Filed 8/14/17 In re A.K. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.K. et al., Persons Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.O., Defendant and Appellant.	B279758 (Los Angeles County Super. Ct. No. DK14234)

APPEAL from orders of the Superior Court of Los Angeles County, Frank Menetrez, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Appellant A.O. (Mother), mother of A.K. (Ama) and A.K. (Ali), appeals the juvenile court's jurisdictional order, finding the children at risk of physical harm due to Mother's unstable mental condition under Welfare and Institutions Code section 300, subdivision (b), and its dispositional order, removing the children from Mother's care.[1] She contends the court misunderstood the criteria for a section 300, subdivision (b) finding, and that substantial evidence does not support its orders. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Prior Proceeding*

Mother was diagnosed with bipolar disorder when she was in her teens.[2] In 2012, she was under the care of a psychiatrist, Dr. Arnath, who had prescribed medication (Abilify) that appeared to be controlling her illness. In July

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] Mother was in her late 30's at the time of the underlying proceeding.

2015, Mother stopped seeing Dr. Arnath, telling him she did not need medication. Later that month, she was assessed by a different therapist who recommended that she receive both medication and therapy.

In November 2015, when Ama was 10 and Ali was almost six, the Department of Children and Family Services (DCFS) filed a section 300 petition alleging that Mother "suffers from mental and emotional problems including a diagnosis of [b]i-polar [d]isorder, which renders [her] incapable of providing the child[ren] with regular care and supervision"; "[o]n prior occasions," Mother was "hospitalized for the evaluation and treatment of [her] psychiatric condition"; and Mother "failed to regularly participate in [her] mental health treatment and failed to take the [prescribed] psychotropic medication . . . ." In May 2016, Mother promised to comply with the therapist's recommendations, and the court dismissed the petition.

B. *Underlying Proceeding*

Six months later, in October 2016, DCFS received a referral that Mother had stopped taking her medication and was "'out of it'" and "'not thinking right.'" Mother had reportedly been staying up all night, disturbing the household, and swearing at the children. The caller said that after Mother had jumped over the backyard fence, her husband, Marcus C., had taken her to be hospitalized, but

she had refused treatment.[3] Marcus was said to be "overwhelmed" because Mother could not care for the children, and he could not "make [Mother] take her medication" and did not "know what else to do so that the children [would be] safe at home."

When the caseworker went to Mother's residence on October 11, 2016, Marcus was caring for the children and refused to give the caseworker any information about Mother. The caseworker learned from the maternal grandmother that Mother had been hospitalized on a 5150 hold a few days after Marcus's first unsuccessful attempt to have her hospitalized.[4] In addition, Mother had been

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[3] Doctors' notes indicated Mother was taken to a Kaiser hospital on October 5, but "did not meet [the] criteria for a 5150 hold." (See *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339, 1343, fn. 3, quoting § 5150, subd. (a) ["The term '5150 hold' derives from section 5150. Section 5150, subdivision (a) applies when a person is a danger to him- or herself or is gravely disabled because of a mental health disorder. Certain professionals 'may, upon probable cause, take, or cause to be taken, the [endangered] person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention'"].)

[4] According to medical records, prior to her hospitalization on October 11, Mother had held a television remote control and a hanger "in a threatening manner" and made "threatening statements" to Marcus, including "'I could kill you.'" The doctor who examined Mother diagnosed "bipolar 1" with psychotic features, reporting that Mother "lack[ed] insight into her mental health and symptoms" in that she "does not believe she has [b]ipolar [d]isorder." In a follow-up appointment, a new doctor
(*Fn. continued on the next page.*)

terminated from her job, and her employer had called police because Mother refused to leave the premises. The grandmother said that ever since Ali had been born "it's been a roller coaster. . . . [Mother] stays up all night long and doesn't go to sleep. She disturbs the kids. She goes [out] late at night . . . ." The grandmother believed the children should be placed with Father until Mother stabilized.

