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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V. et al.,

Defendants and Appellants.

B285367

(Los Angeles County
Super. Ct. No. DK22935)

APPEAL from orders of the Superior Court of Los Angeles
County, Philip L. Soto, Judge. Affirmed.

Darlene Azevedo Kelly for Defendant and Appellant M.V.

Roni Keller for Defendant and Appellant V.M.

M.V. (father) and V.M. (mother) appeal from orders finding grounds for juvenile court jurisdiction under Welfare and Institutions Code section 300, subdivision (b)(1) and removing their son M.V. and daughter Z.V. from their physical custody. Mother and father contend there is insufficient evidence that their substance abuse creates a substantial risk of serious physical harm to the children, and that the evidence does not support the finding that the Department of Children and Family Services (Department) made reasonable efforts to eliminate the need for removal. We conclude that substantial evidence supports the challenged findings and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Factual Background*

On April 21, 2017, mother was taken to the hospital, where she stated that her water broke five days earlier. She tested positive for amphetamines and methamphetamines. Mother experienced a still birth the next day at 22.6 gestational weeks.

On April 27, 2017, a social worker made an unannounced visit to the family home where mother and father lived with M.V. (then eight years old), Z.V. (then four years old), and the children's paternal grandfather. Mother, then 29-years-old, stated that she worked nights as a sanitation supervisor and slept during the day. Mother also received income for providing in-home care for the paternal grandfather. The paternal grandmother previously lived in the home, but passed away in March 2017. Father had quit his job in October 2016 to care for his dying mother. Mother stated that father had an operation a few years earlier to remove kidney stones, and M.V. had his appendix removed, which was a precursor to kidney problems.

Mother stated that for years she and father had tried unsuccessfully to have another child, and she had not been aware of her latest pregnancy. She received no prenatal care. Mother stated that she started using methamphetamine around January 2017 to alleviate her depression, and used the drug only at a friend's house and never at home. Recently she had been using the drug every other day. Mother stated that she was aware that father previously used methamphetamine but was unaware of his recent drug use, and that he was unaware of her drug use.

Father, then 30 years old, stated that he started using methamphetamine at the age of 17 and eventually became addicted. Prior to having children together, father and mother separated because of his addiction, until he quit using and they reconciled. Father had recently started using again. He stated that he used drugs only outside of the house in the car, and the children were well cared for. Father denied having a drug problem and stated that he was able to stop using methamphetamine. Father stated that before the still birth he was unaware of mother's pregnancy or her drug use. The paternal grandfather also stated that he was unaware of mother's and father's drug use, and the children reported observing no signs of drug abuse.

The Department asked mother and father to submit to drug testing and scheduled an appointment for April 28, 2017. Mother and father missed their appointment reportedly because they could not find the testing center. The Department scheduled a makeup appointment on May 1, 2017. Mother and father missed their makeup appointment, claiming that father had mistakenly scheduled the testing on a day when mother had scheduled medical and dental appointments for Z.V.

M.V.'s teacher reported that M.V. had missed 22 out of 154 school days, had arrived tardy on 17 days, sometimes went to school unkempt, and that his poor attendance was interfering with his progress.

On May 3, 2017, shortly after midnight, father was arrested on an outstanding warrant issued on April 7, 2017, for possession of methamphetamine. The sheriff's deputy awakened father at home and found him under the influence and in possession.¹ He was released later that morning. Also on May 4, 2017, a Department social worker contacted mother to reschedule her drug testing. Mother stated that the last time she used methamphetamine was April 24, 2017, after leaving the hospital and that she would test clean next time. On May 4 or 5, 2017, mother tested positive for amphetamines and methamphetamines.² The laboratory report indicated that mother's sample was diluted.

