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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.S. et al., Persons Coming
Under the Juvenile Court Law.

B283301

(Los Angeles County
Super. Ct. No. DK20896)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

P.N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Daniel Zeke Zeidler, Judge. Affirmed
as modified.

Beltran, Beltran, Smith, Oppel & MacKenzie, and Joseph
D. MacKenzie for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Kim Nemoy, Principal Deputy
County Counsel, for Plaintiff and Respondent.

P.N. (Mother) challenges the sufficiency of the evidence to support the juvenile court's jurisdictional findings that she failed to protect her daughter, A.S. (born February 2011), and her son, C.S. (born December 2012), from their father, L.S. (the father). Mother acknowledges that because the father has not appealed from the findings made against him, the outcome of her appeal will have no impact on the court's exercise of jurisdiction over the children. Nonetheless, and although the juvenile court has since terminated dependency jurisdiction and awarded custody of the children to Mother (events which arguably could have rendered her appeal moot), Mother urges us to exercise our discretion and consider her appeal.¹ She maintains that if the findings against her are sustained, they "could impact future dependency proceedings" and "pose potential and inherently deleterious consequences for [her] beyond jurisdiction; most notably, her employment as a teacher and school administrator, and her ability to support herself and her two children, may be adversely impacted." We agree with Mother that her concerns are realistic and worthy of our consideration. We conclude, however, that substantial evidence supports one of the two challenged findings and thus affirm the order as modified.

¹ At DCFS's request, we have taken judicial notice of a juvenile court order made on September 22, 2017, terminating dependency jurisdiction and awarding custody to Mother. At the same time, as discussed later in this opinion, we denied DCFS's motion to dismiss the appeal as moot.

PROCEDURAL AND FACTUAL BACKGROUND

Mother and the father were married in 2009 and purchased a home in Alhambra, where they resided with their two children until December 2, 2016. Mother taught English as a second language at a high school which she helped found in 2013. The father worked as a catering chef and, when he was not working, he cared for his children at the family home. He admitted to having alcohol problems for the past 20 years. His license to drive had been suspended as a result of his conviction for driving under the influence in 2015. Although the father claimed to have been sober since 2015, Mother indicated that he has been binge drinking for the past 13 years.

The events which precipitated the underlying dependency proceeding took place on December 2, 2016. Early that morning, the father set his home on fire, climbed a tree in his backyard, stood on the roof of the detached garage, naked, with a rope tied around his neck and the other end tied to the tree, and threatened to jump. He eventually climbed down and was placed in handcuffs by police.

As a result of the incident, the father was placed in a psychiatric facility. Upon his release three days later, he was arrested and incarcerated. At the facility, the father disclosed to a social worker that he had “suicidal ideations in the past but never actually carried out the act.” He then admitted that he *had* attempted to commit suicide once in the past by hanging himself in the garage. He claimed that he had told Mother about his suicidal thoughts.

When later interviewed by a police officer, the father said that he decided to burn down the house because he wanted to “burn the sadness down,” sadness which was “everywhere.” He

also claimed that he had been sexually molesting A.S. since she was three years old. He said that after starting the fire with paint thinner, he put the children in the car parked in the back so that they would not see what was happening. After he climbed the tree and placed the rope around his neck, he saw A.S. going towards the house. He made no effort to stop her, however, because he felt that whatever happened would be for the best.

When interviewed by the police on the day of the incident, Mother said she had no indication that anything was wrong with the father and had no reason to fear leaving the children with him. She said that the father had been diagnosed with attention deficit hyperactivity disorder (ADHD). She admitted, however, that a few weeks earlier the father told her that “he understands why people in general get to the point where they no longer want to live.” She was unable to say how the conversation began or precisely when the father made the statement. Mother also said that the father recently had been acting strangely and had stopped taking his medication for anxiety and ADHD.