A few days later, Mother was found at home and served with a removal order. Interviewed shortly before the detention hearing, Mother reported she had attended therapy through October 6, 2016 and intended to continue, but was changing medical providers and waiting for an appointment with her new provider.[5] She claimed to be taking the prescribed medication, although she provided contradictory statements concerning whether she was taking it every day or "as needed." She said that prior to her hospitalization, she and Marcus had argued, and she had jumped the backyard fence because he did not want her to pick up Ama. DCFS filed a petition under section 300, alleging the children were at risk of physical harm as a result of Mother's mental illness, described in the petition as

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diagnosed "[a]djustment disorder with anxiety," prescribing the same medication but at a lower dosage.

[5] A letter from Mother's therapist confirmed that she had been regularly attending sessions until October 6, when she terminated.

bipolar disorder. The children were placed with their father, Andre K. (Father).

In his initial interview with the caseworker, Ama said Mother had been "acting 'crazy'" and the home had been in "'an uproar.'" Mother and Marcus argued "a lot," and Mother cursed at and threatened Marcus. Ama said that he tried to calm Mother down when she behaved erratically, but that she was calm for only brief periods, and that Marcus cared for him and his brother when Mother "'[wa]sn't herself.'" Ali confirmed that Mother had been cursing and "'acting way up,'" which made him feel "mad and sad." He said he felt safe with Mother, but would prefer to live with Father. Personnel at the boys' school reported that Mother behaved erratically, going "from 0-100 for no reason." School staff said Ali was quiet and withdrawn in her presence, but active and energetic when Father was with him. The caseworker concluded detention was necessary because Mother's condition had devolved since the earlier intervention, as evidenced by the recent hospitalization and the fact that she had been fired from her job.

Interviewed for the jurisdictional report, Ama said Mother had been "going off" for "2 straight weeks." He heard her banging on the walls when he was in bed. She had falsely accused him of pushing her into the bathtub and threatened to hit him. He stated that he was not "that much" scared of her, but did not want to go back to Mother's home until she got better. He further stated: "It's more safe [at Father's home] and we don't have to deal with that. I

don't think we should have to deal with that. We're kids." Ali reported that he was not getting to bed on time and "fall[ing] asleep in class" because Mother kept him out late. He said when she did not take her medication she "yell[ed] loud" and "can't control her body." Ali said Mother scared him, although she had never physically hurt him, and that he wanted to live with Father. Father said Mother's mental health had deteriorated during their marriage, and that her "episodes" had become frequent after the birth of Ali. He said she started making "irrational decisions," such as cooking over a hot stove while holding Ali. Mother was hospitalized three times during their marriage, once because she was "in a manic state," "paranoid," and "hallucinating." Another time, he called 911 because she was behaving irrationally and would not keep away from the children. Father said Ama had recently lost a patch of hair, apparently due to stress.

Mother was re-interviewed prior to the jurisdictional hearing. She acknowledged waking the children up in the early morning hours by "cursing severely," and that she had been angry and yelling when Marcus took her to be hospitalized. She blamed her behavior on "'dehydration'" and "'stress.'" She denied suffering from bipolar disorder.[6]

The caseworker expressed the view that "Mother's unstable mental health places these children at risk"

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[6] Mother did not dispute the diagnosis of adjustment disorder with anxiety.

because "[t]hey are up late, falling asleep in class, witnessing her manic episodes, and intervening in an effort to calm her down." The caseworker further stated: "This case has come to the attention of the court twice within a year for the same issues. It is not fair for these children [to] be subjected to Mother's unstable mental health and to be repeatedly brought to the attention of DCFS and the court. They deserve a safe and stable environment, and at this time, Father's home is most stable."

At the November 17, 2016 jurisdictional hearing, the attorney for Mother asked the court to dismiss the petition, contending there was no evidence that the children had ever been harmed or been at risk of harm from Mother's mental illness. Counsel for Father asked that the petition be sustained, contending the totality of the evidence indicated that Mother's mental illness was not under control, and that the children were at risk. Counsel for the children also asked that the petition be sustained, observing that the children were presenting signs of being under stress and both had expressed feeling safer with Father.[7]

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[7] DCFS's counsel argued the petition could be sustained based on the evidence of the children's "mental harm" and stress. The court responded: "The petition relies on an single count under subdivision (b) which requires a showing [that] the children have suffered or are at substantial risk of suffering serious physical harm or illness. [¶] So although I am sympathetic to the past report to which [counsel] referred about the children being stressed out and having to deal with things that children shouldn't have to deal with, that is not . . .
(*Fn. continued on the next page.*)