On May 10, 2017, a social worker contacted the children's maternal grandfather concerning a possible placement for the children. The maternal grandfather stated that mother had told

¹ Father argues that the statement in the Department's social study report regarding these events was hearsay. Hearsay evidence in a social study is admissible in a jurisdiction hearing, but if a party timely objects to specific hearsay evidence in a social study that specific evidence alone is not sufficient to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless a statutory exception is established. (§ 355, subds. (b), (c).) There is no indication in the record that mother or father objected to admission of the statement. In any event, the jurisdictional findings were not based on such evidence alone.

² The record is inconsistent as to the date of the drug test.

him about her pregnancy two or three months earlier. On May 11, 2017, father agreed to submit to drug testing, but he did not follow through.

On May 12, 2017, the Department detained M.V. and Z.V. and placed the children with their maternal grandfather in San Joaquin, California.

2. *The Juvenile Dependency Petition*

On May 17, 2017, the Department filed a juvenile dependency petition (Welf. & Inst. Code, § 300)³ alleging dependency jurisdiction under section 300, subdivision (b)(1). It alleged that mother is a current user of amphetamines and methamphetamines and father is a current user of methamphetamines, rendering them incapable of providing regular care for M.V. and Z.V. It also alleged that mother and father knew or reasonably should have known of each other's substance abuse and failed to protect the children, placing them at risk of serious physical harm.

On May 17, 2017, the juvenile court found that father was the presumed father of both M.V. and Z.V. The court ordered the two children detained, placed them with their maternal grandfather, and ordered the Department to provide family reunification services. The court also ordered monitored visits for mother and father three times per week and ordered the Department to provide referrals for counseling and drug testing.

³ All further section references are to the Welfare and Institutions Code.

3. *The Jurisdiction and Disposition Hearing and Order*

On June 22, 2017, the juvenile court conducted a jurisdiction and disposition hearing. M.V. and Z.V. were eight and four years old, respectively, on the date of the hearing. The Department's social study report for the hearing stated that mother denied current use of methamphetamine, but admitted prior use at her friend's house, but never in her children's presence. Although she used methamphetamine during her pregnancy, mother stated that she did not know she was pregnant and had continued to menstruate. She admitted to testing positive for methamphetamines on two occasions in April and May 2017. Mother stated that her drug use did not affect her children. Mother stated that she was not aware of father's drug use and that he took good care of the children.

Father also denied current use of methamphetamine, stating that the last time he used the drug was when the children were removed from the home, on May 12, 2017. Father admitted prior use once or twice per week late at night while the children were sleeping and mother was at work, and admitted that he had prior arrests for drug possession. Father claimed that his drug use did not affect his children and that the children were well cared for.

The report stated that the Department had made reasonable efforts to eliminate the need for removal by providing crisis intervention services; emergency response services; a home interview concerning the dependency allegations; drug testing; monthly bus passes for transportation; and referrals for community services, mental health services for the children, physical and dental exams for the children, and general relief. The Department also conducted a Child and Family Team

meeting on May 23, 2017. However, mother and father failed to participate in any programs.

On June 22, 2017, the juvenile court sustained the petition as to both M.V. and Z.V. The court stated at the hearing that mother has a chronic drug problem despite her denial, and methamphetamine is a dangerous drug that puts the children at risk. Father refuses to acknowledge the danger or address his own drug problem. The court found by clear and convincing evidence that there was a substantial danger to the children's physical health and no reasonable means to protect them without removing them from their parents' custody. The court declared the children dependents of the juvenile court and found that the Department had made reasonable efforts to eliminate the need for removal and had provided reasonable services to meet the children's needs. The court ordered reunification services for mother and father.

DISCUSSION

1. *Standard of Review*

We review the juvenile court's jurisdictional and dispositional findings under the substantial evidence test. We view the record in the light most favorable to the findings, draw all reasonable inferences from the evidence necessary to support the findings, and decide whether the trier of fact could reasonably find the evidence supporting the findings to be reasonable, credible, and of solid value. (*In re R.T.* (2017) 3 Cal.5th 622, 633; *In re Alexander C.* (2017) 18 Cal.App.5th 438, 446 (*Alexander C.*)). Even where the juvenile court must make a finding by clear and convincing evidence, such as the existence of grounds to remove a child from parental custody (§ 361, subd. (c)), the same

substantial evidence test applies. (*Alexzander*, at p. 451 [“on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ [Citation.]”].)

