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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re EMILIO L., a Person Coming
Under the Juvenile Court Law.

B280296

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK98738)

Plaintiff and Respondent,

v.

ANNETTE A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Karin Borzakian, Commissioner. Affirmed.

Ernesto Paz Rey, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Aileen Wong, Deputy County
Counsel for Plaintiff and Respondent.

Annette A. (mother) is the mother of Emilio L. (born in July 2016). Mother appeals from the juvenile court's jurisdictional and dispositional orders declaring Emilio a juvenile court dependent and removing him from her care. We conclude that the court's orders are supported by substantial evidence, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has four children: Victoria D. (born in November 2007), Elijah D. (born in May 2010), Charlotte A. (born in February 2014), and Emilio. Emilio is the only subject of this appeal.

I.

Prior DCFS History

In June 2013, the juvenile court sustained a petition alleging that mother's two oldest children, Victoria and Elijah, were juvenile court dependents pursuant to Welfare and Institutions Code¹ section 300, subdivision (b) because mother had a history of drug use and was a current user of marijuana; mother and her male companion, Orso A., engaged in domestic violence in the children's presence; and mother and her prior partner (Victoria's and Elijah's father) had a nine-year history of domestic violence in the children's presence. Subsequently, mother's third child, Charlotte, became the subject of a voluntary family maintenance case shortly after her birth in February 2014. The dependency proceedings as to all three children terminated in December 2014.

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

DCFS filed another petition in October 2015 as to Victoria, Elijah, and Charlotte, alleging the children were juvenile court dependents pursuant to section 300, subdivision (b). An amended petition, which alleged three counts under section 300, subdivision (b), was sustained on March 11, 2016. Victoria and Elijah were placed with their father and juvenile court jurisdiction was terminated; Charlotte was placed in foster care.

II.

Emilio's Birth

Emilio was born prematurely in July 2016. When Emilio was two days old, DCFS received a referral that he had been prenatally exposed to alcohol, was in the hospital's neonatal intensive care unit, and required tube-feeding. Mother, who was under drug court supervision, was homeless and had tested positive for alcohol approximately two weeks before Emilio's birth. Emilio's alleged father, Orlando S., was in custody.

Mother told a children's social worker (CSW) that she last used methamphetamine and heroin in January 2016, when she was arrested for theft. Upon her release from jail, mother attended a drug treatment program in Tijuana, Mexico. She received additional drug treatment from February through May 2016 at the Tarzana Treatment Center (Tarzana), but was discharged from Tarzana after she failed to return from an outing. Mother denied any alcohol use during her pregnancy and said the positive test on June 24 was in error.

Records attached to the detention report indicated that mother failed to drug test on seven occasions between November 2015 and January 2016, had eight negative drug tests between February 2016 and June 2016, and tested positive for alcohol on June 24, 2016. Mother failed to drug test on July 8, 2016.

III.

Petition and Detention

On July 28, 2016, DCFS filed a petition alleging that Emilio was a juvenile court dependent pursuant to section 300, subdivisions (b) and (j) because mother had a history of substance abuse, was a current abuser of methamphetamine, heroin, and alcohol, used drugs during her pregnancy with Emilio, and had a positive toxicology screen for alcohol on June 24, 2016. The petition further alleged that due to mother's substance abuse, Victoria and Elijah had received permanent placement services, and Charlotte was a current juvenile court dependent.

On July 28, 2016, the juvenile court ordered Emilio detained and placed in foster care. Mother was granted monitored visits with Emilio.

IV.

Jurisdiction and Disposition

A. Jurisdiction

Mother told the CSW that she had remained sober throughout her pregnancy with Emilio, but used heroin on August 26, 2016 after visiting Emilio in foster care. Mother tested positive for heroin on August 26, 2016. The same day, mother admitted herself to a residential drug treatment program at Tarzana.

