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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B235233

(Los Angeles County
Super. Ct. No. CK41335)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAMES L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin,
Juvenile Court Referee. Affirmed.

Neale B. Gold for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Judith A. Luby, Deputy County Counsel, for Plaintiff and Respondent.

James L. (father) appeals from the juvenile court's jurisdictional and dispositional orders regarding his child, Lucy L. He contends the court's findings are not supported by sufficient evidence. He further asserts he was not permitted to cross-examine the case social worker (CSW), resulting in a violation of his right to due process under the state and federal constitutions. We reject his challenges, and affirm.

FACTUAL AND PROCEDURAL SUMMARY

Lucy was five days old when she was detained by the Department of Children and Family Services (DCFS) in March 2011. DCFS filed a dependency petition alleging that mother and father had failed to protect Lucy and were unable to care for her due to their substance abuse. (Welf. & Inst. Code, § 300, subd. (b).)¹

DCFS alleged the following: (1) father had a history of substance abuse and was a current abuser of marijuana, which renders him incapable of providing regular care for Lucy; (2) father had been convicted of possession of controlled substance paraphernalia; (3) Lucy's siblings had received permanent placement services due to father's substance abuse; and (4) father's substance abuse endangers Lucy's physical health and safety and creates a detrimental home environment, placing her at risk of physical harm and damage. In addition to allegations concerning mother's history and current abuse of controlled substances, DCFS also alleged that mother had used illicit drugs during her pregnancy and had tested positive for marijuana and opiates during her pregnancy.

Mother gave birth to Lucy in March 2011. The hospital notified DCFS that mother had positive tests for marijuana during her pregnancy. The CSW visited parents in the hospital. Mother stated she found out she was pregnant with Lucy in June 2010, at which point she stopped smoking marijuana. Mother admitted that she smoked marijuana with father about two times a day until that time. Mother also informed the social worker that she had lost parental rights to her four other children because she failed to comply with a case plan to address her abuse of methamphetamine and marijuana. Mother said she used to abuse methamphetamines, but had not used them in three years.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

She claimed she and father had completed drug rehabilitation programs. Mother said she wanted to care for Lucy.

Father initially denied he abused drugs. Then he admitted that he had smoked marijuana with mother a couple of times a day until mother found out she was pregnant. When the CSW asked him to submit to a drug test, Father eventually admitted he had smoked marijuana a couple of days before Lucy's birth. Father claimed he had not used methamphetamines in three years. He denied any criminal history, but records reviewed by DCFS reflected several arrests and convictions, including a misdemeanor conviction for possession of controlled substance paraphernalia in 2004.

Mother's nurse said mother had been breastfeeding Lucy and that mother appeared bonded to the child. Mother's nurse said both mother and Lucy were healthy and would be discharged from the hospital.

The CSW spoke with Michelle Bryant, a social worker at the hospital. Bryant said mother had tested positive for marijuana three times during her pregnancy, but the confirmation test for one of those positive tests came back negative. Both mother and Lucy had tested negative for drugs at the birth. Bryant noted that mother began prenatal care in her first trimester and Lucy was born at full term.

On March 15, the CSW visited parents in their home. Lucy appeared to be healthy and did not have any visible marks or bruises. The home was clean and contained appropriate baby supplies and food. Mother said she was willing to enter an inpatient drug program. Father said he had signed up for an outpatient drug treatment program.

During a team decision making meeting on March 16, mother admitted that she had used marijuana until August 2010, two months after she found out she was pregnant. Parents also stated they had not completed a drug treatment program and had not maintained their sobriety. Lucy was taken into protective custody and placed in foster care.

At the detention hearing, the juvenile court found prima facie evidence that Lucy was a person described in section 300, subdivision (b). The court referred the parents for

reunification services and ordered monitored visits with Lucy for three hours, three times a week.

On May 2, DCFS filed its jurisdiction/disposition report. The report indicated that mother had been in an inpatient drug program for over 30 days, was cooperating with her counselors, participating in various programs, and testing clean. The CSW wrote that father was in jail on charges that he had made a bomb and was found playing with it. If convicted, father faced imprisonment for up to two years. The CSW attempted to interview father but he became upset and walked out of the interview.

The CSW was concerned that mother was untruthful about using drugs during her pregnancy, both parents had recently used marijuana despite reportedly completing drug programs, and father was so volatile that he could not be interviewed. Because parents had lost parental rights to other children due to substance abuse, the social worker believed Lucy was at a very high risk for future abuse and neglect.

On July 5, DCFS filed a progress report indicating that the criminal charges against father had been dropped and both parents were enrolled in drug treatment programs and testing negative for drugs. The report concluded that it would be in Lucy's best interest to offer the parents reunification services and it recommended that the court order these services for both parents.

At the contested jurisdiction and disposition hearing on July 7, the juvenile court found that while parents were working on their substance abuse problems, there was still a risk to Lucy due to parents' lengthy drug histories and the fact that their other children had been ordered into permanent plans due to parents' substance abuse. The court concluded that Lucy was a child described by section 300, subdivision (b). It declared Lucy to be a dependent of the court and found there was a substantial risk of danger if Lucy were returned to parents' care. It removed Lucy from parents and gave custody to DCFS for suitable placement. As to mother, the court permitted four- to six- hour daytime unmonitored visits three times a week at mother's inpatient drug treatment program and gave DCFS discretion to liberalize. The court allowed father to have

monitored visits twice a week and gave DCFS discretion to liberalize so long as he continued to test negative for drugs.

The court also ordered both parents to complete drug and alcohol programs with aftercare, random weekly drug testing, 12-step program attendance, parenting classes, and individual counseling.

