

Filed 1/19/18 In re M.W. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B283436

(Los Angeles County  
Super. Ct. Nos. CK95065A,  
CK95065B)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.O.,

Defendant and Appellant.

APPEAL from jurisdictional findings and dispositional  
order of the Superior Court of Los Angeles County. Teresa  
Sullivan, Judge. Affirmed.

Christine E. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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## **I. INTRODUCTION**

S.O. (Mother) appeals from the jurisdictional findings and dispositional order made by the juvenile court. She argues there was insufficient evidence to support dependency jurisdiction over her two sons pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (b)(1) and (j). In addition, she contends the trial court abused its discretion when it ordered her to participate in a psychological assessment as part of the family maintenance case plan. We affirm the jurisdictional findings and dispositional order.

## **II. PROCEDURAL HISTORY**

On December 9, 2016, the Los Angeles County Department of Children and Family Services (the department) filed a petition on behalf of six-year-old M.W. and 20-month-old T.M. under section 300, subdivisions (b)(1) and (j). Counts b-1 and j-1 of the petition alleged M.W. was found wandering on the street alone without adult supervision for an extended period, and Mother's whereabouts were unknown. Mother's failure to provide M.W. with adult supervision endangered the child's physical health

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

and safety, and placed him at risk of serious physical harm, damage, and danger.

At the December 9, 2016 detention hearing, the juvenile court detained the children and released them to Mother. The department was ordered to provide Mother with all appropriate referrals for housing, transportation assistance, and wraparound services. In addition, the department was to provide T.M. with a regional center referral, and M.W. with referrals for speech assessment and an individualized education program (IEP).

At the February 22, 2017 jurisdiction and disposition hearing, the juvenile court commented: “[Mother] was over an hour late for court. Her children are not properly dressed, nor is their hair and hygiene to the level that the court would expect a parent to bring their children to court.” In addition, the court stated it observed the children’s behavior and Mother “seem[ed] to have an inability to provide them with guidelines and . . . to redirect and/or control her children.”

After argument, the juvenile court sustained the allegations in the petition. The court found M.W. was a dependent under section 300, subdivision (b)(1), and T.M. was a dependent under subdivisions (b)(1) and (j). The children continued to be placed with Mother under the department’s supervision. The department was ordered to provide Mother with family maintenance services, regional center referrals for the children, housing and transportation assistance, and family preservation services, including wraparound services and intensive field clinical capable services for the children. Mother was ordered to participate in a psychological assessment,

parenting classes for special needs children, and family preservation and wraparound services.<sup>2</sup>

### III. FACTUAL BACKGROUND

The family consists of Mother and her two sons. In November 2012, M.W. became a dependent of the juvenile court under section 300, subdivisions (a) and (b)(1) because of exposure to domestic violence between his parents. On December 6, 2014, the juvenile court terminated jurisdiction and issued a family law order granting legal and physical custody of M.W. to Mother.

Approximately two years later, the department received a general neglect referral from the police. On October 19, 2016, Mother was asleep when six-year-old M.W. got dressed and gave her a kiss before leaving the bedroom. He opened the deadbolt lock on the front door with a key, and put the keys into the mail slot before walking to school. M.W. walked by himself because he could not wake up Mother. The police found M.W. walking alone and could not contact Mother at her home or by phone.

Social worker Kristina Barbee interviewed M.W. at the police station. She had difficulty understanding the child because of his developmental delays and speech impendent. M.W. appeared disheveled and his shirt was inside out. But his clothes were clean and he was appropriately dressed for the

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<sup>2</sup> The department requests judicial notice of two minute orders, dated October 3, 2017, to update us on the status of the case during the pendency of this appeal. We deny the request because these minute orders are not relevant to the appeal. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1226, fn. 3.) Furthermore, this case does not present any exceptional circumstances warranting consideration of postjudgment evidence. (*In re Zeth S.* (2003) 31 Cal.4th 396, 400, 405.)

weather. M.W. indicated the maternal grandfather's girlfriend, Cynthia, normally walked him to school but she was out of town. Mother was sleeping and did not know he left the home.

