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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B261482
(Los Angeles County
Super. Ct. No. DK08206)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

FELICIA J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Connie R. Quinones, Judge. Reversed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Felicia J. (Mother) appeals from the juvenile court's dispositional order it issued after finding that Mother exposed her children, K.W., age 12, and T.G., age six (together Children), to substantial risk of harm through her failure remove their dangerous older brothers, L.R., age 18, and M.W. (Older Brother), age 17, (together, Older Brothers), and their contraband from her home. We agree and reverse.

BACKGROUND

On November 4, 2014, a social worker from the Los Angeles County Department of Children and Family Services (DCFS) accompanied the Los Angeles County Department of Probation (LADP) to Mother's residence as part of a multi-agency response team designed to provide protective services to minors in homes associated with high levels of illegal gang, firearm, and/or narcotic activity as LADP was conducting a warrant service on Older Brother, who was violating his probation. After LADP knocked for approximately 10 minutes, Mother's teenage half brother (Uncle) answered the door. The officers heard a woman shout, "Probation, Probation is here." During their search, LADP found Older Brother hiding in Mother's closet. They also found a loaded gun, five bullets, blank checkbooks (not belonging to any resident of the home), a baggie of pink pills, a baggie of marijuana, and a stolen license plate. The gun, bullets, checkbooks, and narcotics were found in a dryer in the hallway.

Mother, Children, and Uncle denied knowing the contraband was in the home. Mother and Children said the dryer had been broken for some time, and Mother suspected the hider concealed the contraband there knowing it was unlikely to be discovered. Children also denied knowing about guns or drugs otherwise being in the home. Mother was aware of Older Brothers' and Uncle's criminal histories, which, collectively, included burglary, grand theft, and firearm offenses, and that Older Brothers were on probation. After interviewing Mother and seeing the contraband, DCFS removed Children from Mother and placed them with relatives. Older Brother was subsequently sentenced to seven months in a camp; and Mother represented when released he would live with relatives other than Mother.

Three days after the warrant service, on November 7, 2014, DCFS filed a petition in the superior court to detain Children. DCFS asserted Mother had endangered Children's physical health and safety and placed them at risk of harm, damage, and danger by exposing them to Older Brothers and their dangerous contraband, including loaded guns and narcotics. The court detained T.G. with her aunt and released K.W. to her father. On December 12, 2014, the court released Children to Mother.

At a hearing on January 9, 2015, DCFS reported Mother had represented she was taking parenting classes, as required by DCFS, and that Older Brothers were no longer living with her and would not be living with her in the future. She said if she had known about the contraband, she would not have allowed Older Brother to remain in her home. She admitted, however, she knew she needed to be more aware of what was happening in her home. She pleaded for the court not to take Children from her because Children "are my life." The court found it had jurisdiction over Children under Welfare and Institutions Code section 300, subdivision (b).¹ Under section 360, subdivision (b), the court ordered DCFS to monitor the family for six months and provide necessary services. Mother appealed.

DISCUSSION

On appeal, Mother argues the dispositional order should be reversed because the court's jurisdictional findings were not supported by substantial evidence. We agree and reverse.

We review jurisdictional findings under a substantial evidence test. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58.) Under a substantial evidence test, a finding "will be upheld if it is supported by substantial evidence" which is "reasonable in nature, credible, and of solid value," "even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Substantial evidence must show jurisdictional grounds existed *at the time* of the hearing such that the minors were persons

¹ Undesignated statutory references are to the Welfare and Institutions Code.

described by section 300. (*In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1318–1319; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395–1398.) In a section 300 analysis, evidence of parents’ “past conduct may be probative of current conditions,” but “[t]here must be some reason to believe the acts may continue in the future.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) On appeal, Mother “has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*Dakota H.*, *supra*, at p. 228.) If a parent can show the jurisdictional grounds were not supported by substantial evidence, the dispositional orders based on those grounds are reversed.

DCFS failed to present substantial evidence Children fell under section 300 *at the time* of the jurisdiction hearing. At the time of the hearing, Older Brothers were no longer living at Mother’s home, Mother had made arrangement for them to live with other family members, and Mother said they would not be living at her home in the future.² LADP removed the weapon and narcotic contraband from Mother’s home, and the record does not reflect the county has found more contraband in her home. Mother has acknowledged the dangerous situation Children were in when Older Brothers lived at her home and has begun to, and is committed to continuing to, rectify the situation. Since the warrant service, Mother has been cooperative with DCFS and has completed required parenting classes.

DCFS worries Mother may allow Older Brothers to return home, placing Children at substantial risk of future harm. DCFS points to Mother’s conduct during the warrant service, which it characterized as uncooperative, and Mother’s supposed lack of household rules and supervision of Older Brothers and Uncle to suggest Mother may allow Older Brothers to move in again and expose Children to danger. DCFS’s concern about Mother’s intentions, without more, is not enough to find Children are at a substantial risk of future harm. The significance of Mother’s pointed-to past behavior is not strongly correlative to the feared particular future harm because at the time of the

² Uncle is also no longer living at Mother’s residence.

warrant service, Mother was unaware that Older Brothers' criminal activity posed an active danger to Children. The significance is also mitigated by Mother's continuing cooperation with DCFS and her commitment to keep Older Brothers out of her house. Even DCFS conceded it believed Mother had taken the proceedings "seriously" and had complied with its requests. Admittedly, DCFS's goal at the jurisdictional and dispositional hearing was to "make sure that it kind of sinks in here [for Mother] through [the] parenting classes, which apparently she's participating in" that her situation with having so many felons and their contraband in her home was "not safe." DCFS's desire for the seriousness of Children's past dangerous living situation to "sink in," alone, is not enough to justify dependency jurisdiction, especially in light of Mother's compliance, her changed home circumstances, and her commitment to keep Older Brothers out of her home.

At the jurisdictional hearing, the court did not have jurisdiction over Children under section 300, subdivision (b) because DCFS failed to present substantial evidence Children were at substantial risk of future harm. The resulting dispositional orders from that finding must be reversed. DCFS offered no other jurisdictional grounds and therefore the court does not maintain jurisdiction over Children.

DISPOSITION

The juvenile court's dispositional order based on the jurisdictional finding Mother exposed her children to a substantial risk of future harm is reversed.

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LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.