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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re D.G., a Person Coming
Under the Juvenile Court Law.

B296051

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

(Los Angeles County
Super. Ct.
No. 18CCJP06734A)

Plaintiff and Respondent,

v.

ALBERT M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Brett Bianco, Judge. Affirmed.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

Albert M. (father) appeals from the orders of the juvenile court taking jurisdiction over his four-year-old daughter D.G. (Welf. & Inst. Code,¹ § 300, subds. (b)(1) & (j)) and removing her from his custody (§ 361.5, subd. (c)). We affirm.

BACKGROUND

I. Mother and father have both had children in the dependency system.

Mother lost parental rights to two children in Sonoma County in 2004 because of her substance abuse and extreme violence.

Mother lost physical custody of a third child in 2012 on a series of sustained petitions recounting domestic violence in the child's presence; mother's striking and kicking the child, mother's lengthy history of alcohol, cocaine, and methamphetamine abuse; and her mental and emotional problems, including self-mutilation.

Mother's fourth child became a dependent in 2017 after he was born with a positive toxicology screen for amphetamines. This time, the juvenile court bypassed reunification services for mother because her whereabouts were unknown, and the court had already terminated reunification services or parental rights to her older children because she failed to reunify with them.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

D.G. was a dependent of the juvenile court three times before the instant case. First, in 2013, the San Bernardino County Department of Children and Family Services filed a petition on behalf of two-week-old D.G. alleging mother's history of substance abuse, mother's and father's histories with mental illness and domestic violence, and father's neglect. The juvenile court dismissed the petition and granted mother full custody upon participation and completion of services.

A second petition, filed in 2015, alleged the same facts of mother's and father's mental illness, violence and abuse, and mother's history with the juvenile courts of both Sonoma and Los Angeles Counties. This petition added that mother physically abused D.G. by biting her, striking her in the mouth with a shoe, attempting to exit a moving vehicle with D.G. in her arms, and repeatedly dropping the child in the stroller approximately four feet from the ground in anger, leading to mother's 2015 conviction of cruelty to a child. The dependency was transferred to Los Angeles County, where the juvenile court ordered D.G. placed with father in November 2016.

D.G.'s third dependency occurred less than a year later in September 2017. The Los Angeles County Department of Children and Family Services (DCFS) learned that father was hospitalized in critical condition and so it created a temporary safety plan under which D.G. would remain in the custody of her adult sister, C.M. Eight days later, C.M. told D.M.'s previous foster parents, who had custody of D.G.'s half-brother,² that C.M. was struggling with depression and "currently using methamphetamine." C.M. asked the foster parents to take D.G.

² Neither mother nor any of D.G.'s half-siblings is a party to this appeal.

DCFS detained the child because father was unable to provide her with ongoing care. The juvenile court returned D.G. to father in March 2018.

DCFS remained concerned that father was unable to control D.G. The agency observed father screaming at D.G. and warning the child not to talk to DCFS because the social worker is “evil and wants to take you away from me. [The social worker] wants to snatch you from here and take you somewhere to get hurt or abused.” The social worker found that D.G. is extremely bright and understood father, and so she refused to speak to the social worker.

II. The instant petition

Just one month later, DCFS received a referral from a staff member of a clinic where father and mother had taken D.G. to obtain a doctor’s note clearing her of lice. The caller stated that father was being emotionally and physically abusive to the child, and was rude, combative, and abusive to staff. He appeared to have anger issues and to lack impulse control. He also refused to cooperate with the clinic. D.G. was causing a commotion by screaming and running around. Father screamed at the child to “shut your mouth! You better shut your mouth or you know what’s coming.” D.G. said “save me mommy, save me,” to which father responded, “she can’t save you.” From another room, the caller heard a loud slap and then saw D.G. holding her left cheek. Asked whether everything was okay, father sported a “large grin” and replied that everything was “just fine.” However, the child’s cheek was “clearly red.” Staff noticed mother did not protect the child. She appeared developmentally delayed, had a flat affect and facial dysmorphism.

In response to the referral, the social worker made an unannounced visit to the family. Mother answered the door in her underwear and stated that father was asleep. Father came to the door, visibly upset. Claiming he did not slap D.G., father refused to answer the social worker's questions, threatening instead to take the matter to court. Two police officers interviewed D.G. and found no observable marks or bruises. One officer told the social worker that D.G. did not disclose anything, but he had the impression she was reluctant to speak.

Father explained that mother had had a stroke and he did not want her left on the street or on Skid Row. Father was trying to change the family law order to allow mother to parent D.G.

Father told D.G.'s school that he wanted mother "to be involved." D.G.'s teacher understood that father planned to have mother assume drop-off and pick-up duties when DCFS's involvement with the family ended.

