Filed 3/7/14 In re P.M. 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 P.M., a Person Coming Under the Juvenile Court Law.	B250281 (Los Angeles County Super. Ct. No. CK90655)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. L.M., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Akemi D. Arakaki, Judge. Affirmed.

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

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

L.M. (Mother) appeals from the juvenile court's June 17, 2013 jurisdictional and dispositional orders, contending that substantial evidence did not support the court's order declaring minor P.M., born in May 2013, a dependent of the court pursuant to the petition alleged under Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling) based on Mother's drug use, positive screening for amphetamine at P.M.'s birth, and sibling M.M.'s receipt of permanent placement services due to Mother's substance abuse.[1] She also contends that the court abused its discretion in making a dispositional order removing P.M. from Mother's care. P.M.'s father, whose identity is unknown, is not a party to this appeal. We affirm.

BACKGROUND

A. The detention report

The Department of Children and Family Services (DCFS) reported the following in connection with a detention hearing before the juvenile court to determine whether the minor P.M. should be removed immediately from the care of Mother.

On May 9, 2013, DCFS received a referral alleging that Mother had tested positive for amphetamine at the birth of P.M. The reporter stated that during Mother's prenatal examinations, Mother had tested positive for cocaine, methamphetamine, amphetamine, marijuana, and ecstasy. It was reported that maternal grandmother had custody of Mother's older daughter M.M.

Mother told DCFS that she did not have a permanent address; she did not live with maternal grandmother; the Department of Public Social Services was in the process of helping her find housing; and M.M. had been removed from her custody. Mother stated that she had smoked marijuana and methamphetamine in the past, but denied ever having used cocaine. Mother told DCFS that she had gone to a clinic in February or March 2013 because she was concerned that she was "not bleeding." Mother tested positive for drugs at that time. She said she had tested clean twice during her later prenatal visits, but could not provide the dates of those visits. Mother said the last time she smoked

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

methamphetamine and marijuana was over two months before the birth of P.M. Mother reported taking Tylenol with codeine and intravenous medication during her hospital stay, but did not report having taken Sudafed. She said she did not know how drugs got into her system at P.M.'s birth. Contradicting that statement, Mother also said hospital staff told her that she and P.M. had tested clean at the hospital.

The hospital records showed that at P.M.'s birth Mother tested positive for amphetamine and that P.M. tested negative for drugs. P.M.'s temperature had dropped more than five times and hospital staff were unsure whether the temperature drop was due to Mother's drug use. Hospital staff informed DCFS that Mother had tested positive for cocaine, methamphetamine, amphetamine, marijuana, and ecstasy when Mother was 26 weeks pregnant.

Maternal grandmother told DCFS that she was in the process of getting legal guardianship of M.M. She said that Mother sometimes spent the night at maternal grandmother's home.

The social worker for M.M.'s case said she was unaware that Mother sometimes spent the night at maternal grandmother's home. She stated Mother had been provided services through the drug court; had tested positive for drugs on May 7, 2012; and had been "dropped" by the drug court on May 9, 2012, due to noncompliance with services.

The hospital social worker completed a newborn risk assessment on P.M., and reported the following risk factors: Mother's positive drug test; Mother was not in a drug treatment program; Mother's late prenatal care and "poor follow-up"; and Mother's emotional and intellectual limitations.

DCFS reported that M.M.'s dependency case began in October 2011, when Mother presented at a clinic stating she had an implant in her head that needed to be removed and that she needed a CAT scan. Mother reported hearing voices and talking to herself. Mother tested positive for methamphetamine, but walked out of the clinic and refused a psychiatric evaluation. As of October 2011, Mother had multiple prior arrests and warrants for possession of a controlled narcotic substance. M.M., who was 15 months old at the time, was detained from Mother's care. Subsequently, the juvenile

court sustained a petition on behalf of M.M., finding under section 300, subdivision (a), and paragraph b-3, alleged under section 300, subdivision (b), that Mother and M.M.'s father had a history of violent altercations and that in September 2011, M.M.'s father choked Mother. The court found under paragraph b-l, alleged under section 300, subdivision (b), that Mother had a three-year history of illicit drug use and was a user of methamphetamine and on October 21, 2011, Mother had a positive toxicology screen result for methamphetamine. The court found under paragraph b-2, alleged under section 300, subdivision (b), that Mother had a mental and emotional condition, including having auditory hallucinations since May 2011, resulting in her hospitalization in November 2011.

Mother failed to complete the programs ordered by the juvenile court, and Mother's family reunification services for M.M. were terminated.

B. The section 300 petition

On May 14, 2013, DCFS filed a section 300 petition pursuant to subdivisions (b) (failure to protect) and (j) (abuse of sibling), alleging that P.M. came within the jurisdiction of the juvenile court.

