Filed 10/21/19 In re Katie M. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re KATIE M., a Person Coming Under the Juvenile Court Law.	B293487 (Los Angeles County Super Ct. No. 17CCJP01747A
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. G.M. et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, Jean M. Nelson, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant G.M.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant Katie M.

Mary C. Wickham, County Counsel, Kristine Miles, Assistant County Counsel and David Michael Miller, Deputy County Counsel for Plaintiff and Respondent.

INTRODUCTION

G.M. and her daughter Katie M. appeal from the juvenile court's jurisdiction findings and disposition order declaring Katie a dependent of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivision (b),[1] arguing substantial evidence does not support the court's findings. Because substantial evidence supported the juvenile court's finding that G.M.'s mental health placed Katie at serious risk of physical harm, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *G.M. Has a History of Mental Illness*

Beginning in 2014, when she was 12 years old, G.M. was hospitalized on multiple occasions for cutting herself, having anxiety attacks, and "hearing voices telling her to kill herself." In October 2016 G.M. failed to take her prescribed medication, missed appointments with her psychiatrist, and reported feeling

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[1] Statutory references are to the Welfare and Institutions Code.

suicidal. She was admitted to the hospital twice that month for depression and suicidal ideation.

In late 2016 G.M. became pregnant with Katie. In March 2017 G.M. was again hospitalized "due to having feelings of wanting to run into traffic, stab her stomach and overdose on her mother's prescription pills." She told hospital staff that she "was stressed about being pregnant and being able to handle that situation."

In October 2017, when Katie was one month old, G.M. again failed to take her medication consistently. G.M. said she stopped taking her medication because it was "messing with [her] sleep cycle," but took it when she "remember[ed]." On October 25, 2017 G.M.'s therapist contacted the Los Angeles County Department of Children and Family Services and reported that G.M. had not been attending scheduled therapy sessions and sounded incoherent on the phone. The Los Angeles Police Department located G.M. and placed her on a psychiatric hold. At the hospital, G.M. said that "the voices she hears are telling her to kill her baby" and that she wanted to hurt the hospital staff. She also experienced paranoia that former boyfriends were watching and following her, and she reported using marijuana regularly and drinking alcohol. G.M.'s therapist concluded G.M. was a danger to herself and others due to her suicidal and homicidal thoughts.

G.M. and her therapists reported several "triggers" for G.M.'s "mental health crisis." These included living in her mother's home, where G.M. was exposed to an adult sibling who used drugs in the home and to her mother's former boyfriend who molested G.M. when she was nine and 13 years old. G.M. also said her mother pressured her into having Katie, even though

G.M. felt she was not ready to be a teenage mother. G.M.'s therapist said G.M. was "overwhelmed trying to be a teen mother, go back to school, find a job and be consistent with meeting her own needs." G.M.'s mother failed to ensure G.M. received the psychiatric care she needed and dissuaded G.M. from contacting her therapist when she needed help.

B. *The Juvenile Court Detains Katie and Delays the Jurisdiction Hearing for Six Months*

On November 13, 2017 the Department filed a petition under section 300, subdivision (b), and alleged G.M. had mental and emotional problems that rendered her incapable of providing Katie regular care and placed Katie at risk of serious physical harm.[2] The court detained Katie on November 14, 2017 and released her to the home of her father, 22-year-old Luis, who lived at home with his parents. The Department also filed a dependency petition on behalf of G.M., and the juvenile court removed G.M. from her mother's custody.

In January 2018 G.M. was hospitalized twice for suicidal ideation, once after telling her psychiatrist she heard voices telling her to strangle herself. By February 2018 the Department reported G.M. stated she was taking her medication and no longer experiencing auditory hallucinations.

The juvenile court postponed the jurisdiction hearing scheduled for February 2018 to determine whether the court could obtain G.M.'s mental health records. Meanwhile, G.M.

