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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Z.M., a Person Coming Under the Juvenile Court Law.
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B265908

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
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(Los Angeles County
Super. Ct. No. DK10518)

Plaintiff and Respondent,

v.

K.M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Patricia Spear, Judge. Reversed.

Toni Taylor Buck, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

K.M. appeals from the orders of the juvenile court taking jurisdiction over her daughter, Z.M. (Welf. & Inst. Code, § 300, subd. (b).)¹ She contends the evidence does not support the finding that her obsessive compulsive disorder puts the child at substantial risk of serious harm or illness. We agree and reverse the jurisdiction and disposition orders concerning mother.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The family*

In September 2014, mother's therapist, a mandated reporter, notified the Department of Children and Family Services (the Department) that father left his cigarette butts and marijuana within reach of 18-month-old Z.M., who was putting them in her mouth, and that on one occasion, father was unaware and did not react when the child put a piece of glass in her mouth. Mother reported that father had been making threatening statements to her, such as "I hope you kill yourself" and "I hope you die," and that the child was copying father's comments.² Mother and Z.M. left father and moved in with the maternal grandmother in October 2014.

The social worker visited mother and found the child to be appropriately dressed and playing independently with her toys. The social worker observed no evidence of abuse, injury, or neglect. Nor are there developmental or medical concerns about the child.

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

² Father, Jorge M., is not a party to this appeal.

Mother was diagnosed with obsessive-compulsive disorder (OCD) when she was 15 years old but was doing fine until she became “stressed out” by trouble with father. She experienced anxiety and panic attacks. When those thoughts concerned harming Z.M., after the child was born, mother was so scared that she immediately started therapy. Mother never followed through with her thoughts of harm. Her therapist, Kevin R. Foss, MFT, at the OCD Center of Los Angeles, did not prescribe psychotropic medication, but instructed mother to write down her thoughts and fears (scripts), as a form of therapy. Mother also had a packet of resources and treatment assignments and knew to call 911 if necessary.

Foss explained OCD to the Department. With this anxiety disorder, the individual experiences unwanted, intrusive thoughts, feelings, or urges, that create “high anxiety,” which in turn leads to avoidance and compulsive behaviors as a means of relief. The obsessions are by definition abhorrent to the individual who will go to great lengths to ensure that the feared thoughts will not be realized. An individual with “Harm OCD,” “experiences intrusive, unwanted, distressing thoughts of causing harm,” that are inconsistent with the individual’s values, beliefs, and sense of self. Cognitive Behavioral Therapy and Exposure and Response Prevention -- the treatment mother was undergoing -- were the most effective therapies for “Harm OCD.”

Mother stopped therapy in December 2014 when she ceased having negative thoughts. In February 2015, mother reported that she was “‘feeling great and normal’ ” and was no longer suffering any mental health issues. She could always resume treatment if needed.

However, father obtained 40 pages of mother's script and e-mailed them to the Department in April 2015. In those scripts, mother stated such things as, " 'scared to lay and nap with my daughter, afraid of touching pillows around her, fear that I will grab the pillow and start thinking about wanting to smother her. 7/23/14;' " "[s]cared to be alone with my daughter while she sleeps because I am afraid I will smother her.'" Mother also stated " 'My mind suddenly decides that it is a good idea to put my thoughts into action. No matter how hard I try to find within myself something to stop me I can't grab a pillow and before I know it, I am smothering her.'" "Since I can't stop thinking about these thoughts I must somewhere in my mind want to do these horrible things. If I get upset/mad/stressed out with my daughter I might snap/lose control and do something to her."

The Department categorized the child as being at high risk of future abuse or neglect because of father's substance abuse and domestic violence and mother's mental health issues. The ensuing petition alleged father's history of violent and assaultive behavior in the child's presence. Count b3 contained the only allegations concerning mother. Therein, the petition alleged that mother "suffers from Obsessive Compulsive Disorder. On or about 7/23/14, 7/28/14, 9/10/14, 9/12/14, 9/15/14, and 10/13/14, the mother expressed in writing thoughts of harming her child, which caused her to experience extreme discomfort & fear. The mother's mental health issues, without further therapy, endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and danger." (§ 300, subd. (b).)

The juvenile court removed the child from her parents' custody and placed her with her maternal aunt and uncle.

