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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.M. et al., Persons Coming Under the Juvenile Court Law.	B272211
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.M. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. DK12749)

APPEAL from orders of the Superior Court of Los Angeles County. Stephen Marpet, Commissioner. Affirmed and remanded.

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

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

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

S.M. (mother) and J.C. appeal the juvenile court's jurisdiction and disposition orders declaring minors N.M. and A.C. dependents of the juvenile court and removing them from mother and J.C.'s care. We conclude substantial evidence supports the court's orders and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 2, 2015, mother called a helpline and said she was suicidal. She was eight months pregnant, and her family was homeless. She said she was "thinking of hurting [her]self and [her] unborn child" and planned to overdose on insulin that her doctor had prescribed for her diabetes. Mother threatened to take her life while in the presence of three-year-old N.M. and nine-year-old A.M.[1]

Law enforcement responded to the scene and took the children into protective custody. A social worker interviewed mother who said her boyfriend, J.C., generally paid the rent but they had become homeless in the past week after they were forced to move out of the motel where they were staying. J.C. said he did not know mother intended to hurt herself. He also said he could not serve as a caretaker for the children because he worked long hours. A.M. said they had been sleeping behind buildings since they moved out of the motel.

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[1] The children have different fathers: A.M.'s father is Jose C., N.M.'s father is Jonathan M., and A.C.'s father is J.C.

Mother was diagnosed with depression and hospitalized temporarily at a psychiatric facility on a voluntary basis. She told the treating physician she had felt suicidal but denied having a plan to harm herself. She further said she would comply with her doctor's recommendations for treatment. Her physician recommended follow-up care at the outpatient clinic and mother said she would follow up with the clinic upon discharge. The children were placed in foster care. Shortly thereafter, A.M. was released to her father, Jose C.

On August 5, 2015, the Department of Children and Family Services (Department) filed a petition alleging that mother's mental and emotional problems rendered her incapable of providing regular care for A.M. and N.M. under Welfare and Institutions Code section 300, subdivision (b).[2] The petition further alleged that mother had "expressed suicidal ideations" and failed to provide shelter for the children thereby placing the children at risk of serious physical harm.[3] At the detention hearing, the children were detained and mother was allowed unmonitored visitation.

On August 12, 2015, a social worker interviewed mother at a new apartment she and J.C. were renting. Mother was "unable to explain in a coherent or linear fashion" when she had been evicted from her prior residence or why J.C. did not pay to remain at the motel so that they would not have to sleep on the street. Mother appeared to have a good relationship with her

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[2] All further statutory references are to the Welfare and Institutions Code.

[3] The petition also alleged jurisdiction based on N.M.'s father's failure to provide for her. He did not appear in this action.

own father but said she had not asked to stay at his house because "I didn't want to show him I was weak."

In August 2015, mother gave birth to A.C. On September 4, 2015, a social worker visited mother and the infant at their residence. The social worker observed that A.C. had a "severe diaper rash that was bright red" along his inner thighs, around his legs and on his buttocks. He whimpered in pain when mother wiped the area.

Mother stated she had been discharged from the hospital with an ointment for the diaper rash. Mother acknowledged that she had not taken A.C. to his follow-up doctor's appointment that day. The social worker helped mother to schedule another appointment, and instructed mother on caring for A.C.

On September 11, 2015, when A.C. was two weeks old, he was removed from mother's care. The diaper rash had become worse and there were red spots on his face. J.C. said he had not noticed the rash even though he changed A.C.'s diaper every day. A public health nurse examined A.C. She opined that the medicated ointment had not been correctly applied, he was not "being cared for hygienically," and he was in need of urgent medical attention.

A.C. was placed with paternal grandmother. She said the rash was bleeding and there were open sores. A.C. cried in pain whenever she changed his diaper or bathed him. It took four days of treatment with the prescribed ointment before his pain eased.

On September 16, 2015, the Department filed a petition alleging two bases for jurisdiction under section 300, subdivision (b): (1) mother and J.C. had failed to obtain necessary medical treatment for A.C.'s rash thereby placing him at risk of serious

physical harm, and (2) mother's mental and emotional problems endangered A.C..[4] The court ordered A.C. detained with paternal grandmother.

The adjudication and disposition hearing was continued multiple times. In November 2017, the Department submitted a report stating that mother was attentive to A.C. during visits. However, paternal grandmother had observed J.C. acting controlling toward mother during visits. Paternal grandmother said J.C. tended to lash out at mother, hover over her, and touch her constantly. N.M.'s foster mother also said that J.C. frequently called mother on the phone during visits, and mother had bruises on her arms and neck. Social workers noticed mother's bruising as well and observed her being fearful of and subservient toward J.C.

Mother enrolled in therapy in December 2015 but only sporadically attended her weekly therapy sessions over the following several months.

In January 2016, the Department reported that mother had been "extremely emotional, paranoid and aggressive" toward N.M.'s foster mother, paternal grandmother and social workers. J.C. had refused to enroll in services unless ordered by the court.

In March 2016, the Department reported that J.C. continued to exhibit controlling behaviors toward mother and blamed the Department and paternal grandmother for A.C.'s removal. J.C. also refused to acknowledge his "aggressive demeanor" and "vowed to deny [the Department] access to his home once [A.C.] [wa]s placed in his care." With respect to

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[4] The petition also alleged jurisdiction under section 300, subdivision (j): mother's mental and emotional problems and failure to provide shelter for A.M. and N.M. endangered A.C.

mother, the Department noted she was participating in parenting classes.

Later that month, mother participated in a mental health assessment during which she stated that she did not want or need services and had "no symptoms of any kind." She did not discuss the incident that initiated this case or her personal history. She said the Department was forcing her to participate in the assessment and blamed the Department for preventing her from reunifying with her children. The Department concluded mother had "shown little or no compliance" with the Department's efforts to provide her with services to address her mental health issues.

On April 11, 2016, the court held the adjudication and disposition hearing. The court sustained the allegation that mother's mental and emotional problems endangered the children.[5] The court terminated jurisdiction over A.M., giving her father sole custody. Mother and J.C. were granted reunification services and monitored visitation as to N.M. and A.C. The court further ordered mother and J.C. to participate in parenting classes and individual counseling with a focus on anger management and domestic violence. Mother and J.C. timely appealed.

DISCUSSION

1. *Standard of Review*

At the first stage of dependency proceedings, the juvenile court determines whether the child is subject to juvenile court jurisdiction. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 103.) To

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[5] The court also asserted jurisdiction over A.C. under section 300, subdivision (j) on the ground mother had neglected N.M. and A.M. and there was a substantial risk A.C. would be neglected.

do so, the court must determine whether the minor falls within any of the descriptions set out in section 300. (*Ibid.*) " 'The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' [Citation.]" (*In re A.S.* (2011) 202 Cal.App.4th 237, 244.) The Department has the burden to prove jurisdiction by a preponderance of the evidence. (§ 355, subd. (a).)

If jurisdiction is found, the juvenile court must decide an appropriate disposition for the child. (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 645.) To support removal from parental custody, the Department has the burden to prove by clear and convincing evidence that there is a risk of substantial harm to the child if returned home and the lack of reasonable means short of removal to protect the child's safety. (§ 361, subd. (c); *In re D.C.* (2015) 243 Cal.App.4th 41, 54.)

On appeal, we review both the jurisdictional and dispositional orders for substantial evidence. (*In re D.C.*, *supra*, 243 Cal.App.4th at p. 55.) In doing so, we view the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the juvenile court's findings and orders. (*Id.* at p. 51.) Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment. (*Ibid.*)

2. *The Indian Child Welfare Act (ICWA)*

Mother contends, the Department concedes, and we agree that the juvenile court erred in finding that ICWA did not apply with respect to N.M. and A.C.[6]

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[6] Mother does not challenge the orders with respect to A.M.

The notice requirements of ICWA serve the purpose of protecting Indian children and providing a mechanism for the maintenance of tribal and familial ties for native American children faced with the prospect of placement in the foster care system. (25 U.S.C. § 1901; see also *In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) The threshold of information necessary to trigger ICWA notice requirements is low. (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165 [ICWA triggered where mother denied heritage, but father claimed possible Cherokee tribal membership through paternal grandfather, with no biographical data other than grandfather's name].) We review the juvenile court's ruling for substantial evidence. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991.)

On August 5, 2015, mother informed the court that her maternal great-grandmother, Nina R., was a member of the Cherokee tribe. She further wrote that her maternal cousin, Vanita H., would have more information on their Native American ancestry. She later said her great-great-grandfather was also a Cherokee member. The court found that ICWA did not apply.