As sustained, the petition alleged under section 300, subdivisions (b) and (j) that Mother had a five-year history of substance abuse and was a current abuser of cocaine, methamphetamine, amphetamine, marijuana, and ecstasy, which rendered Mother incapable of providing regular care for P.M. In May 2013, Mother had a positive toxicology screen for amphetamine at the time of P.M.'s birth. Mother had used illicit drugs during her pregnancy. P.M.'s sibling, M.M., received permanent placement services due to Mother's substance abuse. Mother's illicit drug use endangered P.M.'s physical health and safety and placed her at risk of harm and damage.

C. The detention hearing

Mother appeared at the detention hearing on May 14, 2013. The juvenile court ordered P.M. detained from the care of Mother and placed in foster care. The court further ordered DCFS to refer Mother for random drug testing. The court ordered monitored visits for Mother of two hours once per week, to take place in a neutral setting

away from maternal grandmother's home, with maternal grandmother not to be the monitor. The court further ordered that Mother was not allowed to reside with the minors at maternal grandmother's home.

D. The jurisdictional and dispositional report

DCFS reported the following in connection with the jurisdictional and dispositional hearing, at which the juvenile court determines whether the minor shall be declared a dependent and issues orders for the minor's care.

On June 4, 2013, Mother told DCFS she had not reunified with M.M. because she had been unable to find a suitable drug program. Mother said she had "contracted bed bugs" from a drug program and did not finish that program or the three others in which she had enrolled. She also said she had been unable to finish the programs because she needed to work.

Mother denied using drugs while she was pregnant with P.M. She said she had used Sudafed during the last part of her pregnancy, which caused her to test positive for amphetamine. Mother provided DCFS with a letter dated June 3, 2013, from Dr. Arjang Naim from a women's clinic that stated: "Patient [Mother] delivered [in May 2013] and was under my care [in May 2013] and was given medication such as Sudafed, sometimes Sudafed can cause a false positive drug test for amphetamines."

Dr. Naim told DCFS that he had filled in for Mother's regular doctor and had provided prenatal care for Mother. He stated that Sudafed was safe to take in the third trimester of pregnancy and could cause a false positive drug test for amphetamine.

An employee of Pacific Toxicology laboratory, which performed Mother's toxicology tests, told DCFS that Sudafed can cause a positive screen for amphetamine, and a confirmation test would rule out a false positive.

E. Last minute information report

DCFS filed a last minute information report on June 17, 2013. The report stated that a team decision making (TDM) meeting had been held on June 7, 2013, during which a safety plan had been developed for P.M. to stay with maternal grandmother, and for Mother to receive reunification services, including a substance abuse program,

random drug testing, parenting, and family preservation services. Mother refused to sign the safety plan, stating that she "does not trust" DCFS.

The last minute report also reported the following.

Candice M., Mother's relative, told DCFS that Candice's father told her in April 2013 that Mother was pregnant. Candice saw Mother only once during her pregnancy, in late April. Candice talked to Mother often after the delivery. Mother seemed coherent and not under the influence of drugs.

Fred Williams, assistant director of a drug program, told DCFS on June 12, 2013, that on June 11, 2013, Mother had enrolled in a drug program that provided random drug testing. He stated that Mother had been referred elsewhere for parenting and domestic violence counseling.

Maternal grandmother told DCFS that she had learned Mother was pregnant in March 2013. She had not observed Mother to be under the influence of any drugs during her pregnancy or after the birth of P.M.

On June 13, 2013, the hospital social worker informed DCFS that a confirmation test had been done on Mother's sample, confirming that Mother had tested positive for methamphetamine. The social worker stated that P.M.'s meconium (feces) tested positive for amphetamine and that the meconium test was more accurate than the previous urine test conducted on P.M.

On June 14, 2013, Mother told DCFS that in "Apri1 2012 I relapsed from being clean when my Father passed away. I went to the Mini-House and relapsed again. Then I went to BHS but I had to leave the program because I needed to work to take care of myself. I started working and I was not using. I found out that I was pregnant February or March 2013. . . . I used marijuana on New Year's Day 2013 and that was about it. The marijuana may have stayed in my system. I have not used drugs since New Year's Day. I have enrolled into R-A-Y Institute Drug Program. I do not trust the Department. It took my other child away from me. I am a good Mother. . . ."

DCFS attached Mother's laboratory report, which showed that the confirmation test showed a positive result for methamphetamine at a level of "3385 ng/ml," and

amphetamine at "1634 ng/ml." The report indicated that the specimen was analyzed for the presence of multiple amphetamine-like compounds, including pseudoephedrine, but none of those compounds was present.

DCFS also attached P.M.'s laboratory report which showed a positive result for amphetamine, including a positive result for methamphetamine at a level of "120 ng/g."

