.).) When a child is of “‘tender years’”—i.e., six years old or younger—“the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767; *Christopher R.*, at p. 1219.)

“In reviewing the jurisdictional findings . . . , 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.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Mother contends the evidence was insufficient to support the finding that she is a current abuser of marijuana. In *Drake M.*, this court reaffirmed that “the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found,” because section 300, subdivision (b) requires evidence of “‘substance abuse.’” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 764, italics added.) As the Legislature had not defined the term, this court concluded that “a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to . . . establish that the parent or guardian at issue has a current substance abuse problem as defined in the [American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR)].” (*Id.* at p. 766.)

When *Drake M.* was decided, the DSM-IV-TR described substance abuse as a “‘maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a

failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household) [; ¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)[; ¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct)[; and ¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’ ” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766, quoting DSM-IV-TR, p. 199.)

The *Drake M.* court concluded the evidence was insufficient to establish that the father’s use of prescribed medical marijuana to treat his chronic knee pain constituted “substance abuse” under this definition. In so concluding, the court relied on undisputed evidence showing that the father had been employed for many years, had no criminal history, and did not operate a motor vehicle or care for the child within a minimum of four hours after ingesting marijuana. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 767-768.)

Since *Drake M.* was decided, other courts have augmented the list of criteria that will support a substance abuse finding. In *Christopher R.*, the court acknowledged that the *Drake M.* formulation offered a “generally useful and workable definition of substance abuse for purposes of section 300, subdivision (b),” but stressed that it was “not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218.)

The *Christopher R.* court concluded the mother’s “use of cocaine while in the final stage of her pregnancy, combined with her admitted use of the drug in the past and her failure to consistently test or enroll in a drug abuse program, justified the juvenile court’s exercise of dependency jurisdiction,” even though the conduct arguably fell outside the DSM-IV-TR categories. (*Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1218-1219.) Moreover, the court observed that the definition of “substance abuse” quoted in *Drake M.* had been “replaced in the more recent Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) . . . by a more broadly defined classification of ‘substance abuse disorders,’ which combines substance abuse and dependence.” (*Id.* at p. 1218, fn. 6.)

To diagnose this disorder, the DSM-5 identified new criteria, in addition to those listed in *Drake M.*, including “cravings and urges to use the substance; spending a lot of time getting, using, or recovering from use of the substance; giving up important social, occupational or recreational activities because of substance use; and not managing to do what one should at work, home or school because of substance use.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218, fn. 6; see also American Psychiatric Association, Highlights of Changes from DSM-IV-TR to DSM-5 <https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM_Changes_from_DSM-IV-TR_-to_DSM-5.pdf> [as of August 17, 2017].) We agree with *Christopher R.* that this augmented list provides a useful, but not categorical set of criteria for assessing whether parental substance use rises to the level of abuse under section 300, subdivision (b).

The evidence supports the substance abuse finding in this case. Most critically, the evidence shows mother was unable to cease using marijuana of her own volition, despite a court order directing her to do so as a condition of retaining physical custody of her child. That failure touches on the legal and interpersonal troubles identified in the DSM-IV-TR criteria, and also reflects an inability to fulfill major role obligations due to persistent substance abuse. (See *In re Natalie A.* (2015) 243 Cal.App.4th 178, 185 [identifying the failure to fulfill major role obligations relating to a child as “one of the most salient manifestations of parental substance abuse”].) As the Department’s reports showed, the maternal grandmother had for most intents and purposes assumed primary responsibility over caring for the child, and this was in no small measure due to mother’s frequent use of marijuana in the mornings and evenings when she otherwise could have been at home caring for the infant.

Along those same lines, the evidence also supported an inference that mother spent a great deal of time using marijuana, gave up important social activities, and did not manage to do what she should at home because of her marijuana use. (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218, fn. 6.) Mother admitted that she smoked marijuana every day, at least once in the morning and once at night, and spent \$25 to \$30 a week on the drug. The maternal grandmother reported that mother left the home to smoke marijuana, she was away from the home from 10 a.m. to 10 p.m. every day, and whenever she left the home to use the drug, she left the maternal grandmother to care for the one-year-old child. This evidence, coupled with the maternal grandmother’s reports that mother used marijuana with father inside the home when the grandparents were away and that she allowed father to use marijuana in the same room as the infant, supported the juvenile court’s substance abuse finding.

Because the child is of tender years, the substance abuse finding served as prima facie evidence of a substantial risk of harm. (See *Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) As mother failed to conclusively rebut this evidence, the juvenile court properly sustained the count under section 300, subdivision (b).) (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1220.)

2. *The Disposition Order Was a Reasonable Exercise of Discretion*

Based largely on her contention challenging the substance abuse jurisdictional finding, mother argues the juvenile court abused its discretion by ordering her to participate in a drug treatment program. Having determined the jurisdiction finding is supported by substantial evidence, we also conclude the court acted within its discretion by ordering services to address mother's abuse of marijuana and the risk of harm it posed to the child.

"The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) In reviewing an order for abuse of discretion, we " 'must consider all the evidence, draw all reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court's ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child.' " (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) "The trial court is accorded wide discretion and its determination will not be disturbed on appeal absent 'a manifest showing of abuse.' " (*Ibid.*)

The juvenile court's disposition order constituted a reasonable exercise of discretion, rationally tailored to advancing the child's best interests. As we explained, the evidence established that mother's marijuana abuse posed a substantial risk to the child in light of her very young age. And, while mother agreed to cease using marijuana when the child was released to her custody following detention, her drug test results showed she failed to comply with the juvenile court's order. Further, when asked to consider the most pressing problem she needed to resolve for her family, mother acknowledged, " 'Within myself I need [to] stop smoking. It's not easy. If I could stop I would stop.' "

On this record, the juvenile court reasonably concluded that a drug treatment program was necessary to eliminate the conditions that led to the child's dependency status. (See § 362, subd. (d).) We find no abuse of discretion, particularly in view of the court's authority to modify or terminate the program if mother complies with its requirements.

DISPOSITION

The substance abuse finding and disposition order are affirmed.

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JOHNSON (MICHAEL), J.*

We concur:

EDMON, P. J.

LAVIN, J.

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