Filed 12/19/19 In re Mar.M. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Mar.M. et al., Persons Coming Under the Juvenile Court Law.	B295223 (Los Angeles County Super. Ct. No. 18CCJP05152A-B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.H., Defendant and Appellant.	

APPEAL from orders of the Los Angeles Superior Court, Stephen C. Marpet, Commissioner. Affirmed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

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The mother of a toddler and an infant appeals the juvenile court's exertion of dependency jurisdiction and imposition of a case plan. Her arguments lack merit, so we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

J.H. (mother) has two children with M.M. (father)—Mar.M. (born March 2016) and Mal.M.(born October 2017).

In the late morning of August 10, 2018, father drove mother and Mar.M. to Long Beach, California. The parents had a two-fold purpose—namely, to "buy weed" and to drop mother off so she could perform sex acts for money. They brought Mar.M. along, even though there was no infant car seat for her.

Mother and father have been long-time users of marijuana. Mother has used the drug since 2009, and father has used since 2004. Since they got together in 2015, they have smoked marijuana together on a "regular" basis, usually early in the morning or late at night. Although the parents insisted that they never smoked marijuana in front of the children, they were the sole adults responsible for the children after ingesting the drug. Mother has a 2011 conviction for use of a controlled substance, and father has a 2008 conviction for driving under the influence of marijuana.

II. Procedural Background

A few days after mother was arrested in a prostitution sting, the Los Angeles Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Mar.M. and Mal.M. on the grounds that mother and father had a "history of substance abuse" and were "current abuser[s] of marijuana," which rendered them "incapable of providing regular care for the children" and "placing" them "at risk of serious physical harm" (thereby rendering dependency jurisdiction appropriate under Welfare and Institutions Code, section 300, subdivisions (b) and (j)).[1]

Following a hearing on October 22, 2018, the juvenile court exerted dependency jurisdiction over both children on the above stated grounds. In so ruling, the court explained that the parents' "historical[]" use of marijuana while responsible for their "two-year-old child" placed that child—and her even younger sibling—at risk of harm, as evidenced by their decision to drive the older child in a car without a safety seat "to buy weed or do prostitution."

The court ultimately set the dispositional hearing for January 7, 2019. Between August 2018 and January 2019, mother's and father's marijuana levels dropped, eventually to zero. The court placed the children in the home of the parents,

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1 The Department also alleged that the parents endangered Mar.M. by "failing to properly secure [her] in a car safety restraint seat," but the juvenile court ultimately declined to sustain jurisdiction on this ground.

All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

ordered the Department to provide the parents with family maintenance services, and ordered mother and father (1) to complete a six-month drug and alcohol program, including drug testing, (2) to complete a 12-step program, (3) to attend parenting classes, and (4) to attend individual counseling.

Mother filed this timely appeal.[2]

DISCUSSION

Mother argues that substantial evidence does not support (1) the juvenile court's exercise of dependency jurisdiction, and (2) the juvenile court's order requiring her to complete a case plan. As a threshold matter, the Department responds that mother's first claim is not justiciable because father has not appealed, such that the court's exercise of dependency jurisdiction will remain appropriate based on father's conduct no matter how we resolve mother's appeal.

I. Justiciability

Juvenile dependency jurisdiction attaches *to the child*, not to the parent. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491 (*I.A.*).) Thus, if there is one valid basis for exerting dependency jurisdiction over a child, a challenge to any other basis for jurisdiction is likely to have no effect on the juvenile court's rulings and thus likely to be little more than an "'"opinion[] upon [a] moot question[] or [an] abstract proposition[]."'" (*Eye Dog Foundation v. State Board for Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *In re D.P.* (2014) 225 Cal.App.4th 898, 902 ["'[A]s

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2 Following mother's appeal, the case was transferred to Riverside County. We grant the Department's request to take judicial notice of these post-appeal events. (Evid. Code, §§ 452., subd. (c), 459.)

long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate. [Citations.]'"].)

Appellate courts nevertheless retain the "discretion" to hear the merits of a challenge to a juvenile court's jurisdictional finding, even if overturning that finding will have no immediate effect on the juvenile court's assertion of jurisdiction. (*I.A.*, *supra*, 201 Cal.App.4th at pp. 1494-1495.) However, courts will generally exercise that discretion only upon a showing that (1) the challenged finding will have some further consequence in the case at issue, such as when the finding "serves as the basis for dispositional orders that are also challenged on appeal," or (2) the challenged finding could have some further consequence in a future proceeding, most likely a future dependency or family law proceeding, such as when the finding declares the appealing parent to be an "offending" parent rather than a "non-offending" parent or when the finding itself is "pernicious" or "carries a particular stigma." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*); *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) Although *Drake M.* articulated three types of showings justifying the exercise of discretion, those types fall into the two broader categories described above.