In September 2016, mother told the CSW that she was not ready to have visits with Emilio because “ ‘I’m not going to do well after he leaves. It fucks with me mentally. I’m going to relapse. It’s hard to see my kids because it’s the hardest part, saying goodbye. I don’t want to do anything that will trigger me to leave residential or relapse.’ ”

On September 13, 2016, the juvenile court sustained counts b-1 and j-1 of the petition.

B. Disposition

In January 2017, mother's counselor at Tarzana advised that mother had consistently tested negative for drugs, was participating in individual and group counseling, was attending 12-step meetings, and was working with a sponsor. The same month, DCFS advised the court that Orlando S. was Emilio's biological father.

At the January 10, 2017 disposition hearing, mother's attorney asked that Emilio be returned to mother's custody. Counsel represented that mother had completed five months of Tarzana's 12-month substance abuse program and would graduate later that day from the inpatient portion of Tarzana's program. Mother planned to participate in Tarzana's outpatient treatment program until a bed became available for her at a sober living facility, which mother anticipated would occur in about March. Until then, mother would live with her aunt.

DCFS opposed returning Emilio to mother's care. Counsel noted that Emilio was mother's fourth child to require juvenile court supervision, mother had a long history of substance abuse and domestic violence, and mother had used heroin as recently as August 2016. Counsel continued: "The Department's hope is that mother continues to successfully work on her sobriety and focus on her own needs and how to maintain sobriety for the long term. It seems that this time when she is participating in the drug court program, she's doing better than the last time she participated and really is committed to doing well in going forward, but we're just at the very beginning. [¶] And because the child is so young, the Department feels that there is a

substantial risk if the child would be released to mom. Mother is just graduating from the inpatient program. She's transitioning to life outside of that. Mother needs to learn the skills that it will take to not only keep herself sober in an environment that's not as controlled, but that would be a significant burden on her to also place a young child in her care."

On January 10, 2017, the juvenile court found that Orlando was Emilio's biological father, and it ordered Emilio removed from the custody of both parents. The court explained: "[Mother's] progress at this point is very new and her gains are recent. . . . [Mother] had been discharged from Tarzana Center in May of 2016 and was attempting to get back into a program, which she did. And I do commend her for getting back into the drug program. It is true that mother is doing good in drug court. I commend her for that. . . . [¶] However, it appears that mother[] . . . has an ongoing substance abuse history and . . . [it] concerns me very much . . . that the child is of a young and tender age. . . . I'm hoping, based on her drug court and her programs, that [mother] will do well, but based on her history as early as September 12th, 2016, I'm not comfortable at this point, really, returning the child back to mother."

The court ordered mother to participate in a full drug program, random weekly drug testing, a 12-step program, a domestic violence support group, individual counseling, and parenting classes. Mother was granted unmonitored visits with Emilio twice each week, for four hours per visit. Orlando was not granted family reunification services, but the court ordered that he receive monitored visits with Emilio upon his release from custody.

Mother timely appealed from the jurisdictional and dispositional findings and orders.²

STANDARD OF REVIEW

“We review the juvenile court’s jurisdiction findings and disposition order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard ‘[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.’ (*In re David M.* (2005) 134 Cal.App.4th 822, 828; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.)

DISCUSSION

I.

The Juvenile Court’s Jurisdictional Findings Were Supported by Substantial Evidence

Mother challenges the juvenile court’s jurisdictional findings, urging that substantial evidence does not support the court’s conclusion that mother’s history of drug use put Emilio at risk of harm. We disagree.

A child is subject to juvenile court jurisdiction under section 300, subdivision (b), where it is shown that “[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 willful or negligent

² While this appeal was pending, the juvenile court ordered Charlotte placed with mother.

failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, 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.”

