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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B296535

(Los Angeles County
Super. Ct. No.
19CCJP00325A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

PATRICIA A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Craig Barnes, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal,
for Defendant and Appellant.

Amir Pichvai for Plaintiff and Respondent.

Patricia A., the mother of three-year-old Samuel A., appeals the juvenile court's jurisdiction finding and disposition order declaring Samuel a dependent of the court and removing him from her custody after the court sustained allegations that Patricia had an unresolved history of alcohol abuse and suffered from untreated mental health issues, each of which affected her ability to care for Samuel and placed Samuel at substantial risk of serious physical harm. Patricia contends the court's jurisdiction finding and disposition order are not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Initial and Amended Dependency Petitions

On January 16, 2019 the Los Angeles County Department of Children and Family Services (Department) filed a petition under Welfare and Institutions Code section 300¹ alleging Patricia's unresolved history of, and current, alcohol abuse left her unable to care for Samuel. Samuel was detained on January 17, 2019 and placed in foster care.

A first amended petition filed February 1, 2019 added a second allegation that Patricia, a single mother, suffered from untreated mental health issues, including anxiety and depression; Patricia self-medicated with alcohol to alleviate her suffering; and her alcohol abuse and untreated mental health issues placed Samuel at substantial risk of serious physical harm.

¹ Statutory references are to this code.

2. The Jurisdiction/Disposition Hearing

a. The evidence at the hearing

In June 2018 Patricia arrived at the hospital complaining of a migraine headache. Her blood alcohol level measured .297 mg/dL. Samuel was at daycare. Patricia explained to her medical providers at the hospital she had been sober for 11 years but recently relapsed and had begun drinking socially again. She also drank wine to relieve her migraine. Patricia was discharged after her blood alcohol levels had dissipated, and a Department inquiry as to neglect of Samuel was closed as inconclusive.

On January 3, 2019 Patricia again went to the hospital, this time complaining of pain she attributed to her chronic diverticulitis. Her blood alcohol level measured .296 mg/dL; Samuel was in daycare. Hospital personnel notified the Department. Patricia called the daycare provider, who agreed to care for Samuel overnight and the next day until Patricia was discharged. The daycare provider told the Department it was not her usual practice to care for Samuel in this way and she did so this time because of the emergency Patricia presented. While hospitalized, Patricia exhibited symptoms of shaking, trembling, hot and cold sweats and increased agitation, which her medical providers attributed to alcohol withdrawal. Patricia left the hospital on January 5, 2019. The Department stated Patricia left without medical clearance. Patricia claimed she had been effectively cleared for discharge, but simply did not have time to wait for the formality of allowing her physician to see her again.

The Department reported Patricia had a long history of alcohol abuse, which, by Patricia's own admission, had begun nearly two decades earlier. She had been sober for a time and throughout her pregnancy with Samuel, but had begun

consuming alcohol again to ameliorate pain and anxiety. Neighbors reported Patricia was unstable, and at least one former babysitter who had accompanied Patricia to dependency court in these dependency proceedings observed Patricia had “reeked” of alcohol. While Samuel exhibited no outward signs of neglect,² the Department feared Patricia’s untreated and unresolved alcohol abuse, alone and coupled with her denial of her condition, placed Samuel at substantial risk of serious physical harm.

The Department also reported Patricia had threatened Samuel’s foster mother and was verbally abusive to social workers and monitors who supervised her visits. Patricia’s landlord and neighbors reported she was erratic and emotionally unstable, pleasant one minute and hostile and threatening the next. They described Patricia as highly manipulative and retaliatory, and several monitors tasked with supervising Patricia’s visits with Samuel had refused to work with Patricia again due to her abusive behavior.

Patricia testified at the jurisdiction hearing and acknowledged a 20-year history of alcohol abuse. Patricia explained she became sober in 2002 and had remained sober for more than a decade, including throughout her pregnancy with Samuel. While she had recently returned to drinking, it was only socially or to ameliorate physical pain from headaches or diverticulitis. Patricia insisted she never drank to excess. She had participated in an outpatient alcohol treatment program on

² There was some evidence Samuel had extensive lice when he was detained. Patricia disputed this evidence and asserted Samuel had acquired the lice in foster care.