Mother has not made a persuasive showing as to why we should exercise our discretion to entertain her substantial evidence challenge to the juvenile court's jurisdictional findings. Although mother challenges the court's dispositional order requiring her to complete a case plan directed toward remedying her substance abuse, that order—as we discuss below—would constitute a reasonable exercise of the court's broad discretion even if there were *no* jurisdictional finding regarding mother's substance abuse because the record still contains ample evidence

of mother's long-standing substance abuse. As a result, her jurisdictional challenge does not serve as the sole (or even primary) basis for a challenged dispositional order. Along similar lines, we doubt that the jurisdictional finding in this case will likely have any appreciable stigmatizing consequence in future dependency proceedings when considered against the backdrop of (1) the juvenile court's exertion of dependency jurisdiction over two of her other children, in a prior dependency case, based on mother's use of "excessively harsh physical disciplinary practices that caused bruising" to the injured child's face, (2) mother's admission to long-standing drug use, and (3) mother's extensive criminal history involving drugs and prostitution.

II. Jurisdictional Findings

The juvenile court's jurisdictional findings are in any event supported by substantial evidence. We evaluate the sufficiency of the evidence supporting a juvenile court's jurisdictional finding by asking whether there is enough evidence in the record that is reasonable, credible and of solid value that a reasonable trier of fact could reach the same conclusion as the juvenile court. (*In re K.B.* (2015) 239 Cal.App.4th 972, 979-980.)

Under section 300, subdivision (b)(1), a juvenile court may exert dependency jurisdiction if, as pertinent here, a "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness" due to (1) "the failure or inability of . . . her parent . . . to adequately supervise or protect" her, or (2) "the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b)(1).) *Risk* of harm means just that: The juvenile court "need not wait until a child is seriously abused or injured to assume jurisdiction." (*In re Kadence P.* (2015) 241 Cal.App.4th

1376, 1383.) When it comes to assessing that risk, the juvenile court may look to a parent's past behavior as a "good predictor" of whether the child is currently at risk. (*Id.* at pp. 1383-1384; *In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*In re T.V.*).)

Substantial evidence supports the juvenile court's determination that Mar.M. and Mal.M. face "substantial risk . . . [of] serious physical harm" due to mother's "inability" to care for them due to her substance abuse. (§ 300, subd. (b)(1).) Mother has been using marijuana regularly for years and has a drug-related conviction. This constitutes "substance abuse." (See *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 726-727 [use of drugs over several years, resulting in criminal convictions or dependency proceedings constitutes "abuse"].) Risk to a child from substance abuse can be established either by (1) proof of "'an identified, specific hazard in the child's environment,'" or (2) proof that the child is of "tender years," in which case "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 pp. 766-767, italics omitted.) Mar.M.'s and Mal.M.'s young age (Mar.M. was two and a half years old and Mal.M. was one year old at the time of the jurisdictional hearing) makes them children of tender years and establishes such risk. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1912 [children under the age of six are children of tender years].)

Mother argues that there is insufficient evidence that the children are subject to risk because (1) she was testing negative for marijuana by the time of the dispositional hearing, (2) father's DUI conviction happened in 2008, (3) mother's 2011 conviction was, in actuality, committed by maternal grandmother and

mother "took the fall" for her by showing up to court and entering a plea, and (4) the use of drugs is not enough to create risk without "something more." These arguments lack merit. The relevant time to assess risk vis-à-vis the exertion of jurisdiction is at the *jurisdictional* hearing, not the subsequent dispositional hearing. (*In re L.C.* (2019) 38 Cal.App.5th 646, 652.) At the time of the October 22, 2018 jurisdictional hearing, mother had been testing clean for less than a month. It is well settled that a period of sobriety, let alone a solitary negative drug test, does not wipe away a long-standing history of drug use. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686-687.) The age of father's DUI is irrelevant because it does not supply the basis for the jurisdictional findings regarding *mother*. The juvenile court had ample basis to reject mother's account that she was able to fool law enforcement and the court by entering a plea for a crime committed by someone else. (See Evid. Code, § 664 ["It is presumed that official duty has been regularly performed."].) And mother's final argument ignores (1) the "tender years" presumption that *does* presume risk when a young child in need of a parent's constant attention is left in the care of a parent using controlled substances, and (2) the evidence that mother, while using marijuana, placed Mar.M. at risk by putting her in a car without an infant seat and bringing her along to "buy weed" and commit acts of illegal prostitution.

III. Case Plan

A juvenile court has the power to make any "reasonable order[]" to the parent of a dependent child that is "appropriate and in the child's best interest" and that is designed to "eliminate [the] conditions that led to the court's finding" of jurisdiction.

(§ 362, subd. (d); see *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) Permissible orders including "participat[ion] in a counseling or education program." (§ 362, subd. (d).) We review the juvenile court's findings in support of a particular order for substantial evidence (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 136), and its decision of which orders to impose for an abuse of discretion (*Drake M.*, *supra*, 211 Cal.App.4th at p. 770).

The juvenile court's case plan for mother required her to complete a six-month drug and alcohol program, to participate in a 12-step program (related to drugs and alcohol), and to attend parenting classes and individual counseling. Because mother's substance abuse and conduct in placing Mar.M. at risk are what led to the court's jurisdictional findings, requiring mother to attend programs and counseling addressing substance abuse and parenting skills is aimed at "eliminat[ing]" those "conditions," and, more broadly, is "appropriate" and in the children's "best interest." Thus, the court's case plan is comfortably within its discretion and, as explained above, was supported by substantial evidence of substance abuse and risk.

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
ASHMANN-GERST