On December 29, 2016, the Department of Children and Family Services (DCFS) filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (b)(1), (d) and (j).² The petition alleged that the father: (1) sexually abused A.S. since she was three years old and told her not to disclose the ongoing abuse; (2) set the family home on fire while A.S. and C.S. were in a vehicle situated just outside of the home; (3) has a history of mental and emotional problems including a diagnosis of ADHD, anxiety, suicidal ideation, homicidal ideation, and a suicide attempt; and (4) has a history of alcohol abuse and is a

² Unless otherwise specified, further statutory references are to the Welfare and Institutions Code.

current abuser of alcohol, all of which place the children at risk of serious physical harm. The petition further alleged that Mother knew or should have known about the father's sexual abuse, mental and emotional problems, and alcohol abuse, and failed to protect the children, thereby placing them at risk of serious physical harm.

While the allegations were being investigated, the children were detained, first in foster care and then with family members.

Mother denied she had any knowledge that the father had been sexually abusing A.S. She said that it made her "physically ill" to think that this could have happened to A.S. She did not believe that the father could have sexually molested A.S. during the night because she was a light sleeper and would have been aware if something was happening. The father, however, said that he believed Mother knew that he had been abusing A.S.

Mother also denied having knowledge of the father's prior suicide attempt. She added that his ADHD never interfered with his ability to care for the children; it only interfered with his ability to complete tasks. She told the police that the father recently stopped taking medication for anxiety and that he had a history of self-medicating by binge-drinking alcohol. Mother admitted that she was the one who would get the father his medication, remind him to take it, and monitor his intake by counting pills. She insisted that the father was having a psychotic episode while at the hospital when he confessed to the sexual abuse. DCFS noted, however, that the father had made the same admissions following his release from the hospital.

On the day of the incident, a neighbor reported that during the four-month period preceding the fire, she had noticed the father acting strangely, including entering his garage late at

night and early in the morning.³ He presented as depressed and would scream a lot. C.S. was often left unattended in the backyard for hours while the father was inside the house. She would hear the father frequently yelling at Mother and the children to leave him alone. In light of the neighbor's report, DCFS was skeptical of Mother's denial that she was not aware of the father's strange behavior. DCFS was also concerned that Mother was focusing her attention on the father's ADHD rather than on his admitted marijuana use and binge-drinking.

At the jurisdictional hearing, Mother urged the court to dismiss the dependency petition as to her. Her written presentation emphasized that she had no knowledge that the father was sexually abusing A.S. She also denied that she knew or reasonably should have known that the father would endanger the children, as he did on December 2, 2016. She claimed that none of the professionals who had examined the father had ever informed her that the father could or would do anything dangerous. Although the father had been treated for anxiety and ADHD, Mother had no information that could have alerted her to his behavior on December 2. Despite informing DCFS of the father's history of binge-drinking, she stated that she had not observed anything to suggest that the father had used or abused alcohol since September 2015.

At the hearing, Mother also asked the court to take judicial notice of the petition she had recently filed in her marital

³ According to Mother, the father began smoking marijuana after he started taking Adderall for his ADHD and he might have kept the marijuana in the garage. The father admitted that on the day of the incident he smoked "concentrated wax of marijuana" and took "one 30 mg pill of Adderall."

dissolution proceeding, a protective order issued in the father's criminal matter, and the felony complaint filed against the father. Noting that the documents were already in evidence, the court denied the request.

The court sustained all of the allegations with respect to the father and sustained the allegations that Mother had failed to protect the children from the father's mental health issues and substance abuse. The court, however, struck the allegations that Mother had failed to protect the children from the father's sexual abuse of A.S. The court ordered the children placed with Mother under DCFS's supervision, conditioned upon the maternal uncle or a maternal grandparent residing in the home, and ordered DCFS to provide Mother with family maintenance and family preservation services. The court denied services to the father and ordered that the father have no contact with the children. The court scheduled a six-month review hearing for September 22, 2017.

Mother timely filed a notice of appeal.

