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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

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

B290967
(Los Angeles County
Super. Ct. No.
18CCJP01617)

LOS ANGELES
COUNTY DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

R.R,

Defendant and
Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Kim Nguyen, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court found Rebekah R. (Mother) suffered from a history of untreated mental and emotional needs, culminating in a psychiatric hold, which placed her three children at substantial risk of serious physical harm. For its disposition, the court ordered informal supervision by the Department of Children and Family Services (the Department).

Without disputing her prior mental and emotional issues, Mother challenges the jurisdictional and dispositional orders. She contends there is no substantial evidence that she posed a substantial risk of harm to her children, and the juvenile court abused its discretion in requiring informal supervision. We disagree and affirm the jurisdictional and dispositional orders.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Placement of the Children into Protective Custody

Mother had three daughters by two fathers: M.J. was born in 2003, S.H. was born in 2007, and A.H. was born in 2008. Neither of the fathers resided with Mother and the children.

On March 8, 2018, the Department took the three children into protective custody. The Department intervened when Mother was placed on a psychiatric hold under Health and Safety Code section 5150¹ and refused to identify an alternative caregiver for her children. Mother was seven months pregnant with her fourth child at the time and suffered from chronic back pain. She had also been diagnosed with postpartum depression.

¹ Health and Safety Code section 5150 provides that individuals who, as a result of a mental disorder, are deemed a danger to themselves or others may be detained for 72 hours in a mental health facility for evaluation and treatment.

Mother's psychiatric hold was triggered by conversations she had the day before with Kaiser Permanente Hospital (Hospital) staff. On March 7, 2018, Mother drove to the Hospital and called the Labor and Delivery Department seeking treatment for her back pain. Mother was refused, either because she did not have an appointment or because the staff could not help her. Mother began crying and yelling. She said to a nurse, "I don't want to be pregnant anymore" and "I can't do this anymore." According to the nurse, Mother "sounded depressed" and "was feeling suicidal." Mother declined to answer questions or disclose her location outside the Hospital. Hospital security could not locate Mother in the parking lots.

The nurse paged a Hospital social worker. Mother spoke to the social worker in a monotone and sounded "guarded and withdrawn." Mother refused to go to the emergency room immediately, because she had to pick up her children. The social worker told Mother if she was not at the Labor and Delivery Department by 5:30 p.m., the police would conduct a welfare check at her home. Mother agreed to comply.

The social worker telephoned Mother at 5:32 p.m. Mother was upset. She told the social worker no one had come to the door to let her into the Labor and Delivery Department. Mother cursed, used profanity, said she was leaving the Hospital and not to call the police. After repeated attempts to reach Mother by telephone, the social worker contacted the police.

Los Angeles Police Department officers arrived at Mother's home and had the System-wide Mental Evaluation Response Team (SMART) assess Mother's mental health. Mother was thereafter placed on a psychiatric hold based on her history of anxiety and depression.

2. The Department's Investigation

The Department conducted an investigation. M.J. (14 years old), S.H. (10 years old) and A.H. (9 years old) were interviewed separately. They each acknowledged Mother was in severe pain from her pregnancy and frequently sad. They also confirmed having gone with Mother to the Hospital's Labor and Delivery Department on March 7, 2017. When Mother rang the doorbell and no one responded, she became angry and upset. The children denied there was substance or alcohol abuse, domestic violence, or sexual abuse occurring in the home. The children appeared to be neat, clean, and unharmed. Their behavior was age-appropriate. When asked, the two older children said they felt safe in Mother's care.

