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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re C.R. JR., et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARTHA R.,

Defendant and Appellant.

B280074
(Los Angeles County
Super. Ct. No. DK19910)

APPEAL from orders of the Superior Court of Los
Angeles County, Lisa R. Jaskol, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court
of Appeal, for Defendant and Appellant.

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

Appellant Martha R. (Mother), the mother of C.R., Jr. (C.) and Marilyn R., appeals the juvenile court's jurisdictional order, contending substantial evidence does not support the court's finding that her abuse of marijuana and alcohol posed a substantial risk of serious harm to the children. She also challenges the dispositional order requiring her to drug test and to enroll in a substance abuse program if she tests dirty or misses a test. Mother does not contest the court's other jurisdictional findings -- that substance abuse on the part of the children's presumed father, C.R., Sr. (Father), and the domestic violence between Mother and Father posed a substantial risk of serious harm to the children -- nor dispute that the children will be subject to dependency jurisdiction whatever the outcome of this appeal. However, she contends her reunification plan should not require her to drug test or to potentially participate in a substance abuse program. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Department of Children and Family Service (DCFS) in October 2016, when

C. was two and Marilyn was one.¹ On October 11, Mother and Father were arrested after engaging in a physical altercation. The police report stated that Mother cut Father's thumb with a knife, pushed him down and bit him on the back, while Father punched Mother in the face multiple times, threw her to the ground and struck her in the head with a glass bottle. The report documented the injuries observed by the officers, including bleeding and swelling around Mother's mouth, an abrasion on the back of her head and a laceration on her foot. Photographs showed the cut on Father's thumb and a large welt on his back. The report stated that both were under the influence of alcohol at the time of their arrest. On October 13, Mother pled nolo contendere to one count of domestic violence and was placed on three years probation. She was ordered to enroll in a 52-week domestic violence treatment program and to attend ten Alcoholics Anonymous meetings.

At the time of the altercation, Mother and the children were residing in the home of the maternal grandmother. The children were detained and placed with their maternal aunt. The court permitted Mother to have unmonitored visits.

¹ The family had been the subject of a referral in February 2016, alleging that Mother and Father used marijuana and cocaine, took the children with them to purchase drugs, and were generally neglectful, and that there had been an incident of domestic violence. The referral was closed as unfounded.

Interviewed by the caseworker before the jurisdictional hearing, Mother reported that on the day of their arrest, she and Father had left the children with their paternal grandparents and “went to go smoke weed.” They returned to the grandparents’ home and slept. When they awoke, they began arguing. Mother said she grabbed a knife and “cut [Father]” because he hit her.² The physical altercation, including Mother biting and pushing Father and Father hitting Mother and throwing her to the ground, continued in front of the children. During the altercation, Mother stepped on glass from a window Father had broken. Mother admitted that she regularly smoked marijuana alone and with Father, and that she had used the drug since she was 15.³ She claimed to smoke outside her mother’s home, while the children were inside with their grandmother. She had a medical marijuana certificate dated January 13, 2016 that did not specify any medical condition. She denied using alcohol. Mother was under a restraining order precluding her from contacting Father, and said she had no intention of resuming a relationship with him. By the time of the jurisdictional report, Mother had completed a parenting course and enrolled in a 52-week domestic violence program with an anger management component. She tested positive

² In their statements to police on the day of the incident, both Mother and Father said Mother threatened Father with a knife and cut him before he hit her.

³ Mother was 19 at the time of the detention.

for marijuana on October 17 and November 10, and negative for all substances on November 16 and 21.⁴

The paternal grandfather said Mother and Father were acting “strange and aggressive” and “not right” when they returned to the grandparents’ home prior to the altercation. Their argument began when Mother demanded her car keys and Father told her she was not in “the right state of mind” to leave. The maternal aunt reported hearing through the maternal grandmother that this had not been the first incident of domestic violence. The aunt said that Mother smoked marijuana and that Father was “always . . . strung out.” Maternal relatives reported that Father used marijuana and methamphetamine and stole from his family to support his drug habit. The maternal grandmother believed Mother was giving Father money to support his drug use.

At the December 19, 2016 jurisdictional hearing, counsel for Mother asked the court to strike all allegations of substance abuse as they pertained to her. Counsel pointed out that Mother was having appropriate unmonitored visits, that her most recent tests had been clean, and that there was no evidence her use of marijuana ever endangered the children. Counsel for DCFS and the children urged the court

⁴ Father refused services and failed to submit to drug testing, saying he did not want custody of his children. He is not a party to this appeal.

to sustain the allegations as amended.⁵ Counsel for the children pointed out that they were quite young, and that Mother's substance abuse had apparently contributed to the violence that occurred on October 11.

The court found true that Mother and Father "have a history of engaging in violent altercations in the presence of the children" and that on October 11, 2016, Mother cut Father with a knife, bit his back multiple times and struck his head on the ground, and Father threw a glass bottle at Mother, striking her in the head, punched her in the face multiple times, and threw her on the ground, supporting jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) and (b).⁶ The court further found that Mother had "a substance abuse history including marijuana" and was "a current user of alcohol," and that Father had "a substance abuse history including marijuana" and was "a current user of methamphetamine and alcohol," rendering both parents "incapable of providing regular care of the children," and supporting jurisdiction under subdivision (b) of section 300.

Mother was ordered to participate in a 52-week domestic violence program, a 12-step program, and

⁵ Prior to making its jurisdictional findings, the court struck an allegation that Mother used methamphetamine. It declined to strike the allegation that Mother abused alcohol.