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[2] The petition also alleged G.M. had a history of substance abuse and was a current abuser of marijuana and alcohol. The juvenile court dismissed that count at the jurisdiction hearing.

participated in weekly therapy sessions and a parenting program, enrolled in a new school near her foster home, and had monitored visits with her mother and with Katie. In April 2018 G.M.'s therapist reported that G.M. was in a relationship with a 21-year-old man with whom she later broke up upon learning she would have to report the relationship to her case social worker. In April and May 2018 G.M. missed an unspecified number of visits with Katie. In a May 2, 2018 last minute information report the Department stated G.M.'s behavior demonstrated she was not yet ready for unmonitored visits with Katie.

In an August 2018 last minute information report the Department stated G.M. was continuing to attend weekly therapy sessions and to take her medication. Luis reported that G.M. visited with Katie regularly and that the visits "have been going well." The Department stated G.M. "is young and immature and requires a lot of coaching and guidance in her life. There are concerns about [G.M.'s] ability to provide adequate care and stability for [Katie] at this time based on [G.M.'s] mental health history and poor decision making abilities in her behavior."

C. *The Juvenile Court Sustains the Petition*

The juvenile court eventually held the jurisdiction hearing on October 11, 2018. In advance of the hearing the Department submitted another last minute information report stating that G.M.'s goals in therapy included "eliminat[ing] self-harm and self-inflicted injuries." G.M.'s therapist reported G.M. was working on eliminating "negative behaviors," such as "AWOL, staying up all night and isolating herself." G.M. continued to go to therapy sessions regularly, take prescribed medication, and

visit with Katie. G.M. was placed in a "whole family home" where she could reunify with Katie. Although she had one three-hour unmonitored visit with Katie each week, G.M. continued to have monitored visits twice each week. G.M.'s caregiver said she was "willing to monitor [G.M.'s] visits . . . to help her learn how to properly care for [Katie] and keep a home."

At the hearing G.M. and counsel for Katie asked the court to dismiss the count alleging a risk of harm to Katie based on G.M.'s mental illness. Counsel for G.M. argued that Katie was well cared for by G.M. before Katie's detention and that there was no current risk of harm to Katie. Counsel for G.M. also stated the Department could continue to supervise G.M.'s progress because the court had jurisdiction over G.M. as a dependent of the court. Counsel for Katie argued that G.M. had gone "above and beyond to find a whole family home for her and her child" and was taking her medications and going to therapy and that there was no current risk of harm to Katie. Counsel for Katie also stressed that G.M. had "self-reported" her suicidal and homicidal thoughts to get the help she needed and that G.M.'s "initiative" minimized the risk of harm to Katie. Counsel for G.M. admitted, however, that "[t]his is a very young mother who does need guidance and help."

The juvenile court sustained the petition under section 300, subdivision (b), based on G.M.'s "mental and emotional problems."[3] The court observed that G.M. had a "long period of

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[3] Count b-1 sustained by the juvenile court states: "The child Katie [M.'s] mother, [G.M.], has mental and emotional problems, including auditory command hallucinations, suicidal and homicidal ideation and paranoid thought process, which render

dealing with her mental health issues." The court stated that, "given the length and seriousness of the mental health problems, the homicidal ideation in November [2017] and the suicidal ideations in January [2018], the court believes that there is still a risk to Katie, although [G.M.] . . . is now . . . getting assistance [and] taking her medication. . . ." The court found that, "without supervision by the Department," there was still a risk of harm to Katie due to G.M.'s mental health issues, her young age, and her history of not taking her medication "on her own volition. . . . The court is concerned we can't wait for something to happen to the infant given these current risks; that there are sufficient signs there is still a current risk, and the court does note that [G.M.] does well when she is under supervision but it is that supervision—that lack of supervision that would pose a risk. And the court does think that the homicidal and suicidal ideations pose a serious risk to the child, and that without supervision there is a danger."