The court amended the petition, striking the allegation that Mother suffered from bipolar disorder and adding an allegation that she suffered from adjustment disorder with anxiety, finding: "[Mother] suffers from mental and emotional problems including a diagnosis of adjustment disorder with anxiety, which renders [her] incapable of providing the child[ren] with regular care and supervision." The court further found that Mother had "exhibited mental and emotional problems including erratic and bizarre behavior in the presence of unrelated adults and [Ama] requiring intervention from [Ama] to calm [her]," and that she had been "hospitalized for the evaluation and treatment of [her] psychiatric condition." The court specifically found that Mother's "mental and emotional problems endanger the children's physical health and safety and place the children at risk of serious physical harm . . . and damage."

At the hearing, the court acknowledged that "merely having a diagnosis of mental illness is not jurisdictional." The court explained that it found the fact that Mother had been put on a 5150 hold after threatening to kill Marcus supported the conclusion that the children were at risk of physical harm.

Turning to disposition, counsel for DCFS, counsel for Father, and counsel for the children asked the court to close

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jurisdictional under subdivision (b). . . . I do need to find either that they suffered or they are at risk of suffering substantial risk of suffering serious physical harm or illness."

the case, placing custody with Father. The court found clear and convincing evidence to support removal based on Mother's recent involuntary hospitalization for being a threat to others, her mental illness and her ongoing struggles with it. The court issued an exit order, giving Father custody and Mother monitored visitation.[8] Mother appealed.

DISCUSSION

A. *Jurisdiction*

The court asserted jurisdiction under section 300, subdivision (b), which provides that jurisdiction is appropriate where "[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 inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness . . . ." A true finding under subdivision (b) of section 300 requires proof of: "(1) neglectful conduct by the parent in one of the specified

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[8] "'When a juvenile court terminates its jurisdiction over a dependent child, it is empowered to make "exit orders" regarding custody and visitation. [Citations.] Such orders become part of any family court proceeding concerning the same child and will remain in effect until they are terminated or modified by the family court. [Citation.]'" (*In re A.C.* (2011) 197 Cal.App.4th 796, 799.)

forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Appellant first contends the court sustained jurisdiction under an incorrect understanding of the requirements of section 300, subdivision (b), specifically, the requirement that there be a substantial risk that the children would suffer serious physical harm as a result of the parent's mental illness. The record reflects that the court made its finding under the proper criteria. It specifically found that the children were at risk of serious physical harm, and expressly rejected DCFS's argument that mental harm and stress alone could support jurisdiction.[9]

Alternatively, Mother contends substantial evidence does not support the court's finding of a risk of physical harm to the children. At the hearing, the agency "'has the burden of showing specifically how the minors have been or

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[9] Mother's brief suggests, without argument or analysis, that the court violated her due process rights by making a last-minute change to the petition. The sole amendment changed the designation of appellant's mental illness from "[b]i-polar [d]isorder" to "[a]djustment disorder with anxiety," the diagnosis Mother indicated was the correct one in her interview with the caseworker. As her counsel did not object to the change at the hearing or seek additional time to address it, this contention was forfeited. In any event, we perceive no error or due process violation in changing the designation of the parent's mental illness, as the statute does not require any particular diagnosis to support jurisdiction.

will be harmed and harm may not be presumed from the mere fact of mental illness of a parent.'" (*In re David M.* (2005) 134 Cal.App.4th 822, 830, quoting *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; accord, *In re David D.* (1994) 28 Cal.App.4th 941, 953.) On appeal, "[w]e draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and review the record in the light most favorable to the court's determinations; we do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the trial court's findings." (*In re M.R.* (2017) 8 Cal.App.5th 101, 108.)

