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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Raymond C., a Person Coming Under
the Juvenile Court Law.

B261340
(Los Angeles County Super. Ct.
No. DK07274)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of the County of Los Angeles, Terry Truong, Commissioner. Dismissed in part and affirmed in part.

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

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Dashiell G. Talbot, Deputy County Counsel, for Plaintiff and Respondent.

J.C. (father) appeals from a judgment declaring his infant son, Raymond C., a minor described by Welfare and Institutions Code section 300, subdivision (b),¹ and removing him from parental custody under section 361, subdivision (c)(1). Father contends the jurisdictional finding and removal order are not supported by substantial evidence. We dismiss the portion of his appeal challenging the court's jurisdictional findings, and affirm the removal order.

FACTUAL AND PROCEDURAL BACKGROUND

This family first came to the attention of the Los Angeles County Department of Children and Family Services (Department) when mother² was admitted to a hospital emergency department after a suicide attempt on August 13, 2014. Raymond was nine months old and mother had learned that father was having an extramarital affair. She made several cuts to her wrist and cut her stomach. Father left with Raymond and called the police when mother texted him photos of the cuts on her stomach. At the hospital, mother admitted to cutting her wrists "last year" as well.

On September 3, 2014, father again called the police, suspecting mother may have overdosed on painkillers. Mother reported she had an abortion after learning her husband's mistress was pregnant, and received a prescription for ibuprofen-600. She acknowledged taking three pills, but said she had thrown away the rest after they accidentally spilled onto the floor. Mother was placed on an involuntary psychiatric hold where she was held for about 24 hours, and then released with a diagnosis of major depressive disorder.

Based in part on mother's multiple suicide attempts over a short period of time, the Department filed a petition on September 9, 2104, alleging Raymond was a minor

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

² Mother has not filed an appeal.

described under section 300, subdivisions (a) and (b). The court ordered Raymond detained in the care of paternal grandfather. The court permitted father to continue residing in the home with paternal grandfather, but ordered monitored visits outside the home for mother.

The Department's jurisdiction/disposition report noted that father did not appear to accept responsibility for his role in mother's emotional distress and its potential impact on Raymond. When interviewed, mother said the family traveled to China in July 2014, and father abandoned her and Raymond after she confronted father about spending time with other women. Father reportedly called his girlfriend, who bought him a ticket back to Los Angeles. After mother's September 2014 hospitalization, father moved in with his girlfriend. Father told a social worker his wife did not meet his sexual needs, so he seeks sexual gratification from other women. In a later interview, he stated he did not understand why the American system makes such a big fuss over the family's issues. He denied Raymond was ever in danger and said, "I went to one parenting class and stopped going. I don't need to take these classes at all. If I need help or protection, I just call the police."

In a Last Minute Information report, the Department raised additional concerns about father. Paternal grandfather reported that father had left for China on October 2, 2014, changed his cell phone number, and did not provide paternal grandfather with any information regarding when he would be back or how to contact him. Mother said she had received text messages from father saying he is not returning to the United States. In the meantime, mother was participating in parenting classes and individual counseling. She obtained full time employment and was motivated to provide a stable home environment for Raymond. The Department observed that Raymond was very comfortable with his paternal grandfather, but is also very attached to mother.

Father did not appear and mother's counsel was out sick for the scheduled October 22, 2014 jurisdiction hearing, so the court continued the hearing to October 28, 2014, when all parties appeared with counsel. Based on the Department's reports, mother's stipulated testimony, and father's testimony, the court struck identical allegations under

section 300, subdivisions (a) and (b) relating to a physical altercation between mother and father, and sustained an amended allegation under subdivision (b) that mother's mental and emotional problems, including self-mutilation behavior, and father's failure to protect the child, placed the child at risk of harm.

On disposition, the court ordered that Raymond would remain removed from parental custody, finding by clear and convincing evidence under section 361, subdivision (c), there would be a substantial risk if he were returned to his parents. The court ordered monitored visits and reunification services for the parents. Father filed a timely notice of appeal.

