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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DAMIAN R., a Person Coming Under
the Juvenile Court Law.

B264742
(Los Angeles County
Super. Ct. No. CK86542)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CLAUDIA H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Daniel Zeke Zeidler, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

Appellant Claudia H. (mother) challenges the juvenile court's jurisdictional and dispositional orders pertaining to her son, Damian R. (Damian, born Aug. 2006). She contends there was insufficient evidence to support both jurisdiction and Damian's removal from her custody. We disagree and affirm.

FACTUAL AND PROCERURAL BACKGROUND

Detention Report

In October 2014, the Los Angeles County Department of Children and Family Services (Department) received a referral alleging that Damian had been neglected by mother, she constantly brought him to school late, she was abusing drugs, and she frequently left home in the morning leaving family members to search for her. The caller was concerned about mother's incoherent behavior at school meetings. The social worker spoke to a "school staff" member, who reported that mother had appeared under the influence of drugs at school meetings, and that other staff stated that mother looked disheveled, unstable, smelled of marijuana, had erratic moods, seemed paranoid, and appeared to be on drugs or just coming off drugs. From August 27 through October 30, 2014, Damian had 24 unexcused tardies and seven unexcused absences.

When the social worker interviewed Damian at school, he stated that he felt safe and happy at home with mother and the maternal family (consisting of the maternal grandmother and maternal aunt). He asked if the social worker knew his father had passed away. (Damian's father committed suicide in 2007.) Damian would only answer simple questions and appeared to have been coached.

The social worker interviewed mother at home. She believed the paternal family had called in the referral because they were unhappy that Damian had been returned to her care. Mother explained that a dependency case was generated when she physically assaulted her sister in front of Damian while intoxicated. The maternal aunt and maternal grandmother obtained restraining orders against mother and she moved out. She stated that she had completed her substance abuse and anger management classes. The dependency case was successfully closed. Mother denied domestic violence or current substance abuse. She had a nervous breakdown after Damian's father died, but denied

any current mental health issues. She stated that Damian was often late to school because he refused to get up and he was being bullied. The school later informed the social worker that Damian was not being bullied and, if anything, he was the bully.

Mother offered to drug test for the Department. When the social worker called the testing center about mother's test on Saturday, November 1, 2014, she was told that mother "was caught with a device that she was trying to urinate with," so her test was considered invalid. When the social worker went to mother's house on November 13, 2014, to discuss the issue, Damian was at a home on a school day. Mother denied using a device to urinate, stating it was a tampon. She agreed to go with the social worker that same day to another testing site, where she was again caught with a "silver device" while testing. When confronted, mother denied having any device, yelled and cried and said she was being "disrespected." On November 14, 2014, mother had a negative drug test.

On November 13, 2014, the social worker spoke to the paternal grandmother, who believed that mother was using cocaine and methamphetamine. Mother and Damian's father used drugs together while he was alive. The paternal grandmother stated that Damian is late for school because mother disappears and is often found asleep during the day, and that neither the maternal grandmother nor maternal aunt take him to school or try to stop mother's behavior. On November 16, 2014, the social worker spoke to the paternal great aunt, who believed mother was using drugs based on her appearance and reports she received from friends and relatives confirming mother's drug use. She confirmed that mother and Damian's father used drugs together and that the maternal grandmother and aunt do nothing about mother's drug use or getting Damian to school. Mother has trained Damian not to talk to social workers by telling him he will be taken from her. Mother also gets Damian to urinate in a cup for her, which she uses to provide clean results.

On November 18, 2014, the social worker spoke with the front office clerk at Damian's school. She confirmed that Damian was still coming to school late, and that mother often looked disheveled and under the influence. Mother had told the school that

Damian was late on November 14, 2014, because he had a doctor's appointment.

According to the doctor's office, Damian had not been there since the previous spring.

On December 3, 2014, the social worker and two police officers went to mother's home. One of the officers stated that he knew who mother was because he had seen her on the streets looking "tweaked out" on several different occasions. Mother denied using drugs. Damian was home and interacted with the officers, but not the social worker. He appeared safe and happy. The officers later told the social worker that in their opinion mother had not appeared under the influence or shown signs of current drug use.

The social worker interviewed the maternal grandmother, who stated that mother was a "great" mother to Damian, and denied that mother used drugs or acted erratically. Damian did not go to school because he refused to get up.

