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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B280159
(Los Angeles County
Super. Ct. No. DK19841

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.S. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles
County, Robert S. Draper, Judge. Affirmed.

Leslie Barry, under appointment by the Court of Appeal,
for Defendant and Appellant, D.C.

Linda Rehm, under appointment by the Court of Appeal,
for Defendant and Appellant, S.S.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, Stephanie Jo Reagan, Principal
Deputy County Counsel, for Plaintiff and Respondent.

Both parents challenge the jurisdictional finding that their two-year-old daughter, S.C., is a dependent child (Welf. & Inst. Code, § 300, subd. (b)(1)).¹ Father challenges the dispositional finding, with mother arguing the child “could have been placed with [f]ather with services to [m]other.” We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

An anonymous caller alerted the sheriff’s department to the filthy and dangerous conditions in the home of S.S. (mother) and advised mother was hitting the child, who was screaming. Officers arrived, and mother admitted spanking the child “because [S.C.] had tossed the dog off her crib and then [the child] would not stop crying.” Before entering the house, the officers noted the “strong smell of incense.” Upon entry, they encountered a marijuana pipe and the stench of spoiled food. Mother admitted smoking marijuana earlier that day, but said she smoked it outside and not in S.C.’s presence.

On the kitchen table and the TV stand in the room where S.C.’s crib was located, the officers noted numerous “bongs,” empty marijuana tins, cigarette lighters, an open bottle of tequila, a large kitchen knife, and a bowl of ashes—all within S.C.’s reach. A box at the end of her crib contained toys and a blowtorch. There were no child protection covers on the electrical

¹ All statutory references are to the Welfare and Institutions Code.

outlets and a steel cylinder (size not described) was perched on the window above S.C.'s crib. A cat and dog were also in the house, lying in feces and trash. Trails of ants, dead cockroaches and live spiders were in S.C.'s room. The child herself had a scratch on her thigh that mother could not explain, insect bites on her face and leg, and several bruises. Her feet, knees, hands, and elbows were dirty. The officers photographed the conditions in the home and placed mother under arrest for child endangerment.

D.C. (father) arrived at the home while the officers were still there, waiting to transport mother to jail and S.C. to the police station to meet a social worker from the Department of Children and Family Services (DCFS). Father denied physical abuse by mother and any dangerous conditions in the home, but admitted mother occasionally smoked marijuana. Later that evening, D.C. spoke with a social worker who advised he should come to the police station where his daughter was waiting. But it was late, he had to go to work early the next morning, and he did not have transportation—so he did not come.

By the time of the detention hearing, S.C. was placed in the home of her maternal great aunt. Mother remained in custody.

The jurisdiction/disposition report summarized interviews with mother, father, maternal great aunt, and paternal grandfather. Mother became pregnant when she was in the 10th grade and father was in the 11th. They both left school at that time. Father did not reside with mother and S.C.; their relationship ended shortly before S.C. was detained because the mother and father frequently quarreled.

Mother had been using marijuana for approximately four years. “[S]he was issued a medical marijuana card due to issues

with anxiety and poor appetite.” She was attending school to earn a GED and did not have much free time to clean the house. She admitted drug paraphernalia was in the home, but did not believe it posed a threat to S.C. The cat did not belong to her—it just wandered into the home and tried to eat S.C.’s food. She was attempting to housebreak the dog. She knew about the spiders and complained the landlord would not install a window screen in the bedroom where she and S.C. slept. The tequila was not hers; it was just left there after a party.

Father did not report a permanent address. He sometimes stayed with mother or his sister. He knew mother smoked marijuana, but he thought it was for migraine headaches.

Paternal grandfather reported father did not reside with him. Paternal grandfather babysat S.C. several days a week.

The jurisdiction/disposition hearing was scheduled for November 21, 2016. Father sought a continuance because he intended to ask for S.C.’s release to him, so he and the child could reside together in the paternal grandfather’s home. The paternal grandfather, however, had criminal convictions for child cruelty and vandalism of a place of worship. Court and counsel conferred, and the jurisdiction/disposition hearing was continued to December 16, 2016.

On that date, the court received the jurisdiction/disposition report and the last minute information into evidence. In lieu of taking father’s testimony, counsel stipulated he did not live with mother and currently resided with the paternal grandfather.

Mother testified. She identified photographs of the home on the day she moved out, approximately one month after S.C. was detained. On cross-examination, she testified she “would clean [the house] every day. That day . . . it was, like, just a mess

that day.”² Although she confirmed the presence of animal feces, trash and the blowtorch on the day of her arrest, she could not remember other details of the home’s condition, other than to agree it was “whatever the [deputies] pictures show.” With prompting on cross-examination, she did acknowledge there were unsafe conditions in the home.

Mother was currently residing with the maternal grandmother and mother’s two younger sisters. There was room in the home for S.C. However, mother did not know the address and never told the social worker she was residing with the maternal grandmother. Mother was not currently enrolled in school because she was awaiting sentencing on the criminal charges and did not “know if they’re going to give me probation or if they’re going to give me more time in jail, so I wouldn’t want to go to school and then have to cut it off again.”

The juvenile court sustained both counts of the section 300, subdivision (b)(1) petition, finding S.C. at substantial risk of serious physical harm based on the unsafe and unsanitary conditions in the home and mother’s marijuana use that rendered her incapable of providing adequate supervision for her child.