F. The jurisdictional and dispositional hearing

Mother did not appear at the jurisdiction hearing on June 17, 2013, although the juvenile court had previously ordered her to attend. The court admitted the detention report and the jurisdiction/disposition report into evidence.

DCFS argued that the petition should be sustained, contending that Mother had tested positive for amphetamine at the time of P.M.'s birth; Mother had used illicit substances during her pregnancy; and P.M.'s sibling M.M. had received permanent placement services due to Mother's substance abuse. DCFS cited the detention report, which indicated that Mother had tested positive for multiple drugs, including cocaine, methamphetamine, amphetamine, marijuana, and ecstasy during her prenatal visits; Mother had a positive test for amphetamine at the time of P.M.'s birth; and Mother admitted to having used methamphetamine and marijuana up to two months before P.M.'s birth. DCFS argued that Mother's purported use of Sudafed did not explain the positive test for cocaine, marijuana, or ecstasy.

P.M.'s counsel joined in DCFS's argument.

Mother's counsel argued that Mother's test for amphetamine was a false positive based on her Sudafed use; she had not used drugs two months prior to giving birth; and she was willing to take a confirmation test.

Following argument, the juvenile court sustained the petition. Mother's counsel did not make any argument regarding disposition. The court ordered P.M. removed from Mother. Mother appealed.

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.) "[W]e must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

B. Sufficient evidence supported the juvenile court's jurisdictional findings

1. Sufficient evidence supported the jurisdictional findings under section 300, subdivision (b)

Mother contends that insufficient evidence supported the juvenile court's jurisdictional order as to the allegations under section 300, subdivision (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."

"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 (e.g., evidence showing a substantial risk that past physical harm will reoccur).' [Citation.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) "[T]he use of the disjunctive 'or' demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 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.)

Viewing all conflicts in favor of DCFS and drawing all reasonable inferences in support of the judgment, as we must (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185), we conclude that substantial evidence supports the juvenile court's findings that P.M. was described by section 300, subdivision (b).

We first note that the statutory dependency scheme provides, "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) Here, the evidence showed that with respect to Mother's prior dependency matter regarding M.M., the juvenile court had found in 2011 that Mother had a three-year history of illicit drug use and that her use of methamphetamine interfered with her ability to provide care for M.M. In addition, Mother had failed to complete four drug treatment programs and had been dropped from the drug court program due to noncompliance.

With respect to the current case, hospital records showed that Mother had tested positive for cocaine, methamphetamine, amphetamine, marijuana, and ecstasy when Mother was 26 weeks pregnant with P.M. Further, Mother had tested positive for amphetamine at the time of P.M.'s birth. Accordingly, the court could conclude that

Mother had ongoing drug issues and that she had knowingly exposed her newborn baby to her prenatal drug use, providing substantial evidence for the juvenile court's jurisdictional findings. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 899 ["prenatal use of dangerous drugs by a mother is probative of future child neglect"].)

Mother argues that the evidence did not support the jurisdictional findings because there was no evidence that she currently was using drugs. She argues that she had not used drugs since she found out she was pregnant; that she had provided a letter from a doctor stating that she had taken Sudafed, which could cause a false positive drug test; and that a relative had reported that Mother currently did not seem to be under the influence of drugs.

However, issues of fact and credibility are questions for the juvenile court. (*In re Precious D., supra*, 189 Cal.App.4th at pp. 1258–1259.) Given (1) Mother's long drug history; (2) Mother's admitted use of drugs during her pregnancy while dependency proceedings were ongoing for M.M.; (3) Mother's denial of cocaine use, even though she tested positive for cocaine; (4) Mother's denial at one point that she had tested positive for drugs at P.M.'s birth; and (5) Mother's failure to mention any Sudafed use when interviewed by DCFS at the hospital, the court could well have found Mother lacked credibility. The court could have rejected Mother's arguments that she was unaware she was pregnant and that she had stopped using drugs when she found out she was pregnant. Further, the court could have found Mother's relatives' statements not to be credible. The court also could have concluded that the doctor's letter, which was submitted to DCFS almost a month after P.M.'s birth and did not state when Mother took Sudafed, or any other details, was too vague to support Mother's argument that she had tested positive for amphetamine because of her purported Sudafed use. Further, Mother's explanation regarding the Sudafed use, even if credible, did not explain the presence of cocaine, marijuana, and ecstasy in her system during her pregnancy.

Mother also argues that there is no nexus between Mother's drug use and risk of harm to P.M. because P.M "was doing well with no concerns," even though hospital staff had reported that P.M.'s temperature had dropped five times shortly after she was born.

Mother also acknowledges that "a second set of results for the same specimens is included in the record," but merely attempts to undermine that evidence by contending that "[t]here is no explanation in the record to suggest why" the confirmation test would be "any more reliable" than the urine test.

