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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B287678

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 17CCJP00522A)

Plaintiff and Respondent,

v.

LESLIE R. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County. Veronica S. McBeth, Judge. Leslie R. appeal dismissed. Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant Leslie R.

Jane B. Winer, under appointment by the Court of Appeal, for Defendant and Appellant Damian V.

Tarkian & Associates, and Arezoo Pichvai, for Plaintiff and Respondent.

Damian V. (Father) and Leslie R. (Mother) appeal from the juvenile court's jurisdictional findings and dispositional orders regarding their four children. Father contends the evidence was insufficient to support the findings made against him. We disagree and find substantial evidence supports the juvenile court's findings as to Father. Mother's appointed counsel filed an opening brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835; Mother raises no issues. We therefore dismiss Mother's appeal.

FACTS

Father and Mother are parents to Angelina M.¹ (born 2009), Damian V., known as "Junior" (born 2012), Alayna V. (born 2015), and Celine V. (born 2017). Mother also has two adult children. Mother has a history of substance abuse and two of the four children involved in these dependency proceedings were born with methamphetamine or amphetamine in their system.

Prior Dependency Proceedings

In 2010, a referral was made because of an altercation between Mother and her then-teenaged son, Brian. Brian did not want to attend school and called Mother a "F---ing Bitch" when she took him back to school. Mother slapped him once in the mouth and when he continued to talk back, she punched him in the mouth. Although she denied she was using illicit drugs at the time, Mother tested positive for drugs and was incarcerated for possession of methamphetamine. The court case was opened from November 3, 2010 to May 5, 2011.

¹ The court found Father to be the presumed father of Angelina, who is not Father's biological child.

When Damian was born in 2012, he tested positive for amphetamine and methamphetamine. Mother claimed she had been clean for a year and a half, but she relapsed. At the time, Angelina was already a dependent of the court because of Mother's substance abuse. That court case was opened from December 24, 2012 to October 1, 2013.

Mother was arrested in connection with a domestic violence incident in 2015. In 2016, Mother and Father engaged in a violent altercation in the presence of Alayna, Junior, and Angelina. At the time, Alayna was less than a year old. Father became upset because Alayna was crying, and he blamed Mother for failing to control the children. Father threw a box of baby wipes at Mother, which hit her in the face. He also hit her on the shoulder with an electrical cord. Mother used the electrical cord to hit him back. Father then choked Mother, pressing her against the couch for one or two seconds, until Mother managed to get him to release his hold by clawing and scratching him. Mother reported there were other domestic violence incidents in the past. Father was arrested in connection with this incident but was released with no charges filed. A voluntary family maintenance contract was put in place from March 23, 2016 to February 7, 2017.

The Present Dependency Proceeding

In 2017, Celine tested positive for methamphetamine at birth. She exhibited symptoms of withdrawal, including vomiting and mottling, at the hospital. A referral was made to the Los Angeles County Department of Child and Family Services (DCFS). Mother admitted to the children's social worker she smoked crystal methamphetamine for three days during the week prior to Celine's birth. She said she found the drugs in her

storage facility and that she could not resist the temptation. Nevertheless, she claimed to have been clean for the previous four years. She denied there were any drugs at home and assured the social worker she had already been in contact with her previous therapist to address the issue.

Father told the children's social worker that Mother is a good and caring parent who had not been using drugs but had a relapse. He stated she had been drug free for over three years and they have a good family support system. Father explained Mother had been sexually molested when she was a child and she only relapsed because she recently encountered the perpetrator. He believed Mother could stay clean, but needed coping skills to deal with her trauma.

The children's social worker interviewed Angelina, who reported she had seen Mother smoking, but did not know what she was smoking. She also reported Mother was "always sleeping." The counselor at Angelina's school reported Angelina did not regularly attend school last year; she was absent over 30 days and was usually late. The parents failed to sign a contract to ensure she attended school.

