Filed 3/23/15 In re An.M. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re AN.M. et al., Persons Coming Under the Juvenile Court Law.	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.M., Defendant and Appellant.	B256113 (Los Angeles County Super. Ct. No. CK65564)

APPEAL from orders of the Superior Court of Los Angeles County, Carlos E. Vazquez, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Appellant A.M. (Father) appeals the juvenile court order asserting jurisdiction over his two daughters, An. and Avery, under Welfare and Institutions Code section 300, subdivision (b).[1] The court based jurisdiction on both Father's and Mother's lengthy histories of abusing amphetamines and methamphetamine, and their recent relapses.[2] Father contends the court's factual findings did not support that the children were at substantial risk of harm from the parents' drug use. Concluding otherwise, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family had been the subject of dependency proceedings in 2006, when An. was born testing positive for amphetamines. Mother admitted using amphetamines "off and on" since she was 16. An. was returned to Mother in 2008 after Mother had complied with her reunification plan. At the time, Mother was residing in a transitional living program. She was receiving Cal Works and food stamps, and had not graduated from high school. Father was residing in a sober living facility.

In February 2014, the Department of Children and Family Services (DCFS) received a referral contending Mother and Father were using methamphetamine. An. was 7; Avery was 2. Mother admitted she had started using methamphetamine six months earlier, and had snorted it three weeks earlier. Mother claimed to have used drugs outside the presence of the children, and denied having drugs or paraphernalia in the home. Father said he was aware of Mother's drug use. He admitted he had a history of marijuana and methamphetamine use. He initially stated he had last used drugs -- "crystal meth" -- three or four months earlier, but

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

2 Mother is not a party to this appeal.

then admitted he had used methamphetamine two days earlier. He stated he "would go to his friend's house after work and do drugs there." The paternal grandmother reported that Mother had not come home for a few days the prior weekend, leaving the children in Father's care. An. was interviewed and appeared to have no knowledge of her parents' drug use, and both children appeared well cared for.[3] Both parents tested negative for illicit substances the day after their interview by the caseworker.

At the detention hearing on March 5, 2014, the children were placed with an adult half-sibling. After the detention, both parents enrolled in outpatient drug programs.

Interviewed for the May 2014 jurisdiction/disposition report, Mother characterized her drug use as "sporadic," saying that she would "use for a while, [then] do meetings . . . trying to see what was causing or trigger[ing] [her] relapse." She said she was suffering anxiety and depression, and had been "overwhelmed" since Avery's birth. She said she had been in an inpatient drug program before and was willing to go into one again. She reiterated that she used drugs only when the children were being cared for by Father, adding that "[i]t was either one of us there with the kids. It would not be both of us loaded. . . ." She said she had not used drugs since the children were detained.[4]

Father said that when he "suspected something" he would not leave the children in Mother's care. But Father was employed, and Mother said she cared for the children during the day when he was at work. Father stated he had started using marijuana when he was 16 and had "experimented" over the years with methamphetamine. He had been clean for "like 3 years," but the weekend before

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[3] Avery was too young to interview.

[4] Through her program, Mother tested negative for substances in March and April.

the caseworker arrived to investigate the children's welfare, he had been in a bar with friends after work when "someone produced the drugs" and he "ended up using." He had never entered a drug treatment program, but had resided in a sober living home and had worked with a sponsor to deal with his "addiction."

The maternal grandmother described Mother's past drug abuse. She said she had obtained legal guardianship of three of Mother's children because Mother would leave them with the grandmother for days at a time. Mother's adult daughter reported that she believed Mother was using because Mother "would leave for a few days," leaving Father alone with the children, "and then when she came back, he would leave." She said that when Mother would "fall," Father "would fall too."

At the May 1, 2014 jurisdictional hearing, the attorneys for Mother and Father argued there was no risk to the children from the parents' use of illicit substances because they used separately, not in the presence of the children, and were obtaining treatment. Counsel for DCFS argued that the allegations of drug use impairing Mother's and Father's ability to care for the children and exposing the children to the risk of serious harm should be sustained. Counsel for the children also urged the court to sustain the allegations.

The court found true (1) that Mother had a 20-year history of illicit drug use, was a current abuser of methamphetamine which rendered her unable to provide the children with regular care and supervision, and had been under the influence of methamphetamine while in the children's presence in 2013 and 2014, and (2) that Father had a history of illicit drug use including marijuana, was a current abuser of methamphetamine which rendered him incapable of providing the children with regular care and supervision, and was under the influence of methamphetamine while in the children's presence at some unspecified time. The court stated that it was persuaded by the evidence that "both parents admitted to using drugs

recently," both "have a lengthy history of drug usage," and "the drug at issue here is methamphetamine."

Turning to disposition, the court placed the children in the home of the parents on the condition they continue to test clean and not miss any tests. DCFS was instructed to provide family maintenance services. The case plan required the parents to participate in a drug and alcohol program, undergo random drug testing, and participate in individual counseling to address case issues. Father appealed.

DISCUSSION

Father contends substantial evidence did not support that the children were at substantial risk of harm from his or Mother's drug histories or current use.[5] We disagree.

On appeal from a jurisdictional order, "we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we

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[5] Respondent contends Father lacks standing to contest the jurisdictional finding that related to Mother. Standing exists where a party has "a legally cognizable interest that is injuriously affected by the court's decision. [Citation.]" (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948.) "The injury must be immediate and substantial, and not nominal or remote. [Citation.]" (*Ibid*.) "We liberally construe the issue of standing and resolve doubts in favor of the right to appeal. [Citation.]" (*Ibid*.) In general, a parent has standing to raise issues affecting his interest in the parent-child relationship. (*In re Patricia E.* (1985) 174 Cal.App.3d 1, 6, overruled on other grounds in *In re Celine R.* (2003) 31 Cal.4th 45, 58-60.) "Where the interests of two parties interweave, either party has standing to litigate issues that have a[n] impact upon the related interests." (*In re Patricia E.*, *supra*, 174 Cal.App.3d at p. 6.) Here, both jurisdictional findings impact Father's interest in his relationship with his daughters, which could be lost if the parents fail to comply with their reunification program. (See *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 ["As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate."].) Accordingly, Father has standing to challenge both jurisdictional findings.

determine there is no substantial evidence to support the findings." (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

Section 300, subdivision (b) permits the assertion of jurisdiction where "the 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 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 . . . substance abuse." "'A jurisdictional finding under section 300, subdivision (b) requires: "'(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness.' [Citation.]" [Citations.] The third element "effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future . . . ." [Citation.]'" (*In re A.G.* (2013) 220 Cal.App.4th 675, 683, quoting *In re James R.* (2009) 176 Cal.App.4th 129, 135.)

It does not automatically follow from a finding that a parent used an illicit or inebriating substance that the parent is unable to provide regular care resulting in a substantial risk of physical harm to the child. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766 (*Drake M.*).) It is up to the juvenile court "to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case." (*Ibid.*) In determining risk, the age of the children involved is a significant factor. Assertion of jurisdiction under subdivision (b) of section 300 for regular use of intoxicating substances is justified where the 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 Rocco M.* (1991) 1 Cal.App.4th 814, 824.) For such a child, "'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 harm.'" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219; accord, *Drake M.*, *supra*, 211 Cal.App.4th at p. 767 [where child was 14 months old, "DCFS needed only to produce sufficient evidence that father was a substance abuser in order for dependency jurisdiction to be properly found"].)

Here, the children were very young -- 7 and 2 at the time of the jurisdictional hearing. The record was clear not only that Mother and Father had used illicit drugs for many years, but that they were addicts. Mother admitted using amphetamines from the age of 16; Father admitted using marijuana and methamphetamine from the same age.[6] An. had been removed from her parents' custody in 2006 due to Mother's inability to refrain from drug use while she was pregnant. Mother had been treated at an inpatient facility; Father had resided in a sober living facility and had obtained a sponsor to deal with his admitted "addiction," but had managed to stay away from drugs for only "like 3 years." When confronted by the caseworker in February 2014, both parents admitted recent drug use on specific occasions. Mother said she had snorted methamphetamine three weeks before the interview, and had "started using again" six months earlier. Father said he had used three or four months earlier at a friend's home and two days earlier at a bar. On this record of Mother's and Father's long-standing and recent drug use, the court's assertion of jurisdiction was warranted. When a person with a long-term drug habit uses even once or twice, the court can reasonably conclude that the problem will worsen without intervention -- particularly where the drug involved is methamphetamine, whose addictive qualities are well known. Moreover, the evidence presented supported that Mother and Father were using drugs with some regularity. Mother had said her drug use was "sporadic" since Avery's birth in 2011, that following the birth of

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[6] Mother was 37 at the time of the children's detention. Father was 36.

her last child she had been "overwhelmed," and that her pattern was to "use for a while" and then "do meetings" to try to determine "what was causing" her relapse. She said that either she or Father would remain with the children while the other was "loaded," suggesting this was a regular occurrence. Although Mother had claimed when interviewed by the caseworker in February 2014 to have last used methamphetamine several weeks earlier, the paternal grandmother said that Mother had inexplicably disappeared from home for several days just the prior weekend. Mother's adult daughter said that when Mother would fall prey to her addiction, Father "would fall too," and described Mother returning from a drug binge and Father immediately leaving, presumably to go on one of his own. The court could reasonably conclude from the evidence presented that the parents' drug use was long-standing and chronic.

Father's reliance on *In re Destiny S.* (2012) 210 Cal.App.4th 999, *In re James R.*, *supra*, 176 Cal.App.4th 129, and *Drake M.*, *supra*, 211 Cal.App.4th 754, is misplaced. In *Destiny S.*, the mother admitted intermittent use of marijuana but her regular abuse of methamphetamine had occurred nine years earlier, and the child was 11 years old. (*Destiny S.*, *supra*, 210 Cal.App.4th at p. 1004.) In *James R.*, there was no evidence that the mother had used illegal drugs after the birth of her children, and although she drank beer, there was no evidence of regular intoxication. Moreover, the children were nearly always in school, day care or the care of their nonoffending father. (*James R.*, *supra*, 176 Cal.App.4th at p. 137.) In *Drake M.*, the father did not seek to reverse the jurisdictional finding based on the mother's extensive history of drug abuse, but sought only to establish that his thrice weekly use of medical marijuana outside the presence of the children to treat arthritis did not transform him into an offending parent. (*Drake M.*, *supra*, at pp. 759, 762-763; see *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453 [parent's

use of marijuana "without more," does not bring minor within the jurisdiction of dependency court].)

Here, Mother's drug problem alone would warrant assertion of jurisdiction, as Father must leave the children in the care of Mother when he is at work and when he goes out after work, which he appears to do regularly. But it is clear that Father, too, will be unable to refrain from abusing drugs without further treatment. Although they claimed not to have used drugs in the children's presence and to have taken turns getting "loaded," neither one has knowledge of or control over the other's drug use patterns. Thus, there can be no guaranty that they would not both be under the influence while caring for the children. The court could reasonably find that in the absence of treatment and supervision, the parents' drug use posed a very real risk of serious harm to the children.

DISPOSITION

The orders are affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P.J.

COLLINS, J.