Filed 10/24/13 In re K.L. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.L., a Person Coming Under the Juvenile Court Law.	B247333 (Los Angeles County Super. Ct. No. CK97331)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.P., Defendant and Appellant.	

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

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeannette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

K.P. (Mother) appeals from the juvenile court's February 6, 2013 jurisdictional and dispositional orders. The court adjudged minor K.L., born in July 2012, a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect).[1] Mother challenges the sufficiency of the evidence to support the court's jurisdictional findings. She also contends the court erred in refusing to continue the dispositional hearing beyond one day and that because the evidence was insufficient to show a risk of harm, the court erred when it removed the minor from Mother. Shane L. (Father) is not a party to this appeal. We conclude that substantial evidence supports the jurisdictional and dispositional orders and the court did not abuse its discretion in refusing to continue the dispositional hearing beyond one day. We affirm.

BACKGROUND

On January 10, 2013, the minor came to the attention of the Department of Children and Family Services (DCFS) when police responded to Mother's apartment and discovered her outside her apartment, not wearing a top and holding a knife, which she had used to puncture the tires of a neighbor's car. Mother argued with the officers, mumbled incoherently, and seemed paranoid. Mother kept repeating, "'I don't want you to take my baby away. Don't take my baby.'" When the officers entered Mother's apartment, they found her apartment "'torn up . . .'" with "broken glass and cut-up curtains." The officers did not notice the minor in the back room and transported Mother to the police station. After neighbors reported that the minor was alone and crying, the officers returned to pick up the minor and placed her in protective custody. The minor appeared to be well cared for, was clean, was dressed nicely, and smiled a lot. Mother was hospitalized involuntarily that day. The next day, after being discharged, Mother told DCFS that she had too much to drink, she "feels good," and her sister was taking her to look at parenting and alcohol programs. Mother wanted to know what programs she should attend.

---

[1] Undesignated statutory references are to the Welfare and Institutions Code.

On January 15, 2013, DCFS filed a section 300 petition on behalf of the minor. As sustained, paragraph b-1 of the petition alleged under section 300, subdivision (b) that Mother has a history of mental and emotional problems, including paranoid, violent, and bizarre behavior, and that on January 10, 2013, Mother was hospitalized for evaluation and treatment for her psychiatric condition. As sustained, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Mother has a history of substance abuse and was a current abuser of alcohol, and that on January 10, 2013, Mother was under the influence of alcohol while the minor was in Mother's care.

Mother appeared for the initial detention hearing on January 15, 2013. The court ordered the minor detained and reunification services and monitored visits for Mother.

Subsequently, DCFS reported the following. Mother, who was then 20 years old, did not have a history of child abuse regarding the minor. Mother and her eight siblings had been dependents of the juvenile court and had not reunified with their parents. Mother had been detained at birth. She did not have a relationship with maternal grandmother and maternal grandfather, but she reported a good relationship with maternal great-aunt and maternal aunt, upon whom she relies for support. She had been in six foster homes and described herself as a "'rebellious' teen which was the cause of her various placements." Mother's relationship with Father ended when the minor was either "two weeks old" or "two months old." She did not receive any child support from Father and did not know where he lived or how to contact him. Mother denied that she had any mental health issues. She stated she had drunk alcohol the night of the incident. Mother's cousin, who had asked to spend the night at her apartment, had started "yelling and 'going crazy'" within 10 minutes of his arrival. Mother started fighting with him; told him to leave; then blacked out and could not remember what happened next. She recalled waking up in jail, then being transported to the hospital, from which she was discharged the following day. She said that she drank because of peer pressure; "this was the only time that she drank alcohol"; she "'messed up' and will not drink again"; and "she learned from her mistake and will not trust anyone including family." She denied

using drugs. On January 28, 2013, DCFS sent Mother "on an on-demand drug and alcohol test and the results were negative."

On February 6, 2013, at a pretrial resolution conference, DCFS provided the juvenile court with a last minute information and Mother's medical records from her hospitalization on January 10, 2013. When the matter did not settle, the court admitted the following documents: the last minute information; Mother's medical records from her hospitalization; DCFS's reports; a letter from a community service center, stating that Mother had been assessed on February 1, 2013; a letter from an alcohol and drug abuse program, stating Mother had enrolled in substance abuse education groups and individual sessions and was required to submit to random urinalysis; and a document indicating Mother had drug tested on February 1, 2013.

