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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JUAN H., A Person
Coming Under the Juvenile
Court Law.

B278558

(Los Angeles County
Super. Ct. No. DK17756)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C. H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Kristen Byrdsong, Judge. Dismissed in part, affirmed in part.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, David Michael Miller, Deputy County
Counsel, for Plaintiff and Respondent.

C. H. (father) appeals from the juvenile court’s jurisdictional order under Welfare and Institutions Code section 300, subdivision (b)(1)¹ and its dispositional order removing his infant son, Juan H., from his custody. After the court ordered Juan released to the custody of both parents, the Los Angeles County Department of Children and Family Services (DCFS) moved to dismiss father’s appeal of the dispositional order on mootness grounds. We granted the partial motion to dismiss, but exercise our discretion to reach the merits of father’s remaining jurisdictional challenge. Because we conclude substantial evidence supports the court’s findings, we affirm the jurisdictional order.

FACTUAL AND PROCEDURAL SUMMARY

Juan came to the attention of DCFS shortly after his birth in May 2016 after he and his 21-year-old mother, B.C.,² tested positive for marijuana at a hospital. Mother admitted to a hospital social worker that she had abused heroin and methamphetamine for years, but quit “cold turkey” by smoking marijuana daily during her pregnancy. Mother was discharged, but Juan remained in the hospital until May 23 due to his premature birth—he weighed only three pounds, five ounces and

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

² Mother is not a party to this appeal.

had difficulty eating. The social worker reported that father (age 22) visited the hospital frequently and both parents were cooperative and honest about their drug use.

In May 2016, a DCFS case social worker (CSW) conducted several interviews at the home of Juan's parental great-grandparents, where mother and father resided. Mother explained that on finding out she was pregnant, she immediately stopped using methamphetamine and heroin and started using marijuana to cope with her addictions. Father said he had been diagnosed with bipolar disorder but was allergic to his prescribed medication, and instead self-medicated with marijuana. Father expressed his willingness to cooperate with DCFS, and both parents agreed that their drug use affected their ability to properly care for Juan. The parental grandparents and great-grandparents expressed concern about mother's substance abuse and father's mental health issues.

On June 6, 2016, DCFS filed a four-count section 300 petition. Count b-1 alleged Juan's positive toxicology screen for marijuana at birth resulted from mother's unreasonable acts and substance abuse during pregnancy. Count b-2 alleged mother has a history of substance abuse and is a current abuser of marijuana, methamphetamine, and heroin; and father failed to protect Juan when he knew mother was abusing marijuana during her pregnancy. Count b-3 alleged father has mental and emotional problems, including a diagnosis of bipolar disorder and failure to take his prescribed medication. Count b-4 alleged father has a history of substance abuse and is a current abuser of marijuana. The petition alleged Juan "is of such a young age requiring constant care and supervision" that his parents' substance abuse and father's mental health issues render them

“incapable of providing regular care of the child,” “endangers the child’s physical health and safety and creates a detrimental home environment for the child, placing the child at risk of serious physical harm, damage, [and] danger.”

At the initial hearing on June 6, 2016, the court ordered Juan released to mother’s custody on the condition that she remain in an inpatient drug treatment facility. The court ordered monitored visitation for father. In advance of the jurisdictional and dispositional hearing, a CSW re-interviewed the family.

Mother stated the last time she used methamphetamine was when she was four months pregnant with Juan. She explained she smoked marijuana and drank alcohol with father, but father did not approve of her using methamphetamine and broke up with her several times because of her substance abuse issues. Mother stated father had been suffering from depression and bipolar disorder for a long time, but she did not think it would prevent him from caring for Juan. She was aware that father had been committed to a psychiatric hospital and had attempted suicide, but said he no longer had suicidal ideation. She noted father recently started receiving mental health treatment and was taking medication instead of relying on marijuana to stabilize his moods.

Father reported being aware of mother’s marijuana and methamphetamine abuse. He stated, “[b]efore she was pregnant, we drank and we smoked marijuana together and even after she was pregnant, because in my opinion doing marijuana was better than meth. We were smoking marijuana together daily.” He was not concerned about the child’s exposure to marijuana during pregnancy, stating he found no evidence that it was harmful.

Father also admitted he had a long-standing substance abuse problem. He started drinking at age 15 and was smoking marijuana three times a day by age 16. He also had experimented with ecstasy and methamphetamine, but said his “drug of choice was marijuana.” He used marijuana to help him deal with his mental and emotional problems because it made him “numb” and helped him sleep. When asked whether he had problems with drugs, father responded, “Yes, I have problems with marijuana and I have drug abuse potential for any drugs and it’s part of being an addict.” Father said he was attending Alcoholics Anonymous / Narcotics Anonymous meetings and submitting to drug testing.