In October 2018, the social worker, along with four police officers, went to the home to remove D.G. C.M. answered the door with D.G. in her arms. C.M. became angry. She refused to give D.G. to the officers and proceeded to yell at the police throughout the removal. Father claimed that the judge who had released D.G. to him told him "he could do what he needed to help" mother. Mother found D.G.'s shoes and brought them to the door. Upon learning that D.G. could remain in the house if mother left, mother became upset.

DCFS concluded that father had put D.G. at risk by exercising poor judgment. Father slapped the child, demonstrating he could not discipline her in a more positive and supportive way. He gave mother unlimited access to D.G. in direct violation of court orders. He advocated and cared for

mother by allowing her into his home after her stroke, and by planning to have mother parent D.G. While he was hospitalized, father inappropriately left D.G. in the care of C.M. who had problems with drug abuse and mental illness. It was not possible to place the child with C.M. again because, in addition to her drug abuse, C.M. was combative and made regular contact with D.G. difficult. And, father has his own history with child protective services.

DCFS filed the instant petition alleging that father “created a detrimental and endangering home environment in that the father allowed the mother . . . who the father knew has an extensive unresolved substance abuse history including methamphetamine, amphetamine and marijuana, has pervasive diagnosed mental illness and has a history of domestic violence with the father to reside in the child[’s] home and have unlimited access to the child despite a family law order that the mother have monitored contact with the child.” The petition alleges that D.M.’s four half-siblings received permanent placement services because of mother’s abuse and neglect. The petition further alleges that “father allowed the child’s adult sibling, . . . who is a current user of methamphetamine to frequent the child’s home and have unlimited access to the child.”

III. The adjudication

In January 2019, father told the social worker that he did not want to participate in any services because he did not do anything wrong. He explained that he took mother into his home because the hospital was going to release her to Skid Row. Told that DCFS was involved because he had allowed mother to have unmonitored contact with D.M, father replied that C.M. would “help with the visits.” By January 2019, mother had moved out

of father's house and he claimed not to know where she was, except that she was in a sober living facility. DCFS recommended no reunification services for father, and asked the juvenile court to set a permanent planning hearing.

DCFS submitted two last minute informations dated the day of the adjudication hearing. According to the informations, DCFS was concerned that father would continue to allow D.G. to have contact with mother. The recovery center where mother stayed after her stroke reported that mother had been paralyzed but could use her limbs and her speech was clear. The social worker spoke to mother's doctor in January 2019. He related that mother was brought into the hospital from a park where she had overdosed on numerous illicit substances. She was paralyzed on her left side. However, by the time she left the hospital, "she was greatly improved. She had regained a lot of movement and was ambulatory. She improved significantly and could speak." He added that mother "had not recovered fully, but she had motor skills and had meaningful conversations." Attached to the informations were mother's medical records, and a drug test result from the recovery center showing that mother was clean of drugs on December 11, 2018.

At the adjudication hearing, the juvenile court asked whether there were any objections to its consideration of DCFS's evidence. Father's attorney replied, "Yes, your honor. I believe some of the [informations] have mother's medical records which I do not know are in compliance with [the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 201 et seq.)] rules." Noting the objection, the court admitted the documents. It explained that while Health Insurance Portability and Accountability Act of 1996 (HIPAA) would affect whether the

records were appropriately filed or redacted, it would not affect their admissibility. However, the court added that it did not read “anything related to mother’s medical report,” as it was irrelevant.

The juvenile court disagreed that father had purely compassionate reasons for allowing mother into his home. The court found father could have demonstrated his compassion for mother without putting D.G. at risk. The court sustained the petition and removed D.G. from her parents’ custody. The court ordered father to undergo a parenting class for special needs children, and individual counseling to address case issues, including anger management. It awarded father monitored visitation three times a week for three hours each. Father appealed.

DISCUSSION

I. The jurisdiction order was not error.

Subdivision (b)(1) of section 300 authorizes dependency jurisdiction over a child 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.” DCFS has the burden under this statute to show three elements “by a preponderance of the evidence: (1) neglectful conduct, failure, or inability by the parent; (2) causation; and (3) serious physical harm or illness or a substantial risk of serious physical harm or illness.” (*In re L.W.* (2019) 32 Cal.App.5th 840, 848.) “The third element includes a showing that the requisite risk of harm still exists at the time of the jurisdictional hearing.” (*In re A.R.* (2014) 228 Cal.App.4th 1146, 1151.) We review the entire record and,

resolving all conflicts in favor of DCFS and after drawing all reasonable inferences in support of the judgment, must determine whether the findings are supported by substantial evidence. (*Id.* at p. 1152.)

Acknowledging that allowing mother to reside in his house was “contrary to the existing custody order,” father argues that he did not “conclusively” place D.G. at substantial risk of serious physical harm, because, as the result of her stroke, there was no evidence that mother engaged in violent behavior or illicit drug use.

