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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re U.M. et al., Persons Coming Under
the Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.T.,

Defendant and Appellant.

A145617

(San Mateo County
Super. Ct. Nos. 84225, 84226, 84227)

M.T. (Mother), mother of 17-year-old U.M., 15-year-old L.M.¹, and 13-year-old C.M., appeals from the juvenile court’s jurisdictional and dispositional orders declaring the children dependents of the court, placing L.M. in out-of-home care, and placing U.M. and C.M. with their father, S.M. (Father). She contends there was insufficient evidence to support the court’s findings and orders. We reject the contention and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 23, 2015, San Mateo County Human Services Agency (the Agency) filed petitions on behalf of U.M., L.M., and C.M., alleging U.M. and C.M. were at

¹L.M.’s initials are S.L.M. but she was referred to below as L.M. We shall do the same.

substantial risk of harm due to neglect of their sibling, L.M. (Welf. & Inst. Code, § 300, subd. (j)).² It alleged as to L.M. that she was at substantial risk of serious emotional damage due to Father's inability to meet her behavioral and mental health needs (§ 300, subd. (c)), and that she had been left without any provision for support due to Mother's incarceration and Father's inability to meet her needs (§ 300, subd. (g)). The family had a child welfare history spanning 14 years, two states, and three counties, and had nearly 30 referrals, multiple voluntary case plans, and one known prior dependency.

A January 26, 2015 detention report stated that L.M. was at the Receiving Home in San Mateo and that U.M. and C.M. were living with Father. Father had been living with U.M. only, but took custody of L.M. and C.M. in October 2014, upon Mother's incarceration in the State of North Carolina. He had been struggling since his family expanded. He had stopped working to care for C.M., who had Down Syndrome and the cognition of a five-year-old child, and was not enrolled in school. The family did not have a stable home and had been staying at a motel for eight days. The only relative who lived nearby was unable to provide the help the family needed.

According to the report, L.M. became drunk and "out of control" on January 19, 2015, at the shelter at which the family was temporarily staying. The police were called and transported L.M. to the hospital, where she became hostile with hospital staff, using profanity and knocking over hospital equipment. The police also informed Father they would be charging L.M. with threatening the officers' lives. L.M. had "explosive anger" and "beat[] up" C.M., who had scratches on his face and a black eye. L.M. told police that she drank and smoked and "hit [C.M.] all the time when he doesn't listen." "The family was afraid of L.M. "[d]ue to [her] stature," and was unable to control her.

²All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

Father reported that he and Mother were married in 1992 and lived together until 2008. They were separated but not divorced. Mother had ten children ranging from two to 23 years of age. The detention report set forth the family's extensive child welfare history in California; there was additional history in North Carolina. In March 2002, there was a report that Mother had not received any prenatal care while pregnant with C.M. There was concern about Mother's marijuana use and whether she would be able to follow through with getting Medi-Cal and medical attention for C.M. There were two additional reports in October 2002 that there were four adults and up to 17 children living in the home. The home was "messy with garbage," and there were rats at the home. One two-year-old child was naked and had been hit by a car. The children were hungry, and the older children missed school to take care of the younger children. The case was closed after a social worker made an unannounced visit to the home and found there was adult supervision and that the house was clean.

There were multiple reports between July 2004 and June 2007. In July 2004, one of the sons, R.T., called 911 to report physical abuse and was observed to have a bloody nose, a fat lip, and a slap mark on his right cheek. The parents were arrested and R.T. and all of his siblings—including U.M., L.M., and C.M.—were placed in protective custody. The children remained in out of home care while the parents received reunification services, and were returned to Mother's care in September 2005. In September 2004, there was an unfounded referral that Mother's baby boy, who later passed away due to causes unrelated to neglect, was being neglected. Mother continued to test positive for marijuana. Two referrals were received in January 2006, after C.M. was heard crying and was seen outside running around in only a diaper. Mother often did not return home until 9:00 p.m. and was seen yelling out the car window, possibly intoxicated.

In two other referrals, Mother was alleged to have been abusive towards a daughter. In January 2006, she attacked the daughter and hit her and dragged her into the

home, leaving a trail of blood. In September 2006, she pulled the daughter's hair, cursed at her, threw a glass vase at her—causing the glass to shatter and hit the daughter—and hurled an open bottle of bleach at her. The daughter “self-mutilated after episodes such as [this] with her mother” and was taken to the hospital by ambulance in June 2007 for “huffing paint” and being suicidal.