The children's social worker described the family home as appropriate, clean, and organized. Junior and Alayna were observed to be healthy, and exhibited no evidence of abuse. The children's pediatrician reported the parents were caring and responsive to the needs of the children. She believed the parents provided the children with a stable home and the children should not be detained.

Father and Mother were given a random drug test on September 12, 2017. Mother tested positive for opioids, which had been prescribed by her doctor after her C-section. Both of

their tests were otherwise negative for drugs or alcohol. Mother again had a negative toxicology report on October 3, 2017.

A petition under Welfare and Institutions Code, section 300, subdivision (b)², was filed as to all four children. Count b-1 alleged Celine was born with methamphetamine in her system because of Mother's use of illicit drugs, which endangered Celine's health and safety. Count b-2 alleged Mother had a history of illicit drug use and is a current user of amphetamine or methamphetamine and an abuser of prescription medication, which renders her incapable of providing regular care and supervision to the children, among other allegations regarding Mother's drug use.

It was further alleged in count b-2 that Father "knew, or reasonably should have known, of the mother's illicit drug use and failed to protect the children in that the father allowed the mother to reside in the children's home and have unlimited access to the children The children are of such young age requiring constant care and supervision and the mother's illicit drug use interferes with providing regular care and supervision of the children. The mother's illicit drug use, and the [] father's failure to protect the children, endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, danger and failure to protect."

At the detention hearing, the juvenile court ordered the children removed from Mother and released to the home of Father. Mother moved in with her sister.

² All further section references are to the Welfare and Institutions Code.

In a subsequent interview with DCFS, Mother again denied using drugs during the pregnancy except for using methamphetamine on three consecutive days, one week before giving birth. Mother explained her brother-in-law molested her from the time she was eight years old until she was 10 years old. Mother said her mother did not want to hear about the molestation when she tried to tell her. Mother never addressed the molestation in therapy. She relapsed after she encountered her brother-in-law at a family gathering. She said she found methamphetamine at her storage unit the day after the encounter and could not resist. She knew she made a mistake and did not intend to continue using drugs. She stated that the baby was doing well.

Father denied being an enabler, asserting that he was not there and did not know there was methamphetamine in the storage unit. However, he stated, "When I came back, she was sleeping a lot, I had an inclination, she slept for two days." He also observed that the baby was healthy with no symptoms. He believed Mother was a good mother, but that she needed to "do better with the triggers." He knew of Mother's addiction and past criminal history. He asserted he knew the signs of drug abuse, but he never observed Mother to be under the influence during the pregnancy; he would have made her go back to therapy if she used drugs. Father claimed the prior domestic violence incident was the result of stress caused by the death of two of his friends.

The children's social worker observed the children to be well cared for and did not appear to have any signs of abuse or neglect, including Celine, who was sleeping in a crib with age appropriate items. The children's pediatrician provided a letter

stating she had known Mother and Father for over four years. She believed they were good parents who brought the children to see the doctor for routine exams and sick visits as needed. She said they were able to describe their concerns in detail and provided proper medical care at home when the children were sick. The doctor noted, in particular, that Father “shows great responsibility and accountability when it comes to his children.”

Mother’s therapist confirmed Mother had started individual therapy to address “the underlying needs that trigger the need to resort to the use of substance abuse.” The therapist explained, “[i]t is my experience that when you deal with a substance abuse issue, the mental health part needs to be addressed, as the client needs to learn healthy coping skills to deal with the triggers. If a client only addresses the substance abuse, without exploring the core of the problem, there’s a high probability the client would have a relapse. Therefore, we will be exploring the core of the problem and identifying the triggers to prevent a future relapse.”

In the jurisdiction/disposition report DCFS acknowledged, “mother’s extent of drug use is unknown.” But, it concluded, “father appears to minimize mother’s drug use and appears he is making excuses for mother. It appears that father is trying to control the situation in order to keep the family intact; however, he does not appear to recognize that mother’s problems are much deeper and mother requires more serious intervention in order to remain sober and drug free.”