The social worker also interviewed the maternal aunt, who stated that she worked a lot and was rarely in the home. She stated that mother is rarely around and does her own thing, and that she did not trust mother to take care of Damian by herself. The maternal aunt was not sure if mother was using drugs and believed that mother should be drug tested. Mother had mood swings, overslept and would just leave the house without stating her whereabouts.

On December 3, 2014, Damian's school reported that he was still arriving late, frequently walked out of his classroom without permission, and bullied other children.

On December 10, 2014, the social worker and two police officers went to mother's home with a warrant to detain Damian. He was placed with his paternal great uncle.

Mother's criminal record included several charges of driving without a license, two DUIs, cruelty to a child, battery, obstructing a police officer, and a "DUI special violation."

The Petition

On December 15, 2014, the Department filed a petition on Damian's behalf under Welfare and Institutions Code section 300, subdivision (b),¹ alleging a single paragraph:

"The child[']s mother has a history of substance abuse, including alcohol, and a conviction for Driving Under Influence [of] Alcohol. The child is a prior dependent of the Juvenile Court due to the mother's alcohol abuse and endangerment of the child. The mother has failed to take steps to ensure her sobriety. On two occasions in November of 2014, mother used a device containing urine to attempt to falsify a substance abuse test and on 04/04/2014, mother was convicted of failing to install [an] ignition lock device. The mother regularly brings the child to school late and has appeared at the child's school smelling of marijuana. Such substance abuse history by the mother and lack of proper care of the child endanger the child's physical health and safety and place the child, at risk of physical harm and damage."

Detention Hearing

Mother appeared at the detention hearing on December 15, 2014, but left before the matter was called. The juvenile court ordered Damian to remain placed with the paternal great uncle and aunt, ordered the Department to provide family reunification services, and granted mother weekly monitored visits.

Jurisdiction/Disposition Report

The social worker interviewed Damian again. He stated that he did not go to school because he would sleep late. He and mother sometimes stayed up late watching movies and playing video games. He loved mother, she was good to him and helped with his homework. He also loved the maternal grandmother, but did not like the maternal aunt who was "mean" and never took care of him.

The social worker interviewed mother again. Mother refused to discuss the allegations in the petition, accused the Department of violating her rights, threatened to sue, and stated that she was homeless. Mother was making minimal efforts to address the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

case issues. She continued to deny substance abuse and had missed five out of six random drug tests.

The maternal grandmother reported that mother used to clean, prepare food, wash and play with Damian daily. She denied seeing mother under the influence of any drugs in her home, but could not speak to what mother did outside the home.

Damian had a mental health evaluation on December 23, 2014. He reported hearing voices telling him to hurt animals and he had killed his pets. The paternal great uncle reported that Damian had a tendency to choke his younger cousins, simulated shooting random people, was hyperactive and did not follow directions. Damian was prescribed Adderall. On January 13, 2015, another therapist who had evaluated Damian expressed her “extreme” concern over his history of killing animals and hearing voices that told him to harm animals. The therapist noted that Damian had a long history of exposure to substance abuse and neglect, given the dependency cases. She believed Damian was emotionally disturbed and had distorted cognitive thoughts.

Damian tended to urinate on himself following contact with the maternal aunt and visits with his mother.

The paternal great uncle reported that twice in December 2014, mother forcefully entered his home, demanding to see Damian. Both times she appeared to be under the influence.

Additional Reports

Mother drug tested twice in November 2014 and twice in January 2015. The tests were not random or part of any treatment. Mother went to a center and paid a fee to take the tests.

Damian was receiving mental health and psychiatric services. He was very well adjusted to his placement.

On March 10, 2015, Damian disclosed to the social worker that when he lived with mother, mother would frequently drink and smoke cigarettes and that she would leave him unattended while she went to the garage with her friends. When he went to the garage, he would see smoke and see people smoking from “a glass tube with a bulb at the

bottom.” He did not see mother do this and could not state the frequency of the gatherings, but they occurred more than once in the last year. Damian expressed fear that mother would hit him if she found out he disclosed this information. He wanted mother to change.

Jurisdiction/Disposition Hearing

The juvenile court conducted the combined jurisdiction/disposition hearing on March 18, 2015. Damian testified that he could sometimes smell smoke from the garage and saw “a bunch of beer,” but denied seeing anyone drunk or smoking from the glass tube. Sometime within the year, mother had slapped him kind of hard on the face when she was cutting his nails too hard and he cried.