2. *Substantial Evidence Supports the Jurisdictional Findings*

Mother contends there is insufficient evidence that her substance abuse creates a substantial risk of serious physical harm to the children. Father contends there is insufficient evidence that he is a substance abuser and that his substance abuse, if any, creates a substantial risk of serious physical harm to the children.

Section 300 states the grounds for dependency jurisdiction, including that “[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 willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, 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.” (*Id.*, subd. (b)(1).)

“[T]here are three elements for jurisdiction under section 300, subdivision (b), namely, (1) neglectful conduct or substance

abuse by a parent in one of the specified forms, (2) causation, and (3) serious physical harm to the child, or a substantial risk of such harm.” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724–725.) Regarding the third element, “the juvenile court is not required to ‘wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child.’ [Citation.]” (*Alexzander C.*, *supra*, 18 Cal.App.5th at p. 448.) Although evidence of substance abuse alone is insufficient to establish a substantial risk of causing serious physical harm to the child (*Rebecca C.*, at pp. 727–728), substance abuse by a parent of a child of “tender years” is *prima facie* evidence of an inability to provide regular care, resulting in a substantial risk of serious physical harm. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 (*Christopher R.*) [children were six years old or younger]; *In re Drake M.* (2012) 211 Cal.App.4th 754, 767 [child was 14 months old].)

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.” (§ 300.2.)

Methamphetamine is “ ‘an inherently dangerous drug known to cause visual and auditory hallucinations, sleep deprivation, intense anger, volatile mood swings, agitation, paranoia, impulsivity, and depression.’ ” (*Alexzander C.*, *supra*, 18 Cal.App.5th at p. 449.) Mother used methamphetamine frequently, every other day during at least part of her pregnancy, so she frequently was under the influence of a dangerous drug. Although mother and father stated that they were unaware of mother’s pregnancy, according to the Department’s report for the jurisdiction and disposition hearing the children’s maternal

grandfather stated that mother had informed him of her pregnancy two or three months earlier.⁴ The court was therefore free to infer that mother knew she was pregnant but used drugs anyway.

Even after losing her fetus in April 2017, mother continued using methamphetamine. Despite coming under the scrutiny of the Department and its efforts to provide assistance, Mother missed two drug tests before testing positive for amphetamines and methamphetamines in May 2017, indicating that she continued using methamphetamine. There is evidence that mother provided a diluted sample, suggesting an effort to conceal her continued drug use. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) Shortly before her last drug test, mother falsely told a social worker that she had not used the drug since April 24, 2017, and that she would test clean. Mother failed to participate in any of the community services programs to which she was referred.

The evidence shows that mother failed to acknowledge the severity of her substance abuse problem and made no reasonable effort to address her problem. There is evidence that mother was aware of her pregnancy, yet continued using methamphetamine every other day, putting her fetus at grave risk. (See *Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1218–1219 [mother’s cocaine use while pregnant and failure to consistently submit to drug testing or enroll in a drug abuse program justified the exercise of dependency jurisdiction].) Although there is no direct evidence

⁴ There is no indication in the record that mother or father objected to admission of the statement concerning mother’s awareness of her pregnancy. In any event, the jurisdictional findings were not based on such evidence alone.

that mother was under the influence of methamphetamine while caring for M.V. and Z.V., the juvenile court could reasonably conclude that the frequency and persistence of mother's drug use and her attempts to conceal her use while failing to acknowledge and address her substance abuse problem indicated that her methamphetamine use would continue and would adversely impact her parenting. M.V.'s poor school attendance record and unkempt appearance suggested that mother had difficulty keeping up with her parental responsibilities. Moreover, Z.V.'s young age (four-years-old), and concerns regarding M.V.'s health, made it particularly important that the children receive regular care. Based on this evidence, the juvenile court could reasonably conclude that mother's continued substance abuse would expose the children to a substantial risk of serious physical harm.