The last minute information stated that Mother denied "any drug or alcohol use" to hospital staff but had tested positive for amphetamines and alcohol when she was hospitalized on January 10, 2013. The information stated that the hospital found Mother's self-reported history not to be reliable. The medical records indicated that when the police arrived at Mother's apartment, she was brandishing a knife and stabbing a car tire. When they approached, she threatened to kill them. Mother was treated for acute agitation and psychosis. The next day, Mother was reported to be calm and coherent. She understood that DCFS had custody of the minor. She stated she was "no longer hearing voices and feels that they were related to her alcohol consumption." She denied suicidal or homicidal ideation and auditory or visual hallucinations. She was described as "[i]nsight and judgment impaired." The medical records reported, "Assessment: [¶] 1. Psychosis. [¶] 2. Amphetamine abuse. [¶] 3. Alcohol abuse." Mother declined medication upon discharge. The treatment plan recommended follow-up with a psychiatrist. The discharging doctor recommended Mother attend Alcoholics Anonymous and obtain a sponsor.

At the jurisdictional hearing, Mother testified that she had been hospitalized on a psychiatric hold because she had blacked out after drinking alcohol. She denied "any" criminal history, taking drugs, having a history of using alcohol, having been hospitalized

or treated for mental health issues, getting into fights at school, or previously blacking out. Mother stated that the doctor's only recommendation was to stop drinking. Mother did not remember stabbing her neighbor's car tire with the knife and "trashing" her apartment. Mother stated the night in question was the first time she had ever drunk alcohol and denied ever using amphetamines. Mother stated the incident was "a one-time thing," she had made a "very bad mistake," and she would do "whatever it takes to get [the minor] back." Mother stated that the minor had been in her care continuously from birth, was full-term and healthy when she was born, and neither she nor the minor had drugs or alcohol in their system when the minor was born.

Under cross-examination by DCFS, Mother denied any "prior contacts with law enforcement, criminal cases or arrests." DCFS then showed Mother a printout of her arrest records. When asked if she recalled being charged with petty theft, Mother stated, "Juvenile." When asked if she recalled being charged with criminal trespass and damage to power lines, Mother stated, "Juvenile." Mother stated she recalled being charged with battery on a person. Mother's attorney then objected to Mother's "juvenile record" being put into evidence, noting when she had asked Mother if she had a "criminal record," Mother had replied in the negative. The juvenile court stated, "Okay. All right. Thank you." Mother then denied she had any other contacts with law enforcement, but subsequently admitted that a charge of "challenging to fight in a public place" had been dismissed.

The juvenile court noted Mother "said that she's in a program, and she's willing to do a program. That's evidence enough to this court that she recognizes that there's a continuing problem. It's a risk to the child." The court stated that it did not find Mother's testimony to be credible and that the submitted documents supported a finding of jurisdiction. The court sustained the jurisdictional allegations under section 300, subdivision (b) of the petition.

When Mother's counsel asked if the juvenile court was willing to continue the dispositional hearing, the court stated that it would give her a "one-day continuance if you want." Mother's counsel argued that a continuance was necessary to get a report

showing Mother has support from maternal aunt, a safety plan could be put in place, and "more information like additional testing which was not attached today." The court stated that although another clean test would be "helpful," the court would still order services, including a live-in program where the minor could be with Mother, if the disposition were continued one day. Mother's counsel declined a continuance of only one day, stating, "I don't believe a day is going to make a difference."

At disposition, the juvenile court stated the instant case was "even more dangerous" than cases involving chronic drug use because Mother was "brandishing a knife on a public street, apparently had already slashed people's tires with it." The court stated, "That is a risk that this court cannot blind itself [to]. It was the tires that were punctured in this instance. It might have well been the baby that was hurt. And [Mother] would not have been able to remember. She can't seem to remember much of what happened that night, because she was either—so many drugs were in her system or so much alcohol was in her system that she blacked out." The court opined that "it's not a one-time thing. It's a chronic problem with potential for relapse and potential for a dangerous situation that may bring this baby to harm. We are talking about a young child who is under three, nonverbal, who can't be calling for help or calling the police or calling 911." The court stated that it wanted Mother in a residential program before the minor was returned to her so that the court could be "certain that the baby is going to be cared for even if [Mother] does fall off the wagon and that there's going to be sufficient safeguards around her to keep her from falling off the wagon." The court found, by clear and convincing evidence, that placement of the minor in Mother's home created a substantial risk of danger to the minor and there were no reasonable means to protect the minor while in Mother's custody. The court ordered the minor to be "suitably placed" and DCFS to "work with Mother to try to find a live-in program." Mother was ordered to attend a program of drug and alcohol counseling with random drug testing, parenting education classes, a psychological assessment, and individual counseling to address mental health and case issues with a licensed psychotherapist. Her visits were to remain monitored.

After making the disposition findings and orders, the juvenile court stated, "You know, I haven't had a chance to review Mother's file when she was a juvenile and in the system, so I don't know exactly what her symptomatology was with regards to drug/alcohol use then. But I have a very strong suspicion that it was not something that just cropped up in the last year or so. It was probably ongoing back then and nobody wanted to deal with it, so now we have to deal with it." Mother filed a timely notice of appeal.