2. *The jurisdiction hearing held on May 19, 2015*

Mother agreed to resume therapy, which had been working. Her therapist opined in April 2015, however, *that mother did not pose a risk of harm to her daughter as the result of her OCD and did not need treatment at that time.*

Foss testified at the contested jurisdiction hearing that six years earlier mother had had thoughts of harming others but had not acted on those thoughts then. He described how the scripts function as part of her treatment. The thoughts that terrify patients the most and cause anxiety are those that patients are least likely to act on. Patients write their fears in order of the amount of distress they produce. As patients are increasingly exposed and habituated to these threatening thoughts, the anxiety and consequential distress that the thoughts provoke diminish. This form of treatment was effective with mother. Her anxiety had decreased over time by continued exposure through her script. The script was proof of mother's compliance with treatment, Foss explained, *not proof of a genuine danger.*

At the time mother left treatment in December 2014, she was "pretty functioning [*sic*]," the therapist testified. Although she had "periodic thoughts of harm," they were not "that triggering," meaning they did not cause her distress and fear. She continued working with the tools she obtained in treatment to manage the symptoms on her own and so Foss felt "pretty . . . comfortable with her leaving group at the time." If she had continued in treatment, it would *not* have been for much longer, he testified. As of April 2015, the therapist felt that the treatment was not necessary for mother, and both he and mother's individual therapist believed that mother posed no risk of harm to Z.M. as the result of her OCD.

The juvenile court sustained the petition on May 19, 2015. The court stated, “I do not trust – although, I indicated that – I think I learned a lot from the testimony, I don’t believe that the group therapy that occurred and the very limited individual therapy – for a couple of sessions . . . were sufficient. . . . I’m concerned about the financial issues having something to do with the conclusion of mother’s therapy [¶] . . . [¶] I just don’t have any doubt at all that the child is at risk of harm.” The court awarded mother monitored visitation as much as could be arranged.

3. *The disposition hearing a month later*

Mother underwent a court-ordered psychological evaluation with Dr. Crespo, to address concerns about mother’s “ ‘OCD [related] threats of harm’ concerning the minor.” (Evid. Code, § 730.) Dr. Crespo reported that mother openly acknowledged her history of OCD-related problems and indicated she sought help when her condition resurfaced when she became a mother and was frightened by the thoughts of harming her child. She developed a fear of pillows, knives, and giving the child a bath. Although she was worried she might act on her fears, she never did act on them. Mother’s scripts were an exercise to reduce her anxiety produced by the thoughts. *That intervention was successful.* Dr. Crespo believed that father was motivated by anger when he shared mother’s scripts with the Department. However, *testing suggested to Dr. Crespo that mother had resolved her OCD-related problems.* Also, mother enjoyed the support of her own mother and sister, with whom she and Z.M. resided, was employed, and was resolved about ending her relationship with father. Dr. Crespo opined that “*the risk the*

mother may pose to the minor due to her history of OCD is rather low.” (Italics added.)

Mother started attending a 10-week parenting class in the spring of 2015 and was scheduled to resume individual therapy. She visited the child every day without incident.

At the disposition hearing held on June 17, 2015, the juvenile court found that the child could be “*very safely maintained in the mother’s home.*” (Italics added.) The court stated that mother was “*a fairly healthy person.* She didn’t appear to have a risk.” (Italics added.) The court returned Z.M. to mother and granted mother sole legal and physical custody of the child and referred the two to family preservation. Mother’s appeal followed. A year later, while this appeal was pending, the court terminated its jurisdiction pursuant to section 364.

CONTENTIONS

Mother contends the juvenile court erred in taking jurisdiction over Z.M. because the record does not show that her OCD endangered Z.M.’s physical health or put her at risk of harm.

DISCUSSION³

1. *Standard of review*

At the jurisdiction hearing, the juvenile court applies the preponderance of the evidence standard to determine whether a child is described by section 300. (§ 355, subd. (a); *In re Isabella F.* (2014) 226 Cal.App.4th 128, 137.) “ ‘ “When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” ’ [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258-1259.) Hence, “[s]ubstantial evidence does not mean ‘any evidence,’ . . . and we ultimately consider whether a reasonable trier of fact would make the

³ The Department moved to dismiss this appeal reasoning that the termination of juvenile court jurisdiction rendered the appeal moot. We denied the motion. We address the merits because, as mother argues, dismissal of the appeal operates as an affirmance of the underlying judgment or order sustaining the petition and there remains a possibility of adverse collateral consequences. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.)

challenged ruling in light of the entire record. [Citation.]” (*In re Isabella F.*, *supra*, at p. 138.)

