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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re V.L., et al., Persons Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ISRAEL L.,

Defendant and Appellant.

B246463

(Los Angeles County
Super. Ct. No. CK54967)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Veronica McBeth, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owen, Assistant County Counsel,
Stephen D. Watson, Deputy County Counsel, for Respondent.

Israel L. (father) appeals from the order adjudicating his daughters, V.L. and I.L., persons described by Welfare and Institutions Code section 300, subdivision (b). He contends the finding that father failed to protect the children from mother's substance abuse is not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father was 17 or 18 years old when he began using methamphetamine in 2002. By 2003, he was romantically involved with mother and they were using together on a daily basis.¹ Father was charged with willful cruelty to a child based on an incident in which he left mother's children alone in a car while he acted as a lookout for mother as she attempted to steal things from a department store. Mother's and father's relationship ended after just four months when mother went to prison. Over the next several years, father acquired an extensive criminal history, including multiple drug-related convictions. In 2006, father was incarcerated on one of those drug-related offenses. He became sober while in prison and has remained so ever since. For two years after his release from prison, father had no contact with mother. When they reconnected in 2009, father believed mother was no longer using drugs. They got married that same year, after mother gave birth to V.L. On June 5, 2012, mother gave birth to I.L. one month prematurely and with a positive toxicology for methamphetamine, amphetamine and ecstasy. Despite his personal history of substance abuse, knowledge of mother's history and prior experience using drugs with mother, father professed to be completely unaware that mother had been using drugs while pregnant with I.L.

I.L. was placed on a hospital hold and V.L. was placed in foster care by the Department of Children and Family Services (DCFS). DCFS filed a section 300 petition paragraphs b-1 and b-2 of which, as later sustained, allege:

¹ It is undisputed that mother has a nine-year history of substance abuse as a result of which she had lost custody of five children by 2010. Because mother is not a party to this appeal, we mention her only to the extent her actions are relevant to father's appeal.

“[B-1] . . . [I.L.] was born suffering from a detrimental condition. Such condition consisted of a positive toxicology screen for amphetamine and methamphetamine. Such condition would not exist except as the result of unreasonable acts by the child’s mother, . . . placing the child at risk of physical harm and damage. Said illicit drug use by the mother endangers the child’s physical health and safety, and places the child at risk of physical harm, damage and danger.

[B-2] [Mother] has a nine year history of illicit drug use, and is a current user of ecstasy, methamphetamine and amphetamine, which renders the mother unable to provide regular care of the children. On prior occasions, the mother was under the influence of illicit drugs while the child [V.L.] was in the mother’s care and supervision. The mother used illicit drugs during her pregnancy with the child [I.L.] and had a positive toxicology screen for amphetamine, methamphetamine and ecstasy, on [at I.L.’s birth]. [Two days later], the mother had a positive toxicology screen for amphetamine and methamphetamine. *The children’s father reasonably should have known of the mother’s illicit drug use and failed to protect the children.* The mother’s illicit drug use and the father’s failure to protect the children endanger the children’s physical health and safety, and places the children at risk of physical harm, damage, danger and failure to protect.”² (Italics added.)

Following a detention hearing, the juvenile court found DCFS had made a prima facie showing that V.L. and I.L. were persons described by section 300, subdivision (b) and there was no reasonable means to protect them other than removal from the parents.

By the time of the July 3rd Pre-Release Investigation report, mother had moved out of the house and father was requesting both children be released to him; father planned that family friend Diane P. would care for the children in her home while father was at work. But DCFS rejected Diane P. as a caretaker. The juvenile court declined to release the children to father that day, citing the need for more information.

By July 19, the date set for the adjudication hearing, I.L. and V.L. were living in the same foster home. Father still maintained he did not know that mother had started using drugs again. If the children were released to him, he would arrange for paternal aunt, Celia V., to care for them in father’s home while father was at work. DCFS

² As filed by DCFS, the petition alleged: “[Father] *knew* of the mother’s illicit drug use and failed to protect the children.” (Italics added.) The juvenile court amended the petition to replace the “knew of” language with the “reasonably should have known” language in the sustained petition.

recommended that the petition be sustained and the children placed in DCFS custody because, although father seemed to have become a law abiding citizen and nothing indicated he was using drugs, his claim of ignorance as to mother's drug use was implausible. Pending a continued adjudication hearing, father was to have unmonitored visits in a public setting with both children. Over the next few months, father consistently tested negative for drugs but did have a few no-shows. DCFS maintained its recommendation that the petition be sustained and the children removed.