The Department's records showed three prior referrals concerning Mother's purported physical abuse of the children. The June 2010 and June 2013 allegations proved to be unfounded. The third referral in February 2013, alleged Mother "use[d] objects to discipline" her children. This allegation was substantiated and Mother agreed to participate in Voluntary Family Maintenance (VFM) services.²

According to the Hospital's medical records, in December 2015 Mother complained about anxiety, stress and insomnia stemming from her work and personal life. She was prescribed psychotropic medication. In January 2016, Mother reported similar symptoms and felt overwhelmed. She was diagnosed with major depressive disorder with recurrent episodes and mild anxiety. In May 2016, Mother was experiencing mood swings and

² It is unclear from the record whether services were terminated.

reported the occasional use of cocaine. She was prescribed additional psychotropic medications.

In July 2016, Mother informed the Hospital staff she would discontinue taking one medication. Her physician prescribed a different psychotropic medication after Mother reported not feeling well, sleeping poorly and crying uncontrollably. Still experiencing the same symptoms in October 2016, Mother reported using marijuana to help her sleep. Mother was again diagnosed with major depressive disorder with recurrent episodes and anxiety.

She was prescribed psychotropic medication, which she was unable to afford because her health insurance had lapsed. More recently, Mother was diagnosed with postpartum depression.

3. The Dependency Petition

In a dependency petition, the Department alleged Mother's inability to provide regular care for and supervision of her children due to mental illness posed a substantial risk they will suffer serious physical harm within the meaning of Welfare and Institutions Code section 300, subdivision (b)(1).³ As factual support, the Department alleged Mother "has a history of mental and emotional needs, including diagnoses of mood disorder, anxiety and postpartum depression, which renders [Mother] incapable of providing regular care and treatment of the children." "On 3/8/18, [Mother] was hospitalized for the evaluation and treatment [of a] psychiatric condition. Such

³ All further statutory references are to the Welfare and Institutions Code.

mental and emotional condition[s] on the part of Mother endangers the children's physical health and safety and places [them] at risk of serious physical harm and damage."

4. The Detention Hearing

At the March 13, 2018 detention hearing, Mother requested her children be released to her. She presented a March 10, 2018 letter from Dr. Eli Friedler, a Hospital psychiatrist. Dr. Friedler wrote: "Patient [Mother] was seen and evaluated at our Mental Health Center. She has no thoughts or behaviors indicating that she is at any risk of harming herself or her children. In my clinical opinion she is safe to care for her children at this time."

The juvenile court ordered the children released to Mother under the Department's supervision on condition she reside with Maternal Aunt, enroll in counseling, see a psychiatrist, and participate in family unification services. The Department was to conduct unannounced visits of Maternal Aunt's home. The three children were not to be removed from Maternal Aunt's home without a court order.⁴

⁴ With respect to S.H. and A.H., the court's safety plan included the release of the two children to Mother and their presumed father D.H., who appeared at the hearing. He is not a party to this appeal. On May 3, 2018, L.J., the father of M.J. appeared at the proceedings. The court reiterated its March 13, 2018 order, releasing the children to Mother under the Department's supervision and on condition she reside with Maternal Aunt. L.J. is not a party to this appeal.

5. The Jurisdiction Hearing

At the May 10, 2018 jurisdiction hearing, the Department introduced into evidence the detention report, the jurisdiction/disposition report and Mother's Hospital medical records. The Department also produced a last minute report stating Maternal Aunt's home was being sold; as a result, Mother planned to return to her own home with her three children. Mother agreed to have the children live with their respective fathers, upon learning her planned move would violate a court order.

Mother introduced into evidence the March 10, 2018 letter from psychiatrist Friedler and an April 27, 2018 Parenting Completion Report. The Report stated Mother had been a "positive and active" participant in parenting classes.

Mother also introduced an April 26, 2018 letter from her family therapist, Erika Andrews. In the letter, Andrews stated in pertinent part, "[Mother] has applied new parenting skills successfully and appears to be very committed to being a good mother to her three daughters, as well as [to] her soon-to-be born son. [Mother's] treatment plan [has] also included developing healthy coping mechanisms to minimize [the] stress and anxiety of being a single working mother." Andrews further stated Mother was "highly motivated and engaged in her treatment" and would continue her weekly therapy sessions.

