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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re W.H., a Person Coming Under the
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

A147472

(Humboldt County
Super. Ct. No. JV150238)

In this appeal, J.S. challenges orders declaring her son W.H. a dependent of the juvenile court under Welfare and Institutions Code section 300, subdivision (b)¹ and removing the child from her custody under section 361, subdivision (c)(1). J.S. asserts the court lacked sufficient evidence to support its jurisdictional findings, and that it erred in removing the child from her home. We affirm both orders.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

W.H. became the subject of a child welfare services referral immediately following his birth in August 2015. Humboldt County Department of Health & Human Services (Department) received the referral from a reporting party expressing concerns that J.S. had tested positive for THC (tetrahydrocannabinol) at the time of the baby's birth and had attended only one prenatal visit. J.S. reported that she was homeless, and

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

had no supplies or car seat. The reporting party also observed that B.H., the child's presumed father, became angry easily, and was verbally abusive towards J.S. both during and after the delivery of the baby. When the family was interviewed by a social worker, J.S. stated that she had been homeless for the past four years and off the street for the last five months, and was currently living in a trailer court. B.H. " 'appeared irritated, talking quickly when answering questions.' "

A few days later, a family nurse practitioner visited the family home for a routine postpartum home visit. The nurse noted W.H. had experienced a 7 percent weight loss since birth. The nurse provided J.S. with education on feeding, safe sleeping, skin care, cord care, thermometer use, newborn sleep patterns, and other matters relating to newborn care.

J.S. brought W.H. to the doctor's office for eye discharge when he was eight days old. A subsequent three-week well-child exam was negative for any out-of-range findings.

On September 22, 2015, a social worker and a public health nurse visited the family home and observed a note on the front door stating: "If you are a drug user do not bother us. I am trying to spend time with my son." When they entered the residence, W.H. was not swaddled and was not wearing a hat or socks even though the windows of the home were open, several fans were on, and a cold breeze was going through the home. The baby was wearing only a diaper. His feet were dangling from a blanket and appeared bluish-purple. J.S. stated that she did not wake in the night to feed W.H. The nurse examined the child and noted several bumps on his head, a decreased activity level, and a weak cry. He was also hypotonic in his lower extremities.

On October 1, 2015, another home visit was conducted at which W.H. was presented undressed. The public health nurse again noted his activity level was decreased and that he had a weak cry. His temperature was 97.8 degrees. J.S. expressed interest in consulting with a public health field nurse, but later refused services.

On October 20, 2015, W.H. attended another well-child exam. His weight at this visit was 10 pounds. His birth weight was 7 pounds, 11 ounces. He was diagnosed with

failure to gain weight. The medical provider ordered formula supplementation after breastfeeding, and told J.S. to pump each breast after feedings to stimulate milk production.

On October 29, 2015, W.H. was diagnosed with unspecified (nonorganic) failure to thrive. His weight on this date was 11 pounds, 10 ounces. J.S. was more concerned about delay in getting W.H. circumcised, reporting B.H. had “said that he would leave her if she comes home without a circumcised child.”

On November 4, 2015, a social worker made an unannounced home visit. When the social worker told J.S. that she was there as a result of being informed that W.H. had been diagnosed with failure to thrive, J.S. replied, “[B]ullshit, you can leave now.” J.S.’s demeanor was quite animated and forceful.

On November 13, 2015, W.H. was detained and placed in foster care. At the time of his detention, he was found dressed in only a diaper. The baby’s initial temperature upon detention was 97.4 degrees, but after being indoors and dressed appropriately, his temperature normalized to 99.4 degrees in just 30 minutes. He weighed approximately 12 pounds, 12.5 ounces, evidencing an average weight gain of 1.23 ounces per day, the highest daily average gain he had displayed since birth. The weight gain status had improved with being formula fed, suggesting that his failure to thrive was attributable to prior inadequate feeding patterns.