At the adjudication hearing on October 24, father testified that V.L. was born "clean" and until I.L. was born, he saw no signs that mother was using drugs again. He explained: "I am not a stupid person and she was there cooking for me, cleaning my house there. She was there when I went to sleep at night. She was there when I went to work in the morning. [¶] I didn't see anything that would make me believe she was using drugs. Of course, she had attitude and we argue once in a while, not in front of the kids. [¶] I just figure it was bipolar and things like that. If I would have known any drug use I would not have been cool with it. I would have been right away that is not what we are all about. I got my life back on track and we have to be on the same track. It would not have been okay and to make sure she was away from my kids." The juvenile court was not persuaded: "... I find it very hard to believe that father couldn't tell you and didn't recognize mother was using drugs. [¶] If he did not, he certainly should have from his relationship." It sustained the amended section 300 petition, finding the children to be persons described by section 300, subdivision (b). Father was given unmonitored visits pending a dispositional hearing on December 19.

At the dispositional hearing, mother testified that her drug use is triggered in large part by failure to take her psychiatric medications, so she was committed to taking those medications regularly. At the time of the hearing, mother was living with her grandfather. Asked whether she intended to continue her relationship with father, mother said, "Yes. We are married." As soon as the court allowed, mother planned on living with father and the children again. The juvenile court found by clear and convincing evidence that there was no reasonable means to protect the children other than removal

from both parents' custody. The children were placed with father under DCFS supervision. Father timely appealed.

DISCUSSION

A. *Substantial Evidence Supports the Jurisdictional Finding*

Father's sole contention on appeal is that the finding that he failed to protect the children because he should have known that mother was using drugs, is not supported by substantial evidence. We disagree.

We begin with the standard of review. “ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “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; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “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. [Citation.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ [Citation.]” ’ ’ (*In re I.A.* (2013) 56 Cal.4th 766, 773.)

Because the purpose of a dependency proceeding is to protect the child, not prosecute the parent, a child may be adjudged dependent if the actions of either parent bring him or her within the statutory definition. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Since father does not challenge the jurisdictional findings as to mother, the children's status as dependent children would not be changed whether or not the allegations pertaining to father are well-founded. (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) Under similar circumstances, the court in *In re I.J.* (2011) 201 Cal.App.4th 1484, dismissed the father's challenge to dependency jurisdiction as moot. But in *In re*

Drake M. (2012) 211 Cal.App.4th 754, 762, the court exercised its discretion to reach the merits of the father's appeal, reasoning that the jurisdictional findings as to the father could have a prejudicial impact in current or future dependency or family law proceedings. Although the jurisdictional findings against father in this case might not impact any subsequent proceedings, we consider the merits of his appeal in an abundance of caution. (*In re C.C.* (2009) 172 Cal.App.4th 1481.)

As relevant here, jurisdiction under section 300, subdivision (b) may be based on evidence that a parent (in this case father) willfully or negligently failed to protect the child from the conduct of the child's custodian (in this case mother). Jurisdiction on this ground requires a showing that the parent knew or had reason to know that the other person was engaging in injurious conduct. (*In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1255.) In *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 599-600, evidence of the parents' long relationship and the father's knowledge that the mother lost custody of several other children as a result of her substance abuse problem, was found sufficient to support the juvenile court's finding that the father knew or should have known the mother had a substance abuse problem from which the father failed to protect the children.

Here, it is undisputed that father has multiple drug-related convictions in his past. Father was aware of mother's long history of substance abuse, and had even used drugs with her on a daily basis before he became sober. Father was also aware that mother had lost custody of her older children as a result of her substance abuse. Although father claimed mother showed no signs that she was using drugs before I.L. was born, he admitted noticing "mood swings" which he attributed to mother's "bipolar and things like that." Despite knowing mother's history of substance abuse and child endangerment, father did nothing to determine whether mother's "mood swings" might be the result of renewed drug use. Nor did father attempt to ascertain whether mother was taking her psychiatric medications. From this evidence, the juvenile court could reasonably infer that father should have known mother was using drugs again. That mother consistently cooked and cleaned the house did not absolve father from his responsibilities to assure

that the children were safe in mother's care. Nor are we persuaded by father's assertion that he "should have been permitted to trust his wife who gave him no reason to believe there was a current problem." In light of mother's history, of which father was well aware, father's obligation was to follow the maxim, "Trust, but verify."

The fact that mother had moved out of the house and the children were placed with father does not establish that the children were not at current risk. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1023 [DCFS must show that at the time of the jurisdictional hearing there was a current risk of substantial harm, or that the child would be at substantial risk of serious physical harm in the future.].) Mother may have moved out, but there was undisputed evidence that mother's and father's relationship was ongoing. Under these circumstances, the juvenile court could reasonably find that there was a continuing risk that father would fail to protect the children from mother's substance abuse, and for this reason maintain jurisdiction.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.