Mother testified as the sole witness at the hearing. Mother acknowledged having told the nurse she no longer wanted to be pregnant and did "not want to do this" anymore. Mother explained she was in a lot of pelvic pain from her fourth pregnancy. She made those statements shortly after a physical therapy session for pain management during which she had

sought more help in relieving her pain. Her physical therapist, however, could only recommend that she wear a belt, which had previously proved ineffective in alleviating the pain. Mother was upset, tired and in pain when she spoke to the nurse. Mother denied her statements meant she wanted to die or terminate her pregnancy.

Mother testified she then left the Hospital to pick up her children, before returning to meet with the Hospital social worker as promised. Mother acknowledged she became angry when her presence outside the Labor and Delivery Department was thereafter ignored, and she “cussed out” the social worker. Mother testified she did not want anyone coming to her home, because she was in pain and exhausted. Mother was resting at home when the police came. She informed the police she had no desire to harm herself or her children. She asked the officers to have the children stay with a neighbor until a family member could pick them up. They ignored her request.

Mother testified she had been diagnosed with anxiety and depression more than three years earlier. She had been prescribed psychotropic medications, but had not been taking them for “a very long time.” She had no recollection of having been diagnosed with postpartum depression. Mother testified she had never harbored any thoughts of harming herself or her children. Mother stopped taking her prescribed medication in 2016 or 2017. After being released from her psychiatric hold, Mother did not seek follow-up mental health treatment until ordered to do so at the detention hearing.

Following argument by counsel, the juvenile court amended the petition that Mother “has a history of mental and emotional problems” to allege she had “mental and emotional needs” and

sustained the petition as amended. In making its ruling, the court found, “I do believe there has been a long history of ongoing mental needs, and that they – in the past year or so they’ve gone untreated. And I believe that all of this culminated in this event that brought the case to the court’s attention . . . When the court reviews all of the evidence before the court, I do believe the untreated emotional needs do place the children at substantial risk of serious harm.” The court found M.J., S.H. and J.H. to be children described by section 300. The court ordered the children released to Mother, denying the Department’s request for release to the respective fathers. The court also ordered family preservation services and a psychiatric assessment for Mother.

6. The Disposition Hearing

At the June 14, 2018 disposition hearing, the court ordered informal supervision under section 360, subdivision (b). The court noted Mother had cooperated with the Department and complied with the court’s orders.

Mother timely filed a notice of appeal.⁵

⁵ The Department filed a cross-appeal, which was dismissed for failure to file an opening brief. (Cal. Rules of Court, rule 8.220(a)(1)).

DISCUSSION

1. Substantial Evidence Supported the Juvenile Court's Jurisdictional Order

Dependency jurisdiction is proper under section 300, subdivision (b) if “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.” Mother contends there was no evidence to substantiate jurisdiction under section 300, subdivision (b)(1).

We review the juvenile court's section 300 jurisdictional findings and orders for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.) Substantial evidence is relevant evidence that adequately supports a conclusion. It is reasonable in nature, credible, and of solid value. (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and adhere to the principle that issues of fact and credibility are the province of the juvenile court. (*In re R.T.*, *supra*, 3 Cal.5th at p. 633.) We do not consider whether there is evidence from which the juvenile court could have drawn a different conclusion, but whether there is evidence to support the conclusion the court did draw. (*In re F.S.* (2016) 243 Cal.App.4th 799, 813.)

While not denying her history of mental health issues, Mother argues the condition of her mental health never exposed her children to any substantial risk of serious physical harm either prior to or at the time of the jurisdiction hearing. Mother also argues the Hospital staff misinterpreted her statements. Her purpose in going to the Hospital was to seek help for her

painful pregnancy, which was antithetical to an intent to harm herself or her unborn child.