In December 2006, another referral was received that C.M. was often left home in a locked room, unsupervised, and without any food, while Mother went to work. Mother called C.M. a dog and monster and said she “kept [him] because she received \$1100.00 a month to care for him.” Mother said that C.M. would not live past 16 years old because he has Down Syndrome and that she had a \$100 million life insurance policy on his life.

In December 2007, another referral was received relating to a domestic violence call. After Father left the house to cool down after an argument, Mother took out anger on the children, throwing dishes and a vase at a daughter and grabbing another daughter by the hair and slapping her. Mother was arrested, and later placed on a psychiatric hold for ripping off all of her clothes and banging her body on the jail cell. Father obtained a temporary restraining order against Mother.

According to the detention report, Father had an August 2004 conviction for willful cruelty a child and a November 2005 conviction for corporal injury to a spouse. A criminal history search for Mother “resulted in several aliases and multiple criminal history convictions ranging from prostitution, fraud, driving without a valid license,” and willful cruelty to a child. The report disclosed that U.M. was on probation until June 2015.

The detention report stated that although the children were brought to the attention of the Agency due to the incident in which L.M. hit C.M., “there were several other concerns with the family including[] housing issues, educational placement, substance abuse concerns, and the need for developmental services.” “The lack of housing, unstable employment, and trying to deal with three children with different needs has

made things difficult for the father to get back on his feet.” “Due to [L.M.’s] excessive use of drugs and alcohol, hostile behavior towards family and law enforcement, and the father’s inability to control her behavior,” the Agency recommended that L.M. be removed from Father’s care, and that U.M. and C.M. remain in Father’s care pending further investigation.

At a January 26, 2015 detention hearing, the juvenile court set the matter for an uncontested jurisdictional hearing. In the interim, the Agency was unable to make contact with Mother, who was incarcerated.

At a March 9, 2015 hearing, the juvenile court suspended L.M.’s delinquency matter due to doubt regarding her competency to stand trial. Mother’s counsel requested a contested hearing on the jurisdictional and dispositional issues in the dependency cases, and the court set the matter for hearing on April 28, 2015. In response to the court’s inquiry about whether Mother would be making an audiovisual appearance, Mother’s attorney replied, “I don’t know where she’s going to be[, so] I guess it is safe to assume she cannot be here, so we will go ahead and ask for the television.”

On April 14, 2015, U.M. admitted to one theft count in her delinquency matter. The juvenile court adjudged U.M. a ward of the court and stated it would make further determinations regarding U.M. at the April 27, 2015 contested jurisdictional and dispositional hearing in her dependency case.

The jurisdictional and dispositional report stated that L.M. portrayed Mother as an “unbalanced” and “sadistic” individual. She recounted “ ‘a lifetime of trauma in her large family (7 siblings), primarily revolving around her unstable mother who perpetrated physical and emotional abuses as well as profound neglect upon her children.’ ” Despite this, L.M. remained loyal to Mother and was “mostly worried about her becoming like her mother.” Since being placed with the Agency, L.M. had been intoxicated in front of her placement staff at least three times, had gone AWOL six times, and had been belligerent or verbally assaultive to others on at least five occasions.

L.M.'s joint delinquency and dependency report dated March 4, 2015 recommended that L.M., who was found intoxicated in her group home on February 23, 2015, be committed to the county's Juvenile Probation Girl's Program and that probation be the lead agency.

An April 22, 2015 addendum report stated that Mother had been released from jail on March 30, 2015, and had confirmed she would be at the April 27, 2015 hearing. She hoped to return to North Carolina with L.M. and C.M., and leave U.M. with Father. L.M. had been suspended from school in early March and had been arrested for and had pleaded to first degree attempted robbery on March 28, 2015.

A joint delinquency and dependency report for U.M. stated that U.M. was involved in a petty theft incident in 2013 for which no formal action was taken. On March 12, 2014, she was arrested for stealing a classmate's cell phone and was placed on informal probation. She was arrested again on August 26, 2014 for stealing another classmate's cell phone. On April 14, 2015, she was declared a ward of the court and placed on formal probation. The report recommended that the Agency be the lead agency for U.M.