DISCUSSION

A. Standard of review

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) "'"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] 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.]"' [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]" (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

B. Substantial evidence supported the juvenile court's jurisdictional finding with respect to the allegations under section 300, subdivision (b) against Mother

Mother contends the evidence was insufficient to support the juvenile court's jurisdictional findings under section 300, subdivisions (b). We disagree.

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if "[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 . . . 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. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

Mother argues that she posed no risk to the minor because the January 10, 2013 incident was a one-time event, she "fully acknowledged the very bad mistake she had made when she accepted the alcohol from her cousin"; she realized she should not be trusting, even of relatives; she had immediately enrolled in a drug treatment program; there was no evidence that she had a continuing mental health problem or a problem with alcohol or drugs; she had a support system in place consisting of an aunt and her god sister; she was enrolled in school; and her drug tests were negative. Mother relies on *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, for the proposition that a child must be at risk of harm "during the jurisdictional hearing" for the court to sustain the petition. But we follow *In re J.K.* (2009) 174 Cal.App.4th 1426, which soundly rejected *In re Rocco M.* as predating the existing statutory scheme requiring a showing that "'*[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 . . . .'" (*In re J.K.* at p. 1434.) *In re J.K.* states, "[T]he use of the disjunctive 'or' demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction." (*Id.* at p. 1435, fn. omitted.) Thus, jurisdiction may be exercised "either based on a prior incident of harm or a current or future risk." (*Id.* at p. 1435, fn. 5.)

Further, Mother is not assisted by her citation to *In re J.N.* (2010) 181 Cal.App.4th 1010 for the proposition that because the incident was a "single demonstrated misstep with alcohol," there was not a substantial risk of harm to the minor. In that case, the appellate court concluded that jurisdiction had been improperly asserted where the parents' drinking had endangered the minors on one occasion, but there was no evidence from which to infer that there was a substantial risk such behavior would recur in light of the parents' remorsefulness, the parents' lack of involvement with the dependency system

or criminal justice system, the health of the children, and no evidence that the parents lacked parenting skills. (*Id*. at p. 1026.) *In re J.N.* states, "In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident." (*Id*. at pp. 1025–1026.)

Here, the evidence established neglectful conduct by Mother because she failed to protect the minor adequately on January 10, 2013. That day, when police officers arrived at Mother's apartment, she was running around outside without her top on and holding a knife. She had just punctured her neighbor's car tires. Mother argued with the officers, threatened to kill them, mumbled incoherently, and seemed paranoid. When the officers entered Mother's apartment, they found her apartment was "'torn up . . .'" with "broken glass and cut-up curtains." Although Mother kept repeating, "'I don't want you to take my baby away. Don't take my baby,'" she did not advise the officers that the minor was in the apartment. Mother's neglectful conduct resulted in the minor being left alone in a "torn up" apartment with broken glass as Mother experienced a psychotic episode and while the officers took Mother to the police station and later to the hospital.

Further, the evidence established that the minor was at substantial risk of serious physical harm in the future. (See *In re J.K.*, *supra*, 174 Cal.App.4th at p. 1439 [evidence of future risk of harm based on mother's previous failure to protect minor from an incident of sexual abuse and an incident of physical abuse by father, father's minimizing of physical abuse, and father's lack of cooperation].) On appeal, Mother minimizes the incident as a "single demonstrated misstep with alcohol," and at the time of the adjudication denied ever using amphetamines, even after testing positive. She also testified that she had never before drunk alcohol. She denied "any drug or alcohol use"

to the hospital staff. And she stated that the doctor's only recommendation was to stop drinking, although she had been advised to seek psychiatric follow-up and enroll in Alcoholics Anonymous. But as we must, we defer to the juvenile court's determination that Mother lacked credibility. Thus, we can conclude that Mother either was in denial of a drug and alcohol problem or attempted to misinform the court, putting the minor at risk of future harm in light of the seriousness of the incident on January 10, 2013. What is more, at the time of the jurisdictional hearing, Mother had not yet established a long-term clean drug and alcohol record. Although Mother claimed to have drug tested negative twice, only one negative test had been presented to the juvenile court. And Mother had only just enrolled in substance abuse counseling and had not attended any sessions. Further, the documents that Mother provided to the court did not indicate what she was being assessed for or the results of that assessment. During her hospitalization, Mother reported that she was "no longer hearing voices and feels that they were related to her alcohol consumption." Thus, we can conclude that at one point, Mother's psychosis caused her to hear voices. But at the time of the jurisdictional hearing, her diagnosis of psychosis was not specified. And it was not established whether drugs, psychosis, alcohol use, or a combination thereof was the cause of Mother's violent conduct on January 10, 2013.

