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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.R. et al., a Person Coming Under
the Juvenile Court Law.

B238922
(Los Angeles County
Super. Ct. No. CK73570)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

R. H.,

Objector and Appellant.

APPEAL from orders of the Superior Court of the County of Los Angeles, Albert J. Garcia, Commissioner. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Objector and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Associate County Counsel, for Petitioner and Respondent.

INTRODUCTION

Objector and appellant R.H. (mother), the mother of C.R. and E.R. (the twins), appeals from the juvenile court's jurisdiction and disposition orders entered pursuant to Welfare and Institutions Code section 300, subdivision (b) and section 361, subdivision (c)(1).¹ According to mother, there was insufficient evidence to support the juvenile court's finding that her past drug abuse problems and current methadone treatment posed a substantial risk of harm to the twins. In addition, mother contends there was insufficient evidence to support the juvenile court's order removing custody of the twins from her and that there were reasonable means available to protect the twins without removing them from her custody.

We hold that there was substantial evidence to support the juvenile court's findings on the jurisdiction and disposition orders. We therefore affirm those orders.

FACTUAL AND PROCEDURAL BACKGROUND

On October 11, 2011, a children's social worker (CSW) for the Department of Children and Family Services (DCFS) received an "Immediate Child Abuse" referral alleging that mother had given birth to twin boys in October 2011, and that she admitted to using methadone during her pregnancy. The referral also stated that mother had relinquished guardianship of her other children and that the newborn twins needed to be assessed immediately. Based on the referral and mother's prior history with DCFS, the juvenile court granted DCFS's request for a removal order following which the children were detained from mother and released to their father.

In response to the referral, the CSW spoke to a medical social worker who confirmed that mother had admitted to using methadone throughout the course of her pregnancy. The CSW also interviewed the nurse who cared for the twins in the neo-natal

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

intensive care unit. The nurse reported that the twins “demonstrated behaviors that were indicative of withdrawal.” The nurse specifically observed that the twins had “high pitched cries” and exhibited “excessive sucking” behavior. The nurse informed the CSW that she was unaware of any other medical condition that would cause such behavior.

On October 12, 2011, the CSW interviewed mother who explained that she was unaware she was pregnant until three months into the pregnancy. According to mother, her drug treatment clinic told her that “if she suddenly stopped using methadone she could miscarry and lose both children,” and it was for that reason that she continued to use methadone throughout her pregnancy. Mother provided the CSW with documentation from the Pacific Alliance Medical Center that indicated that while she was being treated for drug addiction there, she was prescribed methadone “with the full knowledge and approval of medical staff at that hospital.” Mother thereafter provided a letter from her obstetrician which explained that mother had been “informed that it [was] important to continue her methadone treatment throughout [her] pregnancy, as withdrawals during pregnancy pose[d] a risk of complications and even pregnancy loss.”

The CSW also reported that mother’s “substance abuse history ha[d] existed for an extended period of time.” The CSW further noted that notwithstanding that mother had been advised by her physician to continue to use methadone during her pregnancy, the twins were “exposed to the substance,” and they were “manifesting withdrawal symptoms from their exposure to methadone” at the hospital. The CSW then provided mother’s detailed “prior child welfare history,” including the fact that mother had five other children who were no longer in her custody due to her longstanding drug abuse.

The CSW concluded that, based on the foregoing information, the twins were “at high risk for abuse.” The CSW therefore recommended that “continued detention [of the twins] from . . . [mother was] necessary to protect their safety.”

On October 19, 2011, DCFS filed a petition under section 300 alleging in paragraph b-1 that: “The children[’s], . . . [the twins’] [mother] has a history of substance abuse including cocaine and prescription medication and is a current abuser of methadone, opiates, codeine and morphine which renders the [twins’] mother incapable

of providing regular care for [them]. On October 12, 2011, the mother and [sic] had a positive toxicology screen for opiates, codeine and morphine. The [twins'] siblings, Kristina [H.] . . . and Victoria [G.] . . . received Permanent Placement Services, due to mother's illicit drug use. The mother's illicit drug use endangers the [twins'] physical health and safety and creates a detrimental home environment, placing the [twins] at risk of physical harm and damage."

At the October 19, 2011, detention hearing, the juvenile court found that there was a prima facie case for detaining the twins and that the twins were persons described in section 300, subdivision (b). The juvenile court further found that a substantial danger existed to the physical or emotional health of the twins and that no reasonable means existed to protect the twins without removal. The juvenile court also found that reasonable efforts had been made to prevent or eliminate the need for the removal of the twins from mother's custody and that "continuance in the [mother's] home [was] contrary to the [twins'] welfare. The twins were temporarily placed with DCFS and released to their father. The juvenile court granted mother monitored visitation.

