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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.F. et al., Persons Coming Under the Juvenile Court Law.	B278040
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ISAAC F., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK16969)

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Respondent.

Appellant Isaac F. (Father) challenges jurisdictional findings and a disposition order removing his children from his custody. Father contends the evidence is insufficient to support the dependency court's rulings. We affirm.

FACTS

Father and S.F. (Mother) are the parents of A.F. (born in December 2013) and P.F. (born in November 2014). Mother also has two other children by two other fathers: A.M. (born in 2009) and A.B. (born in 2012). Only A.F. and P.F. are involved in Father's present appeal. In May 2016, A.F. and P.F. and their half-siblings came to the attention of the Los Angeles Department of Children and Family Services (DCFS) when it received a referral from a "facility" where Father was a "patient."

The caller reported that Father had come into the facility with one of his children and appeared to be "delusional," but not under the influence of any substances. The caller reported that Father suffered a brain injury at some unspecified time, and opined that Father's mental state was somehow related to his brain injury. The caller reported that Father had stated that there were three children at home with Mother, and that there were knives and bats "all over the house accessible to the children." Father said Mother "carved someone's name on her arm," and that one of the children in the home was missing a patch of hair from her scalp, which he believed was "pulled out." The caller had talked with the children's paternal grandmother who reported that Father had started acting "bizarre" recently.

On May 26, 2016, a DCFS case social worker went to the paternal grandmother's home where she interviewed Mother and the older children. Mother said she had talked to police after an incident at the Antelope Valley Mental Health facility,

apparently referring to the reported visit by the Father noted above, and that the police had told her that Father had told them that "someone almost killed him 17 times." Mother reported that it seemed like Father was "not all there," and that Father said countless times during that week that someone was going to kill him. Mother reported that Father suffered from depression and that she did not think he was taking his medication. She also said Father had an untreated concussion when he was younger and went to counseling once a month.

Mother admitted that she was recently hospitalized involuntarily for a psychological assessment after she scraped "mom" into her arm. She said she was also diagnosed with depression and had been advised to seek counseling, but was not prescribed any medication.

The social worker noted the children were clean and appropriately dressed, with no visible marks or bruises indicating abuse or neglect. The social worker spoke with the children's maternal aunt who said she had no concern about the children's well-being with Mother, but was concerned that Father exhibited "erratic behavior" and paranoia and had stated that people were "coming to get them." The maternal aunt did not believe there was domestic violence in the parents' relationship. The maternal aunt understood that Father had been out of work for a while and offered that she thought that was why he might be depressed.

The maternal great-grandmother said she had no concern for the children's safety with either parent, but acknowledged the Father had shown signs of "depression and paranoia." She also opined Father was depressed because he had been out of work.

A.M. told the social worker that Mother and Father "argued a lot," and that Father had "punched" Mother in the face

and that Mother had called the police He also said Father "punched" a hole in the wall and door when they were arguing. A.M. said that he felt safe at home with both his parents, and denied any abuse or neglect.

Mother denied domestic violence in the family home but did report that Father once "pushed" her in the face. Mother denied that Father ever hit or punched her. Mother said she and Father argued about every month and a half, and Father would "get in her face." She reported a specific incident a few months earlier when Father "pushed" her in their bedroom, but she maintained that the children did not witness the incident. Mother also said she saw Father once break a window in the children's bedroom when he kicked a toy. On that occasion, Father was initially playing, but his mood "suddenly changed."

Mother agreed to be interviewed for an Up Front Assessment, and to abide by a safety plan under which the children would temporarily stay with the maternal great-grandmother.

On June 8, 2016, the social worker received a telephone message from Theresa Culver, Clinical Director of Family Preservation at Penny Lane. Culver reported that Mother's Up Front Assessment was completed, and that Mother had reported to the assessor that Father had exhibited his paranoid behavior for a little over the past half-year. The assessor had expressed no concerns regarding Mother's ability to parent, and believed Mother might be suffering from situational depression. The assessor opined Father should not be allowed around the children until he was compliant with a DCFS plan. She recommended the family receive Family Preservation Services.

On June 13, 2016, Father met with the social worker at DCFS's office. Father said he felt like someone was "going to kill him" when he went into the Mental Health Wellness Center. Father talked about a recent party at his neighbors' home and claimed the neighbors threatened his family when he asked them to move cars blocking his driveway. He claimed he received threatening telephone calls and texts, although he did not know if they were related to the incident with his neighbors. Father also said racial flyers were placed on his car when he parked near Mother's residence.