Turning to disposition, the juvenile court detained S.C. from both parents and ordered that S.C. remain placed with the maternal great aunt, with family reunification services to mother and father. Although the paternal grandfather’s home itself was suitable for the child’s placement, the juvenile court announced it would not place S.C. with him because the necessary waivers concerning his criminal convictions had not yet been obtained.

² This testimony contradicted mother’s earlier statements to the social worker that her school schedule meant she could only clean the house on Fridays.

Mother did not seek placement with her in the maternal grandmother's home.

DISCUSSION

I. Mootness

The uncontested six-month review was conducted on June 16, 2017. Court minutes for that date reflect mother and father were in partial compliance with their case plans and S.C. was continued as a dependent child in an out-of-home placement. Neither parent appealed from that order.

We asked counsel to submit supplemental briefs addressing whether the parents stipulated to the continued dependency and out-of-home placement (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404) and whether the pending appeal was moot. Appellate counsel could not confirm the parents stipulated to the six-month findings. Accordingly, we proceed with the merits of the appeal.

II. Challenge to Jurisdiction

On appeal, both parents assert there was insufficient evidence that S.C. was at substantial risk of serious physical harm at the time of the jurisdiction/disposition hearing, which was two months after S.C.'s removal from mother's care. We review the juvenile court's findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) Inferences may constitute substantial evidence, provided they are the products "of logic and reason" and " . . . rest on the evidence." . . . "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." (*Id.* at p. 967.)

At the jurisdiction/disposition hearing, mother relied heavily on photographs showing improved conditions in the home from which S.C. was removed. The photographs were taken at least one month after S.C. was taken out of the home, and mother was no longer living there.

The jurisdiction/disposition report included substantial evidence that both parents were in denial concerning the dangerous conditions in the home. Mother was living in that home, yet did not recognize the dangers. Some feces was from a cat she did not own, but that roamed in the home and snatched S.C.'s food. Mother was trying to housebreak the dog. She never explained, however, why she did not pick up the feces. She knew the tequila bottle was there, but offered no explanation for why she did not put it or the cigarette lighters, drug paraphernalia, knife, and blowtorch out of S.C.'s reach.

Father denied living in the home, but admitted he accidentally left the blowtorch in S.C.'s toy box the very morning of mother's arrest because he was in a hurry. He knew the tequila bottle was there, but did not know for how long or if mother was drinking. Yet it apparently never occurred to him to put the bottle out of the child's reach. He arrived at the house while the sheriff's deputies were still there, but in a conversation with the social worker he denied the presence of animal feces or rotten food.

Because they denied the existence of dangerous conditions at the jurisdiction/disposition hearing, neither parent accepted responsibility for them. As the Court of Appeal has observed, "One cannot correct a problem one fails to acknowledge." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.) And that is the crux of this appeal. After S.C. was detained, mother and father moved

into their respective parents' homes, but there was no evidence they did anything to address the problems that led to the dependency proceedings and mother's arrest. The court's jurisdictional finding was not based on speculation; it was based on substantial evidence, including reasonable inferences, that the parents' conduct would reoccur. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

Substantial evidence also supports the finding that mother's marijuana use, although legal, constituted substance abuse that created a substantial risk of serious harm to S.C. Dependency jurisdiction is properly asserted if DCFS "produce[s] sufficient evidence that [the parent] was a substance abuser." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767 (*Drake M.*)). We recognize, as did the *Drake M.* court, that a parent's abuse of drugs does not necessarily justify jurisdiction under section 300, subdivision (b)(1). But we also agree "[t]he [juvenile] court is in the best position to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case. That being said, [when the child is] 'of such tender years . . . the absence of adequate supervision and care poses an inherent risk to their physical health and safety. . . .' [I]n cases involving [young children], the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm." (*Id.* at pp. 766-767; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219.)

III. Challenge to Disposition

At the jurisdiction/disposition hearing, counsel for mother, father, and S.C. initially asked the juvenile court to place S.C.

with father because father was residing in the paternal grandfather's home. When the juvenile court questioned what would happen if father decided to leave the paternal grandfather's home, counsel suggested placement with the father be conditioned on father remaining in the paternal grandfather's home.

The juvenile court declined to make that order:

"The Court: ". . . I'm not going to place with father. I want the Department to evaluate the paternal grandfather's house and to seek waivers and then we will come back in 30 days and we will see if we have - - -

"[Father's Counsel]: Your Honor, what's the purpose of the waiver?

"The Court: [Paternal grandfather] has criminal convictions. If I'm going to place with the paternal grandfather, then I need to have those waived. . . ."

Father's reliance on section 361, subdivision (c)(1) to challenge the child's out-of-home placement is unavailing. Mother, father, and paternal grandfather consistently maintained S.C. was not residing with father when the dependency petition was filed. Section 361, subdivision (c)(1) is implicated only when the dependent child was residing with a parent at the time the dependency petition was initiated. As our colleagues in Division Seven have held, "the rigorous requirements of section 361, subdivision (c), apply only when the issue is whether to remove a dependent child from the physical custody of a parent *with whom the child was residing at the time the dependency petition was initiated*. That provision does not address the court's authority when considering the appropriate restrictions on the rights of an offending nonresident custodial

parent, that is a parent who has some right to physical custody of a child (whether sole or joint) but was not residing with him or her at the relevant time.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 347, italics added.)

The juvenile court did not err in ordering S.C.’s removal from the parents’ custody.

DISPOSITION

The orders are affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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