The juvenile court found releasing Katie to her parents would not be detrimental to Katie's safety, protection, or physical or emotional well-being and released Katie to the home of both

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the mother incapable of providing regular care of the child. The mother failed to take the mother's psychotropic medications as prescribed. On 10/24/2017 and on prior occasions, the mother was hospitalized for the evaluation and treatment of the mother's psychiatric condition. The mother has failed to take the mother's psychotropic medication, as prescribed and failed to consistently participate in mental health treatment. Such mental and emotional problems on the part of the mother endanger the child's physical health and safety and place the child at risk of serious physical harm, and damage, and danger."

her parents. The court ordered family maintenance services, including mental health counseling, for G.M. G.M. and Katie timely appealed.

DISCUSSION

A. *Applicable Law and Standard of Review*

The social services agency has the burden of proving by a preponderance of the evidence that a child is a dependent of the juvenile court under section 300. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re M.W.* (2015) 238 Cal.App.4th 1444, 1453.) A court may declare a child a dependent under section 300, subdivision (b), if "the '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.'" (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146; see § 300, subd. (b)(1).) "In deciding whether there is a substantial risk of serious physical harm, within the meaning of section 300, subdivision (b), courts evaluate the risk that is present at the time of the adjudication hearing. 'While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.'" (*In re Roger S.* (2018) 31 Cal.App.5th 572, 582.)

We review jurisdiction findings for substantial evidence. (*In re Roger S.*, *supra*, 31 Cal.App.5th at p. 582; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.) "In doing so, we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders.

Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment." (*Yolanda L.*, at p. 992; see *In re I.J.*, *supra*, 56 Cal.4th at p. 773.) "[S]ubstantial evidence 'is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] . . . "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record."'" (*Yolanda L.*, at p. 992; see *In re M.W.*, *supra*, 238 Cal.App.4th at p. 1453.)

B. *Substantial Evidence Supports the Jurisdiction Findings*

G.M. and Katie argue substantial evidence does not support the jurisdiction findings because at the time of the jurisdiction hearing there was no evidence G.M. presented a current risk of harm to Katie. G.M. and Katie assert that Katie never suffered actual harm in G.M.'s care and that, "other than a couple of bumps in the road early on," G.M. thrived after leaving her mother's home. Among other things, G.M. participated in weekly therapy and psychiatric services, took her prescribed medication, enrolled in school and earned good grades, and improved her ability to live independently. G.M. and Katie stress that, at the time of the jurisdiction hearing, G.M. had not been hospitalized for nine months.

G.M. and Katie are correct that a parent's mental illness, without more, is insufficient to support dependency jurisdiction under section 300, subdivision (b)(1). (See *In re A.L.* (2017) 18 Cal.App.5th 1044, 1049-1051 [mother's schizophrenia did not create a substantial risk of physical harm to her children]; *In re*

Joaquin C. (2017) 15 Cal.App.5th 537, 563 (*Joaquin C.*) ["mental illness is not itself a justification for exercising dependency jurisdiction over a child"]; *In re James R.* (2009) 176 Cal.App.4th 129, 136 (*James R.*) [mental illness does not create a presumption of harm], disapproved on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 624, 628; *In re David M.* (2005) 134 Cal.App.4th 822, 829-830 (*David M.*) [finding no evidence of a risk of harm to an infant and a toddler resulting from parents' mental illness], disapproved on another ground in *In re R.T.*, at p. 628.) "'Harm to a child cannot be presumed from the mere fact the parent has a mental illness.'" (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226; see *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1079.) But the juvenile court did not find a risk of harm to Katie based solely on G.M.'s undisputed mental illness. The court cited the severity of G.M.'s condition (including her past hallucination telling her to kill Katie), G.M.'s multiple hospitalizations (including two that occurred after the Department intervened), and G.M.'s young age and relative inability to manage her mental health problems without supervision. Moreover, most of G.M.'s visits with Katie were still, and would continue to be, monitored, and G.M. continued to engage in "negative behaviors" that could affect her mental health. There was also evidence that G.M. minimized her mental illness following at least one hospitalization and that Katie's father Luis was not aware of G.M.'s hospitalizations and had little contact with Katie when the juvenile court detained her. Substantial evidence supported the court's finding that G.M.'s mental condition posed a significant risk of serious physical harm to Katie.