To be sure, Mother's mental health issues alone, either past or present, are not enough to presume physical harm or a risk of physical harm to the children. (*In re A.L.* (2017) 18 Cal.App.5th 1044, 1050.) There must be a nexus between Mother's mental health issues and the risk of future physical harm to her children, either based on circumstances existing at the time of the jurisdiction hearing (see *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824) or on past harmful conduct that is likely to recur (see *A.L.*, *supra*, 18 Cal.App.5th at p. 1051; but see *In re J.K.* (2009) 174 Cal.App.4th 1426, 1434-1439 [risk of harm can be based on prior harm alone].).

On the other hand, the juvenile 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 R.V.* (2012) 208 Cal.App.4th 837, 843.) 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.)

In this case, the evidence showed Mother had been suffering for three years from depression and anxiety, manifesting in symptoms of insomnia, mood swings and paranoia. More recently, she apparently had been diagnosed with postpartum depression. Exacerbating matters, Mother had also been dealing with the stress of a rent increase, employment issues, and a painful pregnancy. Mother felt she was at risk of losing everything. The evidence further showed when the Hospital incident occurred, Mother had been without treatment for at least one year; she had stopped taking her medication. In

talking with the nurse and the social worker, Mother was upset, resistant and evasive. She refused to divulge her location at the Hospital, to seek emergency room treatment and to maintain telephone contact while picking up her children. Based on this evidence the juvenile court could reasonably infer that Mother's alarming behavior that day was the culmination of her untreated anxiety and depression, aggravated by other stressors in her life. The court credited the Hospital staff's characterization of Mother during the incident as depressed and suicidal over Mother's testimony that she never intended or expressed the intention to terminate her life or her pregnancy. We do not reweigh the court's credibility determinations. (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225.)

Mother reasons that, as of the May 10, 2018 jurisdiction hearing, there was no current risk of harm to the children, because she was actively participating in mental health services. She had received a positive evaluation from a psychiatrist on March 10, 2018, had an appointment with another psychiatrist on March 15, 2018, had completed parenting classes on April 27, 2018, and was working well with a family therapist. Although Mother was being monitored by health care professionals and had made progress in addressing her mental health issues, she had attained only a very short period of stabilization at the time of the hearing. Additionally, after being released from the psychiatric hold, Mother did not seek follow-up treatment on her own. The juvenile court ordered her to see a psychiatrist at the detention hearing, one month before the jurisdiction hearing. Moreover, there was no indication, at the time of the jurisdiction hearing, that Mother was regularly seeing a psychiatrist or a psychologist to treat her anxiety and depression pending the

birth of her fourth child. Based on the totality of the record, there was substantial evidence to support the jurisdictional finding that Mother's ongoing mental health issues placed her children at substantial risk of serious physical harm.

2. The Dispositional Order Was Not An Abuse of Discretion

Section 360, subdivision (b) permits a juvenile court to order informal supervision by the Department instead of declaring the child a dependent of the court. (§ 360, subd. (b); see also Cal. Rules of Court, rule 5.695(a)(2).) The court has broad discretion to determine whether informal probation is warranted. (*In re N.M* (2011) 197 Cal.App.4th 159, 171.) A court exceeds the limits of legal discretion if its decision is arbitrary, capricious or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Mother argues the juvenile court abused its discretion in ordering the family be under informal supervision by the Department, because the jurisdiction order was not supported by substantial evidence. The Department argues the order is no longer in effect, because the case has been dismissed. Therefore, the appeal from the dispositional order is now moot.

Whether or not the appeal is moot⁶, the juvenile court acted well within its discretion in ordering informal probation. At the time the court entered its disposition, Mother had undergone a psychological assessment and was still seeing her family therapist and maintaining contact with the Department social

⁶ Neither party has provided a juvenile court order terminating jurisdiction in this case.

worker. The juvenile court acted within its discretion in concluding that informal supervision was necessary to ensure Mother participated in whatever psychiatric counseling was deemed necessary by the psychological assessment.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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CURREY, J.

We concur:

MANELLA, P. J.

WILLHITE, J.