At the April 27, 2015 hearing, Mother's attorney asked for a continuance on the ground that his "client is stuck in North Carolina." The juvenile court granted the request and rescheduled the hearing for June 22, 2015. Turning to L.M.'s delinquency matter, the court reinstated the proceedings as the competency evaluation determined she was competent. L.M. waived her trial rights and admitted she used violence on another person in violation of Penal Code, section 242, and was drunk in public and unable to take care of herself in violation of Penal Code section 647, subdivision (f). The court sustained the two counts and adjudged L.M. a ward of the court.

Speaking on her client's behalf, L.M.'s attorney requested that L.M. be allowed to live with Father, who "actually does a much better job of taking care of her and her brother than her mother was able to do when she was living in North Carolina." The

attorney stated that L.M. had hip surgery when she lived with Mother in North Carolina but that Mother never followed up with physical therapy, which resulted in L.M. having serious issues with her leg. The court ordered that L.M. was to receive medical attention for her leg, and also ordered the family to participate in the Girls' program.

On June 17, 2015, the Agency filed amended dependency petitions. For U.M. and C.M., the allegation remained that because their sibling, L.M., had been neglected, they were at substantial risk of similar harm (§ 300, subd. (j)). For L.M., the Agency dropped the serious emotional damage allegation (§ 300, subd. (c)) and replaced it with a failure to protect allegation (§ 300, subd. (b)), and maintained the no provision for support allegation (§ 300, subd. (g)).

A second addendum report stated that L.M. continued to act out and had been placed at juvenile hall for some time before being allowed to return to Girls' Camp. U.M. was in compliance with her probation requirements and it was anticipated that her probation would be closed as there were no concerns about her remaining with Father. C.M. was flourishing in Father's care. A social worker confirmed that Mother was going to appear at the June 22, 2015 hearing. The Agency recommended that the children remain in Father's care, with continued family maintenance services for U.M. and C.M.

At the June 22, 2015 hearing, Mother's counsel requested a continuance on the ground Mother was unable to clear security at the North Carolina airport. The attorney further averred that Mother had been driving all weekend and should be available that afternoon. The juvenile court said, "I think enough is enough. We can deal with dispositional discussions in a moment. I am going to proceed without Mother. She has been given ample opportunity to be here above and beyond the normal timeframes." The court accepted Father's waiver of rights. The court sustained the allegations in the amended petitions and continued the matter until that afternoon, to "entertain any testimony by mother that affects disposition as opposed to jurisdiction."

At the beginning of the afternoon session on June 22, 2015, Mother's attorney reported that Mother was still in Southern California. Counsel stated that Mother was seeking custody or unsupervised visits. Father submitted on the pleadings. The juvenile court removed L.M. from Father's care and placed her in the care of juvenile probation at the Margaret J. Kemp Camp for Girls. The court ordered that U.M. and C.M. remain in Father's care, with services. The court noted that C.M. and Father appeared to share a strong bond, and stated, "I am not worried at all about mother's concerns that she's been the so-called primary caretaker. I think he is doing a stand-up job. [¶] I am very grateful to you, sir, on behalf of the court and your children." Mother timely appealed.

DISCUSSION

Mother contends there was insufficient evidence to support the juvenile court's findings and orders. We reject the contention.

“ “In juvenile cases, . . . the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.” ’ ” (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378–1379.) “If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250.)

First, Mother argues there was insufficient evidence to support the jurisdictional finding for U.M. and C.M. under section 300, subdivision (j), which provides that a juvenile court may exercise jurisdiction over a child whose “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.” She asserts there was insufficient evidence to support the finding that Father neglected L.M. because the evidence showed that L.M. was simply a “disobedient teenager” who, through no

fault of Father, was out of control and unmanageable. She also argues U.M. and C.M. were not at substantial risk of harm because L.M.—who was placed in an out-of-home placement due to her delinquency case—was no longer living with them at the time of the jurisdictional hearing. Finally, she argues U.M. was never at substantial risk of harm because she was not “helpless to defend herself or diffuse any confrontations with her younger sister” and there was no evidence that L.M. had “even attempted any violence against [U.M.]”

