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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ANGEL R., a Person Coming Under
the Juvenile Court Law.

B250424

(Los Angeles County
Super. Ct. No. CK90836)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ESTELA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Mark A. Borenstein, Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

Estela M. appeals from the juvenile court's findings and order declaring her then-three-month-old son, Angel R., a dependent child of the court after sustaining a petition alleging Estela had a history of substance abuse and was a current abuser of alcohol that rendered her incapable of providing regular care and supervision of the child and had physically abused Angel's eight-year-old sibling. Estela contends the evidence is insufficient to support a finding of jurisdiction under either Welfare and Institutions Code section 300, subdivisions (b) (neglect/failure to protect) or (j) (abuse of sibling).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 21, 2011—approximately a year prior to Angel's birth—the juvenile court sustained allegations under section 300, subdivisions (a) (physical abuse), (b) and (j) that Estela had inappropriately disciplined her young daughter Matilda by hitting her with a belt and hanger and pulling her hair, that Estela was a current abuser of alcohol to such a degree as to periodically interfere with her ability to provide appropriate supervision and care for Matilda and her other daughter, Crystal, and that Estela created a detrimental home environment for the two children by engaging in violent altercations in their presence with their maternal grandfather, a male companion and the children's father. The court declared Matilda (then eight and one-half years old) and Crystal (then 10 years old) dependents of the court, directed they be suitably placed in foster care and ordered family reunification services for Estela including a full drug/alcohol abuse program and individual counseling to address substance abuse, domestic violence and child protection.

On May 10, 2013 the Los Angeles County Department of Children and Family Services (Department) filed a dependency petition on behalf of two-month-old Angel under section 300, subdivisions (a), (b) and (j), alleging Estela's prior physical abuse of Matilda created a serious risk of substantial physical harm for the infant and her history of substance abuse, including a conviction for driving under the influence of alcohol, and

¹ Statutory references are to the Welfare and Institutions Code.

current abuse of alcohol rendered her incapable of providing regular care and supervision of Angel.

Prior to filing the petition (and while Estela was receiving reunification services in connection with Matilda and Crystal's dependency proceedings) a Department social worker made an unannounced home visit to Estela's apartment, which she shared with her roommate Julie. The apartment was messy; there was little food, no crib and very few baby supplies. Estela told the social worker Julie cared for Angel when Estela was attending her programs. A second home visit was made the following day after a neighbor reported drug and alcohol use at the apartment. Although denying she had used drugs, Estela agreed to temporary foster care for Angel while she tested for alcohol consumption and obtained a crib and other baby supplies, a stove and refrigerator. The social worker scheduled a Team Decision Making meeting and referred Estela to family preservation services.

Estela failed to appear for the Team Decision Making meeting and refused to commit to a new date although she had been advised the meeting was necessary to generate a case plan and provide her with financial assistance. She also failed to make the necessary contacts or respond to the agency assigned to offer her family preservation services. Estela missed two drug tests after Angel was voluntarily placed in foster care; she had six negative tests but missed numerous others in the months preceding the Department's intervention on behalf of Angel. Her visits with Angel were inconsistent.

Angel was still in foster care at the time of his detention hearing. On May 10, 2013 the court ordered Angel detained and permitted Estela monitored visitation. The jurisdiction/disposition hearing was held three weeks later. The court sustained the subdivision (b) count alleging a risk of physical harm to Angel due to Estela's history of substance abuse and current abuse of alcohol. The court dismissed the physical abuse counts under section 300 subdivisions (a) and (b), finding the Department had not met its burden of proof, but sustained the same allegation under section 300, subdivision (j). The court removed Angel from Estela's custody, ordered reunification services and monitored

visitation. Estela was ordered to complete six drug tests and, if she tested positive or missed a test, to complete a full drug program with random testing. The court authorized short unmonitored day visits after Estela completed six consecutive negative drug tests.²

Estela filed a timely notice of appeal.