Mother further argues that the juvenile court erred in admitting references to Mother's juvenile delinquency record; speculating that Mother had had a substance abuse problem when she was a dependent of the court; and concluding Mother's willingness to accept services was an indication of current risk. At the jurisdictional hearing, after Mother's attorney objected to Mother's "juvenile record" being put into evidence, the court replied, "Okay. All right. Thank you." While it is unclear whether the court sustained the objection and struck the answers, it is clear that the court did not rely on Mother's juvenile record in making its decision. Rather, the court stated that Mother's testimony was not credible and that it found jurisdiction based on other evidence that was admitted. Accordingly, we need not address Mother's argument that evidence of

Mother's juvenile criminal history was "seemingly in violation of section 827," regarding confidentiality of juvenile records.

We also determine that the juvenile court's conclusion that Mother had an unaddressed substance abuse problem was supported by substantial evidence, based on the extreme behavior that Mother displayed while under the influence; Mother's lack of credibility in denying use of drugs and alcohol to hospital staff; and Mother's lack of credibility in later claiming that the incident of January 10, 2013, was the first time she had used alcohol. Further, although Mother claims that the juvenile court erred by speculating that Mother had had a substance abuse problem when she was a dependent of the court, the court's statement that it strongly suspected that Mother's substance abuse problem began when she was a juvenile and "was not something that just cropped up in the last year or so," was made after the dispositional findings and orders. And while we do not agree with the court that Mother's willingness to accept services was an indication of a continuing problem and a risk to the minor, we conclude dependency jurisdiction was otherwise supported by substantial evidence.

We conclude that substantial evidence supported the juvenile court's jurisdictional finding with respect to the allegations under section 300, subdivision (b) against Mother.

C. The juvenile court did not abuse its discretion in refusing to continue the hearing beyond one day

Mother contends the juvenile court erred in refusing to continue the dispositional hearing beyond one day. We disagree.

After a child has been found to be described by section 300, under section 358 the juvenile court may grant a continuance for up to 10 days if the child is detained. (§ 358, subd. (a)(1).) We review the court's ruling on a motion to continue for abuse of discretion. (*In re Robert L.* (1993) 21 Ca1.App.4th 1057, 1065.)

Mother contends that the juvenile court erred in refusing to continue disposition for more than just one day in light of her need for time to receive a DCFS report with information addressing maternal aunt's support, information regarding a safety plan to place the minor in her home, and drug test results. We conclude that the court did not

abuse its discretion in refusing to continue the disposition beyond one day. Mother testified she had tested negative on two drug tests, but evidence of only one negative drug test was documented. And DCFS records showed that Mother had stated she had a good relationship with maternal great-aunt and maternal aunt, upon whom she relied for support. Thus, a continuance for the sake of receiving paperwork documenting the negative second drug test and receiving information regarding maternal aunt's support was cumulative evidence and within the court's discretion to deny. Further, the documents Mother produced demonstrated only that she had been assessed and had enrolled in a drug treatment program. The documents did not indicate what she was assessed for or whether she had enrolled in individual treatment. Thus, Mother did not provide any information that gave the court any reason to believe that within 10 days an adequate safety plan for the minor's return could be in place or that Mother would be able to demonstrate a sustained period of sobriety.

We conclude the juvenile court did not abuse its discretion in refusing to continue the hearing beyond one day.

D. Substantial evidence supported the removal order

Mother contends that because the evidence was insufficient to show a risk of harm, the juvenile court erred when it removed the minor from Mother. We disagree.

Section 361, subdivision (c)(1) states that the juvenile court may remove physical custody of the child from the parent where it finds by clear and convincing evidence that there is substantial danger to the physical health, safety, protection, or emotional well-being of the child or would be if the child were returned home, and there was no reasonable means to protect the child without removal from the parent's physical custody. "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) We review the court's order removing

children from their custodial parents for substantial evidence, bearing in mind the heightened burden of proof at the trial level of clear and convincing evidence. (*In re Kristin H*. (1996) 46 Cal.App.4th 1635, 1654.)

We conclude that substantial evidence supported the juvenile court's removal order. Mother's actions on January 10, 2013, were dangerous to the minor, who was left unattended in a "torn up" apartment while Mother was running around outside without her top on, puncturing her neighbor's car tires with a knife, mumbling incoherently, and threatening to kill police officers. Mother did not have the presence of mind to advise the officers that the minor was in the apartment. Mother denied using drugs and alcohol to hospital staff, even though she tested positive for both. She later claimed that the incident was the first time she had ever drunk alcohol. The court determined that she was not credible. And other than one random drug test, there was no evidence that Mother was substance free. Mother had only just enrolled in substance abuse counseling and had not gained the tools necessary to remain alcohol and drug free. Finally, the cause of Mother's psychosis was not established at the time of the disposition hearing, although she reported she had heard voices as a result of drinking alcohol. The minor was only six months old and in no position to protect herself from Mother's conduct.

We conclude that substantial evidence supported the juvenile court's removal order.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J