January 31, 2019 and for several days in February 2019 and had recently returned to Alcoholics Anonymous (A.A.) meetings and obtained a sponsor.

Patricia also supplied letters from Samuel's health care providers and caretakers to demonstrate her good care of Samuel: Samuel's pediatrician wrote Samuel was up-to-date on his vaccinations, received regular medical care for his chronic ear infections and appeared healthy and well cared for in Patricia's custody. Samuel's speech therapist and one of his former daycare providers similarly wrote they had no concern about Patricia's ability to care for Samuel.

Patricia insisted any symptoms she exhibited in the hospital such as shaking and trembling were due to pain, not alcohol withdrawal. Patricia claimed she had three clean alcohol tests—on January 30, 2019, February 3, 2019, and March 12, 2019—which she supported by receipts that confirmed Patricia had provided urine samples on those days. However, no documentation was submitted concerning the results of those tests.

Finally, Patricia challenged several aspects of the Department's reports that described her as combative, belligerent and emotionally unstable. Any hostility she exhibited, Patricia maintained, was caused by the desperation she felt because her child had been taken from her. She had also been involved in legal disputes with her landlord prior to these proceedings and attributed his disparaging reports about her to animosity unrelated to her parenting.

b. The court's jurisdiction finding and disposition order

The court sustained the allegations in the amended petition. Regarding Patricia's unresolved alcohol abuse, the court

stated, “[Patricia] says the people at the hospital, the people at the [Department], all these people got it wrong, that this is about something else. But what’s inescapable is .296 alcohol level. That’s not casual drinking, and you certainly don’t start casually drinking in the morning either before dropping off your son. There’s some reference to mom saying, ‘This is to treat migraines.’ Today she said it was because she casually drinks. . . . When you’re an alcoholic, you don’t get to do what everybody else does. You have to treat your problem. And you don’t get to .296 from just taking a taste. So [Patricia’s] testimony is unconvincing.” While the court complimented Patricia on resuming her participation in A.A., it found she had only begun in recent days, if at all, to accept she had an alcohol problem that endangered her child.

The court also sustained allegations that Patricia’s erratic, hostile and threatening behavior to her neighbors, babysitters, landlord, Samuel’s foster mother and visitation monitors demonstrated an emotional instability that interfered with her ability to care for Samuel and placed Samuel at substantial risk of serious physical harm.

Moving to disposition, the court declared Samuel a dependent child of the court and removed him from Patricia’s custody, finding by clear and convincing evidence there would be substantial danger to Samuel’s physical health and safety if he were returned to Patricia. The court placed Samuel in the care and custody of the Department and ordered family reunification services for Patricia, including monitored visitation for a minimum of six hours per week, participation in a drug and alcohol program with random weekly testing, individual counseling and a psychiatric assessment.

DISCUSSION

1. *Governing Law and Standard of Review*

Section 300, subdivision (b)(1), allows a child to be adjudged a dependent 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” Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.) The court may consider past events in deciding whether a child currently needs the court’s protection. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) A parent’s “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In Kadence P.*, at p. 1384.)

In addition, the Legislature has declared, “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. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.” (§ 300.2.) Exercise of dependency jurisdiction under section 300, subdivision (b), is proper when a child is “of such tender years that the absence of adequate supervision and care poses an

inherent risk to [his or her] physical health and safety.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

“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 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.”” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) We 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. (*Ibid.*; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

2. *Substantial Evidence Supports the Court’s Jurisdiction Finding Patricia’s Unresolved Alcohol Abuse Placed Samuel at Substantial Risk of Serious Physical Harm*