Concerning the initial incident reported to DCFS, Father denied saying that Mother had knives and bats accessible to the children in their home, and denied saying anything about one of his children having missing hair. At the same time, Father admitted he could not recall much about the day of the incident. Father said that, when he subsequently arrived home, the police were there. Father said he ran because the officer taking the report did not have a badge. Father said that, since the incident, he had been homeless and mainly living in his car or sometimes with friends or family.

Father denied any substance abuse or domestic violence in the family home. He said he was A.F.'s and P.F.'s biological father, and that he also considered A.M. and A.B. to be his children. He said that he was seeing a psychiatrist, but was not currently prescribed any medication.[1] He denied hearing voices or being suicidal.

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[1] The social worker subsequently learned that Father last saw his psychiatrist in May 2016, and that he had terminated treatment.

On June 24, 2016, the social worker received the results of Father's Up Front Assessment conducted by assessor D.M. Ms. M. reported she was concerned when Father arrived for their meeting wearing an orange safety vest and safety goggles. She also expressed concern that Father fell asleep during the assessment interview, and she questioned whether Father was being completely honest and sincere with his responses. Ms. M. believed Father met the criteria for major depressive disorder, as he reported that he was in a depressed mood most of the day, nearly every day. Father also reportedly had a decreased appetite, insomnia, fatigue or loss of energy most the day, daily feelings of inappropriate guilt, and a diminished ability to think or concentrate nearly every day. She believed a further assessment would be needed to accurately determine if schizophrenia was an issue, as there was not enough information to make a determination at that time. There was no concern Father was suicidal. The assessor recommended a further psychiatric evaluation to explore Father's diagnosis more fully, and a medication evaluation to see if he would benefit from psychotropic medication, and drug testing to determine if substance abuse was a factor in Father's symptoms.

Later in June 2016, Mother and Father agreed to a new safety plan under which Father would wait to have contact with the children until after the matter was heard in court.

On July 18, 2016, DCFS filed a petition on behalf of A.M., A.B., A.F. and P.F. pursuant to Welfare and Institutions Code section 300, subdivision (b). The allegations as subsequently sustained are discussed below. The juvenile court ordered A.F. and P.F. to be detained from Father, and released to Mother. By subsequent orders, the court directed Father to submit to an

on-demand drug test, and ordered him to take any prescribed medications and sign all medical releases. Further, the court ordered Father not to come within 100 yards of Mother or the children except for permitted visitation.

In September 2016, DCFS filed a combined jurisdiction and disposition report. The report largely restated the facts summarized above. Mother and Father continued to deny domestic violence. Mother now said she had been aware of Father's depression, but not his paranoia. Father denied he had major depressive disorder or paranoia, and said he was not receiving any services at that time. He said he just "went to church and read the bible." The social worker expressed concern that Father had terminated services from the Antelope Valley clinic.

On September 7, 2016, the court conducted a combined jurisdiction and disposition hearing. At that time, DCFS's reports were admitted into evidence. Father's attorney argued there was insufficient proof that Father suffered from mental and emotional problems, and, in this vein, questioned the qualifications of the assessor who performed the Up Front Assessment.

After hearing argument, the dependency court sustained the amended petition as follows:

"[Father] has a history of mental and emotional problems including a diagnosis of major depressive disorder and paranoid behavior. Due to Father's mental and emotional problems, [he] is unable to provide regular care for the children. Such mental and emotional condition on the part of [Father] endangers the children's physical health and safety and places the children at risk of serious physical harm and damage."

The court adjudged A.F. and P.F. to be dependents of the court and ordered them removed from Father's custody. The children remained placed with Mother. The court granted Father monitored visitation in a neutral location. Further, the court ordered services for Father, including a psychological assessment, and ordered Father to take any appropriate medication, and to participate in individual counseling and parenting instruction. Mother received family maintenance services.

Father filed a timely notice of appeal.

DISCUSSION

Father contends the evidence is insufficient to support the dependency court's jurisdictional findings and removal order. We disagree.