DCFS carried its burden. Father directly violated court orders by allowing mother, who has repeatedly intentionally physically harmed D.G., unfettered access to the child. Despite father’s argument that mother’s stroke prevents her from hurting D.G., her doctor reported in January 2019 that mother had significantly improved, she regained motor skills, was ambulatory, and could have meaningful conversations. Mother was mobile enough to come to the door when the social worker visited. Mother brought D.G. her shoes when DCFS removed the child from father’s custody, an interesting fact given the San Bernardino County juvenile court had sustained a petition in 2015 alleging mother had *hit the child in the mouth with a shoe*. Father planned to have mother assume pick-up and drop-off at school indicating he found her sufficiently capable of taking on that task. Furthermore, mother failed to protect D.G. when father slapped the child at the clinic. Hence, mother continues to pose a risk to the child. Father justifies his choice to expose D.G. to mother by claiming mother would otherwise be homeless, notwithstanding mother had places to go: a rehabilitation center where she went after her stroke, or a sober living facility where

she went after leaving father's house. Worse, father fails to appreciate the danger mother presents to the child. Father told school officials that he wanted mother more involved and told DCFS he wanted mother to be a parent to D.G., notwithstanding mother had failed to reunify and hence lost custody of *five* children because of her neglect, abuse, and cruelty. More than exposing D.G. to mother, however, father placed D.G. at risk by having C.M., who is struggling with her own drug abuse, watch the child. Irrespective of whether mother continues to abuse drugs, father's own neglect places the child at substantial risk of physical harm.

Father argues that D.G. "has not suffered actual serious physical harm or illness as a result of . . . allowing [mother] to reside in the home." However, "section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*' (§ 300.2, italics added.) 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.'" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Father contends that when assessing risk to D.G., the juvenile court "should have read and considered" mother's medical records attached to DCFS's informations and admitted

into evidence. He argues that the records were relevant because they addressed mother's mental and physical functioning.

We will not disturb the juvenile court's evidentiary rulings absent a showing of manifest abuse of discretion. (*In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1249.) The medical records were admissible. HIPAA allows medical providers to disclose protected health information to governmental agencies authorized to receive child abuse or neglect reports, irrespective of a patient's permission or objection. (45 C.F.R. § 164.512(b)(ii) (2019).) Although the medical records were admissible, the court's decision not to review them was based on its conclusion that they were not relevant. Relevant evidence is evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)

The juvenile court did not abuse its discretion. Nearly half of the 56 pages of medical records are irrelevant metabolic panel results. The remaining records—consisting of one page of blood-test results and 29 pages of general medical notes—date from August and September 2018 *before* mother left the hospital, and hence are also irrelevant. Without considering the stale medical records attached to the informations, the record contains ample evidence, including a telephone call with mother's doctor, of mother's capabilities at the time of the jurisdiction hearing. The juvenile court did not abuse its discretion in disregarding the medical records.³

³ As jurisdiction was proper based on count b-1, we need not consider father's challenge to count j-1. (See *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

II. The removal order was not error.

A dependent child may not be taken from the physical custody of a parent unless the court finds by clear and convincing evidence that there is or would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and that there are no reasonable means to protect the child's physical health without removing that child. (§ 361, subd. (c)(1).) The focus of the statute is on averting harm to the child. Hence, the parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. (*In re D.B.* (2018) 26 Cal.App.5th 320, 328.)

Dispositional findings are reviewed for substantial evidence. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders. (*In re D.B.*, *supra*, 26 Cal.App.5th at pp. 328–329.) “The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home.’” (*Id.* at p. 332.) Additionally, “the juvenile court may consider the parent’s past conduct and current circumstances, and the parent’s response to the conditions that gave rise to juvenile court intervention.” (*Ibid.*)

Here, the juvenile court sustained the petition in its entirety, providing prima facie evidence that D.G. is unsafe in father’s custody. It is of no consequence that mother was not living in the house at the time of the disposition hearing. Given father preferred caring for mother over providing safety for D.G., and given his desire for mother to be in D.G.’s life without ever participating in services, there is no guarantee he will not prevent mother from returning to his home. Father, who insists

he has done nothing wrong and who gleefully hit the child, refuses to recognize that the events triggering the juvenile court's intervention posed a risk to her. "One cannot correct a problem one fails to acknowledge." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

Father also contends there were reasonable means to prevent harm to D.G. short of removing her from his custody. He argues that staff at D.G.'s school stated father was open to recommendations. But, father was particularly resistant to DCFS's recommendations. He would only talk to DCFS in the presence of an attorney. He declined to take parenting classes or to undergo counseling *because, he claimed, he had done nothing wrong*. Father suggests that the juvenile court could fashion orders that D.G. could not be left unsupervised with mother or C.M. But, orders that mother could only have very limited supervised contact with D.G. already existed and father flouted them. There was simply no reasonable means of protecting D.G. short of removing her from father.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.