Although section 300 generally requires a showing that the child is subject to a defined risk of harm at the time of the jurisdiction hearing, “the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child.” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215–1216.) Instead, “[t]he court may consider past events in deciding whether a child presently needs the court’s protection. [Citation.] A parent’s ‘ “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ [Citation.]” (*Id.* at p. 1216.) When a child is of “ ‘tender years’ ”—i.e., six years old or younger—“ ‘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.’” (*Drake M., supra*, 211 Cal.App.4th at p. 767.)” (*In re Christopher R.*, at p. 1219.)

In the present case, Emilio—who was a newborn when the petition was filed—unquestionably is a child of “tender years,” and mother concedes that she “had a lengthy history of ‘hard’ drug abuse.” Emilio thus is presumptively in need of juvenile court supervision. Mother urges, however, that substantial evidence did not support the juvenile court’s exercise of jurisdiction in this case because by the time of the jurisdictional hearing, “Mother had conquered her drug addiction in its entirety.”

We do not agree that, on the present record, the juvenile court was compelled to conclude that mother's drug use did not put Emilio at substantial risk of serious physical harm. It is undisputed that mother has used drugs for many years, and that Emilio's three older siblings were subject to juvenile court jurisdiction due in significant part to mother's drug use. It also is undisputed that mother used heroin on August 26, 2016, just *18 days* before the September 13, 2016 jurisdictional hearing. Mother cites no authority—and we are aware of none—for the proposition that a parent with a lengthy history of drug abuse does not pose a risk of harm to her infant because she has abstained from drug use for 18 days. To the contrary, cases consistently have held that much lengthier periods of sobriety are insufficient to permit children to be returned to their parents. (E.g., *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423–424 [“[R]elapses are all too common for a recovering drug user. ‘It is the nature of addiction that one must be “clean” for a much longer period than 120 days to show real reform.’ [Citation.] . . . 200 days was not enough to reassure the juvenile court that the [father's] most recent relapse would be his last”]; *In re Mary G.* (2007) 151 Cal.App.4th 184, 206 [“Given the severity of [mother's] drug problem the court could reasonably find her sobriety between March and the date of the hearing, June 20, was not particularly compelling.”]; *In re Angel B.* (2002) 97 Cal.App.4th 454, 463 [mother's four months of sobriety did not constitute changed circumstances entitling her to supervised custody of child; “while [mother] had completed [a] drug program, the time she had been sober was very brief compared to her many years of drug addiction (a concern expressed by the social

worker), and in the past she had been unable to remain sober even when the stakes involved were the loss of her other child.”].)

Accordingly, substantial evidence supported the juvenile court’s exercise of jurisdiction over Emilio.³

II.

The Juvenile Court’s Disposition Order Was Supported by Substantial Evidence

Section 361, subdivision (c)(1) provides that a dependent child shall not be removed from a parent’s physical custody unless the juvenile court finds clear and convincing evidence that “[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.”

Mother urges that the juvenile court erred in ordering Emilio removed from her care because he could have been safely placed with mother at Tarzana, which in November 2016 had advised DCFS that “[o]ur facility is set up to house 10 children at a time and we currently have room for [mother] to have her daughter^[4] here.” By the date of the disposition hearing, however, mother’s counsel represented that mother was

³ Having concluded that substantial evidence supported the juvenile court’s exercise of jurisdiction under section 300, subdivision (b), we need not consider mother’s jurisdictional claim under section 300, subdivision (j).

⁴ It is not clear whether the reference to mother’s “daughter” was to Emilio’s half-sister Charlotte, or was simply an error (because Emilio is mother’s *son*).

graduating from Tarzana and would no longer be living in the Tarzana inpatient facility. Although mother hoped to obtain housing at a sober living facility, she did not anticipate that a space would be available for her for at least two months, and there was no evidence that the facility into which mother hoped to move would accommodate an infant. Nor did mother present any evidence that the aunt with whom she would be temporarily living would be able or willing to house Emilio. Accordingly, mother has not demonstrated that there were reasonable alternatives to removing Emilio from her custody.

DISPOSITION

The September 13, 2016 and January 10, 2017 findings and orders are affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

STONE, J.*

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