Father admitted that he began using methamphetamine at the age of 17, was addicted to methamphetamine in the past, and had recently resumed using late at night in his car while mother was at work and the children were sleeping. On April 7, 2017, a warrant was issued for his arrest for possession of methamphetamine, and on May 4, 2017, a sheriff's deputy awakened father at home and found him under the influence and in possession. Father denied having a current drug problem and stated that he last used methamphetamine on May 12, 2017, but he missed three drug tests, never tested clean, and failed to participate in any of the community services programs to which he was referred. Substantial evidence supports the juvenile court's finding that at the time of the jurisdiction and disposition hearing father was a methamphetamine user and that his methamphetamine use amounted to substance abuse.

Father was the children's primary caregiver overnight when mother was away at work, so he was under the influence of methamphetamine while he cared for the two children. We conclude that the evidence of father's prior chronic methamphetamine use, his recent methamphetamine use while caring for his two young children, and his failure to recognize mother's substance abuse problem and address his own substance abuse problem, is substantial evidence supporting the juvenile court's finding of a substantial risk of serious physical harm to the children due to his substance abuse.

We therefore conclude that substantial evidence supports the jurisdictional findings.

3. *Substantial Evidence Supports the Finding That the Department Made Reasonable Efforts to Eliminate the Need for Removal*

Mother and father contend the evidence does not support the finding that the Department made reasonable efforts to eliminate the need for removal.⁵

The juvenile court may order the removal of a child from the physical custody of his or her parents if the court finds by clear and convincing evidence that there would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if the child were returned to the parents' physical custody, and that there are no reasonable means to protect the child's physical health without

⁵ Mother and father also argue that if there is no substantial evidence supporting the jurisdictional findings, the dispositional findings must be reversed. This argument fails because we conclude that substantial evidence supports the jurisdictional findings, as stated.

removal. (§ 361, subd. (c).) In addition, “The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home The court shall state the facts on which the decision to remove the minor is based.” (*Id.*, subd. (e).)

The juvenile court expressly found that reasonable efforts were made to prevent or eliminate the need for removal. The Department reported that it had provided crisis intervention services; emergency response services; a home interview concerning the dependency allegations; drug testing; monthly bus passes for transportation; and referrals for community services, mental health services for the children, physical and dental exams for the children, and general relief. The Department also conducted a Child and Family Team meeting on May 23, 2017, but mother and father failed to participate in any programs.

Father argues that the Department should have provided additional services to address the family’s emotional needs arising from the death of the paternal grandmother, the paternal grandfather’s poor health, the loss of the stillborn child, and the family’s financial troubles. Father has not shown that the array of services provided by the Department was manifestly unreasonable and inadequate, particularly when mother and father failed to participate in any of the programs offered. We conclude that substantial evidence supports the finding that the Department made reasonable efforts to eliminate the need for removal.

Father also argues that the juvenile court failed to “state the facts on which the decision to remove the minor is based” (§ 361, subd. (e)), as required by statute, because the removal order “simply recites that reasonable efforts were made, but fails

to state the facts,” and the court did not state the facts at the hearing. The reasons for removal are apparent in the record and are the same reasons the court cited for sustaining the petition, relating to mother’s chronic use of methamphetamine, her denial that she has a substance abuse problem, father’s failure to recognize mother’s substance abuse problem and address his own methamphetamine use, and the risks inherent in mother’s and father’s abuse of such a dangerous drug. Therefore, any error in failing to comply with this statutory requirement was harmless because there is no reasonable probability that mother and father would have obtained a more favorable result absent any error. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.)

DISPOSITION

The jurisdictional and disposition orders are affirmed.

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MICON, J.*

We concur:

MANELLA, P. J.

COLLINS, J.

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