As Father conceded when he voluntarily placed L.M. with the Agency, however, he had been struggling to care for all three children since his family expanded in October 2014 to include L.M. and C.M. C.M. had Down Syndrome and the cognition of a five-year-old child, and was not enrolled in school. He therefore required full time care, and Father had quit his job in order to care for him. The family did not have a stable home and stayed temporarily at motels and shelters. Father was unable to adequately care for L.M. and meet her mental health and behavioral needs, which exacerbated her “disobedient” behavior.

Thus, as the detention report noted, although it was L.M.’s behavior in hitting C.M. that brought the family to the attention of the Agency, there were numerous other concerns, including neglect of L.M. resulting from the “lack of housing, unstable employment,” “educational placement,” “the need for developmental services,” and “trying to deal with three children with different needs.” In other words, it was not just L.M.’s actions against C.M., or the fact that she was a “disobedient teenager” that placed U.M. and C.M. at substantial risk of harm; it was Father’s inability to adequately care for all three children, most notably L.M., that placed her siblings at risk of harm. The fact that L.M. may temporarily be placed outside the home in her delinquency case also did not diminish the need for U.M. and C.M. to be protected from neglect. “When, as in this matter, a juvenile court hears a dependency case under section 300 of the Welfare and Institutions Code, the court . . . has a special responsibility to the child as *parens patriae*

and must look to the totality of a child’s circumstances when making decisions regarding the child.” (*In re Chantal S.* (1996) 13 Cal.4th 196, 201, citations omitted.) The totality of circumstances compelled the Agency’s intervention. There was sufficient evidence of neglect of L.M. and of substantial risk or harm to U.M. and C.M.

Second, Mother asserts there was insufficient evidence to support the jurisdictional finding for L.M. under section 300, subdivision (b)—failure to protect—and subdivision (g)—no provision for support. As to subdivision (b), she reiterates that Father did not neglect L.M., but that she was simply a “disobedient teenager.” She relies on *In re Precious D.* (2010) 189 Cal.App.4th 1251, but the case is distinguishable. There, the mother signed a voluntary family reunification contract and placed her teenaged daughter outside the family home. (*Id.* at p. 1255.) Thereafter, a dependency petition was filed on the ground that the child’s behavior was “incorrigible.” (*Ibid.*) The only finding that could be deemed critical of the mother’s parenting was that she and her daughter did not communicate, although there was evidence showing they had daily telephone contact. (*Ibid.*) The Court of Appeal held it was improper for the juvenile court to take jurisdiction over the child simply because she is “incorrigible,” where the parent is neither unfit nor neglectful. (*Id.* at p. 1261.) Here, in contrast, as set forth in detail above, there was ample evidence of Father’s neglect, e.g., his inability to adequately care for and supervise three children with different needs, the lack of stable housing, unemployment issues, among others, that placed L.M. (and her siblings) at risk of substantial harm.³

³Citing to a treatise that calls into question whether dual (dependency and delinquency) jurisdiction is necessary where probation is “doing everything for [the] minors and their family members that the social services agencies do for dependent children and their families,” Mother questions whether dependency jurisdiction was necessary in this case. She forfeited the issue by not challenging dual jurisdiction below. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 [a claim of error is generally forfeited on appeal if it is not raised in the trial court].) In any event, “the dependency and delinquency systems serve overlapping but slightly different aims.” (*In re W.B.* (2012) 55 Cal.4th 30,

Having concluded there was substantial evidence to support the juvenile court's determination that L.M. came within the provision of section 300, subdivision (b), we need not address Mother's claim that there was insufficient evidence to find jurisdiction under section 300, subdivision (g)—that L.M. was left with no provision for support due to Mother's inability to make adequate provisions for her basic needs, and Father's failure to meet her mental health and behavioral needs. Section 300 contemplates that jurisdiction may be based on any single subdivision. (*E.g., In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address remaining allegations after one allegation found supported]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

46 [dependency system protects a child victimized by parental abuse or neglect, while the delinquency system enforces accountability for the child's own wrongdoing, both to rehabilitate the child and to protect the public.] Mother has not shown how maintaining dual jurisdiction for L.M. was improper.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.

In re U.M.; A145617