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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CHASE M., a Person
Coming Under the Juvenile
Court Law.

B289240
(Los Angeles County
Super. Ct. No. 18CCJP00933A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of
Los Angeles County, Rashida A. Adams, Judge. Reversed.

Brian Bitker, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Jeanette Cauble,
Principal Deputy County Counsel for Plaintiff and Respondent.

T.M. (mother) contends that substantial evidence did not support the juvenile court's finding that jurisdiction over then four-year-old Chase was necessary because mother left Chase with his maternal great aunt (MGA), with whom he had been living since birth, without making a plan for his ongoing care. We agree that there was no substantial evidence that mother's placement of Chase in MGA's care placed Chase at substantial risk of serious past or future harm, and thus reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Chase came to the Department of Children and Family Services' (DCFS) attention on December 20, 2017 through a referral asserting mother was not taking care of Chase, but instead, "spending most of her time" with her boyfriend and "doing drugs." The reporting party did not know who was Chase's father,¹ but stated Chase "appears to be developmentally on target." The reporting party stated that mother and her boyfriend have "domestic violence issues."

¹ Ultimately, DCFS obtained the name of Chase's father from mother and conducted a due diligence search to try to locate father. Father never appeared at the proceedings described herein and is not a party to this appeal. As set forth *post*, the juvenile court denied father reunification services when, after ordering a due diligence search, father's whereabouts remained unknown.

During the social worker's interview of MGA, MGA said she never saw mother use drugs or have drug paraphernalia, although recently mother had been losing weight and seemed depressed. Two months earlier, mother came home with a bruised face and claimed her boyfriend had hit her.

MGA stated mother did not hit Chase or yell at him. When the social worker visited MGA's home, she observed no safety hazards and sufficient food in the refrigerator. MGA stated mother was home only two to three times per month, did not "engage" Chase when she was home, and slept most of the day. Mother made false promises to come home, which saddened Chase. MGA also reported her inability to contact mother when mother was not home because mother did not provide any contact information for herself or her boyfriend.

MGA also stated mother did not provide financial support for Chase and that MGA was providing Chase's necessities, including taking him to the doctor. The doctor knew the family and apparently was willing to treat Chase without a consent letter from mother. MGA described her willingness to care for Chase as she had done in the past. At the same time, MGA wanted mother to be part of Chase's life, but mother needed DCFS services and to be drug-tested.

When the social worker interviewed Chase, he confirmed MGA's observations about mother not hitting or yelling at him, about his getting enough food, and about mother " '[s]ometimes' " not being at home. Chase said he was happy at home and that he did not see his mother smoke, drink alcohol, or "act weird." He never saw mother's boyfriend in or near the house and had not been in the boyfriend's home. Chase denied being touched

inappropriately and appeared to the social worker to be neatly groomed.

The social worker's multiple attempts during the January 12, 2018 to February 8, 2018 time period to reach mother by regular and certified mail, telephone, text messaging, and going to MGA's home were unsuccessful despite leaving telephone messages for mother to contact the social worker. One message informed mother that "her cooperation would be appreciated and her lack of responsiveness could mean the department making decisions that do not include her." A subsequent message informed mother that the social worker was going to recommend referring the case and noted the difficulty in reaching mother. Mother did not contact the social worker notwithstanding these messages.

The social worker's research of databases revealed no prior family history with DCFS. The detention report dated February 8, 2018 sets forth the above facts and contains the social worker's conclusion that "[t]hese actions by the mother demonstrate mother is not able or willing to provide for the child . . . to such degree that the mother has abandoned the child." The social worker also reported her concern about mother's substance abuse and that mother may be engaged in a "violent relationship."

On February 12, 2018, DCFS filed a petition alleging under Welfare and Institutions Code² section 300, subdivision (b)(1) that in 2017, mother "left the child with the [MGA], . . . , without making an appropriate plan for the child's ongoing care and supervision. The mother failed to provide the [MGA] with the

² Undesignated statutory citations are to the Welfare and Institutions Code.

mother's contact information and the mother's whereabouts are unknown. Such failure to make an appropriate plan for the child's ongoing care and supervision . . . endangers the child's physical health and safety, and places the child at risk of serious physical harm and damage."

Mother did not appear at the February 13, 2018 detention hearing. At that hearing, the juvenile court found Chase to be a child described in section 300, detained Chase in MGA's care, ordered mother not to reside with Chase in MGA's house with discretion to DCFS to liberalize, and ordered scheduled monitored visitation for mother.