DISCUSSION

1. *The Governing Statute and Standard of Review*

The purpose of section 300 “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; see *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) Section 300, subdivision (b), allows a child to be adjudged a dependent of the juvenile court when “[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 or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” Section 300, subdivision (j), authorizes dependency jurisdiction when a child’s sibling has been abused or neglected as defined in subdivisions (a), (b), (d), (e), or (i), and there is a substantial risk the child will be abused or neglected.

² The six month review hearing (§ 366.21, subd. (e)) was initially scheduled for December 2, 2013, and then continued to February 19, 2014 for a contested hearing. Although not material to our resolution of the issues presented by Estela’s appeal, the minute order from the hearing on February 19, 2014 reflects that the court terminated family reunification services for both Estela and Angel’s father and continued the matter to June 18, 2014 for a selection and implementation hearing (§ 366.26). The court found, “The parents have not consistently and regularly contacted and visited with the minor, . . . have not made significant progress in resolving the problems that led to the minor’s removal from the home, and . . . have not demonstrated the capacity and ability both to complete the objectives of their treatment plan and to provide for the minor’s safety, protection, physical and emotional well-being, and special needs.”

Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*)), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child presently needs the court's protection. (*Ibid.*) A parent's "[p]ast conduct may be probative of current conditions' if there is reason to believe that the conduct will continue." (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.)

In addition, the Legislature has declared, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment." (§ 300.2.) Exercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child is "of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] physical health and safety." (*Rocco M., supra*, 1 Cal.App.4th at p. 824.)

We review the juvenile court's jurisdictional findings and disposition orders for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard "[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible." (*In re David M.* (2005) 134 Cal.App.4th 822, 828; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 763; *In re Savannah M., supra*, 131 Cal.App.4th at p. 1393.)

2. Substantial Evidence Supports the Jurisdiction Finding under Section 300, Subdivision (b)

Estela, through her counsel, concedes she had a serious alcohol problem when Angel's siblings were declared dependents of the juvenile court, but contends at the time of Angel's jurisdiction hearing she no longer had an issue with alcohol abuse that put Angel at risk. In support of this argument she cites to evidence she had completed a six month alcohol and drug program; was actively participating in a second alcohol and drug program and making "significant strides toward sobriety"; and, although acknowledging she had missed a number of drug tests, had tested negative for all substances on those tests she did take.

As found in the earlier dependency proceedings, Estela's alcohol and substance abuse problems were profound. Her excessive drinking occurred regularly in front of her two older children, and she became violent and aggressive when she was drunk. Notwithstanding Estela's efforts to address those problems after Crystal and Matilda were removed from her custody, as sincere and commendable as they may be, there was substantial evidence before the court that she had not yet successfully resolved the issues surrounding her substance abuse. In the 10 months preceding Angel's jurisdiction hearing, Estela failed to drug test more often than she tested; that spotty record included several missed tests after Angel had been detained. The court could reasonably infer the missed tests would have been positive. Moreover, letters from professionals at Estela's drug programs indicated only that she was working on the underlying issues, including anger management, and making some progress; there were no statements that the process had been completed (or was even near completion).

There were also reports from Estela's neighbors that Estela and her friend Julie, who Angel's grandfather had described as encouraging and facilitating Estela's substance abuse, continued to party and drink alcohol until late at night. Even more troubling, in interviews with the Department's social workers Estela exhibited a lack of insight into her prior issues of substance abuse and their relationship to the removal of Angel's sisters from her custody.

This evidence, combined with the prior substance abuse findings, fully supports the court’s finding that Estela had a history of substance abuse and remained a current abuser of alcohol. Because Angel was only three months old at the time of the jurisdiction hearing—a child of “tender years” in the language of *Rocco M.*—“the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767; accord, *Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) Estela did not adequately rebut that evidence.³

DISPOSITION

The juvenile court’s findings and order are affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.

³ Because the sustained allegation under section 300, subdivision (b), brings Angel within the jurisdiction of the juvenile court, we need not decide whether substantial evidence also supports the jurisdiction finding under section 300, subdivision (j). (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 [“[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [“[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence”]; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876 [where one basis for jurisdiction is supported by substantial evidence, court need not consider sufficiency of evidence to support other grounds].)