⁶ Undesignated statutory references are to the Welfare and Institutions Code.

counseling to address substance abuse and domestic violence. At the request of Mother's counsel, and with the acquiescence of counsel for DCFS and the children, the court deleted from the case plan the requirement that Mother immediately participate in a substance abuse program. Instead, she was to continue to drug test, and if any future test was missed or dirty, she would then be required to participate in a program. In addition, the court conditioned Mother's unmonitored visitation with the children on her continuing to test clean. Mother appealed.

DISCUSSION

A. Jurisdictional Finding

Mother contends substantial evidence does not support the trial court's jurisdictional finding that her use of alcohol and marijuana posed a risk to the children. For the reasons discussed, we disagree.

Preliminarily, we address justiciability. There is no dispute that "[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 Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.) Accordingly, where a parent contests a portion of the jurisdictional findings, leaving one or more grounds for

assertion of jurisdiction unchallenged, the appellate court need not address the contested findings. (*In re I.A.*, *supra*, at pp. 1491-1492.) Nonetheless, a reviewing court will generally consider the merits of a parent's appeal that challenges fewer than all the juvenile court's jurisdictional findings when the contested jurisdictional finding "(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation]." (*In re M.W.* (2016) 238 Cal.App.4th 1444, 1452, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Here, the court's finding led it to include in the reunification plan elements Mother finds onerous -- drug testing and completion of a drug program if any tests are missed or dirty. Accordingly, we will address the merits.⁷

⁷ Although we address the court's finding that Mother's substance abuse posed a substantial risk of serious harm to the children, it does not follow that we must review every element of that finding for substantial evidence. Acknowledging the evidence of her regular marijuana use, Mother disputes that substantial evidence supports the court's finding that she abused alcohol. As the court's assertion of jurisdiction and the reunification plan assigned to Mother do not depend on the alcohol abuse finding, we do not specifically address it. We note, however, that the police report stated alcohol was a factor in the couple's physical altercation.

To support assertion of jurisdiction under section 300, subdivision (b) based on substance abuse, the juvenile court must find “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness . . . by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s . . . substance abuse.” The agency bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court’s jurisdiction. (*In re M.R.* (2017) 7 Cal.App.5th 886, 896.) On appeal, “we must uphold the court’s [jurisdictional] findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of [jurisdiction], we determine there is no substantial evidence to support the findings.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

Multiple courts have said that proof of a parent’s use of marijuana alone is insufficient to support jurisdiction. (See, e.g., *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003; *In re David M.* (2005) 134 Cal.App.4th 822, 829-830, disapproved in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346, disapproved.) The evidence must establish that the parent’s use of marijuana created a specific, nonspeculative, substantial risk of serious harm to the child. (*In re David M.*, *supra*, at p. 830; *In re Destiny S.*, *supra*, at pp. 1003-1004; *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 765-766.)

Such harm may be found where a parent's marijuana use has become a persistent and regular habit that causes the parent to neglect his or her children. (See, e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219-1220; *In re Alexis E.*, *supra*, at p. 453; *In re Natalie A.* (2015) 243 Cal.App.4th 178, 185-186; see *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1489 [evidence supported removal of children where mother's excessive use of alcohol led to failure to supervise].) The age of the child involved is a significant factor, and assertion of jurisdiction is particularly warranted where the child of the substance abusing parent 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." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated in part on another ground in *In re R.T.*, *supra*, 3 Cal.5th 622; accord, *In re Drake M.*, *supra*, at p. 767.) The court "determine[s] the degree to which a child is at risk based on an assessment of all the relevant factors in each case" (*id.* at p. 766), and "need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child [citation]." (*In re Christopher R.*, *supra*, at p. 1216; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.)

Mother contends her use of medical marijuana "pursuant to the existing California statutes" does not meet the definition of substance abuse and did not cause a substantial risk of serious physical harm to the children, because no evidence was presented that she "smoke[d]

marijuana around the children” or that “[her] use of . . . marijuana impacted the lives of [C.] or Marilyn.” Mother is mistaken. The evidence established that after getting high on October 11, Mother and Father returned to the home of the paternal grandparents where the children were being cared for. There, in the presence of the children, they engaged in a violent fight in which Mother cut Father with a knife, pushed him down and bit him in the back, while Father repeatedly punched Mother in the face, hurled a glass bottle at her and threw her to the ground. By the time the police arrived, both were covered in injuries. Mother does not dispute that the fight was the product of the couple’s compromised condition. Nor does she dispute that the fight was precipitated by her insistence that she be permitted to drive while under the influence. The evidence also established that Mother used marijuana when she and the children were at the maternal grandmother’s house. While she said she stepped outside to smoke, she did not claim to have left the children in their grandmother’s care until she returned to a sober state. The children are very young and need constant attention and supervision that cannot be provided when the parent responsible for their care is regularly under the influence of an intoxicating substance.

Mother contends her clean tests and the court’s decision to grant unmonitored visitation were proof that no current risk existed. The evidence established that Mother had been using marijuana regularly for four years, having

started at a young age. Two clean drug tests did not compel a finding that she was rehabilitated and could be trusted to stay sober around the children without continued monitoring. The court's jurisdictional finding was supported by substantial evidence.

B. Dispositional Order

Mother contends the court's dispositional order should be reversed to the extent it requires drug testing and a full rehabilitation program if she tests dirty or misses a test. She asserts that the dispositional order was not designed to eliminate the conditions that led to the assertion of jurisdiction because at the time of the jurisdictional hearing, the children were not at substantial risk of serious physical harm in the future due to her abuse of marijuana or alcohol. As we have affirmed the court's jurisdictional finding that the children were at substantial risk due to Mother's substance abuse, we find no basis to reverse its dispositional order.

DISPOSITION

The court's jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.