On November 17, 2015, the Department filed a dependency petition. The Department alleged that W.H. came within section 300, subdivision (b) due to the parents’ failure to provide him with proper nutrition. The Department noted J.S. had admitted to smoking two to three joints of marijuana daily. B.H. had recently been arrested for possession of concentrated cannabis and possession of more than 28.5 grams of marijuana. Both parents had stopped engaging with the public health nurse as well as the social worker. Due to their inability or unwillingness to monitor the child’s failure to thrive diagnosis, the Department alleged W.H. was at risk for continued weight loss and hospitalization. Additionally, it was noted that prior to W.H.’s birth, police had responded to unsubstantiated reports of domestic violence between J.S. and B.H.

At a contested jurisdiction hearing held on December 30, 2015, J.S. asked that the petition be dismissed, asserting the Department had not shown there was a present substantial risk of harm. The juvenile court amended one of the counts as stated on the record, and found the remaining counts to be true. Although the court acknowledged that this was a “very, very close call,” it was not comfortable in dismissing the case and returning the baby to the parents. The court assumed jurisdiction and directed the department to provide the parents with visitation.

On January 29, 2016, the Department filed its disposition report. The report indicated that J.S. had attended W.H.’s December 2, 2015 medical appointment. When she entered the examination room she smelled heavily of marijuana. At that time the social worker, foster parent, and doctor were discussing concerns about the baby losing weight, but when he was reweighed he had actually gained weight. J.S. did not pay attention to the baby during the weighing to see if he had gained anything. Originally, the parents had been consistently late for visitation, but the visits were currently reported to be going well. J.S. was visiting on a fairly regular schedule but B.H. was not, missing six out of 10 visits. J.S. was very attentive and used appropriate parenting skills during visits. However, both parents continued to refuse to engage in services through the Department. Additionally, B.H. had inappropriately yelled at the public health nurses during visitation.

Following argument by counsel at the disposition hearing, the juvenile court declined to return W.H. to his parents’ custody. The court expressed concern about their hostility towards the Department, their refusal to accept services that were offered to them, their capacity to monitor the child’s health, and B.H.’s anger management issues. W.H. was declared a dependent and the court ordered reunification services be provided to the parents.

On February 4, 2016, J.S. filed a notice of appeal. B.H. is not a party to this appeal and has not filed his own appeal.

DISCUSSION

I. J.S.'s Appeal Is Not Justiciable

The juvenile court in this matter sustained four counts against both J.S. and B.H. While J.S. challenges the sufficiency of the evidence as to her conduct, she concedes the jurisdictional findings against B.H. are unchallenged because he has not filed his own appeal.

“[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) “For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 (*I.A.*)). As the *I.A.* court explained: “Under these circumstances, the issues Father’s appeal raises are ‘abstract or academic questions of law’” [citation], since we cannot render any relief to Father that would have a practical, tangible impact on his position in the dependency proceeding. Even if we found no adequate evidentiary support for the juvenile court’s findings with respect to his conduct, we would not reverse the court’s jurisdictional and dispositional orders nor vacate the court’s assertion of personal jurisdiction over his parental rights.” (*Ibid.*) While the father in *I.A.* contended that the finding of jurisdiction could have other consequences for him beyond jurisdiction, the *I.A.* court noted “Father has not suggested a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings.” (*Id.* at p. 1493.)

It is true that an appellate court may address the merits of the jurisdictional findings against one parent where “the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) Because the

findings against J.S. could impact the current dependency proceeding, we will address the merits of her appeal.

II. Substantial Evidence Supports the Jurisdictional Finding as to J.S.

J.S. contends there was insufficient evidence to support the juvenile court's findings against her under section 300, subdivision (b). We are not persuaded.

“ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate.]” ’ ’ ’ ’ ” (In re I.J. (2013) 56 Cal.4th 766, 773.)

Section 300, subdivision (b) describes a child who “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.” “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (In re Rocco M. (1991) 1 Cal.App.4th 814, 824.)

