Filed 11/7/17 In re D.J. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.J. et al., Persons Coming Under the Juvenile Court Law.	B279796 (Los Angeles County Super. Ct. No. DK01562)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.T., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Veronica McBeth, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey

M. Blount, Senior Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant T.T. (Mother) is the mother of five children: fifteen-year-old Trev., thirteen-year-old Tren., ten-year-old Tray., and the subjects of this appeal, a twenty-month-old son D.J. and a twelve-day-old daughter T.[1] Mother appeals from the juvenile court's order sustaining allegations that D.J. and T. were dependent children described by Welfare and Institutions Code section 300.[2] The court specifically found (1) Mother's use of marijuana while pregnant, which resulted in T. being born with a positive toxicology screen, demonstrated T. was at risk of physical harm; (2) Mother's history of substance abuse and current use of marijuana rendered her incapable of providing D.J. and T. with the regular care and supervision they need as very young children; and (3) Mother's bipolar disorder, for which she refused to take prescribed psychotropic drugs in favor of self-medicating with marijuana, rendered Mother unable to provide regular care for D.J. and T. We consider whether substantial evidence supports the juvenile court's decision to assume jurisdiction over D.J. and T.

I. BACKGROUND

A. The Los Angeles County Department of Children and Family Services (the Department) Begins Investigating T.'s Welfare

Mother has a history of mental illness. In 2013, Mother was diagnosed with bipolar disorder and was prescribed

---

[1] These were the children's ages at the time the dependency proceedings began.

[2] Statutory references that follow are to the Welfare and Institutions Code.

psychotropic medications Seroquel and Abilify. Mother took the medications briefly, but stopped because she did not like the side effects she believed them to have. Mother did not consult with a medical professional before ceasing the medication and instead chose to use marijuana, for which she has a medical recommendation, to treat her symptoms.

T. was born on September 26, 2016. Five days later, the Department received a referral raising concerns about T.'s well-being. Although T. was healthy and did not exhibit any withdrawal symptoms, both T. and Mother had tested positive for THC/marijuana shortly after T.'s birth.

The Department began investigating that same day. The assigned social worker arrived at Mother's home unannounced, and Mother refused to allow the social worker into her home. During their conversation, Mother repeatedly stated that her case was closed,[3] and the social worker attempted to explain she was investigating a new allegation. Mother told the visiting social worker that she (Mother) spoke to social workers at the hospital and she was unwilling to speak to any more.

The social worker then interviewed employees of the hospital at which Mother had given birth. A nurse in the post-partum unit of the hospital stated Mother and T. had tested

---

[3] The investigation involving T. was not Mother's first interaction with the Department; she had a history of prior referrals. In January 2015, the Department received a referral related to Mother's care for D.J., who was an infant at the time. Specifically, the Department was informed Mother had not had any prenatal care before D.J.'s birth, had missed a well-baby checkup, and had failed to follow up on a recommendation that she have lab testing done for D.J.

positive for THC, but she otherwise had no concerns with Mother's parenting. The nurse stated Mother was "super attentive" and "very appropriate" with T., and the nurse further related that a hospital social worker who had seen Mother twice had no concerns.

Nine days after T. was born, Mother took T. to the hospital for a routine checkup. Mother arrived over two hours late for her appointment, and once she arrived, she asked a clerical employee to watch T. The employee declined, but Mother left T. unsupervised for an unspecified period of time anyway while Mother went to move her car. After T. was seen at the hospital, Mother was told T. had abnormal blood results and Mother needed to take her to a metabolic clinic for additional blood and urine tests. Mother, however, said she would not take T. to get the tests done.

Later that same day, the assigned social worker returned to Mother's home with another social worker and two LAPD officers. They informed Mother that a removal order had been granted allowing them to detain her children. The social worker reported that Mother was "uncooperative" and "upset." The social worker observed Mother's home appeared to be neat and clean with ample food in the refrigerator and cabinets, and all utilities were in working order. D.J., T., Tren., and Tray. appeared to be "clean and appropriately dressed." Trev. was not present at the time.