2. *The record does not support the finding mother posed a substantial risk of harm to Z.M.*

Subdivision (b)(1) of section 300 authorizes dependency jurisdiction if a 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 [the] parent . . . to adequately supervise or protect the child.”

Section 300 requires proof that the child is subject to a statutorily recognized risk of harm *at the time of the adjudication hearing*. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Although the court may consider past events in deciding whether a child is currently in need of the court’s protection (*In re Rocco M.*, *supra*, at p. 824) and although the court need not wait until a child is seriously abused or injured to assume jurisdiction, and may take steps necessary to protect the child (*In re N.M.* (2011) 197 Cal.App.4th 159, 165), there must be a reason to believe that the conduct will continue. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.) That is, the question under section 300 is whether circumstances at the time of the jurisdiction hearing subject the child to the defined risk of harm. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1453.) The conduct alleged in count b3 is mother’s OCD-related thoughts of harming her daughter. The thoughts of harming the child may support jurisdiction but only if there is evidence that, *at the time of the jurisdiction hearing*, this risk is ongoing or likely to continue. (*Ibid.*)

Here, the record shows that at the time of the jurisdiction hearing, mother did not pose a risk of harm to Z.M. because of

her OCD. Three therapists concluded as much: mother's individual therapist: Foss, who repeatedly stated this opinion; and Dr. Crespo. No one testified to the contrary. As Foss explained, the thoughts and fears experienced by an individual with harm OCD are antithetical to the individual's values, beliefs, and sense of self and are the ones that the individual is *least likely to act on*. When mother became anxious and distressed by thoughts of harming others, she sought out therapy, which treatment both Foss and Crespo opined was effective. The scripts that father volunteered to the Department out of anger, while disturbing, are "not proof of [a] genuine danger," but in fact constitute evidence that the intervention was successful and the therapy worked.

The statements of the juvenile court at the May 2015 jurisdiction hearing indicate the court was aware that mother did not pose a danger to her child. The court was concerned that mother's therapy was limited and ended too soon. However, apart from the fact that mother voluntarily resumed therapy, Foss testified that had mother continued with treatment, it would not have been for much longer because she was able to manage the symptoms herself. That is, by the time of the jurisdictional hearing, treatment was unnecessary, Foss testified, thus negating the petition's allegation that without further therapy, Z.M. was at risk of harm. Foss stated: "[B]ased on my experience, [mother] *is not a risk of harming her daughter as a result of her OCD*." (Italics added.) Therefore, there is no evidence, at the time of the jurisdiction hearing, that mother placed the child in any danger.

Not only was the child free from a statutorily recognized risk of harm at the time of the adjudication hearing (*In re*

Savannah M., *supra*, 131 Cal.App.4th at p. 1396), but there was no reason to believe any risk from mother's OCD would arise in the future. (*In re S. O.*, *supra*, 103 Cal.App.4th at p. 461.) Mother had had thoughts of harming others in the past and had never acted on them. Nor did she harm or neglect Z.M. this time. Mother has a history of managing her anxieties by seeking treatment, in 2012 and again in 2015. Mother voluntarily ended her relationship with and moved away from father, the stressor who had triggered her OCD thoughts. Mother and child are living with the maternal grandmother and aunt who are supportive. The child shows no signs of neglect or abuse. Mother is employed. She knows exactly where to seek help for her anxiety if it arises again. Dr. Crespo opined that "*the risk the mother may pose to the minor due to her history of OCD is rather low.*" (Italics added.) The jurisdictional order sustaining count b3 is not supported by the evidence and must be reversed.

The purpose of the dependency system is to protect children who are currently being abused, neglected, or exploited, or who are at risk of that harm. (§ 300.2.) If mother has thoughts of harming her child, they will so frighten her that she will seek help. The Department may also step in and file a petition to protect the child. However, given there is no evidence that mother has caused Z.M. harm, or that the nonexistent harm would continue, sustaining the petition's count b3 was reversible error.

As we have concluded that the jurisdictional order with respect to mother must be reversed, the disposition order concerning mother must also be reversed. (*In re Isabella F.*, *supra*, 226 Cal.App.4th at p. 141.)

DISPOSITION

The jurisdiction order of May 19, 2015 and the disposition order of June 17, 2015 are reversed as to mother only.

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ALDRICH, J.

We concur:

EDMON, P. J.

GOSWAMI, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.