

Filed 5/8/18 In re K.L. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

B285521
(Los Angeles County
Super. Ct. No. DK09377)

APPEAL from orders of the Superior Court of Los Angeles
County. Philip L. Soto, Judge. Affirmed.

Matthew J. Hardy, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Stephen D. Watson, Deputy
County Counsel, for Plaintiff and Respondent.

The juvenile court exercised jurisdiction over the children of M.G. (mother) and J.L. (father) pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b). Their children are K.L. (born July 2010), E.L. (born Jan. 2012), J.L., Jr., (Feb. 2013), and L.L. (born Jan. 2015) (collectively minors). In this appeal, mother acknowledges that jurisdiction is proper based on the unchallenged findings that father created a risk of harm to minors. Nonetheless, she requests that we exercise our discretion to reverse the findings that she also created a risk of harm to minors based on failure to protect, and based on failure to create an adequate plan for them while she was incarcerated. If we reverse those findings, she requests that we also reverse the dispositional orders that impact her. We find no error and affirm.

FACTS

The Petition

On March 6, 2017, the Los Angeles County Department of Children and Family Services (Department) filed a petition on behalf of minors.

Counts a-1 and b-2 alleged: Mother and father have a history of violent altercations in the presence of minors. In 2016, father repeatedly struck mother with his fists and choked her. He struck her head with a bottle and threatened to kill her. He has criminal convictions for inflicting corporal injury on a spouse/cohabitant and child cruelty/possible injury/death.¹ Mother failed to protect minors by allowing father unlimited access to them. His violent conduct against the mother in the presence of minors and her failure to protect them endangers

¹ The record suggests the child cruelty conviction pertained to L.L.

their physical health and safety, placing them at risk of suffering serious physical harm.

Count b-1 alleged: Mother's whereabouts were unknown. On or about February 14, 2017, mother left minors in the care of a male companion who was unable to provide minors with ongoing care and supervision. Three days later, he took minors to the home of their maternal grandmother. Mother's failure to make an appropriate plan for the care and supervision of minors endangers their physical health and safety, and places them at risk of suffering physical harm.

Adjudication/Disposition

Evidence

In 2015, L.L. was born with a toxicology screen that was positive for marijuana. The juvenile court sustained a section 300, subdivision (b) petition against mother and father, concluding mother had a history of using methamphetamine and marijuana. The family was ordered to participate in Family Preservation Services, and mother and father were ordered to submit six clean drug and alcohol tests. Mother submitted six clean tests, and she enrolled in programs ordered by the juvenile court.

There were over 20 unreported domestic violence incidents between mother and father over the course of their relationship. In March 2016, father accused mother of infidelity and beat her over a two-day period, strangled her, hit her over the head with a cologne bottle, and threatened to kill her. Maternal grandmother called the police and father fled. Mother obtained a three-year restraining order. Father was arrested, and mother testified against him at trial. He was sent to prison for six years due to domestic violence.

The March 2016 domestic violence incident resulted in a referral to the Department. Mother submitted to a drug test, which came back negative. She cooperated with the Department and started counseling. The referral was closed because the “situation” had “stabilized.”

On February 22, 2017, the Department received a referral from maternal grandmother stating that mother left minors with her boyfriend and had not returned. Maternal grandmother opined that mother had been arrested. The investigation revealed the following: Mother and her boyfriend C.J. (boyfriend) were living with maternal grandmother for a few weeks, but at some point she told them to leave. Mother and boyfriend did not have money to rent an apartment or move into a hotel. She was arrested for stealing baby formula, which she intended to sell to make money. According to mother, she need to get at least \$80 to spend the night somewhere. She refused to give law enforcement her name and, as a result, she was booked under the name Jane Doe. Mother gave boyfriend and her cousin authorization to care for minors. Maternal grandmother picked minors up from boyfriend on February 17, 2017. K.L. was interviewed. She reported seeing mother and boyfriend use a small green glass bottle to smoke something that looked like little crystals or salt powder. On several occasions, mother and boyfriend left what they were smoking on the balcony and E.L. picked it up. K.L. would tell E.L. to put it back and not touch it because she knew it was bad stuff. The social worker showed K.L. a photo of crystal meth in a plastic bag and a green meth pipe. She said she had seen stuff like the crystal meth with mother and boyfriend, and it was in a similar plastic bag. Also, they had something that looked like the green meth pipe. They had other colors, too.

Minors were placed with maternal grandmother.