In the December 5, 2011, jurisdiction/disposition report, a CSW reported that she interviewed mother who admitted that she began using and abusing vicodin after it was prescribed following a dental procedure, and then also began abusing oxycontin. Mother explained that she had not abused prescription drugs for three years and had been attending a methadone clinic for three years. According to mother, she was using 110 mg of methadone per day and, on the date of the interview, she was using 95 mg per day. Mother stated that she attended her methadone clinic for three hours a day, Monday through Friday, and also participated in AA meetings Monday through Saturday. Mother claimed that she was "in a different place in her life" and was "following her methadone treatment religiously." In the report, a CSW confirmed that mother had failed to reunify with her other children due to her past drug use. The CSW recommended to the juvenile court, inter alia, that the twins be declared dependents of the court under section 300, subdivision (b), that mother receive family reunification services, and that she participate in individual counseling and substance abuse treatment.

In a last minute information filed with the juvenile court on December 5, 2011, a CSW reported that mother had tested negative for drugs on November 29, 2011, but that on July 12, 2011, mother tested positive for morphine and that on October 12 and 19, 2011, mother tested positive for codeine. According to mother's substance abuse counselor, mother tested positive for codeine in October 2011 because she had been given that pain medication at the hospital due to the caesarian birth of the twins.

On December 5, 2011, the juvenile court held a pretrial resolution conference during which mother's counsel claimed that the July 12, 2011, positive test result for morphine was due to emergency room treatment mother received for gallstones. Her counsel represented to the juvenile court that mother would provide documentation supporting that claim.

At the January 12, 2012, jurisdiction/disposition hearing, DCFS submitted as evidence the detention report, the jurisdiction/disposition report, and the December 5, 2011, last minute information for the court. Mother's counsel then called her substance abuse counselor as a witness who testified that he was mother's primary counselor in her "group and individual methadone maintenance program." In the program, mother attended a clinic daily to receive her daily dose of methadone. She began that particular program on April 15, 2011.

Mother's counsel next called an obstetrician who treated mother during her pregnancy with the twins. According to the obstetrician, mother's pregnancy with the twins was "complicated by the substance abuse history for which she was treated with methadone." Therefore, the obstetrician's team was responsible for caring for her high risk pregnancy while another obstetrician provided mother routine obstetrical care. The high risk pregnancy obstetrician was aware that the twins tested positive for methadone at birth and had withdrawal symptoms, but opined that they would not have experienced those symptoms if mother had been allowed to breast feed them as planned. The obstetrician also opined that mother's methadone levels were appropriate, and that reducing or stopping methadone during pregnancy could have caused the twins to suffer withdrawal symptoms in utero serious enough to cause a loss of the pregnancy.

On cross-examination, the obstetrician stated that she would not advise a woman being treated with methadone to become pregnant. The obstetrician also explained that although some patients need to be treated with methadone for life, that need varies from patient to patient. According to the obstetrician, if mother had a positive drug test for morphine, it could be considered as a relapse.

Mother testified that the positive drug test for morphine on July 12, 2011, was the result of treatment she received for gallstones. She did not, however, have any documentation confirming that treatment.

At the close of testimony, the juvenile court found paragraph b-1 of the petition to be true and found the twins to be persons described under section 300, subdivision (b) and dependents of the court. In doing so, the juvenile court observed that mother needed more treatment and that the twins needed to be protected. According to the juvenile court, mother needed “to stay clean. And she [did not] understand that,” a statement that suggested that the juvenile court did not find mother’s excuse for the July 2011 positive drug test credible. The juvenile court further found that a substantial danger existed to the physical or emotional well-being of the twins and that no reasonable means existed to protect the twins without removal of custody from mother. In addition, the juvenile court found that DCFS had made reasonable efforts to eliminate the need for removal of custody of the twins from mother. Based on those findings, the juvenile court ordered that custody of the twins be taken from mother and that the care, custody, and control of the twins be placed under the supervision of DCFS. The twins were placed in the home of their father, and mother was granted family reunification services and monitored visitation. The juvenile court also required mother to provide explanations from her doctors in the event she had “any dirty, missed . . . , or diluted [drug] test[s].” And the juvenile court required mother to complete a full drug and alcohol rehabilitation program with drug and alcohol testing on demand.