G.M. and Katie argue the Department failed to show a specific, identified harm to Katie or a substantial risk of harm. But the Department made that showing by introducing evidence G.M. had auditory hallucinations telling her to stab herself in the stomach while pregnant and to kill Katie after she was born. G.M.'s therapists and the police repeatedly hospitalized G.M. because she was a threat to herself and others. (See *In re Travis C.*, *supra*, 13 Cal.App.5th at pp. 1226-1227 ["It is not necessary for [the Department] or the juvenile court to precisely predict *what* harm will come to [children] because Mother has failed to consistently treat her illness. Rather, it is sufficient that Mother's illness and choices create a substantial risk of *some* serious physical harm or illness."].)

G.M. and Katie cite numerous cases where courts have reversed jurisdiction findings that were based solely on evidence of a parent's mental health condition, including *Joaquin C.*, *supra*, 15 Cal.App.5th 537, *James R.*, *supra*, 176 Cal.App.4th 129, *David M.*, *supra*, 134 Cal.App.4th 822, and *In re Matthew S.* (1996) 41 Cal.App.4th 1311 (*Matthew S.*). None of these cases supports reversing the jurisdiction findings here.

In *Joaquin C.* the social services agency failed to meet its burden to show the mother, who was diagnosed with "'Psychosis vs. Schizophrenia, paranoid type'" (*Joaquin C.*, *supra*, 15 Cal.App.5th at p. 540), had ever failed to adequately supervise, protect, or provide regular care for her infant child and made only "conclusory assertions" the child was endangered and at risk (*id.* at pp. 562-563). The evidence showed the mother had "'plenty of support in the home,'" attended regular therapy sessions, and took prescribed medication. (*Id.* at pp. 541, 564-565.) The mother's therapist told the agency that, "even when [the mother]

was not taking psychotropic medication, she cared for Joaquin C. appropriately." (*Id.* at p. 563.) The court concluded that, "[w]hatever [the appellant's] mental problems might be, there was not evidence that they impacted her ability to provide adequate care for her son." (*Ibid.*)

Similarly, in *James R.* the court held the social services agency failed to show a risk of current harm where the mother's mental illness did not threaten her or her children's well-being. (*James R.*, *supra*, 176 Cal.App.4th at pp. 132, 136.) The mother came to the attention of the agency after she had been hospitalized following a "negative reaction to taking ibuprofen and drinking beer" while caring for her three children. (*Id.* at pp. 132, 136.) The hospital staff, however, determined she was not suicidal and released her. (*Id.* at p. 133.) A social worker assessed the risk to the children as "moderate to high" without juvenile court intervention because the children's father might leave the children with their mother when he went to work, the mother might consume alcohol or drugs while caring for the children, and, if the mother did not comply with her treatment recommendations, "she might want to hurt herself and the minors could possibly be exposed to [her] conduct." (*Id.* at p. 134.) The court reversed the jurisdiction findings because, unlike here, "[t]here was no evidence" the mother ever "had suicidal ideation after the birth of her children" and the juvenile court did not find the mother "was a danger to herself or others." (*Id.* at p. 136.)

In *David M.* a social services agency alleged both parents of two young children had mental illnesses or disabilities that prevented them from caring for their children. (*In re David M.*, *supra*, 134 Cal.App.4th at p. 825.) The mother had never been

hospitalized or involuntarily committed because of her mental condition, and the only evidence the mother suffered from a psychiatric or psychological disorder at the time of the jurisdiction hearing in 2005 was a diagnosis from 2001. (*Id.* at pp. 826-827.) The father "admitted suffering from social and anxiety disorder and depression," but there was no evidence the father's condition prevented him from caring for his children. (*Id.* at p. 827.) The court reversed the jurisdiction findings because "the evidence of mother's . . . and father's mental problems was never tied to any actual harm . . . or to a substantial risk of serious harm." (*Id.* at p. 829.) The court recognized "it is possible to identify many possible harms that *could* come to pass. But without more evidence than was presented in this case, such harms are merely speculative." (*Id.* at p. 830.)