The next day, a nurse from the metabolic clinic called Mother. Mother hung up on her. Mother later sent the metabolic clinic nurse a text message stating, "Don't call me. Yall are messy. I don't wanna have nothing to do with yall. Loose my number. If you decide to call I will block your number. Because of yall bullshit. My family is split up. I hope you're proud of

yourself. Yall didn't help you hindered. Thanks for destroying my life."

B. The Department Initiates Dependency Proceedings

The Department filed a four-count petition pursuant to section 300, subdivisions (b) and (j) alleging Mother's children were at substantial risk of suffering serious physical harm.[4] Count b-1 of the petition alleged T. was at risk due to Mother's "illicit drug use" and "unreasonable acts" that caused T. to be born suffering from a detrimental condition—namely, that T. had a positive toxicology screen for marijuana. Count b-2 alleged all five children were at risk as a result of Mother's inability to provide regular care and supervision for the children. Specifically, count b-2 alleged Mother "has a history of substance abuse and is a current user of marijuana[,] . . . used illicit drugs during [her] pregnancy with [T.,] and had a positive toxicology screen for marijuana . . . at the child's birth." The Department further alleged that Mother had been under the influence of marijuana while supervising the children on prior occasions in 2016 and that D.J. and T. "are of such tender age that [they] require[ ] constant care and supervision." Count b-3 alleged all five children were at risk because Mother "has mental and emotional problems including a diagnosis of Bi Polar Disorder [and] . . . failed to take [her] psychotropic medication as prescribed."

At the initial detention hearing, the juvenile court ordered Mother to submit to weekly drug testing and said it wanted to see

---

[4] Count j-1 was substantively identical to count b-2.

her marijuana usage levels going down. The court agreed, however, to release the children into Mother's custody.

In the weeks following the detention hearing, the Department social worker interviewed Trev., Tren., and Tray. According to various statements made by the children during the interviews, Mother smoked marijuana "often" and had smoked marijuana while pregnant with T. Mother did not smoke marijuana in the house; she would go outside to smoke in the car and stay outside for "a little bit" or about "ten minutes." Mother seemed "normal" after she smoked, did not "go through mood swings," and "wouldn't do" something like leave her marijuana in an area accessible to the children.

The Department also interviewed Mother. She reported she had a "medical marijuana recommendation." She admitted to using marijuana almost every day while pregnant with T., and she said she did not think she needed to consult with a physician regarding her marijuana use during that time. According to Mother, no one reprimanded her for having marijuana in her system when she went to prenatal appointments and "[t]hey kept prescribing [her] the psych medication." She said she uses marijuana because it helps her "cope" through the day, explaining she would self-medicate with marijuana "instead of taking the pills." Mother stated that she "will not take the meds. I know the side effects of the medication and it is not worth me taking the meds."

C. The Jurisdiction and Disposition Hearing

The juvenile court held a combined jurisdiction and disposition hearing. Mother's attorney asked the court to dismiss the petition in its entirety, and counsel for David J., the father of

D.J., T., Tren., and Tray., joined in that request.[5] Counsel for the Department asked the court to dismiss the petition as to the three eldest children (Tren., Tray., and Trev.) but sustain the petition as alleged against D.J. and T. The Department's attorney argued Mother had admitted using marijuana daily and expressed concern that Mother refused to take medication prescribed to manage her mental disorder. The Department argued it was appropriate for the court to assume jurisdiction over two very young children who were dependent on the care of a person (Mother) who used marijuana so frequently. Counsel for D.J. and T. agreed with the Department's recommendation to sustain the petition. The children's attorney stated she was concerned by Mother's continued decision to self-medicate for her mental health issues and she wanted to ensure that any of T.'s metabolic or other health issues were attended to properly.

The juvenile court sustained count b-1 as pled, and sustained counts b-2 and b-3 only as to D.J. and T. (striking the three older children named in those counts).[6] The court acknowledged Mother's levels of marijuana had, overall, decreased "substantially" from a month earlier. It was also true that, by the time of the jurisdiction hearing, T. had undergone the recommended metabolic tests (despite Mother's earlier expressed refusal to have her daughter tested). But the court explained the reasons why it was assuming jurisdiction over the two young children: "[T.] was born with a positive toxicology for

---

[5] David J. took no appeal from the trial court's jurisdiction findings and disposition order.