DISCUSSION

Jurisdiction

Father contends the jurisdictional findings involving his conduct are not supported by substantial evidence. The Department contends father fails to raise a justiciable issue because he does not challenge the court's assertion of jurisdiction based on mother's conduct. Because mother has not appealed the court's jurisdictional finding, we decline to exercise our discretion to address whether the court erred and we do not reach the merits of father's challenge to the court's jurisdictional findings. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490-1492.)³

“[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 [him] within one

³ Father incorrectly claims in his reply brief that the Department cannot rely on *In re I.A.* because it is “unpublished.” Father's mistake may arise from the Department's inaccurate citation to *In re I.A.* as 201 Cal.App.4th 1481, rather than 201 Cal.App.4th 1484. Mistakes do happen, as shown by father's citation in the reply brief to an unrelated unpublished case bearing the same initials (*In re I.A.* (Nov. 9, 2011, D059786) [nonpub. opn.]) and an outdated rule of court (California Rules of Court, rule 977, which was amended and renumbered as rule 8.1115 in 2007).

of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.’ [Citations.] The child thus remains a dependent of the juvenile court.” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.)

Father did not address the question of justiciability in his opening brief, and he concedes in his reply brief that the court will retain jurisdiction over Raymond based on mother’s conduct, regardless of the outcome on father’s appeal. Father argues this court should exercise its discretion to examine the jurisdictional finding against him because it serves as the basis for the court’s removal order and is prejudicial to father because of possible implications in future custody determinations in this and future cases. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*).) In *Drake M.*, the court determined the difference between father being an “offending” parent versus a “non-offending” parent was enough prejudice to warrant the exercise of discretion. The court reasoned, “Such a distinction may have far reaching implications with respect to future dependency proceedings in this case and father’s parental rights.” (*Id.* at p. 763.) Like father here, the father in *Drake M.* did not challenge jurisdictional findings based on mother’s role, but only challenged the court’s exercise of jurisdiction based on his use of medical marijuana. The child was 14 months old, well fed, and well cared for, and father was employed. The Department reported that father appeared capable of providing for the child’s basic needs, and at disposition, the court had ordered the child to remain placed with father. (*Id.* at pp. 758, 760-762.)

The facts relating to the father in *Drake M.* bear no resemblance to the facts before the court in this case, where there is ample evidence father’s conduct contributed to the issues faced by this family. We do not read *Drake M.*, *supra*, 211 Cal.App.4th at page 763, as holding as a matter of law that the characterization of a parent as “offending” renders any challenge to a jurisdictional finding justiciable. *Drake M.* recognizes that courts retain discretion to review jurisdictional findings, which necessarily means the decision turns on the facts of each individual case. Father’s conduct played a key role in the events leading to mother’s suicide attempts, and his cavalier attitude did not improve

after the Department filed a petition seeking court intervention. Rather, he dismissed any need for parenting classes and considered it sufficient to simply call the police if there was a problem. He also left paternal grandfather to care for Raymond with no information about when he might return from China. The hypothetical potential consequences of the court's jurisdictional finding against father do not persuade us to exercise our discretion to review the court's findings in this case. Even if we were to exercise our discretion, which we do not, the facts described above would unquestionably constitute substantial evidence to support the court's jurisdictional findings.

Removal Order

Father contends there was insufficient evidence to support the dependency court's order removing Raymond from his custody under section 361, subdivision (c)(1). We disagree.

We review a dispositional order removing a child from parental custody for substantial evidence. (*In re D.G.* (2012) 208 Cal.App.4th 1562, 1574.) In other words, “we look to see if substantial evidence, contradicted or uncontradicted, supports [it]. [Citation.] 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[.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Issues of fact and the credibility of witnesses are questions for the trial court. (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 495.) “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.]” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) Thus, the pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Under section 361, subdivision (c)(1), a dependent child may not be removed from a parent unless the dependency court finds by clear and convincing evidence “[t]here is or

would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents . . . physical custody." (§ 361, subd. (c)(1).) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

There is substantial evidence that returning Raymond to father's custody would pose a substantial danger to Raymond's well-being. Father's past conduct displays a cavalier disregard for Raymond's well-being. He denies the need for any parenting classes, leaves the day-to-day care of his son to other caregivers, and then leaves for China without providing any way to contact him or information about when he might return. In light of his absence for more than three weeks, his failure to appear at the original adjudication hearing, and vague texts to his wife about possibly not returning, the court could reasonably conclude that continued removal was warranted.

DISPOSITION

We dismiss father's appeal of the court's jurisdictional findings and affirm the court's order removing Raymond from parental custody.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.