Finally, in *Matthew S.* the mother had delusions that her 13-year-old son mutilated himself. (*Matthew S.*, *supra*, 41 Cal.App.4th at p. 1314.) She took him to a doctor who found no evidence of injury and did not believe the mother was a risk to her son. (*Ibid.*) The social services agency filed a dependency petition on behalf of the mother's son and 16-year-old daughter, alleging the mother's "serious emotional problems" created a substantial risk of serious physical harm to her children. (*Id.* at p. 1315.) The court reversed the jurisdiction findings, stating: "Aside from going to the [doctor] to make sure her son was not harmed after she had a delusion, [the appellant] is an excellent mother." (*Id.* at p. 1319.)

What distinguishes all of these cases from this case are the facts that G.M. hallucinated voices telling her to kill Katie, G.M. actually acted on self-destructive thoughts in the past by cutting herself, and G.M. did not have a support system that would allow

her to reunify with Katie without substantial supervision. Since becoming pregnant with Katie, G.M. was hospitalized on five separate occasions for having suicidal and homicidal thoughts. Professionals repeatedly determined G.M. posed a threat to herself or others. Thus, unlike social services agencies in the cases cited by G.M. and Katie, where the agency failed to show a risk of harm arising from the parent's mental health condition, the Department here satisfied its burden to show G.M.'s mental illness created a present and serious risk of danger that G.M. will directly or indirectly through neglect cause serious physical harm to one-year-old Katie. This risk of harm was not speculative, and Katie's relative improvement between her last hospitalization in January 2018 and the jurisdiction hearing in October 2018 did not eliminate the risk of harm.

C. *Luis's Willingness To Care for Katie Does Not Defeat Jurisdiction*

Katie argues jurisdiction is "unwarranted" because Luis "was a non-offending parent willing and able to care for Katie." Section 302, subdivision (a), however, provides: "A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court." Thus, "a dependency court has jurisdiction when the actions of either parent bring the child within the statutory definition of a dependent, which fits with the purpose of a dependency proceeding to protect the child, rather than prosecute the parents. [Citation.] Accordingly, the court may base jurisdiction

on the actions of one or both parents, and once established, the court may enter orders binding both parents." (*In re H.R.* (2016) 245 Cal.App.4th 1277, 1285-1286; see *In re Briana V.* (2015) 236 Cal.App.4th 297, 308 ["'[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent.'"].)

Citing *In re A.G.* (2013) 220 Cal.App.4th 675 and *In re Phoenix B.* (1990) 218 Cal.App.3d 787, Katie argues that "there [is] no basis for assuming dependency jurisdiction" where a mother's mental condition placed children at risk, but "the father provided appropriate care and the minor's welfare was not endangered by placing her with the father." *In re A.G.* and *In re Phoenix B.* are distinguishable. In *In re A.G.* the court reversed jurisdiction findings where the mother's mental condition prevented her from caring for her children, but the children's father, who lived with the mother and children, could properly care for the children. (*In re A.G.*, at p. 677.) The court stated: "Father ensured that there was adult supervision, other than Mother, of the minors at all times." (*Id.* at p. 684; see *id.* at p. 686 ["there was always a responsible adult present to care for the minors, save on one occasion where no harm came to the minors"].) In this case there was no such evidence, and there was no guarantee there will always be, a "responsible adult present" to care for Katie when she is in G.M.'s custody. And in *In re Phoenix B.* the juvenile court *declined* to exercise jurisdiction over the child, the mother appealed, and the court held dismissing the petition was not an abuse of discretion. (*In re Phoenix B.*, at pp. 792-793.) Although the juvenile court in this case arguably could have dismissed the petition without abusing its discretion, we

may not "reweigh the evidence nor exercise our independent judgment" on appeal. (*In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992; accord, *In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

DISPOSITION

The jurisdiction findings and disposition order are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.