In a last-minute information submitted prior to the jurisdiction hearing, DCFS reported that Mother had had no visits with the children. Mother and Father had failed to ask other relatives to become monitors for visitation and refused the

social worker's offer to monitor the visits. In addition, Mother enrolled in a drug program at the Valley Women Center.

At the contested jurisdiction and disposition hearing, Father argued that he should be stricken from count b-2 on the ground DCFS had failed to meet its burden to show he knew or should have known of Mother's methamphetamine use. He asserted he was not even in the state at the time Mother used drugs and that she was not under the influence of the drug when she was with Father or the children.

The children's counsel urged the court to sustain the allegations as pled, except for Mother's positive toxicology results for opioids since those were prescribed. The children's counsel argued Father knew of Mother's addiction and thought it strange that she was sleeping for two days, yet did nothing. Counsel further argued that Father now knows about Mother's relapse but continues to minimize the issue by asserting she is a good mom and just made one mistake. Counsel noted Father also missed multiple meetings with the social worker and complained about the social worker and children's counsel's interviews with Angelina. Counsel for DCFS agreed with the children's counsel and further argued that Father's statement—"Mother was sleeping a lot. I had an inclination. She slept for two days."—was sufficient evidence that he knew or should have known about her drug use.

The juvenile court sustained the b-1 and b-2 counts, but struck the allegation that Mother was "an abuser of prescription medicine" and "on 9/11 she tested positive for opiates and hydrocodone." The juvenile court further struck the allegation that Father "knew" of Mother's drug use, but found that Father should have known. The court commented, "I think there is a lot

of minimizing what's going on and just ignoring what's right in front of you, but I also think he loves his children and I don't think anybody's going to ask for the kids to be removed."

The juvenile court expressed its concern that "Father needs to understand and he needs to do Al Anon to understand the seriousness of the problem because I still think he is minimizing. . . ."

Father then addressed the court, arguing, "I wasn't even in the state when this particular thing took place, and I'm not in denial about anything my wife is doing and I know she has a problem, but what bothers me is that before D.C.F.S. got involved, my wife was checked into therapy on her own accord . . . and that don't count for nothing." Father then complained about Angelina being informed of Mother's drug use by the social worker. After Father's outburst, the juvenile court admonished Father: "What I expect when you're married to somebody you know has used drugs and you see them sleeping for two days in a row without any explanation, that it at least cues something in your mind that maybe something is wrong and that you have to look out for the kids. That's why I want you to go to the classes and that's what I want you to learn about and not come in here and complain about the social workers every day."

The juvenile court placed the children in the home of Father, but denied his request to allow Mother to live in the home. Mother was granted monitored visits outside of the home, and ordered to a full time drug program with aftercare and random weekly testing as well as individual counseling. Father was ordered to complete participate in an Al-Anon program and was prohibited from monitoring Mother's visits.

Father and Mother timely appealed.

DISCUSSION

I. Mother's Appeal

Mother's appointed counsel filed an opening brief in accordance with the procedures outlined in *In re Phoenix H.*, *supra*, 47 Cal.4th 835. We notified Mother by letter dated April 20, 2018, that she could submit any issues she wished us to consider. Mother did not respond to our letter. Because no colorable claim of reversible error or other legal defect has been raised for review, Mother's appeal is dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952; *In re Phoenix H.*, *supra*, 47 Cal.4th 835.)

II. Father's Appeal

A. We Exercise Our Discretion to Reach the Merits of Father's Appeal

Before we address the merits of Father's appeal, we must consider the threshold matter of whether Father's appeal is justiciable.³ Here, Father only challenges the jurisdictional allegations sustained as to him. As Mother has presented no arguments on appeal, the allegations as to her remain.