DISCUSSION

While this appeal was pending DCFS asked us to take judicial notice of juvenile court orders made on September 22, 2017, terminating dependency jurisdiction and releasing both children to Mother. Additionally, DCFS asked us, in light of those orders, to dismiss the appeal as moot on the ground that we are unable to offer Mother any effective relief. We granted the request for judicial notice, but denied the motion to dismiss.

In its respondent's brief, DCFS contends that Mother's appeal is not justiciable regardless of whether we reverse the findings against her because we cannot grant her any effective relief; jurisdiction remains valid based on the findings against

the father which he has not challenged. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) Notwithstanding the foregoing, we consider the merits because the adverse findings against Mother may prejudice her in any future dependency proceedings and may affect her future employment. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.) In considering the merits, we conclude that substantial evidence supports one of the two findings against her.

Section 300, subdivision (b)(1), authorizes dependency jurisdiction if a 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.” (§ 300, subd. (b)(1).) We review the challenged jurisdictional findings for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Mother contends that the father’s statements that he had attempted suicide in the past do not, without more, constitute substantial evidence that Mother had knowledge of the father’s past behavior. We do not disagree. Substantial evidence, however, shows that, at a minimum, Mother knew enough about the father’s actions to alert her that he posed a substantial danger to the children. She admitted that the father had not been taking his medication on a regular basis, that he had been acting strangely, and that he had recently told her he understood why people might want to end their lives. Indeed, the father’s behavior had become so strange that even a neighbor observed the deleterious changes during the most recent four months. Yet despite these danger signs requiring extreme caution, Mother left her two young children in the father’s sole care.

Mother argues that the father's failure to take his ADHD medication is irrelevant because he only needed it to deal with his ADHD issues; the failure to take the medication was not the cause of his mental health problems. That, however, misses the point. It matters not what the medication was for. Rather, what matters is that the father was deviating from his routine behavior and that Mother was aware of it and other signs of mental health issues.

Mother further contends, citing *In re J.N.* (2010) 181 Cal.App.4th 1010, 1026 [in evaluating risk based upon single episode of endangering conduct, juvenile court should consider parent's efforts in addressing problematic conduct], that "[d]espite the profound seriousness of [the] [f]ather's unanticipated and extremely perilous conduct on December 2, 2016, there was no evidence at the jurisdictional hearing from which to infer there is a substantial risk the children will be exposed to such behavior in the future." We do not disagree with the principle, but we do disagree that it applies here. As discussed above, danger signs preceded the December 2 incident. Thus, although Mother might not be expected to predict the exact future endangering conduct, she had reasons to know that the father's mental state endangered the children. As the trial court concluded, "Mother was aware of the father's mental health issues [and] did not show protective capacity in relation to them." Moreover, we agree with the trial court that, notwithstanding Mother's contention to the contrary, "[t]he length of the father's incarceration has nothing to do with . . . Mother's . . . capacity to protect these children from future harm."

Finally, Mother contends that she took all appropriate, necessary and available measures to ensure the safety, security

and well-being of her children following the December 2, 2016 incident. Although Mother's post-incident actions are certainly commendable and presumably influenced the court's ultimate decision to terminate jurisdiction and place the children in Mother's custody, they have no bearing on whether the court acted appropriately in sustaining the challenged allegations in the first instance.

Mother also contends that there is insufficient evidence that the father had been binge drinking at any time after 2015, or, if he was, that she knew about it. DCFS does not contend otherwise and we agree with Mother.

Furthermore, we note that the court's oral decision is silent with respect to this count of the petition and deals instead only with the father's mental health issues. Thus, and although the finding that the father abused alcohol must stand in that the father has not appealed, no substantial evidence supports the juvenile court's finding that Mother knew that the father was a current abuser of alcohol and therefore failed to protect the children so as to endanger their health and safety.

DISPOSITION

The juvenile court's finding that Mother failed to protect the children when she knew of the father's alcohol abuse is stricken. In all other respects, the order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

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