[6] The court struck j-1 as unnecessary.

marijuana. We're still not sure of what the long-term [e]ffects of that could be. [¶] Mother knowingly smoked during her pregnancy knowing it could have negative [e]ffects on her child. [¶] . . . [¶] Mother does have significant mental emotional problems which have gone really for quite some period of time not being treated, and she is smoking her marijuana for it. And unfortunately that use has led to, as counsel said, her making pretty bad decisions, in terms of leaving the child [unattended at the hospital]." The court ordered the children placed in Mother's home, and ordered the Department to provide a number of services. The court additionally ordered Mother to take all prescribed psychotropic medication.

II. DISCUSSION

Contrary to Mother's sole argument on appeal, substantial evidence supports the juvenile court's decision to assume jurisdiction over D.J. and T. Specifically, the record indicates Mother regularly smoked marijuana while pregnant with T., Mother's marijuana use caused T. to be born with the detrimental condition of a positive toxicology screen for marijuana, and Mother thereafter continued to smoke marijuana virtually daily, which meant she would leave the two very young children without adult supervision while she smoked outside in her car and then would return to care for them while under the influence of marijuana. These actions exposed T. and D.J. to poor decision making (e.g., smoking while pregnant and leaving her infant unattended at the hospital) and, indeed, the requisite substantial risk of suffering serious physical harm. Because we hold the evidence concerning Mother's marijuana use (as alleged in counts b-1 and b-2) provides a sufficient basis for jurisdiction,

we will affirm the juvenile court's jurisdiction finding without need for extended discussion of the separate mental health basis for jurisdiction alleged in count b-3. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

A. Standard of Review

"'In reviewing a challenge to the sufficiency of the evidence supporting the [juvenile court's] jurisdictional findings . . . , 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." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [ ].) "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. [Citations.]'" (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; *In re F.S.* (2016) 243 Cal.App.4th 799, 813.) Mother, as the party challenging the juvenile court's findings, bears the burden of showing there was no evidence of a sufficiently substantial nature to support those findings. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

B. Substantial Evidence Supports the Juvenile Court's Decision to Sustain Counts b-1 and b-2

A juvenile court may assert jurisdiction over a child pursuant to section 300, subdivision (b)(1) 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 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 . . . ." (§ 300, subd. (b)(1); see also *In re R.T.* (2017) 3 Cal.5th 622, 629 [first clause of section 300, subdivision (b)(1) "requires no more than the parent's 'failure or inability . . . to adequately supervise or protect the child'"].) "Although 'the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm' [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection. [Citations.] A parent's past conduct is a good predictor of future behavior." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; see also *In re F.S.*, *supra*, 243 Cal.App.4th at pp. 814-815.) A dependency 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." (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216).

We conclude substantial evidence supported the dependency court's finding of jurisdiction under section 300, subdivision (b)(1). While other opinions have broadly stated a dependency jurisdiction finding may not be sustained on the basis of substance use alone (see, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453), there was substantial evidence of more than just substance use in this case.

Mother's history with marijuana dates back to at least 2006 (during her pregnancy with Tray.) and her current use behavior is consistent with substance abuse. Mother's regular use of

marijuana while pregnant, which caused T. to be born with a positive toxicology screen for marijuana, was likely sufficient alone to constitute substance abuse, as one of a parent's "major role obligations" is to ensure she does not expose her children to drugs. (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1218-1219.) Additionally, Mother's essentially daily use of marijuana is relevant to the supervision for her young children. According to statements made by both Mother and some of her older children, at least once per day, Mother leaves the house for approximately ten minutes to go outside and smoke marijuana in the car. Mother then returns to the home. There is no evidence that any other sober adult is regularly present to supervise the children during these times. Mother thus regularly leaves her very young children unattended for periods of time to smoke marijuana, and then cares for her children, often if not always alone, while under the influence of the drug.

Mother has also exhibited concerning instances of poor judgment that support the jurisdictional finding. Smoking marijuana while pregnant with T.—which caused T. to be born with marijuana in her system—is certainly one. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 825 ["[A] child's ingestion of illegal drugs constitutes 'serious physical harm' for purposes of section 300"], disapproved on another ground in *In re R.T.*, *supra*, 3 Cal.5th at p. 629; see also *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217 [use of drugs while pregnant "unquestionably" endangers the health and safety of the unborn child]; *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378-1379 ["The child was born with dangerous drugs in her body, which creates a legal presumption that she is a person described by . . . section 300, subdivision (b)"].) Another occurred shortly after

T. was born when Mother left T. unsupervised for an unspecified period of time while Mother went to move her car, a fact that appropriately troubled the juvenile court. In addition, Mother has repeatedly disregarded the directions of medical professionals who recommended that she take her young children to the hospital for additional testing. This occurred not just with T. (metabolic testing) but also earlier with D.J. (no prenatal care and a missed baby checkup, see *ante*, fn. 3). Furthermore, Mother has been unable to acknowledge the problems with her behavior, as demonstrated by her text message to the metabolic nurse and her reaction to the social worker assigned to this case.

Mother's behavior presents a substantial risk of serious physical harm or illness to her children. Children of "tender years," like T. and D.J., face "an inherent risk to their physical health and safety" if they are not adequately cared for or supervised.[7] (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) In matters involving young children, "the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767.) Mother's behavior demonstrates she has been unable to

---

[7] We recognize Mother can be commended for otherwise maintaining a clean home, providing food for her children, and arranging for the children to attend school. These facts are presumably what led the Department to dismiss her older children from the dependency petition. But these facts, and the fortuity that greater harm had not yet befallen the children of tender age, T. and D.J., do not undermine the substantial evidence in the record that indicates these two children were at risk of serious physical harm.

consistently provide appropriate supervision for D.J. and T., and that, without intervention by the Department and the juvenile court, they are at substantial risk of serious harm.

In support of her argument that substantial evidence did *not* support the jurisdictional findings, Mother relies on a number of cases in which reviewing courts held there was not a sufficient link between a parent's substance use and a risk to a child's safety. (See *In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 764-765, 767 [father's medical marijuana use did not support a jurisdictional finding because there was no showing that father was the sole source of the child's supervision while under the influence and because there was no showing the father failed to otherwise provide regular care to his child due to substance use]; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022 [single episode of parental conduct resulting in harm to children was insufficient to bring children under court's jurisdiction where there was no evidence from which to infer there was a substantial risk the behavior would recur]; *In re Destiny S.*, *supra*, 210 Cal.App.4th at pp. 1003-1005 [evidence of a parent's drug use, without any indication of child abuse or neglect, was not sufficient to support jurisdiction over eleven-year-old child].) Mother contends there is no link between her marijuana use and any risk to D.J. and T.

The cases Mother cites are different from this case. Unlike the father in *Drake M.*, who demonstrated that he used marijuana regularly but was never the child's sole caretaker while under the influence (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 761), substantial evidence indicates Mother was regularly under the influence when serving as the sole caretaker of her children. Unlike the parents in *J.N.*, who had engaged in a single episode of particularly bad conduct, Mother's marijuana

use has been frequent and consistent and there have been multiple instances where she has exercised poor judgment. In addition, unlike the eleven-year old child in *Destiny S.*, at the time of the jurisdiction hearing D.J. was under two years old and T. was less than two *months* old.

Finally, though we need not address the court's finding that substantial evidence supported jurisdiction as alleged in count b-3 concerning Mother's mental health issues, the facts concerning Mother's marijuana use should also be viewed against the backdrop of her bipolar disorder. It is undisputed Mother stopped taking the psychotropic drugs prescribed to treat that disorder without seeking medical or psychiatric advice before doing so. Instead, Mother chose to "self-treat" her bipolar disorder with marijuana alone. While "harm may not be presumed from the mere fact of mental illness of a parent" (*In re James R., Jr.* (2009) 176 Cal.App.4th 129, 136, disapproved on another ground in *In re R.T.*, *supra*, 3 Cal.5th at pp. 628-629), Mother's failure to take prescribed medication to treat her mental illness in favor of her own belief that marijuana would suffice bolsters our conclusion that the juvenile court had substantial evidence before it to conclude D.J. and T. were at substantial risk of harm absent the court's involvement (see, e.g., *In re Kristin H.* (1996) 46 Cal.App.4th 1635).

DISPOSITION

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

---

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