Emphasizing evidence from Samuel’s pediatrician, speech therapist and babysitter that Samuel appeared well cared for in her custody, Patricia argues there is insufficient evidence to support the court’s jurisdiction finding that Samuel was at substantial risk of serious harm. Patricia’s argument, however, ignores the evidence the court found most troubling—repeated instances of Patricia drinking alcohol to such excess that she required medical intervention. Patricia denied drinking to excess, but her blood alcohol levels of .297 in June 2018 and .296 in January 2019 proved otherwise. A former babysitter who had

accompanied Patricia to dependency court in these proceedings observed that, even in dependency court, Patricia “reeked” of alcohol. In addition, the court observed that Patricia failed to take any responsibility for her situation: She blamed medical personnel, babysitters, social workers and others for the Department’s intervention to protect Samuel, routinely downplaying, if not outright ignoring, her own alcohol abuse and the danger it posed to her young child. As the court found, this lack of insight created a danger to Samuel. (See *In re A.F.* (2016) 3 Cal.App.5th 283, 293 [“denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision”]; *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 [“[o]ne cannot correct a problem one fails to acknowledge”].)

Patricia highlights evidence of her attendance on January 31, 2019 and for several days in February 2019 at outpatient treatment sessions for alcohol abuse, as well as her recent return to A.A. and acquisition of an A.A. sponsor in March 2019, arguing she had at least demonstrated the necessary insight by the time of the jurisdiction hearing. The juvenile court acknowledged these efforts, but found them too recent to suggest with any degree of confidence that Patricia would be able to maintain her sobriety without court intervention, particularly when Patricia continued to deny during her testimony at the jurisdiction hearing that she had a problem with alcohol in the first place. The record amply supports the court’s assessment.

Finally, Patricia observes no harm had come to Samuel from any of her actions and argues there was no evidence to suggest it would. But, as discussed, the juvenile court need not

wait until a child is seriously injured to assume jurisdiction and take the steps necessary to protect the child. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) The court’s finding that Patricia had an unresolved history of abusing alcohol that placed Samuel, a child of tender years, at substantial risk of serious physical harm is supported by substantial evidence.³

3. *Substantial Evidence Supports the Juvenile Court’s Disposition Order Removing Samuel and Mandating Monitored Visitation for Patricia*

A child may not be removed from a parent or guardian with whom the child resides at the time the petition was initiated unless there is clear and convincing evidence of a substantial danger to the physical health, safety, protection or physical or emotional well-being of the child and there are no reasonable means to protect the child other than by removing the child from his or her parents’ custody. (§ 361, subd. (c)(1).) The court must also determine whether reasonable efforts have been made to

³ Patricia also challenges the court’s finding she suffered from emotional instability that placed Samuel at substantial risk of serious physical harm. In light of our holding affirming the court’s finding that Patricia had an unresolved history of alcohol abuse that put Samuel at substantial risk of serious physical harm, we do not address the court’s additional jurisdiction finding concerning Patricia’s emotional instability. (See *In re I.J.*, *supra*, 56 Cal.4th at p. 773 “[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence”]; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 [same].)

prevent or to eliminate the need for removal of the child from his or her home and “shall state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).)

Patricia contends the Department failed to demonstrate that reasonable efforts had been made to prevent or eliminate the need for Samuel’s removal. However, as discussed, the Department established with overwhelming evidence that Patricia refused until very recently to recognize she had any alcohol problem. Under those circumstances, the court found the only means to protect Samuel was to remove him from Patricia’s custody. Substantial evidence supports that conclusion. (See *In re A.F.*, *supra*, 3 Cal.App.5th at p. 293 “[i]n light of mother’s failure to recognize the risks to which she was exposing the minor, there was no reason to believe the conditions would not persist should the minor remain in her home”].)

Patricia’s challenge to the court’s order for monitored visitation similarly fails. Because Patricia continued to minimize both her alcohol abuse and the risks it posed for her young child, the court reasonably concluded any time in Patricia’s unsupervised care would expose Samuel to a significant risk of serious physical harm. Substantial evidence supports that finding.

DISPOSITION

The jurisdiction finding and disposition order are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.