A dependency court's jurisdictional findings are reviewed under the substantial evidence test. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) Under this test, we resolve all conflicts in the evidence, and indulge all reasonable inferences that may be derived from the evidence, in favor of the court's findings. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

Father acknowledges that "[t]he evidence is reasonably clear [he] was depressed and had a touch of paranoia." However, he contends there is no evidence that he poses a threat to his children. In this regard, Father argues that "California law has long adhered to the principle that harm to a child cannot be presumed from the mere fact of mental illness of the parent." Thus, DCFS "was required to show specific examples of the manner in which [his] behavior had, and would, adversely affect the children or jeopardize their safety." Here, he cites *In re Jamie M.* (1982) 134 Cal.App.3d 530, 540 (*Jamie M.*), and *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 422

(*Patricia W.*).) We are satisfied that the dependency court's jurisdiction findings are supported by substantial evidence.

There is no dispute that Father suffers from mental and emotional problems. This finding is conceded by Father. Further, there is no dispute that Father was receiving mental health treatment, but did not follow through with appointments and ultimately decided to end his treatment. These facts are not directly challenged by Father.

At the time of jurisdiction hearing in September 2016, A.F. was two years old and P.F. was one year old. The dependency court could properly consider the children's age. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [jurisdiction is proper where a child is of such "tender years" that a failure to provide adequate supervision and care poses an inherent risk to his or her physical health and safety].) The dependency court need not wait until a child actually suffers a serious injury to assume jurisdiction. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165; *In re I.J.* (2013) 56 Cal.4th 766, 773.)

Here, based on the evidence before it, the dependency court could reasonable infer that, in the event Father became delusional and paranoid that people were trying to kill him, as he had done on more than one occasion, or had a sudden mood change and or became erratic, as reported by Mother and other relatives, or fell asleep during an important event, as he had during his assessment appointment, then his two young would be at serious risk of harm. Given the age of the two children, and their inability to care for themselves, the court could take jurisdiction in an effort to assure that they would receive the focused, stable care suitable for their needs. We generally agree

with Father that a parent's mental illness, alone, is not sufficient for dependency jurisdiction, but this case shows much more.

Father's reliance on *Jamie M., supra*, 134 Cal.App.3d 530 and *Patricia W., supra*, 244 Cal.App.4th 397 for a different conclusion are not persuasive. Father's reference to *Jamie M.* is to a discussion of the issue of "custody" of the subject children at disposition, not of jurisdiction. Indeed, in *Jamie M.*, the Court of Appeal stated that the evidence supported the dependency court's decision to exercise jurisdiction over the children in the first instance. (*Jamie M.*, 134 Cal.App.3d at pp. 542-543.) Father's reference to *Patricia W.* is to a discussion of whether the social services agency provided adequate family reunification services to the parents.

Further, in both *Jamie M.* and *Patricia W.*, the dependency courts acted on essentially no more than a mere diagnosis that the parents suffered from mental illnesses, without a developed record of what those diagnoses actually entailed in terms of conduct by and treatment for the parents. To the extent that *Jamie M.* and *Patricia W.* are relevant for Father's present appeal, they teach that a parent's mental condition for purposes of dependency court action is a matter of degree and circumstances. Here, as we noted above, Father's case involves much more than a mere diagnosis of a mental condition; the record includes facts of specific instances of conduct interfering with his ability to parent. We are satisfied that a parent's acts of claiming he or she is being targeted by killers, terminating his or her mental health treatment, and falling asleep during important meetings, and the like, show a condition that places his or her child at risk of harm. This is particularly apt here, where the children are one and two years old.

Our discussion above applies with equal force with regard to Father's argument that the dependency court erred in ordering A.F. and P.F. to be removed from Father's custody. Welfare and Institutions Code section 361, subdivision (c), authorizes the dependency court to remove a child from the physical custody of a parent when it finds by clear and convincing evidence that there is a substantial danger to the physical health, safety, protection, or emotional well-being of the child if he or she were returned to the parent's custody. On appeal, the dependency court's determination that removal is needed is reviewed under the substantial evidence test. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 439.)

The evidence that we discussed above supports the dependency court's removal order. We reject Father's argument that the other elements of his case plan, which include a psychological assessment, and then appropriate counseling and medication accordingly, are sufficient safeguards to make removal unnecessary. The problem with Father's argument is that it focuses on his anticipated successful participation in his case plan. At the time of the disposition hearing, however, the court had before it evidence of Father's resistance to treatment. Until such time as Father had begun a program and demonstrated his commitment to treatment, the court had grounds for making its removal order.

DISPOSITION

The dependency court's orders are affirmed.

BIGELOW, P.J.

We concur:

FLIER, J. GRIMES, J.