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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.S., a Person Coming Under the
Juvenile Court Law.

B247190

(Los Angeles County
Super. Ct. No. CK 96789)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court for the County of Los Angeles.

Donna Levin, Juvenile Court Referee. Affirmed.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

The child in this juvenile dependency proceeding had a positive toxicology screen for amphetamine when he was born. The father challenges jurisdictional findings that he failed to take action to protect the child when he knew or reasonably should have known of the mother's substance abuse, and that his own substance abuse placed the child at risk of physical harm and damage. The jurisdictional findings based on mother's conduct are uncontested, and the allegation that father failed to protect the child is supported by substantial evidence. We therefore need not consider father's claim there was insufficient evidence of the additional jurisdictional finding that father's substance abuse endangered the child's physical health and safety, and we affirm the court's dispositional orders.

FACTS

When the child, A.S., was born, both mother and son tested positive for amphetamines. The Department of Children of Family Services obtained a removal order three days after the child was born.

Mother, S.G., who lived with the maternal grandmother, had delivered the baby in her garage and then was taken by ambulance to a hospital. She said she learned she was pregnant only about six weeks before, and when she tried to schedule an abortion, was told she was 33 weeks pregnant. She said she did not obtain prenatal care because she was planning on an abortion. Mother said she had smoked methamphetamine for about a year and a half; she admitted smoking methamphetamine several times after learning she was pregnant, and had done so two days before the birth.

Mother said she did not tell her family or father, I.S., that she was pregnant, and was able to hide the pregnancy because she only gained 10 pounds. Father said that mother informed him in March that she was pregnant, and told him she was having an abortion. Father believed her but "recently began questioning mother" about whether she was pregnant, and mother denied it. Father said, "I guess she never got the abortion." Father was "very clear" in saying he believed he was the father, but because he and

mother broke up several times during their relationship, he wanted a DNA test to confirm he is the biological father.

Mother admitted she told father she was pregnant in March 2012, but claimed she was lying because she was “trying to hold onto father.” It was unclear to the social worker whether mother knew she was pregnant during the entire pregnancy or learned recently, but the baby’s gestational age, estimated at 38 weeks, coincided “with mother telling father in the end of March that she was pregnant.”

Mother said that, to her knowledge, father does not abuse any drugs. According to the detention report prepared on December 3, 2012, father stated he currently smokes marijuana, and “he smoked methamphetamine for approximately one to two months and last used one month ago.” (Elsewhere in the same report, the social worker wrote that father “admitted to abusing methamphetamine for a period of two months and stated that he has not used methamphetamine in at least a month or two.”) Father said he was unaware mother was abusing drugs “although he had heard from several people that she was”; mother denied it every time father asked her.

The baby was discharged from the hospital a few days after his birth, and mother and father both signed a safety plan, agreeing the child would be under the maternal grandmother’s care and the parents would be supervised by the maternal family while visiting and caring for the baby. The detention report concluded, based on methamphetamine use by mother and father, the family could be categorized as being at high risk for future neglect.

The court detained the child on December 5, 2012, and stated the paternity finding was “on hold” pending receipt of DNA test results. The court allowed mother to reside in the home of maternal grandmother, but ordered that she not be left alone with the child. Father was allowed monitored visits a minimum of once a week, one hour per visit.

Father did not keep his appointment in early December for the DNA test, but on January 8, 2013, said he still wanted to have the test “as he still questions paternity of the child.” Mother told the social worker that father did not know she was using methamphetamine, and father said the same thing. Father said he found out mother was

using methamphetamine during the pregnancy when he showed up at the hospital. “She was doing that because of the stress, and she didn’t want to have the baby. I didn’t know at all.” Father said the hospital called to tell him mother “had just had my little boy,” and “it was a big surprise.”

But father suspected drug use by mother. He said, “I would ask her and she would always deny it.” He noticed mother was “getting a little skinny” and “every time I would ask her to eat she would say no. I had an idea but I wasn’t gonna accuse her of doing drugs.” When father was asked if mother told him she was pregnant, father said, “Yeah, she mentioned way back that she was on the IUD and we had a talk about her taking it off and that we should have a baby. Then we said that maybe we should wait. She called me and said she was pregnant and I told her that I thought she was on the IUD. We had talked about it and made a plan that we weren’t going to go through with it and have the abortion. . . . She never did nothing about it. This was around November or December. She told me that she was gonna go through the abortion.” Father said he “missed work two times to go to the abortion,” but when they arrived, mother was not willing to go through with it. “She was looking skinnier and she didn’t go through with it all. She wasn’t eating. I think that is when she was doing Methamphetamine. I think she was using Methamphetamine to not have the baby.”

As for father’s drug use, mother said (not identifying any drug): “I knew he was using it. He would sometimes come home and have done it. I never did it with him or ever saw him do it. I just knew.” When father was asked if he and mother had used drugs together, he said, “No, we didn’t do any of that. I would do it but it was never an addiction, only to lose a little weight. But we never did that together. We have that respect towards each other.”

When he was asked what drug he used to lose weight, father said he used methamphetamine. He said the social worker “that wrote that down” (in the detention report) “got it mixed up, I recently done marijuana, not Methamphetamine. I don’t do drugs anymore.” When asked (for the jurisdictional report prepared on January 9, 2013) when he last used methamphetamine, father said, “Now it has been longer; I would say

six months.” He said he “was only doing it for a month and a half. I heard about it. I had seen a friend that was losing weight; I wanted to lose a little weight. I only did it to lose weight.”