At one point, mother appeared unannounced at the Department's office in Van Nuys. Because mother was erratic and aggressive, a social worker asked her to submit to a drug test. She tested negative.

On March 10, 2017, at a continued detention hearing, the juvenile court ordered mother to submit to a drug test. It granted her monitored visitation.

When maternal grandmother was interviewed, she said she threatened to call the police on boyfriend if he did not give her custody of minors. Her rationale was that boyfriend did not work and was not responsible and she wanted to make sure minors were safe. She explained that when boyfriend and mother were living with her, they would stay up all night, not fully care for the children, and not pay their share of rent. According to maternal grandmother, boyfriend said he had used methamphetamine prior to meeting mother. Maternal grandmother suspected father and mother were smoking marijuana in her home because maternal grandmother was able to smell it.

At the hearing, mother revealed that she was living with a person who did not want to be identified.

Ruling

After hearing argument from counsel, the juvenile court stated it would "make true findings based on the documents supplied . . . [on] the allegations in the March 6th petition of this year finding (a)(1) and the corresponding . . . (b)(2) true and the (b)(1) true as plead[ed]."

The juvenile court found that returning minors to mother and father would create a substantial risk of detriment to their

safety and protection as well as their physical and emotional well-being. As a result, the juvenile court ordered minors to remain placed with maternal grandmother. Mother was granted unmonitored day visits with the condition that she not bring anyone with her.

The juvenile court said to mother, “I appreciate whatever friend you’re living with giving you a place to stay. He doesn’t want to get involved, fine. They don’t want to get involved. . . . But I’m telling you this: If we don’t know where you are and can see this house and check it out and be able to make unannounced home visits when [minors] are back with you . . . then I can’t release [them] to you.”

This appeal followed.

DISCUSSION

I. Justiciability.

Father is not a party to this appeal, and mother does not challenge the jurisdictional findings based on a risk of harm to minors he created. As a consequence, jurisdiction must be affirmed, and we need not consider whether the alleged risk of harm created by mother is supported by sufficient evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492.) Whether to consider that issue is a matter of our discretion. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) Typically, a reviewing court will reach the merits of a challenge to any jurisdictional finding when (1) the finding serves as the basis for dispositional orders that are also challenged on appeal, (2) the finding could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings, or (3) could have other consequences beyond the appellant beyond jurisdiction. (*Id.* at pp. 762–763.)

Here, if we determined that the evidence did not support the findings adverse to mother, that could alter the dispositional orders regarding placement of minors. We therefore opt to consider the merits of this appeal.

II. Standard of Review.

We review jurisdictional findings pursuant to the substantial evidence test. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394.)

III. Analysis.

Section 300, subdivision (b), applies where there is a substantial risk of harm due to a parent's failure or inability to adequately supervise or protect a child. The question is whether there was a substantial risk of harm at the time of the adjudication. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1023, citing to *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134; *In re Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1395–1396; *In re David M.* (2005) 134 Cal.App.4th 822, 829; cf. *In re J.K.* (2009) 174 Cal.App.4th 1426.)

Count b-1 alleges that mother failed to make an adequate plan for minors while she was incarcerated. The juvenile court found the allegation to be true. Given that boyfriend did not have prospects for his own housing, and the evidence established that he was a drug user, the trial court's finding was supported by substantial evidence. In other words, mother failed to adequately supervise and protect minors. The question is whether the risk persisted at the time of the adjudication. It did. Mother was living at an undisclosed location, and she had demonstrated bad judgment by leaving minors with boyfriend. Also, she had gotten arrested, and there was evidence she was using drugs. There

was a substantial risk she would once again leave minors in the care of a person who was not a suitable guardian.

We turn to count b-2.

There were over 20 incidents of unreported domestic violence between mother and father. “[D]omestic violence in the same household where children are living is neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) As explained by one court, children can be “put in a position of physical danger from [spousal] violence” because “they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot, or leg, . . .” (*Ibid.*) “Both common sense and expert opinion indicate [that] spousal abuse is detrimental to children.’ [Citations.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

Mother exposed minors to a risk of harm by not reporting multiple instances of domestic violence in her home. That created a risk they would be injured. At the time of the adjudication, mother’s issues with domestic violence had yet to be resolved. Given her history, there was a risk she would put minors at risk again by either reuniting with father² or find another abusive relationship. Consequently, count b-2 was supported by substantial evidence.

Because the juvenile court’s findings with respect to count b-2 are supported by substantial evidence, so too are the findings with respect to count a-1. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598–599.)

² Upon his release from prison.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT