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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.G., et al., Persons Coming
Under the Juvenile Court Law.

B285534

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK77293)

Plaintiff and Respondent,

v.

G.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Debra L. Losnick, Commissioner. Affirmed.

Johanna R. Shargel, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

G.R. (Mother) challenges a juvenile court jurisdictional order finding her children to be persons described by Welfare and Institutions Code section 300, subdivision (b).¹ Mother contends there was insufficient evidence that her children were at substantial risk of harm at the time of the jurisdiction hearing. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2017, at 5:00 a.m., Los Angeles Police Department officers served and executed a search and arrest warrant at Mother's apartment, primarily targeting Mother's father (maternal grandfather). The officers executed the warrants as part of a broader effort targeting a specific criminal street gang. Based on an ongoing investigation, the officers believed the maternal grandfather was conducting narcotics sales out of Mother's apartment.

At the time, Mother lived in the apartment with her two children—A.G. (seven years old) and C.A. (three years old)—her mother (maternal grandmother), her sister (maternal aunt), the maternal aunt's wife, and the maternal grandfather. F.A. (Father), who is the biological father of C.A., did not live with Mother. A.G.'s father was last known to live in Guatemala.

When the officers attempted to execute the warrants, Mother and the maternal grandmother tried to prevent and delay them from entering the apartment. The officers saw the maternal grandfather run into the master bedroom and lock the door behind him. After forcibly entering the bedroom, the officers observed the maternal grandfather attempting to "flush" drugs. The officers found in the bedroom a significant amount of crystal

¹ All further undesignated section references are to the Welfare and Institutions Code.

methamphetamine, money, baggies, and a digital scale with residue, all of which were consistent with narcotics sales. According to the officers, the methamphetamine was within access of the children. The officers arrested the maternal grandfather and contacted the Los Angeles County Department of Children and Family Services (DCFS) to conduct an investigation into the safety and wellbeing of the children.

The DCFS social worker who investigated the report observed a “strong awful odor” emitting from Mother’s apartment, trash, dog feces, and dog urine on the floor, and roaches on the walls and inside the refrigerator. The social worker noted that A.G. and C.A. also had a bad odor, and C.A. had many lice eggs in her hair. The children were otherwise healthy. A.G. told the social worker that when Mother is at work, the maternal grandfather, the maternal aunt, or Father care for him. DCFS removed the children and placed them in foster homes.

Investigation of Mother

In an initial interview with a DCFS social worker, Mother stated she did not know why the police executed a search warrant, nor was she aware of any drugs in the apartment. According to Mother, the maternal grandfather would sometimes sleep in the apartment’s master bedroom, which was otherwise used as storage. Mother denied using drugs and denied a history of domestic violence. She explained that Father has significant contact with the children and takes care of them when she is at work.

A DCFS social worker returned to Mother’s apartment on March 20, 2017, and found it was very clean. Mother informed the social worker that she and the maternal grandmother were

the only persons living in the apartment at that time. Mother explained that the maternal grandfather had been living in her apartment for six months, during which time he always locked the bedroom door and was the only person with a key to it. Mother also asserted the maternal grandfather was in the bedroom with the door locked when the police arrived.

Mother stated she had not had contact with the maternal grandfather since he was arrested, and she believed he would be deported to Belize. Mother indicated she would not allow the maternal grandfather to return to her home.

Mother also reported that in 2014, Father struck her on her face with his hand, after which she obtained a restraining order.

Investigation of Father

Father initially denied drug use, but later admitted self-medicating with marijuana for stress and anger issues. Father reported he smoked marijuana once or twice a week, but had stopped doing so as a result of the dependency proceedings. Father denied smoking marijuana around Mother or the children.

Father admitted having anger issues. Father was previously arrested for a domestic violence incident with Mother. He was ordered by the court to complete anger management classes, but he did not attend a single class.

In early March 2017, when Father learned that the children had been taken into protective custody, he had a “mental breakdown” and was yelling, screaming, and cursing. After threatening to kill himself, police officers detained Father and admitted him to a mental health treatment facility where he received treatment for four days. Father indicated he was diagnosed with depression while at the facility. Father was prescribed Sertraline, which he continued to take upon discharge,

but in the wrong dosage. Father had also received a referral for further psychiatric care, but had not followed up on that referral. Father was not participating in any mental health services to treat his mental illness, nor was he enrolled in a substance abuse program.