As for his marijuana use, father said (in January 2013) he last used it “I would say like a month ago. I have only smoked it every now and then when I am stressed out and had a long day. I would say I barely started like the middle of last year around May.” Father tested positive “for Cannabinoids 110 NG/ML” on November 21, 2012.

At the time of the jurisdictional report, father was visiting the child about three times a week, and there were no reports of any concerns during the visits. Both parents were enrolled in random weekly drug testing. The social worker explained family reunification services to the parents, and both said they wanted the child to be in their care and would comply with court orders.

Neither parent was present at the jurisdictional and dispositional hearing on January 24, 2013. Father’s counsel asked for a continuance, because “if he is not the biological father, . . . he would want to be dismissed from this case.” The court found father to be the presumed father, observing he had “more than enough time” to get a DNA test even if he could not keep the initial appointment. The court said it would entertain a motion to rebut the presumption of fatherhood if the test results were negative. The Department’s reports were admitted in evidence without objection.

The Department’s counsel argued father “does have a history of using methamphetamine,” and “[t]he last time he used was approximately six months ago, but his marijuana use was more recent, approximately one month ago.”

Father’s counsel requested dismissal of the allegation that father had “a history of substance abuse, and is a current user of methamphetamine and marijuana” Counsel pointed out father only used methamphetamine for a month and a half, and “that was well over six months ago.” And while father acknowledged smoking marijuana, “when he tested most recently for the Department, his levels were very low.” Mother was the primary caretaker of the child, so there was no nexus “between drug usage [by father] and neglect of the child.”

The court struck duplicative allegations against the mother, combining allegations from a second count against the mother into the first count against mother and father. The sustained count alleged the child's birth with a positive toxicology screen; mother's positive test and history of substance abuse (amphetamine, methamphetamine, marijuana and alcohol); and father's failure to protect the child when he knew or should have known of mother's substance abuse.

The court also sustained the third count, against father, that he had "a history of substance abuse, and is a current user of methamphetamine and marijuana," rendering him incapable of providing regular care for the child, and that father's "substance abuse endangers the child's physical health and safety and creates a detrimental home environment, placing the child at risk of physical harm and damage."

The court ordered the child removed from mother and father. The court allowed mother to reside in the home with the child, but not to be left alone, with discretion to liberalize if mother was testing clean.

The court ordered father to do a full drug program with weekly random and on-demand testing, a 12-step program, "and he can have visitation one time per week, one hour per visit, with discretion to liberalize."

Father filed a timely appeal from the court's orders.

DISCUSSION

Father argues the evidence was insufficient to sustain the jurisdictional allegation that he had a history and current use of methamphetamine, and his occasional use of marijuana alone was an insufficient basis for dependency jurisdiction. Father also contends the evidence was insufficient to support the allegation that he failed to protect the child, "because he did not know that mother was still pregnant," and the Department "did not present evidence that father knew mother was using drugs and continuing the pregnancy." He further contends the court did not have clear and convincing evidence to remove the child from father and to limit his visitation.

The Department argues we need not consider father's arguments on their merits, because jurisdiction over the child is proper based on mother's conduct. Jurisdiction over

the child is, of course, proper without regard to father's conduct. But there are circumstances under which courts should consider one parent's claim to be a nonoffending parent, even though dependency jurisdiction continues over the child in any event. (*In re Drake M.* (2012) 211 Cal.App.4th 754.) This is not a case involving a nonoffending parent, and we therefore decline to entertain all of father's jurisdictional contentions. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 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"].)

Even if father were correct that substantial evidence did not support the juvenile court's finding that father was "a current user of methamphetamine," and the remaining drug use allegation (supported by his use of marijuana) – that father's "substance abuse endangers the child's physical health and safety" and "plac[es] the child at risk of physical harm and damage" -- father would not be a "nonoffending parent." There was substantial evidence to support the other jurisdictional allegation based on father's conduct: that he "failed to take action to protect the child when he knew or reasonably should have known of the mother's substance abuse."

In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "[W]e draw all reasonable inferences from the evidence to support the findings and orders of the dependency court" (*ibid.*), and "[w]e 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" (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321).

Father contends the Department "did not present evidence that father knew mother was using drugs and continuing the pregnancy." We disagree. There was substantial evidence supporting the failure-to-protect allegation. Mother told father about the pregnancy; father knew that on two occasions, he himself took mother to get an abortion and mother could not bring herself to have the procedure; and father admitted he

suspected mother of drug use but did not want to accuse her. From this evidence, a fact finder could reasonably infer father should have known mother had not terminated her pregnancy and was using drugs, but nonetheless did nothing to try to protect the unborn child.

In sum, because jurisdiction over the child was proper based on mother's conduct *and* father's conduct, father's challenge to the court's jurisdictional order fails. His challenge to the dispositional orders is also unavailing. Father's conduct in failing to protect the child before he was born justified removal of the newborn child from father. Moreover, although father's counsel told the juvenile court he "would want the child to be returned to him and the mother," father did not attend the dispositional hearing, sought a continuance of the hearing to obtain a DNA test, and "would want to be dismissed from this case" if he is not the biological father. We see no error in removing the child from father, and father's further objection to the visitation order – once per week, one hour per visit – is likewise without merit. Father says, without elaboration, that there was "no need" to restrict his visits, but has not demonstrated any abuse of the court's discretion in making the order, which in any event gave the Department "discretion to liberalize father's visits."

DISPOSITION

The orders are affirmed.

GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.