Here, at the jurisdiction hearing the juvenile court found true that J.S. (1) had failed to provide W.H. with proper nutrition, (2) was unable or unwilling to avail herself of public health assistance to monitor the infant's failure to thrive diagnosis, (3) had

placed her child at risk of physical harm and neglect due to her continued substance abuse, and (4) had engaged in domestic violence while the child was present.

J.S. asserts the record does not show she had been unwilling or unable to address W.H.'s failure to thrive diagnosis. She notes that she took W.H. to his checkup appointments from birth up until October 29, 2015. The medical records for that date reflect that she had recently been supplementing breast milk with formula and that the child was responding by gaining weight. The child reportedly appeared well-nourished and was active and in no distress. She asserts that “[w]hile [she] may come under criticism for failing to interact well with the social worker or the public health nurse, such criticism does not establish that [W.H.] was at a substantial risk of harm” with respect to his slow weight gain. We disagree.

Combined with her prior failure to provide W.H. with adequate nutrition, the juvenile court could reasonably have inferred that there were significant concerns regarding J.S.'s ability and willingness to keep the baby warm and dress him appropriately for cold weather. More significantly, however, even after he was diagnosed with failure to thrive, J.S. was openly hostile to receiving any assistance from the Department social workers or the public health nurses on how to care for a newborn. Additionally, it is undisputed that J.S. had little or no prenatal care and tested positive for THC at his birth. She does not contest that she failed to provide W.H. with adequate nutrition. Nor does she contest the finding that she was unwilling to allow public health nurses to assist her in monitoring his failure to thrive diagnosis. The court reasonably concluded that without this public health assistance, W.H. was at risk for continued weight loss and hospitalization.

J.S. challenges the significance of allegations regarding her marijuana use and the sufficiency of the unsubstantiated domestic violence allegations. While each of these allegations, standing alone, arguably would not be sufficient to warrant the assertion of jurisdiction, the facts supporting the allegations are uncontradicted. Specifically, J.S. admitted to smoking two to three marijuana joints a day and had tested positive for THC at W.H.'s birth. It is also undisputed that B.H. had raised his voice in the hospital when

J.S. was in labor, and that he was abusive to the social workers and public health nurses who were attempting to assist the family. In one incident, B.H. had told the nurses in J.S.'s presence to "[g]et the fuck out of here and don't come back," "[y]ou don't do anything to help people, all you do is fuck up their day, why don't you fucking do something to help people," and "[e]very time you leave here cunt, I have to listen to her cry." In sum, we find substantial evidence supports the juvenile court's assertion of jurisdiction.

III. The Removal Order

J.S. asserts the removal order was unnecessary to protect W.H. from a risk of harm. Again, we disagree.

To support an order removing a child from parental custody, the court must find clear and convincing evidence "[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 . . . physical custody." (§ 361, subd. (c)(1); see *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The court also must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor" and "state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).)

We have already concluded the juvenile court's jurisdictional findings are sound. "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.]' [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]' [Citation.] We review a dispositional order removing a child from parental custody for substantial evidence." (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.)

Here, substantial evidence supports the juvenile court's order for removal of the infant. The court had before it evidence that J.S. failed to provide W.H. with proper

nutrition and had refused assistance in how to properly care for a newborn baby. She also failed to appreciate that the social workers and the public health nurses were trying to help her maintain her son's health, instead engaging in a power struggle with the Department. In light of W.H.'s tender age and J.S.'s apparent failure to recognize the risks to which she had exposed the baby, there was no reason to believe the conditions would not persist should he remain in her home. Given the parents' refusal to allow nurses to monitor W.H.'s safety and well-being during this critical recovery period, we agree with the court below that there were no less drastic alternatives available to protect him without removing him from the home. The fact that W.H. had gained weight just prior to his removal does not negate the significant circumstances in favor of removal.

We conclude substantial evidence supports the dispositional order of removal.

DISPOSITION

The orders are affirmed.

Dondero, J.

We concur:

Humes, P.J.

Banke, J.

A147472, *In re W.H.*