Mother arrived at the police station after being contacted by Cynthia and spoke with Barbee. Mother stated: "My son is developmentally delayed, he runs away from school all the time, he is out of control. I need help for him." Mother explained M.W. had cried and thrown tantrums until 5 a.m. in the morning because the maternal grandfather and Cynthia went to Las Vegas without telling him until the last minute. She did not plan to send M.W. to school that day because she knew he would be tired. Mother added: "I keep him out of school a lot because he has anger issues and behavioral problems at school and the school doesn't handle it[.]" Mother indicated this was the first time M.W. walked out the house by himself.

Mother stated that after she woke up, she saw a text message from Cynthia and numerous missed calls from the police station. She had kept her cell phone on silent while sleeping so she did not hear her phone. She also did not hear the police knock or ring the doorbell because her bedroom was at the back of the house.

Barbee visited the home the same day and confirmed that a key was required to open the front door from the inside. In addition, Barbee verified that from the back bedroom she could not hear the doorbell and knocks on the front door. Barbee observed Mother's bedroom floor was strewn with dirty dishes, trash, and clothes. Extension cords were stretched across the floor, creating a safety hazard for the children. Barbee saw the house keys were accessible to the children and told Mother to place her keys on a high shelf. During the visit, Barbee observed

M.W. would pick up and eat anything, including trash and dog poop. She advised Mother to clean the bedroom, remove safety hazards, and obtain a crib for T.M. Mother agreed and signed a safety plan.

The family resided with the maternal grandfather and his longtime girlfriend, Cynthia. Mother stated they provided her with much support and guidance. Mother disclosed she was diagnosed with post traumatic stress disorder and manic depression, and has had mental health issues since she was ten years old. She was previously on medication and had been in therapy for over 20 years, but stopped going to sessions about 2 years ago.

T.M.'s father reported he visited the family two to three times per week. He stated: "I told [Mother] that [M.W.] would run away from home eventually if she doesn't get him help. . . . I have been trying to tell her and she ignored it for a while until now. I was scared for her when I heard that he ran away and was found [b]y the police." But T.M.'s father also said: "[S]he does the best that she can, she is a single mother and her parents are very active to help her."

Ping, M.W.'s special education teacher, stated the child was "very crafty, very aggressive, and very violent yet at the same time can be very sweet, loving and kind." He indicated M.W. had been sent home after he knocked over all the computers in the classroom and could not calm down. M.W. often would sit in the backpack closet for over 30 minutes screaming profanities and crying. Ping reported Mother and Cynthia were doing all they could to assist, and were very hands-on in caring for the child and assisting the school.

During a November 1, 2016 home visit, Barbee observed Mother was unable to control the children's aggressive behavior. The children were physically fighting, pushing, screaming, and throwing things at each other. They threw tantrums, cried inconsolably, and hit their heads on the ground very hard. Mother stated they would hit their heads on the wall and on the floor for long periods of time. Barbee noted the children were very dirty and had on dirty clothes.

On another visit on November 17, 2016, Barbee tried to speak with M.W. but he was angry and refused to speak with her. His clothes appeared dirty and were too small on him. While playing with T.M., he was very aggressive and punching his younger brother, but Mother did not stop M.W. Barbee saw M.W. place rocks in his mouth and underwear. He also hit himself with the rocks. During the visit, Barbee observed T.M. was filthy. T.M. screamed a lot and hit his head on the floor when he did not get his way.

Initially, Mother was offered services through a voluntary family maintenance case. But the department filed a non-detain petition after Mother failed to attend a scheduled mental health evaluation for M.W. and a scheduled child and family team (CFT) meeting. In addition, Mother wanted M.W. to get another IEP and was advised by Barbee that she needed to request an emergency IEP for educational, behavioral, and emotional services. However, Mother made an excuse and did not submit a request to the school for an emergency IEP. Barbee noted Mother made many excuses for why she had not connected her children to appropriate services to address their needs.