Regarding his mental health issues, father said he had been diagnosed with depression, bipolar disorder, and post-traumatic stress disorder (PTSD). He confirmed having been committed to a psychiatric hospital on two prior occasions when he was 16 and 17 years old, and that he had attempted suicide on one occasion. He started attending therapy in the seventh grade and was prescribed antidepressants before he was 16 years old. But father said he was not compliant with his treatment because he believed he was allergic, felt sick, and lost weight when he was taking the medication. He recently had started seeing a drug addiction counselor and a psychiatrist, and was taking prescribed antipsychotic medication. He said he no longer had suicidal ideation.

The jurisdictional and dispositional hearing was continued to September 19, 2016. DCFS submitted two last minute information reports. In a report dated September 15, DCFS indicated father was attending AA/NA meetings and working with a sponsor on his substance abuse issues. However, father

was in the process of switching therapists because of scheduling conflicts and had stopped taking his prescribed medication because it was reportedly making him hallucinate. On July 7, father had tested positive for marijuana but otherwise tested negative for all substances. He missed his most recent drug test on August 26 but was excused by DCFS.

A further DCFS report, dated September 19, 2016, indicated father was evaluated in June 2016 by Julia Heredia, a chemical dependency counselor, who recommended that he participate in an eight-week lecture series on addiction, individual counseling sessions, and three 12-step meetings daily until he found employment. Ms. Heredia also reported that father was not compliant with his treatment plan. She provided a letter dated August 31, 2016 indicating father had agreed to commit to a minimum of two to four weeks in an intensive outpatient treatment program to address his substance dependency. Father's psychiatrist, Dr. Michael Hwang, provided a letter dated September 6, 2016 stating father was compliant with all recommended treatment. Dr. Hwang's letter did not specify what father's recommended treatment entailed and whether father had been prescribed any medications.

At the September 19, 2016 jurisdictional and dispositional hearing, mother's attorney submitted on the allegations of the petition but asked the court to strike the phrase in count b-2 stating she was a "current abuser of marijuana, methamphetamine, and heroin," given her enrollment in a treatment program and recent negative drug tests. Father's attorney asked the court to dismiss the allegations as they pertained to father's failure to protect the child from mother's substance abuse, father's own substance abuse issues, and his

mental and emotional problems. Counsel argued that father was cooperative with DCFS, enrolled in treatment programs, and testing negative for drugs.

The court sustained the petition as pleaded. Turning to the disposition, the court declared Juan a dependent of the court, removed him from father's custody, and placed him with mother under DCFS supervision. Father was ordered to participate in services to address his substance abuse and mental health issues, including a full drug and alcohol program with aftercare, parenting education classes, and individual counseling to address case issues. The court allowed father unmonitored visits with Juan at the inpatient treatment facility and provided DCFS with discretion to liberalize visitation. Father filed an application for rehearing, which the court denied on October 5.

This appeal followed.

DISCUSSION

I

We first consider whether this appeal is justiciable. Father challenges both the court's jurisdictional and dispositional orders on sufficiency of the evidence grounds. After the parties submitted their briefs, we took judicial notice of additional postjudgment evidence regarding a review hearing held on March 20, 2017, in which the court ordered Juan placed in the home of both parents under DCFS supervision. DCFS filed a partial motion to dismiss, arguing that father's challenge to the dispositional order removing Juan from his custody was rendered moot by the court's subsequent home-of-parents order. We granted the partial motion to dismiss. Consequently, father's sole remaining claim on appeal is his jurisdictional challenge.

Father acknowledges Juan will remain a dependent of the court regardless of the outcome of his appeal because the findings against mother are uncontested. “[A] jurisdictional finding good against one parent is good against both” because jurisdiction attaches to the child, not the parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Generally, a “single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings. [Citation.] We nonetheless retain discretion to consider the merits of a parent’s appeal [citation], and often do so when the finding ‘(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) “could have other consequences for [the appellant], beyond jurisdiction” [citation].’ [Citations.]” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

Father notes this appeal will determine whether he is considered an “offending parent” or a “non-offending” parent under the Welfare and Institutions Code, which “may have far-reaching implications with respect to his paternal rights and future dependency proceedings in this case.” He further notes that jurisdictional findings can establish prima facie evidence that a child cannot safely remain in the home. (See § 361, subd. (c)(1); *In re T.V.* (2013) 217 Cal.App.4th 126, 135.) Because we agree that the jurisdictional findings against father could be prejudicial and potentially impact the current or future dependency proceedings, we exercise our discretion to consider his challenge to the jurisdictional order on the merits. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; see also *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316-1317.)