Mother's arguments are not persuasive. *In re Monique T.* (1992) 2 Cal.App.4th 1372 held that a minor born with dangerous drugs in her body created a legal presumption that she was a person described by section 300, subdivision (b). (*Monique T.*, at p. 1378.) Further, the mother's prenatal drug use was probative of future neglect and indicated that the minor was in need of the juvenile court's protection. (*Id.* at p. 1379.) "Additionally, the mother's own mental and emotional disabilities, her drug abuse, the failure to obtain prenatal medical care and her inability to make definite living arrangements in a secure setting for herself and her daughter, reveal a tragic inability to protect and to care for the needs of her medically fragile daughter." (*Ibid.*)

Here, the last minute information report confirmed that P.M. was born with drugs in her system. It also reported that Mother tested negative for amphetamine-like compounds, including pseudoephedrine. As in *In re Monique T.*, Mother had a long history of drug use; Mother had been unable to make living arrangements; and Mother had mental disabilities.

The record does not indicate that the last minute information report was admitted into evidence and discussed during the jurisdictional hearing. But on appeal, Mother does not argue that the last minute information report may not be considered on appeal. However, even if the juvenile court did not have the benefit of the last minute information report when it made its jurisdictional finding, in light of the substantial evidence supporting its determination that P.M. was a minor described by section 300, subdivisions (b) and (j), we conclude that there was no error. (*In re Abram L.* (2013) 219 Cal.App.4th 452, 463 [juvenile court's order cannot be reversed unless its error was prejudicial].)

We conclude that sufficient evidence supported the juvenile court's jurisdictional findings under section 300, subdivision (b).

2. Sufficient evidence supported the jurisdictional findings under section 300, subdivision (j)

We disagree with Mother's next contention that insufficient evidence supported the juvenile court's jurisdictional order as to the allegations under section 300, subdivision (j).

A child comes within the jurisdiction of the juvenile court under subdivision (j) of section 300 if, in pertinent part, "The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

Mother contends that insufficient evidence supported the juvenile court's jurisdictional finding, arguing "[a]lthough [M.M.] had been found to be neglected due to Mother's prior drug use, Mother was no longer using illicit drugs and there was not a substantial risk that [P.M.] would be abused or neglected." Thus, her argument is based solely on her claim that she was no longer abusing drugs and there was no risk of serious harm to P.M.

As previously discussed, substantial evidence supported the juvenile court's finding that Mother was using illicit drugs and there was a risk of serious harm to P.M. Accordingly, Mother's argument fails, and we conclude that sufficient evidence supported the court's jurisdictional finding under section 300, subdivision (j).

C. The juvenile court did not abuse its discretion in removing P.M. from Mother's care

Mother contends that the juvenile court abused its discretion in removing P.M. from Mother's care because there was insufficient evidence that P.M. could not be protected with a lesser alternative. We disagree

After the juvenile court adjudges a minor a dependent of the court, "it 'may limit the control to be exercised over the dependent child by any parent' and shall clearly specify those limitations in its orders. (§ 361, subd. (a).)" (*In re Damonte A.* (1997) 57 Cal.App.4th 894, 898.) But the minor may not be removed from the physical custody of the parents unless "[t]here is or would be a substantial danger to the physical health,

safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).)

"The juvenile court has broad discretion to decide what means will best serve the child's interest and to fashion a dispositional order accordingly. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104.) Its determination will not be reversed absent a clear abuse of that discretion. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.)" (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.)

Mother argues that because she "was not using drugs, but had been given Sudafed by her treating physician. . . . [P.M.] was doing well with no concerns. . . . Mother could have cared for [P.M.]" But as previously discussed, substantial evidence supports the juvenile court's conclusion that Mother had a long history of drug abuse and both she and P.M. had drugs in their system when she gave birth to P.M.

We are not persuaded by Mother's argument that P.M. could have been placed with Mother if Mother had been provided with services and supervision. The record shows that Mother previously had failed to comply with any of the services offered to her by DCFS, the juvenile court, or the drug court. Mother had been dropped from the drug court program for noncompliance; had failed to complete multiple drug treatment programs; and had continued to test positive for illicit drugs up to the time of P.M.'s birth. In addition, Mother had failed to comply with services to resolve her substance abuse issues with respect to M.M. Therefore, the juvenile court could have concluded that the offer of services would not have eliminated the risk of serious harm to P.M. if she had been placed with Mother.

Accordingly, we conclude that the juvenile court did not abuse its discretion in making its dispositional order removing P.M. from the care of Mother.

DISPOSITION

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

NOT TO BE PUBLISHED.

MILLER, J.*

We concur:

CHANEY, Acting P. J.

JOHNSON, J.

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