Father timely appeals.²

DISCUSSION

I

Father contends there was insufficient evidence to support the juvenile court's jurisdiction.

In dependency proceedings, DCFS must prove by a preponderance of the evidence that the child who is the subject of the petition is a person described by section 300. (§ 355, subd. (a).) Section 300, subdivision (b) provides in part that jurisdiction may be assumed if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of inadequate parental supervision or the parent's inability to provide regular care due to his or her substance abuse.³ The court may consider past events in deciding whether a child presently needs the court's

² Mother does not appeal.

³ Section 300 reads in pertinent part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The 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 the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent 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 mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family."

protection, so long as those events are not too remote or the risk of harm to the child too speculative. (See *In re David M.* (2005) 134 Cal.App.4th 822, 832.)

“The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.” (*In re David M., supra*, 134 Cal.App.4th at p. 829.) “The third element ‘effectively requires a showing that at the time of the jurisdiction 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). [Citations.]’” (*Ibid.*)

We review the court’s jurisdictional finding for sufficiency of the evidence. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.) In doing so, we review the record to determine whether there is any substantial evidence to support the court’s conclusions. We draw every reasonable inference and resolve all evidentiary conflicts in favor of the court’s order. (*Ibid.*)

The record contains sufficient evidence to sustain the dependency petition under section 300, subdivision (b). Father admitted that he used marijuana with mother. While father initially stated they used marijuana only until mother found out she was pregnant, mother admitted that she used marijuana until two months after she found out she was pregnant, and father later admitted that he used marijuana two days before Lucy was born.

Father contends DCFS failed to present evidence showing how his use of marijuana during mother’s pregnancy harmed or caused a substantial risk of serious harm to Lucy. Even if this were so, evidence showed that father failed to protect Lucy from in-utero exposure to marijuana resulting from mother’s drug use. “To enable juvenile courts to protect drug-exposed infants and to compel parents to undergo drug rehabilitation therapy and to afford child protection services to the family, courts must be able to assert jurisdiction over infants born at risk because of prenatal exposure to dangerous drugs.” (*In re Troy D.* (1989) 215 Cal.App.3d 889, 898.)

Further, DCFS presented evidence connecting father's substance abuse to neglect of his other children, which resulted in the juvenile court sustaining several section 300 petitions on behalf of those children and eventually terminating father's parental rights with respect to them. In one instance, father used marijuana at the home and in the presence of the children. Father failed to complete reunification services for these children and continuously used marijuana from his most recent dependency case through mother's pregnancy with Lucy. This evidence demonstrated by a preponderance of the evidence that father had continuing problems with substance abuse, and these problems placed Lucy at substantial risk of serious physical harm.

Father argues that his past behavior regarding his other children was too remote and should not have been considered by the court. “[P]revious acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]’ [Citation.]” (*In re David M.*, *supra*, 134 Cal.App.4th at pp. 831-832.) Father's neglect of his other children was based on his abuse of drugs, including marijuana. This abuse continued while mother was pregnant with Lucy and father admitted he used marijuana two days before Lucy was born. That father's drug use was likely to reoccur was not speculative, particularly since he admitted to continuously using marijuana between the previous dependency cases and Lucy's birth. Thus, it was proper for the court to consider his history of drug abuse and dependency proceedings, along with the other evidence presented.

II

Father contends the evidence was insufficient to support the dispositional order.

After the juvenile court finds a child to be within its hearing, the court must conduct a dispositional hearing and decide where the child will live while under the court's supervision. (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 169.)

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [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.]” (*In re N.M., supra*, 197 Cal.App.4th at pp. 169-170.)

If the court finds by clear and convincing evidence that the child’s welfare requires removal due to a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child, the court may issue a removal order. (§ 361, subd. (c)(1).) “Whether the conditions in the home present a risk of harm to the child is a factual issue. Again, we apply the substantial evidence test.” (*In re N.M., supra*, 197 Cal.App.4th at p. 170.)

As an initial matter, father did not object to the removal order nor did he present evidence or argument with regard to the court’s dispositional finding. Even if he had, substantial evidence supports the juvenile court’s order to remove Lucy from father’s custody. In addition to the evidence of father’s drug use, father had only recently begun attending Narcotics Anonymous and Alcoholics Anonymous meetings. He had not signed up for any other programs since being released from jail. He had relapsed in the past. Thus, there was substantial evidence that there was a substantial risk to Lucy’s physical health if she were returned home.

III

Father argues that because the CSW was not present at the jurisdictional and dispositional hearing, he was not permitted to cross-examine her about the contents of her report, resulting in a violation of his constitutional right to due process.

Father’s attorney did not object to the absence of the CSW. Father’s attorney said “it looks like at the last court date I did ask for the social worker to be present, but I will proceed by argument.” She added: “It was my intention to cross-examine the social worker; however, I will proceed by argument.” DCFS’s attorney explained that she told the social worker not to attend the hearing because she anticipated the case would settle as a result of DCFS recommending that the court order family reunification services for father and mother. Father’s attorney proceeded with the argument.

Father contends that “his attorney’s efforts to raise this issue with the court became futile” and thus preserved the issue for appellate review. A party is not required to make repeated objections to preserve an issue if further objection would be futile. (3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, § 387, pp. 479-480.) But there was no objection by father’s attorney and no request to have the social worker present or to stay the proceedings until the social worker could be present. Thus, we conclude that father’s attorney failed to object to the social workers absence and forfeited appellate review of that issue.

DISPOSITION

The orders of the juvenile court are affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.