Prior Incidents of Domestic Violence

In 2009, the juvenile court sustained a petition related to A.G. following an incident in which his father violently attacked Mother and threw A.G., who at the time was one month old. In connection with that incident, Mother reported to a social worker that there was a history of domestic violence with A.G.'s father.

In 2014, Father was arrested for strangling Mother. The incident resulted in a referral to DCFS. A criminal court granted Mother a three-year protective order mandating that Father not come within 100 yards of her person. Sometime thereafter, Mother obtained sole legal and physical custody of C.A., and Father was granted visitation.²

Petition

On April 5, 2017, DCFS filed a first amended petition asserting three separate bases for finding A.G. and C.A. are persons described by section 300, subdivision (b)(1). Specifically, the petition alleged that Mother created a detrimental and endangering home environment for A.G. and C.A. because methamphetamine was found in her apartment within access of the children. It further alleged that Father created a detrimental and unsafe home environment for C.A. because of (1) his history

² The visitation order is somewhat confusing. It states Father is entitled to visitation on weekends, but lists his visitation as each Tuesday at 8:00 a.m. through Friday at 12:00 p.m.

of substance abuse and current use of marijuana, and (2) his history of mental health problems.

Jurisdiction Hearing

At the jurisdiction hearing, Mother argued the children did not have access to the methamphetamine because it was kept in the maternal grandfather's bedroom, which was locked at all times. She further argued there was no current risk to the children because the maternal grandfather was not welcome in the home, and he had possibly been deported. DCFS countered that there was evidence indicating the door was unlocked the night of the search and mother knew the maternal grandfather was selling drugs.

Father argued there was no evidence he used or was under the influence of marijuana around the children; nor was there evidence that his marijuana use poses any risk to the children. He further argued his single episode of mental health issues, which was triggered by the current proceedings, did not pose a risk to the children. In response, DCFS noted that Father failed to continue treatment as recommended and prescribed by the mental health treatment facility.

The juvenile court declared the children dependents under section 300, subdivision (b), noting it agreed with DCFS's "rendition of what is happening in this case" The court removed the children from the parents and ordered reunification services for Mother and Father.

Mother timely appealed.

DISCUSSION

On appeal, Mother contends there was insufficient evidence to support the court's order finding the children to be persons described by section 300, subdivision (b). Specifically, she

contends there was insufficient evidence showing: (1) the children had access to the methamphetamine; (2) there was a current risk of harm to the children, especially given the maternal grandfather no longer lives in the home; and (3) Father's marijuana use and mental illness created a current risk of harm. We find these contentions lack merit.

“ ‘ “In reviewing the sufficiency of the evidence, our review requires that all reasonable inferences be given to support the findings and orders of the juvenile court and the record must be viewed in the light most favorable to those orders. [Citation.]” ’ [Citations.] ‘Evidence sufficient to support the court’s finding must be reasonable in nature, credible, and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case. [Citation.]’ [Citation.] ‘[W]e . . . must uphold the trial court’s findings unless it can be said that no rational factfinder could reach the same conclusion. [Citation.]’ [Citation.]” (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628–629.)

The court may find a child is described under section 300, subdivision (b), when “[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, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).) “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory

bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Mother asserts there was not substantial evidence showing the children had access to the methamphetamine.³ In support, she points to the fact that the drugs were found in the maternal grandfather’s room. She also points to her assertions that the door was locked at all times, and only the maternal grandfather had a key. According to Mother, this evidence—which she contends is undisputed—shows it was impossible for the children to access the methamphetamine.

Mother’s assertion that the door was locked at all times, however, was contradicted by other evidence before the juvenile court. The police, for example, reported observing the maternal grandfather run into the bedroom when they arrived at the apartment. Given the speed with which the events likely occurred, and given the officers did not report observing the maternal grandfather first unlock the door, the juvenile court could have reasonably inferred that the door was unlocked at that time. Further, there was evidence suggesting Mother left the children in the apartment when she went to work, during which time she would have no knowledge of whether the bedroom door was locked. This evidence—along with the police report that

³ Mother does not contest that access to methamphetamine would place the children at a substantial risk of physical harm. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 825 [“a trial court is entitled to infer that a child . . . is subjected to a substantial risk of serious physical harm when he or she is placed in an environment allowing access to drugs, with nothing to prevent him from succumbing to the temptation to ingest them”], abrogated on another ground in *In re R.T.* (2017) 3 Cal.5th 622.)