The information provided by mother was sufficient to trigger the obligation of the Department to provide notice under ICWA. (See *In re Gabriel G.*, *supra*, 206 Cal.App.4th at p. 1165.) We therefore remand for the limited purpose of directing the juvenile court to order the Department to provide such notice. (*In re Damian C.* (2009) 178 Cal.App.4th 192, 199–200 ["Although we conclude the matter must be remanded with directions to the court to ensure ICWA compliance, we decline to reverse the jurisdictional and dispositional orders. There is not yet a

sufficient showing [the minor] is an Indian child within the meaning of ICWA."].)

3. *Substantial Evidence Supports the Court's Adjudication Findings*

Mother and J.C. contend the jurisdiction order is not supported by substantial evidence. They argue there was no evidence mother still suffered from mental health problems at the time of the adjudication hearing such that N.M. and A.C. were still at risk of harm. They further argue that A.C. was not at risk of future harm based on his parents' medical neglect at the time of the adjudication hearing.

Here, the petitions alleged that the children were neglected by mother and J.C. under section 300, subdivision (b). Section 300, subdivision (b)(1) provides that a child comes within the jurisdiction of the juvenile court 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 . . . ." The petitions alleged, as to both N.M. and A.C., that mother's "mental and emotional problems . . . [and] failure to make an appropriate plan for the children, endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, and danger." A.C. was further alleged to be "at risk of serious physical harm, damage, danger and medical neglect" due to mother and J.C.'s "fail[ure] to obtain necessary medical treatment for the child's diaper rash."

A section 300, subdivision (b) jurisdictional finding may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur. (*In re J.N.* (2010) 181 Cal.App.4th 1010 [jurisdiction could not be based

on single incident of driving under the influence where there was no evidence that parents had ongoing substance abuse issues].) But evidence of past conduct may be probative of current conditions. (*In re James R.* (2009) 176 Cal.App.4th 129, 135–136.) To establish a defined risk of harm at the time of the hearing, there "must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]" (*Id.* at p. 136.)

With respect to mother's mental health problems, she argues the record establishes that her depression and suicidal thoughts were a temporary condition brought on by pregnancy. She analogizes to *In re James R., supra,* 176 Cal.App.4th 129 where the court concluded that there was no causal link between mother's mental health issues and future harm to her children. (*Id.* at p. 136.) In *James R.*, the mother was hospitalized after she took eight ibuprofen with several beers while caring for her children. (*Id.* at pp. 131–132.) The evidence established this was not an attempt at suicide but rather that the mother believed she had built up a tolerance to the medication. (*Id.* at p. 132.) Although the mother had a history of mental illness, there was no evidence she continued to suffer from mental illness since her children were born. (*Id.* at p. 136.) In addition, there was "never a determination [she] was a danger to herself or others." (*Ibid.*)

Mother argues that, like the mother in *James R.*, she was never determined to be a danger to herself. We disagree and, more pertinent here, we conclude the evidence showed mother's mental health problems posed a danger to her children. Mother threatened not only to kill herself, but also her unborn child, and she had a plan for carrying out this threat – overdosing on insulin. In addition, she threatened to kill herself in front of N.M., which created a risk of emotional harm to the child.

Although mother was released from the psychiatric facility based on the conclusion she was no longer suicidal, she was also given a current diagnosis of depression and ordered to participate in treatment.

Mother argues her depression was a temporary condition related to her pregnancy and it had been fully resolved. However, her treating physician diagnosed her with depression without limiting the condition to mother's pregnancy. In addition, the doctor's order that she participate in follow-up care for her depression indicates that she needed care to resolve the condition.

Although mother denied continuing to suffer from any symptoms of depression, she was an unreliable witness. After calling the helpline, she told law enforcement she planned to overdose on insulin. However, when she was hospitalized, she denied having a plan to harm herself. In addition, she told the treating physician she would comply with the doctor's recommendations for treatment and follow up with the clinic, but the evidence suggests she did not do so. Rather, when mother did participate in a mental health assessment, she refused to address her prior suicide threat or history of depression but claimed the Department was unreasonably forcing her to participate in mental health services.

On these grounds, we conclude there is substantial evidence mother did not take needed steps to address her depression and her mental and emotional problems continued to pose a risk of serious harm to N.M. and A.C. at the time of the jurisdiction hearing. We decline to address the additional jurisdictional allegations against mother because mother's mental and emotional problems provided an adequate basis for

jurisdiction. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492 ["an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence."].)