"It is commonly said that the juvenile court takes jurisdiction over children, not parents. . . . The court asserts jurisdiction with respect to a child when one of the statutory prerequisites listed in section 300 has been demonstrated. [Citation.] The acquisition of personal jurisdiction over the parents through proper notice follows as a consequence of the court's assertion of dependency jurisdiction over their child. [Citation.] [¶] As a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to

³ Respondent does not address the mootness issue, although it was raised by Father in his opening brief.

assert jurisdiction over the child. [Citations.]” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491, fn. omitted.)

In other words, any decision we might render on the allegations involving Father will not result in a reversal of the juvenile court’s order asserting jurisdiction over the children because jurisdiction is triggered by Mother’s conduct. “ ‘An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.’ ” (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498 [citation omitted].)

Father contends his appeal is not moot because the findings against him could prejudice him in future dependency proceedings and lead to the loss of parental rights. He further asserts the jurisdictional findings form the basis for the adverse dispositional orders in the present proceeding, requiring him to participate in Al-Anon, forbidding him to monitor visits, and prohibiting visits from occurring in the home. (*In re D.M.* (2015) 242 Cal.App.4th 634, 638–639.) We agree and thus, consider the merits of his appeal. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

B. Substantial Evidence Supports the Juvenile Court’s Findings

Father contends there was insufficient evidence to support a finding he “should have known” about Mother’s drug use and as a result, he failed to protect the children. He further contends the dispositional orders must be reversed because they are based on the purportedly unsupported jurisdictional findings. We find substantial evidence supports the jurisdictional findings and the dispositional orders are proper.

1. Standard of Review

A child comes within the jurisdiction of the juvenile court if “[t]he 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” (§ 300, subd. (b).) DCFS has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300. (§ 355, subd. (a); see *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.)

“ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ [Citation.]” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)’ (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.)” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

2. Analysis

Father asserts he was not present when Mother had her relapse and she failed to exhibit symptoms of methamphetamine

use when he returned. He claims he only noticed she slept for two days, from which it could be inferred that she was tired because she was pregnant or because she had been taking care of the children without him. However, the record shows the juvenile court did not draw the same inferences from Mother's behavior as Father contends it should have. We decline to re-evaluate the reasonable inferences drawn by the trial court. (*In re I.J.*, *supra*, 56 Cal.4th at p. 924.)

At the end of the parties' arguments and after consideration of the evidence, the juvenile court found Father did not know Mother relapsed. However, it found Father should have known about Mother's drug use from her past drug use and current odd behavior. Since Father knew Mother was an addict and knew the signs of drug abuse, the court reasoned it was unusual that Father did not think Mother had relapsed when she slept for two days. Indeed, seven-year-old Angelina noticed that Mother was "always sleeping." We agree that Mother's odd behavior, noted by both Angelina and Father, along with her extensive history of substance abuse, was substantial evidence that Father should have known Mother relapsed.

In any event, there is substantial evidence to support a finding that Father should have known of the seriousness of the problem, but failed to understand it and thus, failed to protect. For example, Father believed that only therapy was needed to address Mother's relapse, not a drug treatment program. To the contrary, Mother's therapist stated that in addition to exploring mental health issues, it is important to address the substance abuse, presumably through a drug treatment program.

Father minimized the problem by emphasizing how well Celine seemed to be doing without acknowledging the dangers she faced by being born with methamphetamine in her system. He described Mother as a “great mom” and dismissed Mother’s drug use on three consecutive days right before she gave birth as “bad judgment.” Coupled with Mother’s history of drug abuse, which resulted in years of dependency proceedings and incarceration, Father’s failure to admit the extent of the problem supports a finding that the children are at substantial risk of harm from Father’s failure to protect.

The jurisdictional findings as to Father are supported by substantial evidence. Accordingly, we also find the dispositional orders involving Father were proper.

DISPOSITION

Mother’s appeal is dismissed. The challenged jurisdictional and dispositional orders are affirmed. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1489 [dismissal of an appeal operates as an affirmance of the underlying judgment or order].)

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.