At the March 12, 2018 arraignment hearing,³ mother requested that Chase be released to her on the condition she reside with MGA, or in the alternative, that she be allowed to live with MGA with unmonitored visits within the home and monitored visits outside the home. If not allowed to live in MGA's home, mother requested visitation monitored by MGA. Her counsel remarked that mother was visiting Chase daily and participating in "parenting." Child's counsel did not oppose mother's living with MGA with monitored outside visitation, but expressed concern about "possible" domestic violence between mother and her boyfriend. DCFS argued mother's daily visits violated the court's previously ordered visitation schedule and mother's "refus[al] to contact or speak with anyone at the Department" made investigation difficult.⁴ Because of mother's

³ Mother failed to appear for the first scheduled arraignment hearing.

⁴ A last minute information for the court filed on March 12, 2018 described DCFS's unsuccessful efforts to contact mother.

lack of cooperation and DCFS's concerns about drug use and domestic violence, DCFS opposed changing the juvenile court's prior orders. The juvenile court agreed with DCFS.⁵

On April 3, 2018, the juvenile court conducted a combined jurisdiction and disposition hearing; mother did not attend the hearing.⁶ DCFS's jurisdiction/disposition report was admitted into evidence in which DCFS repeated what was in the detention report, but noted a shift in MGA's position during the social worker's telephone interview of MGA on March 15, 2018. During that interview, MGA stated that although mother has not been home, she "keep[s] contact" from time to time. She stated mother "brought her card for us to go buy food and paid her portion of the rent."

DCFS reported MGA blamed herself for mother's leaving Chase: "She left [C]hase because I told her to do so." MGA explained MGA wanted custody of Chase and "called the wrong people." She recounted mother's view that MGA never trusted mother and did not give mother an "opportunity" to raise Chase, and that MGA now agreed with mother. MGA expressed concern about destroying her family. She observed that mother needed to spend more time with MGA and Chase, and mother needed therapy. MGA described mother as being "wonderful with

⁵ The juvenile court also noted the absence of any claim of Indian ancestry.

⁶ The juvenile court denied counsel for mother's request for a continuance based on mother's assertion that there were "some things that needed to get done in her building." Mother's counsel also told the juvenile court that mother had not returned counsel's calls seeking clarification of the latter reason for mother's requested continuance.

children and the children adore her.” According to MGA, mother was with the same boyfriend and the only incident of domestic violence was the one described in the detention report. MGA reported mother was not living with MGA, but was “staying from family member to family member.”

The jurisdiction/disposition report stated that Chase was not yet of “school age” and there were no concerns about Chase’s mental health. It also referenced MGA’s obtaining medical care and dental care for Chase and willingness to provide contact information and medical records to the social worker. The social worker had no concerns about Chase’s remaining in MGA’s home.

In the report, DCFS recounted unsuccessful attempts to interview mother. It also referenced that Chase “continues to thrive in the home” and “appeared to be happy and comfortable in the presence of the mother and MGA.” DCFS observed that Chase loved mother and MGA.

As to the petition’s allegation about mother’s not planning for Chase’s care, DCFS stated “there is [an] element of truth to the mother not making [a] plan for the child and MGA caring for the child[’s] wellbeing” but that MGA “ensures the child[’]s medical and dental needs are met.” DCFS recommended, among other things, Chase’s removal from mother’s custody and placement in suitable out of home care with the caregiver being given authority to consent to Chase’s routine medical and dental care, and monitored visitation for mother.

MGA testified she had enrolled Chase in school, was able to obtain medical and dental care and financially provide for him, and did not need any assistance from DCFS. She reiterated she

had gone to the wrong court and should have requested guardianship from the probate court.⁷

Mother's counsel argued there was no evidence of risk to Chase and mother had, in fact, made an appropriate plan by leaving Chase with MGA, who was not requesting any DCFS assistance and had been able to provide for Chase's financial and other needs. MGA could go to probate court to obtain legal guardianship, and thus there was no reason for the juvenile court to exercise jurisdiction over Chase.

Child's counsel argued mother had in essence abandoned Chase by leaving him with MGA with an occasional appearance at MGA's home, and had failed to cooperate with DCFS, including "absent[ing] herself" from the adjudication hearing. For the reasons set forth in its jurisdiction/disposition report, DCFS recommended removal from mother's care and suitable placement with MGA.