DISCUSSION

A. Standard of Review

Mother's challenges to the sufficiency of the evidence in support of the juvenile court's jurisdictional and dispositional findings are reviewed under the substantial evidence standard of review. "On appeal, the 'substantial evidence' test is the appropriate standard of review for both the jurisdictional and dispositional findings. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654 [54 Cal.Rptr.2d 722]; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344 [51 Cal.Rptr.3d 448].) The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. (See *In re Jerry M.* (1997) 59 Cal.App.4th 289, 298 [69 Cal.Rptr.2d 148].)" *In re J.K.* (2009) 174 Cal.App.4th 1426,1433.) "In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]" (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564 [135 Cal.Rptr.2d 72].)" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) "When an appellate court reviews a sufficiency of the evidence challenge, we may look only at whether there is any evidence, contradicted or uncontradicted, which would support the trier of fact's conclusion. We must resolve all conflicts in favor of the court's determination, and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547 [247 Cal.Rptr. 784]; *In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1132 [200 Cal.Rptr. 789].)" (*In re John V.* (1992) 5 Cal.App.4th 1201,1212.)

B. Substantial Evidence in Support of Risk of Harm

Mother first challenges the sufficiency of the evidence in support of the jurisdictional findings as to the twins. The juvenile court found that each child was a person described by section 300, subdivision (b). That section provides in pertinent part: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] (b) 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 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, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, 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. . . .”

Mother contends that her past drug abuse history, her current methadone use, and the one July 2011 positive drug test for morphine did not support a reasonable inference that the twins were at risk of harm. According to mother, at the time of the jurisdiction hearing, she was doing well in her treatment programs and not abusing illicit drugs. In addition, mother asserts that she provided a satisfactory explanation for the July 2011 positive drug test.

The evidence before the juvenile court showed that mother had a long history of drug abuse that was so incapacitating it caused her to lose custody of her five other children. It also required her to take daily doses of methadone over a long period of time—three years—without substantially reducing her dosage. Moreover, the evidence showed that mother continued to use methadone during her pregnancy and, as a result, the twins suffered from withdrawal symptoms following their birth, i.e., they suffered physical harm as a direct result of mother's drug abuse issues. That evidence was sufficient to support a reasonable inference that mother had a serious drug addiction issue

that prevented her from caring for her other children and which caused physical harm to the twins at birth. (See *In re Troy D.* (1989) 215 Cal.App.3d 889,897 [“The fact that [the minor] was diagnosed as being born under the influence of a dangerous drug is legally sufficient for the juvenile court to exercise jurisdiction”].)²

In addition, the evidence showed that, notwithstanding her methadone treatment and drug abuse programs, mother tested positive for morphine in July 2011. Although mother provided an explanation for that positive test, she had no documentation to support that explanation, and the juvenile court did not find the explanation credible. That test, coupled with the other evidence, was sufficient to support a reasonable inference that mother had relapsed in July 2011 and was therefore at risk of doing so in the future. Given that mother had a history of being unable to care for and protect her children while she was abusing drugs, the risk of relapse was sufficient to support an inference that the twins were at risk of harm.

C. Substantial Evidence in Support of Removal Order

In determining whether to remove a child from his or her parents’ custody, the juvenile court must find that “[t]here is or would be substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home” (§ 361, subd., (c)(1).) “A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]’ (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136 [98 Cal.Rptr.2d 715],

² Mother argues that because she was doing so well in her treatment programs, it was unfair for the juvenile court to remove the twins from her. But “[t]he paramount purpose underlying dependency proceedings is the protection of the child. [Citations.] “*The parents do not represent a competing interest in this respect.*” [Citation.]’ (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214 [272 Cal.Rptr. 316], italics added.)” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452.)

disapproved on another point in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6 [110 Cal.Rptr.2d 828, 28 P.3d 876].) The juvenile court's findings must be based on clear and convincing evidence. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 696 [13 Cal.Rptr.3d 198]; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1656 [54 Cal.Rptr.2d 722].) [As noted,] . . . an order removing a child from parental custody [is reviewed] for substantial evidence in a light most favorable to the juvenile court findings. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1120 [93 Cal.Rptr.3d 418]; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [60 Cal.Rptr.2d 315].)" (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

Mother contends that even assuming there was substantial evidence to support the juvenile court's jurisdictional findings, there was insufficient evidence to support the disposition order removing the twins from her custody. According to mother, she was doing well in her treatment programs, she was not abusing illicit drugs, and there were reasonable means, short of removal, to protect the twins from the risk of harm, such as, for example, supervision by the twins' father and "wraparound" services.

The evidence showing physical harm to the twins at birth and a current risk of relapse discussed above was sufficient to support the removal order. That evidence supported a reasonable inference that despite her long term methadone treatment and drug programs, mother was still at risk of relapse, as evidenced by the July 2011 positive drug test result. Therefore, it was reasonable for the juvenile court to conclude that mother needed further treatment and testing before she could take full responsibility for the care and protection of the twins. Because past supervision by father and past drug abuse treatment services failed to prevent the July 2011 relapse, there was substantial evidence that removal was necessary to protect the twins and that there were no reasonable means available to protect the twins without such removal.

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed.

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MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

KRIEGLER, J.