the methamphetamine was within the children's access—was sufficient to support the juvenile court's finding that the children had access to the methamphetamine, and we do not reweigh or resolve conflicts in the evidence on appeal. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Mother next asserts there was no current risk to the children as of the jurisdiction hearing because the maternal grandfather had been arrested and “was on his way to being deported.” As of the jurisdiction hearing, however, there was no evidence the maternal grandfather had been deported or convicted of a crime and incarcerated. As a result, it was possible that he would be released from custody and return to living in Mother's apartment, which would pose a continuing risk to the children. (See *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806 [father who was convicted and incarcerated still posed risk to children because he had not yet been sentenced and could appeal convictions].)

Mother further suggests there was no risk because she represented that the maternal grandfather would not be welcome in her apartment if released from custody. The juvenile court, however, had reason to question Mother's veracity and disbelieve such representations.⁴ For example, although Mother denied knowledge that there were drugs in her apartment, there was substantial evidence indicating she was aware of the maternal grandfather's illicit activity. The police, for instance, reported that Mother attempted to stop or delay them from entering the apartment, and the court could have reasonably inferred that Mother did so to give the maternal grandfather sufficient time to

⁴ We defer to the juvenile court's credibility determinations. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.)

dispose of the drugs. Moreover, the police executed the warrants following an ongoing investigation that led them to believe narcotics sales were being conducted out of the apartment. The juvenile court could have reasonably concluded it is unlikely the police would have probable cause for such warrants, yet Mother was unaware the maternal grandfather was selling drugs out of her apartment.

The juvenile court also could have questioned Mother's veracity based on her untruthful and misleading statements to DCFS. Mother, for example, initially denied a history of domestic violence, despite having been the victim of several serious incidents of domestic abuse resulting in DCFS referrals and a three-year protective order against Father. In addition, Mother initially indicated that the master bedroom was primarily used for storage and the maternal grandfather slept there only occasionally. Subsequently, she revealed that the maternal grandfather had been living in the apartment for at least six months. Based on these untruthful and misleading statements, the juvenile court could reasonably disbelieve Mother's other assertions, including that she would not allow the maternal grandfather to continue living in her apartment.

With respect to the allegations relating to Father, we agree with Mother that evidence of his marijuana use, standing alone, was not sufficient for the juvenile court to assert jurisdiction over C.A.⁵ Generally, "mere use of marijuana by a parent will not

⁵ Both parties proceed as if the allegations related to Father concern both C.A. and A.G. The first amended petition, however, is clear that such allegations concern only C.A. DCFS initially included allegations that Mother failed to protect A.G. from Father, but it voluntarily dismissed those allegations.

support a finding of risk to minors.” (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452; see *In re Drake M.* (2012) 211 Cal.App.4th 754, 764 [“the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found”].) Here, there was no evidence that Father used or was under the influence of marijuana around C.A. Nor was there any other evidence suggesting Father’s marijuana use negatively impacted his ability to care for C.A. or created a risk of harm.

Nonetheless, there was sufficient evidence to support jurisdiction based on Father’s history of mental illness. There was substantial evidence that Father suffered from depression and anger issues, which made him a danger to himself and others. Father, for example, very recently was detained and involuntarily admitted to a mental health treatment facility after acting erratically and threatening to kill himself. There was also evidence indicating Father’s anger issues resulted in a violent incident in which he strangled Mother.

Moreover, the evidence showed Father’s mental illness was untreated at the time of the jurisdiction hearing. Father, for example, did not attend anger management classes as ordered by the criminal court, and instead self-medicated using marijuana. Father also was not taking his psychiatric medication as prescribed, and was not participating in any mental health services, despite receiving a referral for such services. This constituted substantial evidence that Father’s mental illness—which remained untreated and on occasion manifested itself as violence or threatened violence towards himself and others—

created a substantial and continuing risk that C.A. will suffer serious physical harm while under his care.⁶

DISPOSITION

The juvenile court order is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.

⁶ Although Mother had sole legal and physical custody of C.A., the evidence showed C.A. spent significant time under Father's care. There was also no indication that Father's contact with C.A. would be limited in the future.