On February 14, 2017, Mother was interviewed by dependency investigator Keisha Stanton for the jurisdictional

and dispositional report. She stated M.W. had a habit of walking out of the classroom. One parent told Mother that she had seen M.W. walk out the school and had to direct him back in. In addition, the child had walked out of his classroom into the parking lot twice. However, M.W. had never walked out of the house before. Since the October 19, 2016 incident, Mother had kept her keys out of the children's reach. The department concluded it was "an isolated incident." The department explained: "Although the mother was sleeping and the child had access to the keys to unlock the doors it is believed that the mother was not negligent in that the child has never walked out of the home in the past."

Mother believed M.W. had behavioral and mental health problems. She stated: "He's acting out, kicking people, biting people, walking out, spitting on people at school. . . . Last week he kicked the new teacher twice. He tore up the classroom. We had an incident before the end of the school year where the teacher's aide handcuffed him. . . . He has a lot of emotional stuff going on and he doesn't know how to tell you what's wrong with him. My child can't read, can't talk, anything could have happened to him." The department noted Mother was concerned about M.W.'s mental health and had been provided referrals, but she was not proactive in getting services for him.

During the interview, Stanton observed the children were very active. They were jumping off the furniture and running around the house. Stanton believed Mother was overwhelmed by the children's behavior and would benefit from appropriate services.

Stanton also recommended a current mental health evaluation for Mother because she had a long standing history of



mental health issues. Mother denied the need for one, stating: “The[y] say I need a psychological evaluation, do I hear voices? [D]o I wig out? [N]o I don’t[.] I have emotional problems, I have been through a lot.”

## IV. DISCUSSION

### A. *Jurisdictional Findings*

The juvenile court has jurisdiction over a child if the department establishes by a preponderance of the evidence that allegations made pursuant to section 300 are true. (§ 355; *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 118-119.) Jurisdiction under section 300, subdivision (b)(1) applies when “[t]he child has suffered, or there is substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his parent . . . to adequately supervise or protect the child . . . .” Section 300, subdivision (j) authorizes jurisdiction when “[t]he child’s sibling has been abused or neglected, as defined in subdivisions (a), (b), (e), or (i), and there is substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633; *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560.) Substantial evidence is relevant evidence which adequately supports a conclusion. It is evidence which is reasonable in nature, credible, and of solid value. (*In re F.S.* (2016) 243 Cal.App.4th 799, 811-812; *In re R.C.* (2012) 210 Cal.App.4th 930, 940-941.) We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and adhere to the principle that issues of fact and credibility are the province of the

juvenile court. (*In re R.T.*, *supra*, 3 Cal.5th at p. 633; *In re Joaquin C.*, *supra*, 15 Cal.App.5th at p. 560.)

Mother argues there is insufficient evidence to support the jurisdictional findings under section 300, subdivision (b)(1). She was aware that M.W. walked out of his unlocked classroom door, but he had never walked out of the home before. She contends the October 19, 2016 incident was a one-time occurrence. After the incident, Mother implemented a safety plan by no longer leaving the house keys in a location accessible to the children.

Although the department concluded it was “an isolated incident” and Mother was not negligent, there was substantial evidence in the record to support jurisdiction under section 300, subdivision (b)(1).<sup>3</sup> The department initially provided Mother services through a voluntary family maintenance case. But the department filed a dependency case after Mother failed to attend a scheduled mental health evaluation for M.W. and a scheduled CFT meeting. In addition, Mother was advised she should request an emergency IEP for M.W. but she failed to do so. Barbee observed Mother made many excuses for why she did not obtain appropriate services to address the children’s needs. Mother expressed concerns about M.W.’s behavioral and mental health problems but was not proactive in getting him services to meet his special needs.

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<sup>3</sup> To the extent Mother is arguing that dependency jurisdiction under section 300, subdivision (b)(1) is improper because she was not negligent, her contention is foreclosed by *In re R.T.*, *supra*, 3 Cal.5th at pages 624 and 629. Our Supreme Court has explained that section 300, subdivision (b)(1) does not require a finding that a parent is neglectful or at fault for her failure or inability to supervise or protect her children. (*Ibid.*)

In addition, two social workers visited the family on four separate days and noted Mother was unable to supervise the children. During the October 19, 2016 visit, Barbee observed six-year-old M.W. would pick up and eat anything from the floor, including trash and dog poop. On another visit, Barbee saw M.W. place rocks in his mouth and underwear, and hit himself with the rocks.