We will address J.C.'s arguments regarding the jurisdictional allegations sustained against him because they could be prejudicial to him in future dependency proceedings. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) J.C. argues there was no substantial evidence that (1) A.C.'s rash constituted serious physical harm, and (2) A.C. was at risk of suffering serious physical harm. As to the former contention, the petition here did not allege that the rash constituted serious physical harm but only alleged that A.C. was *at risk of* serious physical harm due to his parents' neglect.

As to the later contention, J.C. argues that A.C. was no longer at risk of harm at the time of jurisdictional hearing because his rash had been treated. We disagree. We note first that substantial evidence supported the finding that A.C. suffered from medical neglect while in mother and J.C.'s care. A.C. was discharged from the hospital with a diaper rash with instructions to return for a follow-up appointment, however, his parents did not bring him to the appointment. A.C.'s condition then worsened while in his parents' care: the "severe," "bright red" rash developed open sores and began to bleed. When A.C. was removed at the tender age of two weeks, a nurse found that the medical ointment prescribed for his condition had not been applied correctly, he had not been "cared for hygienically," and he needed urgent medical attention. This was substantial evidence his parents' neglect placed A.C. at risk of serious physical harm.

Furthermore, at the time of the jurisdiction hearing, J.C. had not acknowledged his prior neglect of A.C. Rather, he refused to enroll in services unless ordered by the court and vowed to deny the Department access to A.C. once the child was returned to J.C.'s care. "One cannot correct a problem one fails to acknowledge." (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.) Accordingly, although A.C.'s rash had healed, he was still at substantial risk of serious physical harm because J.C. had not taken steps to address his neglect. On these grounds, there was substantial evidence the conditions placing A.C. at risk of serious harm persisted.[7]

4. *Substantial Evidence Supports the Court's Disposition Orders*

Mother and J.C. also challenge the sufficiency of the evidence supporting the dispositional order. Mother argues that the court erred in ordering the removal of N.A. and A.C. because there was no substantial evidence they would be in danger if returned to mother's care. J.C. argues there were reasonable means to protect A.C. without removal.

" 'A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child 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

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[7] J.C. also argues that A.C. was not at risk of suffering serious physical harm because J.C. had arranged for A.C. to stay with paternal grandmother. This argument goes to disposition not to jurisdiction. Furthermore, at time of the adjudication hearing, paternal grandmother and J.C. had had a falling-out and she had obtained a restraining order against him.

child." [Citation.] The court may consider a parent's past conduct as well as present circumstances.' [Citation.] [¶] 'Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.' [Citation.]" (*In re A.S.*, *supra*, 202 Cal.App.4th at p. 247.)

Here, the evidence supports the disposition finding. Even though mother had participated in parenting classes and several counseling sessions, there was substantial evidence mother had not addressed the root cause of her neglect – her depression – which led to her threatening in front of N.A. to kill herself and her unborn child. Mother's neglect posed a risk of danger to both children's physical health if returned home.

Although J.C. argues the Department could have ordered "in-home services" or "frequent, unannounced home visits," the record indicates this would not have been effective in averting the danger to the children. A Department social worker made an unannounced home visit when A.C. was a week old, informed mother of A.C.'s need for medical attention, helped her contact the doctor's office, and instructed her on caring for the infant. This did not prevent the deterioration of A.C.'s condition under mother and J.C.'s care. In addition, despite the Department's attempts to help mother obtain services for her depression, mother "showed little or no compliance" and refused to acknowledge her diagnosis.

Both mother and J.C. challenge the court's order that they participate in individual counseling with a focus on anger

management and domestic violence. J.C. argues the order was not related to the sustained allegation against him. However, even in the absence of a jurisdictional finding against J.C., the juvenile court would have had the discretion to make a dispositional order as to him. (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) As one court has explained: "The juvenile court may make 'all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.' (§ 362, subd. (a); citation.) The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.]" (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.)

The juvenile court "has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion." (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) Here, paternal grandmother, N.M.'s foster mother, and Department social workers all observed signs of domestic violence between mother and J.C. which included J.C.'s lashing out at mother and mother's fearful demeanor toward him. In addition, there was evidence mother focused her anger on the Department instead of addressing her depression – she blamed the Department for the removal of her children and for making her participate in mental health services. Based on this evidence, the court ordered both parents to address issues of domestic violence and anger management in counseling. This was not an abuse of discretion.

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed. We remand for the limited purpose of directing the juvenile court to order the Department to comply with ICWA.

SORTINO, J.*

WE CONCUR:

BIGELOW, P. J.

FLIER, J.

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