There was sufficient evidence to support the finding that the children were at risk of physical harm. The evidence emphasized by the court -- that Mother had threatened to kill Father and been placed on a 5150 hold as a possible danger to herself or others -- was sufficient in itself, particularly in view of Ama's statement that Mother had accused him of pushing her and threatened to hit him. Moreover, the children were young, 11 and six at the time of the detention, and still in need of regular parental supervision. Without medication, Mother became manic, angry and paranoid. She swore, issued threats, did not sleep or allow the household to sleep, and went out late at night, sometimes with the children. She would not calm down or listen to reason. A parent whose unstable mental health causes her to rage and curse throughout the day and night, and to threaten her family members, is in no condition to

provide adequate parental care to young children, putting them at risk of serious physical harm.

Mother points to the absence of evidence that she ever physically harmed the children. In asserting jurisdiction, "the court 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.* (2014) 225 Cal.App.4th 1210, 1216; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.) It is up to the juvenile court "to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766.) The court may consider past events if there is reason to believe that the parent will continue or resume the conduct. (*In re Kadence*, *supra*, at p. 1383.) Mother has struggled with a serious mental illness since her teens. The birth of Ali in 2009 caused her condition to deteriorate. A section 300 petition alleging the children were in danger was filed in 2015, and dismissed only because Mother agreed to address her illness with medication and therapy. A few months later, she became noncompliant and her behavior reverted. Although she had not physically harmed the children, she had threatened to do so, and the court could reasonably conclude that as her condition deteriorated, the risk to the children would increase.

Mother contends she is in the position of the mentally ill parents in *In re A.G.* (2013) 220 Cal.App.4th 675 (*A.G.*) and *In re Phoenix B.* (1990) 218 Cal.App.3d 787 (*Phoenix B.*).

In *A.G.*, the appellate court reversed the juvenile court's jurisdictional order based on the mother's mental illness because the father had, with one brief exception, always ensured the children were under the supervision of a competent adult. (*A.G., supra,* at p. 684.) Moreover, prior to the jurisdictional hearing, the father had initiated proceedings to gain custody of the children in family court. (*Id.* at p. 686.) Here, there is no evidence that the children were always under the supervision of Father, Marcus or some other responsible adult, or that family law custody proceedings were underway.

Phoenix B. is equally inapposite. There, the mentally ill mother asked the court to assert jurisdiction, hoping to keep the matter in juvenile court. By the time of the jurisdictional hearing, however, the children were being well cared for in the father's custody and the father was preparing to initiate proceedings in family court, which appeared to be "the appropriate forum for resolving the matter . . . ." (*Phoenix B., supra,* 218 Cal.App.3d at p. 790.) Neither *A.G.* nor *Phoenix B.* addressed the instant situation, where the juvenile court's assertion of jurisdiction is necessary to protect young children from a mentally ill parent who has frightened and threatened them, threatened to kill a co-habitant and proven herself unable to maintain her mental stability.

B. *Disposition*

Mother contends the evidence does not support the court's dispositional order, removing the children from her care. We disagree.

Section 361, subdivision (c) permits the court to remove a child from the physical custody of parents or guardians "with whom the child resides at the time the petition was initiated" if the court finds by clear and convincing evidence that "[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 parent's or guardian's physical custody." (§ 361, subd. (c)(1).) "'"[T]he minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.]'" (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.) The court's jurisdictional findings represent prima facie evidence that the child cannot safely remain in the home. (*Ibid.*; *In re Cole C.* (2009) 174 Cal.App.4th 900, 917; *In re T.V.* (2013) 217 Cal.App.4th 126, 135.) Although the juvenile court's findings must be made on clear and convincing evidence, "[o]n review, we employ the substantial evidence test, however bearing in mind the heightened burden of proof." (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

The evidence that supported the court's jurisdictional holding supported its order removing the children from

Mother's care under the heightened burden of proof. There was no dispute that Mother had threatened to kill Marcus and had been placed on a 5150 hold after being found a danger to herself or others. Nor was there any dispute that Mother had been unstable for some time, engaging in bouts of raging, cursing and issuing threats, and leaving to Marcus the care of the children when he was available. Finally, there was no dispute that neither Father, the grandmother nor Marcus believed Mother could adequately care for the children until her condition stabilized, and that the children felt safer with Father. On these facts, the court's disposition was adequately supported.

DISPOSITION

The juvenile court's orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.