II

Father argues that the court's jurisdictional findings against him are not supported by substantial evidence. "In reviewing a challenge to the sufficiency of the evidence supporting the 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." [Citation.] "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.] "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." [Citation.]" [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Jurisdiction under section 300, subdivision (b)(1) is warranted when the "[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." DCFS has the burden of proving three elements by a preponderance of the evidence to support a jurisdictional finding: "(1) neglectful

conduct by the parent in one of the specified 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.) The third element “effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

Regarding the petition’s substance abuse allegations, father argues he did not fail to protect Juan from mother’s drug use during pregnancy. But father admitted to the CSW that he smoked marijuana with mother daily even after finding out she was pregnant because he thought it was “better than meth” and did not believe it could harm the child. “[A] child’s ingestion of illegal drugs constitutes ‘serious physical harm’ for purposes of section 300.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825; see also *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217 [use of drugs while pregnant “unquestionably” endangers the health and safety of the unborn child].) Instead of helping mother seek treatment, father put the safety of his child at risk by condoning mother’s continuing drug use during her pregnancy. Father’s admission is sufficient to support the allegation that he failed to protect Juan from mother’s substance abuse. (See *In re J.C.* (2014) 233 Cal.App.4th 1, 6 [sustaining jurisdiction against nonusing father because he “knew mother was taking drugs while she was pregnant and did nothing to protect his unborn child from her conduct”].)

Father also argues DCFS failed to establish that his use of marijuana placed Juan at substantial risk of harm. He notes

that “a parent’s use of marijuana ‘*without more*,’ does not bring a minor within the jurisdiction of the dependency court.” (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003, citing *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453; accord *In re Drake M., supra*, 211 Cal.App.4th at p. 764.) However, children of “tender years,” like Juan, face “an inherent risk to their physical health and safety” if they are not adequately cared for or supervised. (*In re Rocco M., supra*, 1 Cal.App.4th at p. 824.) In such cases, “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.*, at p. 767.)

For purposes of section 300, subdivision (b), a finding of substance abuse must be based on evidence sufficient to show that either (1) the parent had been diagnosed with a current substance abuse problem by a medical professional; or (2) the parent has a current substance abuse problem as defined in the DSM-IV-TR. (*In re Drake M., supra*, 211 Cal.App.4th at p. 766; but see *In re Christopher R., supra*, 225 Cal.App.4th at pp. 1218-129 [*Drake M.* definition “is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court”].) The DSM-IV-TR definition³ of “substance abuse”

³ “The full definition of ‘substance abuse’ found in the DSM-IV-TR describes the condition as [a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or

includes “recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home.” (*Ibid.*) Here, sufficient evidence supports the finding that father had an unresolved substance abuse issue at the time of the jurisdictional hearing. He admitted that he had long-standing substance abuse problem and agreed that it affected his ability to properly care for Juan. Father was being treated for substance dependency at the time of the jurisdictional hearing and recently had committed to participating in an intensive outpatient treatment program. Moreover, a “major role obligation” for parents is to ensure that they do not expose their children to drugs. Father failed to fulfill this obligation by smoking marijuana with mother daily during her pregnancy. This evidence of substance abuse is sufficient to support the juvenile court’s finding that father was unable to provide regular care resulting in a substantial risk of physical harm to Juan. (*Id.* at p. 767.)

Finally, father argues DCFS failed to establish that his mental and emotional problems endangered Juan. He notes that DCFS “has the burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent. [Citations.]” (*In*

household); [¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); [¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct) . . . [¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’ (DSM-IV-TR, at p. 199.)” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766.)

re Matthew S. (1996) 41 Cal.App.4th 1311, 1318; accord *In re James R.* (2009) 176 Cal.App.4th 129, 136.) Father acknowledged he had long-standing mental health issues and had been diagnosed with depression, bipolar disorder, and PTSD. He also admitted he had been prescribed antidepressants in the past but was not compliant and instead abused marijuana to deal with his mental and emotional problems. At the time of the jurisdictional hearing, father recently had informed DCFS that he was no longer taking his antipsychotic medication because it was making him hallucinate. In light of his noncompliance, it was reasonable for the juvenile court to infer that father's mental health issues were unresolved and impaired his ability to provide regular care for Juan, resulting in a substantial risk of physical harm to the child.

DISPOSITION

Father's appeal of the dispositional order is dismissed. The jurisdictional order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.