The juvenile court found true the allegation in the petition under section 300, subdivision (b)(1) that "mother did not make an appropriate plan, thereby leaving the child at risk of harm." The juvenile court noted Chase was "fortunate that he had a relative who was willing and able to step in and care for him." The juvenile court then declared Chase to be a dependent of the court under section 300, subdivision (b). It found by clear and convincing evidence that "continuance in the home of the mother is contrary to the child's welfare," removed Chase from mother's custody, placed him with MGA, and ordered unmonitored visitation and reunification services for mother. It did not order

⁷ The juvenile court denied mother's motions to dismiss under section 350, subdivision (c).

reunification services for father because his whereabouts were unknown.

Mother filed a timely notice of appeal from the juvenile court's jurisdictional and dispositional findings.⁸

DISCUSSION

“[S]ection 300, subdivision (b), invokes the jurisdiction of the juvenile court and permits it to declare a child a dependent of the court 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 willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment.’ ” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1159 (X.S.) [quoting § 300, subdivision (b)(1)].) Risk of harm is measured as of the time of the juvenile court hearing, although “evidence of past conduct may be probative of current conditions.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated in part on another ground, in *In re R.T.* (2017) 3 Cal.5th 622, 627-629.)

DCFS has the burden of showing specifically how the child has been harmed or will be harmed. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 303 [§ 300's purpose is “to limit court intervention to situations in which children are threatened with serious physical or emotional harm”].) “To declare a child a dependent of the court under section 300, the juvenile court must find by a preponderance of the evidence that the allegations are true.

⁸ We observe that the parties' briefing addresses the juvenile court's jurisdictional findings only. We limit our review accordingly.

[Citations.] We review the juvenile court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value.” (X.S., *supra*, 190 Cal.App.4th at p. 1160.)

The parties make essentially the same arguments they asserted below. Thus respondent contends mother’s leaving Chase for long time periods without providing contact information, not providing consistent financial support or written authorization to MGA to make medical or education decisions for Chase, and failure to cooperate during DCFS’s investigation constituted “willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment,” supporting the juvenile court’s declaring Chase a dependent of the juvenile court. (§ 300, subdivision (b)(1).) Respondent also highlights “concerns about possible domestic violence and drug abuse by mother,” but concedes there was no evidence “that either occurred in the child’s presence,” and the juvenile court did not base its jurisdictional findings on any such concerns. The only evidence respondent cites of harm to Chase is the possibility that mother could not be reached in the event of an emergency.

In retort, mother argues that she did not fail to make an appropriate plan for Chase. We agree.

Mother placed Chase in MGA’s care who, by all accounts, was loving and met all Chase’s needs. Indeed, that Chase was well-adjusted and had all his needs met in MGA’s care was undisputed. There was literally no evidence that mother’s placement of Chase in MGA’s care had in the past posed any “substantial risk” of “serious physical harm or illness.” As

explained above, DCFS described Chase as “thriving” in MGA’s and mother’s home. DCFS did not report a single instance of MGA’s not being able to obtain medical care for Chase because she was not able to contact mother or because of the purported lack of mother’s written consent. The same was true for Chase’s educational needs.

Mother also contends there was no evidence of substantial future risk of serious harm or illness other than mere speculation. Respondent counters that because of mother’s failure to provide MGA with mother’s contact information, in the case of a medical emergency, MGA may not be able to consent to medical care for Chase absent “a notarized letter authorizing [MGA] to consent to medical treatment.” We agree that respondent’s contention is mere argument.

There was no evidence that MGA would be disabled from obtaining medical care for Chase because of the lack of mother’s written authorization. The same is true for Chase’s educational needs. The uncontested evidence was that Chase’s medical and dental needs had been met consistently in MGA’s care and that by the time of the jurisdictional and dispositional hearing, he was already enrolled in school. As mother argues, the purpose of dependency jurisdiction is to address substantial risk of serious harm to a child, not to obtain the authority of a guardian.

Finally, respondent observes mother may have emotional issues perhaps related to domestic violence or drug use that would be well-served by a therapist’s services. Without substantial evidence of substantial risk of serious past or future harm to Chase, this hypothesis cannot support dependency jurisdiction over Chase.

Absent any evidence that mother's conduct posed a substantial risk of serious past or future harm to Chase, the juvenile court erred in declaring Chase a dependent of the juvenile court under section 300, subdivision (b)(1).

DISPOSITION

The jurisdictional order is reversed and all orders are vacated.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.