Mother also testified. She denied drinking or using drugs since her DUI conviction in 2011, and denied using a device to drug test. She could not put the ignition interlock device on her car because the car was sold without her authorization. Damian was late to school “[o]n occasions” because he did not want to wake up. Kids were throwing rocks at his legs leaving bruises and when she took him to a doctor, she was told it was normal for a kid to have bruises. Damian did not know the names of the kids who bullied him.

The juvenile court sustained the petition as written. It found that “mother sounded credible for the first half of her testimony, and then the further along she got, the more stories, explanations, rationales she had for everything, it just slowly started becoming less and less credible.”

As to disposition, the juvenile court ordered Damian to remain placed with the paternal great uncle and aunt, as requested by the Department and Damian’s attorney. The court ordered mother to participate in the following: a full drug and alcohol program with aftercare; weekly random and on-demand testing for drugs and alcohol; a 12-step program; parenting classes; a psychological assessment and psychiatric evaluation and to take any recommended prescribed medication; individual counseling to address case issues, including grief and loss issues; and anger management classes if recommended by

the therapist. Mother was granted weekly monitored one-hour visits with Damian, and the Department was given discretion to liberalize the visits. This appeal followed.

DISCUSSION

I. Jurisdiction

Mother contends the evidence was insufficient to support the juvenile court's jurisdiction under section 300, subdivision (b).

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (b), if the 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.”

In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected “and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.) The Legislature acknowledged that 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.)

We review a juvenile court's jurisdictional findings for substantial evidence. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.) This means that we “view the evidence in the light most favorable to the trial court's order, drawing every reasonable inference and resolving all conflicts in support of the judgment.” (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.)

Substantial evidence supports the jurisdictional finding that mother has a substance abuse problem that places Damian at risk of serious harm.

First, it is undisputed that mother has a history of substance abuse. Mother has arrests and convictions for driving under the influence. A prior dependency case was initiated as a result of mother's substance abuse. Mother and Damian's father used drugs together. And mother has a misdemeanor conviction on April 4, 2014, for failing to

install an ignition interlock device on her vehicle. “A parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ [Citation.]” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

Second, the evidence showed that mother’s substance abuse problem is ongoing. Mother went to Damian’s school while appearing under the influence. School staff reported that she was disheveled, incoherent, paranoid and smelling of marijuana. A local police officer had seen mother on the streets several times looking “tweaked” out. Mother often left the house without informing anyone of her whereabouts and would sleep during the day. The maternal aunt thought mother should be drug tested. The paternal grandmother believed that mother was using cocaine or methamphetamine again. The paternal aunt also believed that mother was using drugs based on mother’s appearance and reports from others. The paternal aunt stated that mother had Damian urinate in a cup so she could use his urine for drug tests and warned him not to speak with social workers or he would be taken from her. Indeed, Damian feared mother would hit him if she found out he had disclosed personal information to the social worker. Twice, mother used some type of device to falsify drug tests. The paternal great uncle reported that twice mother tried to force her way into his house to see Damian and that both times she appeared to be under the influence. And Damian had seen mother and her friends in the garage with alcohol, a bong, and lots of smoke.

Mother’s substance abuse placed Damian at serious risk of harm. Mother had unexplained absences from home, thus neglecting her obligation to care for Damian. She chronically failed to take Damian to school on time or at all. She and her friends used alcohol in the garage where Damian could see what was happening, including that a bong was present. Mental health professionals were extremely concerned about Damian’s emotional disturbances and his behavior of harming animals.

While mother presents alternate explanations or excuses for her behavior, this approach misses the point. “We emphasize that the test is *not* the presence or absence of a substantial conflict in the evidence. Rather, it is simply whether there is substantial evidence in favor of the respondent. If this ‘substantial’ evidence is present, no matter

how slight it may appear in comparison with the contradictory evidence, the judgment must be upheld.” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.)

II. Removal Order

Mother contends the evidence was insufficient to support the juvenile court’s removal of Damian from her custody.

Before the juvenile court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that there 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 child can be protected without removal. (§ 361, subd. (c)(1).) “The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. [Citation.] We review the court’s dispositional order for substantial evidence.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 849.)

Substantial evidence supported the juvenile court’s removal order. At the time of disposition, mother was homeless. Even if she and Damian could have continued to reside in the maternal grandmother’s home, the evidence showed that neither the maternal grandmother nor the maternal aunt did anything to stop mother’s drug use or protect Damian from mother’s neglectful behavior. They did not take Damian to school when mother went missing or overslept. The maternal grandmother denied that mother had a substance abuse problem and Damian was afraid of the maternal aunt.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT