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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A. E., a Person Coming Under the Juvenile Court Law.	B256449 (Los Angeles County Super. Ct. No. DK02737)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A. S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

A.S. (mother) appeals from the dependency court's jurisdictional findings and dispositional order retaining jurisdiction over her daughter, A.E., pursuant to Welfare and Institutions Code section 300, subdivision (b).[1] Mother contends the jurisdictional findings against her are not supported by substantial evidence and that the juvenile court erred in refusing to dismiss the petition. We disagree and affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Initial Investigation and Detention

This case arose following mother's arrest on December 12, 2013 for driving under the influence and child endangerment after she crashed her car into a tree with two-year-old A.E. in the back seat.[2] On that date, Inglewood Police Department Officer Lisardi contacted the Department of Children and Family Services (DCFS) and reported that he and his partner were at the scene of another accident around 8:00 p.m. when they observed mother's vehicle "traveling at excessive speeds" and dragging an orange traffic cone underneath it. The officers pursued the vehicle and saw it make a sudden right turn. When the officers reached the vehicle, it had hit a tree and mother, A.E., and another adult passenger were outside the car. Officer Lisardi stated that mother confirmed she was driving, and she appeared to be extremely intoxicated—she was slurring her speech, swaying, and could not explain how A.E. had gotten out of her car seat. None of the passengers appeared to be injured. Mother failed a field sobriety test and agreed to take a breathalyzer test, which registered a blood-alcohol level of 0.25, more than three times the legal limit. Mother was arrested and she and A.E. were transported to the police station.

The investigating Children's Social Worker (CSW) spoke with the maternal grandmother (grandmother), who said she cared for A.E. when mother was working, that

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] A.E.'s father, M.E. (father), was non-offending and is not a party to this appeal.

A.E. spent a lot of time in her home, and confirmed that she was willing and able to care for A.E. DCFS released A.E. to her grandmother.

Grandmother told the CSW that she was "in shock" because mother did not usually consume alcohol, and she had no idea why mother was consuming alcohol with A.E. in her care. Grandmother stated that mother works "really hard and is a good mother," and had no prior issues with substance abuse. The CSW also spoke with the maternal aunt, who shared an apartment with mother. The aunt also stated that mother has never had any substance abuse issues. She said that mother is a "workaholic who works only to support her child who she loves very much." The CSW observed that A.E. appeared to be developing age appropriately and was happy to see her grandmother and aunt.

B. Section 300 Petition and Detention Hearing

On December 18, 2013, DCFS filed a petition under section 300, subdivision (b), alleging A.E. came within the jurisdiction of the dependency court because mother's drunk-driving incident "created a detrimental and endangering situation for the child," (paragraph b-1) and because mother was a "current abuser of alcohol which renders the mother incapable of providing regular care for the child" (paragraph b-2). The dependency court held the detention hearing the same day. The court found a prima facie case was established for detaining A.E. pursuant to section 300, subdivision (b). The court detained A.E. and placed her with grandmother pending further court order. The court granted monitored visits to mother of at least three hours per week once mother was able to contact DCFS.

As of the date of the detention hearing, DCFS had been unable to obtain a statement from mother due to her incarceration for the drunk-driving incident and had no information regarding the identity or whereabouts of father. The dependency court therefore ordered DCFS to present evidence of due diligence in attempting to locate father and to give mother notice of the next hearing.

C. Adjudication

DCFS filed its jurisdiction/disposition report (jurisdiction report) on February 19, 2014. DCFS was able to interview both mother and father for the report. Pursuant to a family law order dated February 21, 2013, mother was granted sole custody of A.E. and father was ordered to pay child support. Mother and father stipulated to visitation with father whenever he was in Los Angeles (anticipated to be one weekend every other month), with monitoring by mother or grandmother until A.E. "is comfortable spending time alone" with father.

Mother informed DCFS that she had been convicted of child endangerment and driving under the influence for the December 12, 2013 incident, and was now on informal probation. She was sentenced to 23 days in jail (she served eight days), nine months of DUI classes, a 52-week parenting class, four years of informal probation, 26 days of Caltrans service, and fines. She had started her parenting class on January 11, 2014 and had completed four classes at the time of her interview on February 10, 2014. She also had enrolled in her DUI class.

Mother reported she was currently employed and denied any criminal history or history of substance abuse or mental health issues. She told the CSW that she did not have an alcohol problem. The night of mother's arrest, she stated, she was supposed to go to grandmother's house to help her move. She left a restaurant, where she had "one drink," picked up A.E. from daycare, and then returned to the restaurant because of heavy traffic. She and A.E. ate dinner at the restaurant and mother stated they stayed there "longer than I thought I would be and I had one too many (drinks). I was socializing with my co-workers and I didn't realize how drunk I was." She told the CSW she had two or three margaritas that night, and that they "were a little strong."

Once they left the restaurant, mother's friend asked for a ride to his car. Mother put A.E. in her car seat and fell asleep in the passenger seat; instead of driving to his car, mother's friend drove them to his home. Mother awoke in her car outside her friend's

home[3] and said at that point she "felt fine." Her friend then asked if she was "okay to drive" and asked if she could take him to his car. While mother was driving, she turned her head toward A.E. in the back seat and hit a car in front of her. That car did not pull over, so mother continued to drive as well. She decided to "take the back streets to get out of traffic" but when she turned, she rolled over an orange safety cone. Mother said she did not realize what she had run over and she was "frantic" and "nervous." At that point, her friend grabbed the steering wheel and "that's when we hit the tree."

When asked how often she drank alcohol, mother responded that she did not drink "that often, but that week, I was going out with co-workers a lot because we were all in the process of being laid off. We would go to Islands [a restaurant] and have a couple of drinks." Mother stated that she typically goes to happy hour and drinks "once or twice a week." She "wouldn't consider" herself an alcoholic. She acknowledged that "it was a mistake" to drink and drive and that she and A.E. "could have been hurt." She stated she was willing to comply with all court orders and wanted A.E. returned to her care.

DCFS interviewed father by telephone on February 4 and 11, 2014. Father was living in Florida and had last seen A.E. for her birthday in July 2013. Father acknowledged it had been "far and few between" that he had been able to visit A.E. He claimed mother was violent toward him during their relationship and that he only put his hands on her in self-defense. Father stated mother did not have an alcohol problem but said he had "seen her get out of control after drinking. She gets aggressive and violent towards me and towards random people." He also said mother had told him she had "problems before with drinking a lot." Father stated he was not in a position to care for A.E. because he works 70 hours per week and does not have a home of his own.

DCFS also spoke with several of mother's relatives, all of whom denied that mother had an alcohol problem and stated that she was a "great mom."

As a result of the above investigation, the jurisdiction report recommended that A.E. remain in out-of-home care, with family reunification services to both parents,

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[3] There is no evidence in the record regarding how long mother was asleep in her car with A.E. in the back seat.

DCFS-monitored visitation to mother, and family-monitored visitation to father per the family law order.

The jurisdictional hearing was held on February 27, 2014. Mother's counsel asked the court to release A.E. to mother on the condition that she reside with grandmother. A.E.'s counsel agreed. Father's counsel requested A.E. be released to father on an "extended visit" until the next hearing. The court noted it was not ready to say this was a "one-time event" and denied mother's request for custody. The court ordered A.E. released to grandmother and allowed mother to live in the home with them, with the condition that mother was not allowed to drive with A.E. in the car.

In a last minute information filed April 7, 2014, DCFS acknowledged that mother "has been cooperative with DCFS" but nevertheless stated it would not recommend a 301 contract[4] due to the severity of the December 12, 2013 incident and the fact that mother "minimizes her alcohol issues and appears to have consistently been drinking several times per week." DCFS stated it would "like to continue to monitor [mother] to ensure that she completes all Court ordered programs."

The disposition hearing was held on April 7, 2014. DCFS submitted as evidence the December 18, 2013 detention report, the jurisdiction report, and the last minute information. Mother submitted as evidence progress letters from her substance abuse and parenting classes showing regular attendance and noting a positive attitude, two alcohol testing receipts with clean results, and a copy of her driver's license, restricting her to only operate a vehicle equipped with an "ignition interlock device" that requires a clean breathalyzer reading before it allows the car to start. DCFS and counsel for A.E. asked that the court sustain the petition as pled. Mother argued that the petition should be dismissed, relying on *In re J.N.* (2010) 181 Cal.App.4th 1010 (*J.N.*) to support the

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[4] Section 301 provides the parameters for the social worker's informal supervision. Under section 360, subdivision (b), "[i]f the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together" under the informal supervision of the social worker for a limited time period. (§§301; 360, subd. (b), Cal. Rules of Court, rule 5.695(a)(2).)

proposition that a single incident of drinking and driving could not sustain a finding of jurisdiction under section 300, subdivision (b).

Following argument, the court indicated it wanted to hear from mother regarding "how frequently [she] goes to happy hours, . . . how many drinks are usual, and whether she does that before she picks up her daughter, or even after she picks up her daughter and her daughter is in the car." Mother testified that she would usually go to happy hour "once or twice a week." She would usually go to Islands with coworkers, since that restaurant was within walking distance to her job and her home. On these occasions, A.E. would usually either already be at home with grandmother, or mother would pick A.E. up from daycare, drop her off at home, and meet back up with her coworkers for a drink. Mother stated that on the day of the incident, she had one drink at Islands around 3:30 or 4:00 p.m., then went back to work. She then picked A.E. up around 6:00 p.m. before heading back to Islands for dinner to avoid the traffic. Mother stated she did "not often" (defined as "once a month") go to happy hour in the middle of a workday, and would eat lunch when at the restaurant.

The court distinguished *J.N.*, in which "there really was no evidence that the parents did drink on a regular basis and this one event really was a one-time occurrence." In contrast, the court found "that is not the case here. The mother drinks, prior to this event, quite regularly, once or twice a week." Further, the court stated it did not find mother's testimony credible, noting that her story "just did not make a lot of sense" and that she "really did not have a credible explanation for why things were different" from her usual practice on December 12, 2013. As such, the court found that "there is some minimizing, there is some inaccurate representations [sic] here about the drinking problem, and the only way to make sense of the facts before the court is that [mother] does drink before picking her daughter up, and it has happened on more than one occasion . . . . But it does appear to be, prior to this date, a fairly regular occurrence with [mother]." Accordingly, the court sustained both counts under section 300, subdivision (b).

At the suggestion of A.E.'s counsel, the court then continued the disposition hearing to allow the parties to meet with DCFS to develop a safety plan that would allow A.E. to live with mother and also address father's request to spend more time with her.[5] In advance of the continued disposition hearing, DCFS submitted a last minute Information on May 13, 2014, changing its recommendation to allow A.E. to be returned to mother. DCFS based its revised recommendation on the following facts: (1) A.E. was currently residing with grandmother in mother's home, with no reports of abuse or neglect; (2) mother had been cooperative with DCFS; (3) mother had been consistently attending and actively participating in her court-ordered programs; (4) mother had participated in random drug/alcohol testing and had four clean results between March and May, 2014; and (5) mother continued to have a restricted driver's license that only allowed her to drive to and from work and her programs and only in a vehicle with an interlock ignition device. As such, mother "has demonstrated that she is committed to completing all of her Criminal Court ordered services as well as committed to cooperating with DCFS in order for [A.E.] to be returned to her care." Father also told DCFS he was in agreement with A.E. being returned to mother's care, but that he would like to spend more time with A.E. over the summer and on holidays.

At the disposition hearing on May 13, 2014, the court admitted the last minute information from the same date into evidence. After noting that mother had been "very committed" and commending her efforts, the court ordered A.E. returned to mother's custody under a home-of-parents order, with unmonitored visitation to father. The court ordered family maintenance services for both parents, including continued rehabilitation programs and testing for mother.

Mother timely appeals the court's jurisdictional findings and dispositional order.

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[5] Over the course of the hearings on this matter, and despite his earlier statements regarding his inability to care for his daughter, father alternately requested custody of and increased visitation with A.E.

DISCUSSION

A. Standard of Review

We review jurisdictional findings and the disposition to see if substantial evidence, contradicted or uncontradicted, supports them. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (citation omitted).) ""In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the juvenile 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]." (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

B. Substantial Evidence Supports Jurisdiction[6]

Section 300, subdivision (b)(1), provides that a child comes within the jurisdiction of the juvenile court as a dependent 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 . . . to adequately supervise or protect the child. . . ." DCFS has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300. (§ 355, subd. (a); *In re I.J.*, *supra*, 56 Cal.4th at p.773 (citation omitted).)

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) Thus, courts have largely held that "past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; '[t]here must be some reason to believe the acts may continue in the future.' [Citations.]" (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; see also *J.N.*, *supra*, 181 Cal.App.4th at p. 1023 [same].) In other words, section 300, subdivision (b) "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 (e.g., evidence showing a substantial risk that

[6] Although Mother appealed from the disposition as well, she only asserts error with respect to the court's jurisdictional findings.

past physical harm will reoccur). [Citations.]" (*In re Savannah M*. (2005) 131 Cal.App.4th 1387, 1396.)[7]

Mother argues that the dependency court erred in sustaining the section 300 petition because there was no evidence that, at the time of the jurisdictional hearing, A.E. currently faced a substantial risk of harm. As she did below, she relies principally on *J.N.* to support her contention that her single incident of drinking and driving with A.E. in the car does not establish a risk of any present or future harm to her child. In *J.N.*, the father drove the family minivan into a light pole while both parents were drunk, injuring two of their children. (*J.N.*, *supra*, 181 Cal.App.4th at pp. 1014-1015.) Both parents denied regular alcohol use, a fact echoed by their eldest child, who stated that his mother "drank a beer once in a while" and his father drank "only one or two beers a couple times per month." (*Id.* at p. 1017.) Based on the severity of the single incident, the dependency court exercised jurisdiction over the children pursuant to section 300, subdivision (b). (*Id*. at p. 1021.) The Court of Appeal reversed, holding that "[d]espite the profound seriousness of the parents' endangering conduct on the one occasion in this case, there was no evidence from which to infer there is a substantial risk such behavior will recur." (*Id*. at p. 1026.) In fact, "[t]he evidence as a whole did not even establish that mother or father consumed alcohol on a regular basis." (*Ibid*.) As such, "[t]he evidence was not sufficient to establish that the children were at substantial risk of serious physical injury as the result of parental inability to adequately supervise or protect the children." (*Id*. at p. 1027.)

"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." (*J.N.*, *supra*, 181 Cal.App.4th at p. 1025.) Here, mother's decision to get behind the

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[7] The court in *J.N*. noted contrary language in *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435, but disagreed with that case to the extent it "concludes that section 300, subdivision (b), authorizes dependency jurisdiction based upon a single incident resulting in physical harm absent current risk." (*J.N.*, *supra*, 181 Cal.App.4th at p. 1023.) Because we find substantial evidence that A.E. faced a current risk of harm, we need not reach this issue.

wheel of a vehicle while intoxicated exposed her child to a grave risk of harm.[8] This harmful conduct distinguishes the instant case from those cited by mother finding no jurisdiction based on evidence of substance abuse *alone*. (See, e.g., *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [no evidence of harm from mother's use of drugs]; *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 59 fn.2 [father's alcoholism, alone, did not support jurisdiction under section 300, subdivision (b)].) Further, unlike in *J.N.*, here the dependency court expressly found that the evidence established a substantial risk such behavior would recur. Mother admitted that she would drink regularly, once or twice a week, including in the middle of the workday about once a month. Further, although mother contends this was a one-time incident, the court found her testimony was not credible, pointing to inconsistencies in mother's testimony regarding the timing and frequency of her drinking. Based on these findings, the court concluded that mother minimized her drinking and she "does drink before picking her daughter up, and it has happened on more than once occasion." Thus, in light of the evidence of the severity of the incident, the frequency of mother's drinking, and the court's finding that mother's testimony was not credible, we find there is substantial evidence that A.E. continued to be at a substantial risk of serious harm.[9]

The trial court commended mother on her cooperative attitude with DCFS and her efforts to rectify this situation, which resulted in the court's order returning A.E. to her under the home-of-parent order. It does not, however, provide a basis to overturn the dependency court's conclusion, supported by substantial evidence, that A.E. remained at substantial risk of serious harm.

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[8] The fact that mother and her passengers were fortunate enough to emerge from the accident uninjured has no bearing on our analysis of the risk.

[9] Because we affirm the jurisdictional finding based on the factual allegations in paragraph b-1 of the petition regarding mother's December 12, 2013 drinking and driving incident, we do not reach mother's contention that she was not an alcohol abuser as alleged in paragraph b-2. (See *In re I.J., supra*, 56 Cal.4th at p.773.)

DISPOSITION

The order is affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.