On two November 2016 visits, Barbee noted the children were very dirty and unkempt. Furthermore, during the November 1, 2016 visit, Barbee observed Mother was unable to control the children's aggressive behavior, which included fighting, pushing, screaming, and throwing objects at each other. The children also threw tantrums, cried inconsolably, and hit their heads on the ground very hard. Mother reported both children hit their heads on the wall and floor for long periods of time. At the November 17, 2016 visit, Mother did not intervene when M.W. 6 punched 20-month-old T.M. Barbee observed M.W. was very aggressive and possibly angry. She also saw T.M. scream a lot and hit his head on the floor when he did not get his way.

Dependency investigator Stanton visited the family on February 14, 2017 and observed the children were very active. During the visit, they were jumping off the furniture and running around the house. Mother appeared overwhelmed by the children's behavior.

We conclude substantial evidence supports the section 300, subdivision (b)(1) findings that the children were at substantial risk of physical harm because of Mother's inability to supervise them. Mother was overwhelmed by her children's behavioral problems and unable to control their aggressive conduct. There

was substantial risk that the children would suffer serious physical harm because of Mother's inability to stop them from fighting and throwing objects at each other. In addition, Mother was unable to stop the children from self-harm when they repeatedly hit their heads against the wall and floor for long periods of time, and when M.W. hit himself with rocks. Furthermore, Mother was aware of M.W.'s mental health and behavioral problems, but she cancelled scheduled appointments made by the department for M.W. and failed to obtain services for him. Mother's inability to supervise her children and to obtain appropriate services placed them at substantial risk of physical harm.

Mother also challenges the jurisdictional finding under section 300, subdivision (j). In addition to the finding under section 300, subdivision (b)(1), the juvenile court found T.M. was a dependent under subdivision (j). "[s]ubdivision (j) applies if (1) the child's sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions." (*In re I.J.* (2013) 56 Cal.4th 766, 774.)

Here, there was substantial evidence that M.W. was at substantial risk of suffering serious physical harm as specified under section 300, subdivision (b)(1) because of Mother's inability to supervise him as discussed above. Furthermore, there was substantial risk of harm to T.M. based on Mother's inability to supervise her children. Mother was unable to stop her children from physically fighting and throwing objects at each other, and from engaging in self-harm. She appeared to be "overwhelmed" by the children's behavior, which included 20-month-old T.M. jumping off the furniture. We conclude the juvenile court

properly exercised jurisdiction over T.M. under section 300, subdivisions (b)(1) and (j).

*B. Psychological Assessment Order*

Under section 362, subdivision (a), “the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . .” When determining the dispositional orders that would be in the children’s best interest, the juvenile court is not limited to the sustained allegations in the petition, but may consider the evidence as a whole. (*In re Brianna V.* (2015) 236 Cal.App.4th 297, 311.) “The juvenile court has broad discretion to determine what would best serve and protect the child’s best interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion. [Citation.]” (*Ibid.*)

Mother challenges the dispositional order requiring her to participate in a psychological assessment as part of the family maintenance case plan. She argues her psychological condition was not what led to the dependency proceedings. She further contends the psychological assessment was not reasonably tailored to the circumstances of the family. We disagree.

The juvenile court did not abuse its discretion in ordering Mother to undergo a psychological assessment. Where the jurisdictional finding is not based on a parent’s mental disability, the juvenile court may look to the circumstances underlying the dependency case and the evidence of the parent’s conduct in determining whether to order a mental health evaluation. (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 840.) Mother has been diagnosed with manic depression and post traumatic stress

disorder. Mother disclosed she has had mental health issues since the age of ten, and previously was on medication. She was in therapy for over 20 years, but stopped attending sessions about 2 years ago. Furthermore, Mother was unable to control her children's aggressive behavior and failed to obtain services for them. The juvenile court could reasonably conclude ordering Mother to participate in a psychological assessment would allow the department to help Mother with her mental health issues, and thereby help ensure she provides appropriate supervision of the children.

## **V. DISPOSITION**

We affirm the jurisdictional findings and dispositional order requiring Mother to participate in a psychological assessment.

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RAPHAEL, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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