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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ASHELY M., a Person Coming Under
the Juvenile Court Law.

B236768
(Los Angeles County
Super. Ct. No. CK86741)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KEVIN A.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Rudolph Diaz, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of County Counsel, John F. Krattli, Acting County Counsel, James M.
Owens, Assistant County Counsel, Deborah L. Hale, Deputy County Counsel, for
Plaintiff and Respondent.

Kevin A. (Father) challenges a juvenile court order sustaining allegations that he failed to supervise or protect his one-year-old daughter Ashely M. by not providing her with the necessities of life and not making an appropriate plan for her care and supervision. (Welf. & Inst. Code, § 300, subd. (b).)¹ The jurisdiction and disposition orders are supported by substantial evidence. We affirm.

FACTS

In February 2011, the Department of Children and Family Services (DCFS) learned that Ashely (born in December 2009) suffered from neglect and caretaker absence. Ashely was abandoned by her mother Elizabeth M. (Mother), whose whereabouts are unknown.² Mother's three older children are in a legal guardianship with their maternal grandmother.

At the time of the referral, Ashely was living with paternal grandmother Maria G. (PGM). PGM's house was filthy and in ill-repair; graffiti and holes marred the walls; it had lacked running water for eight months; and PGM faced imminent eviction. PGM failed to supervise her own minor children, leaving them home alone for a week. As a result, PGM's children were detained on February 16, 2011, and she was instructed to stay home until a DCFS social worker came to speak to her about Ashely. By the time the social worker arrived, PGM and Ashely were gone.

Reached by telephone, PGM said that Mother dropped Ashely at her home in December 2010—ostensibly for a few hours—and never came back. This was not the first time Mother had abandoned the child. There was no plan for the child's care and no provisions for her. PGM admitted that her home has no running water and is dirty and decrepit. PGM brought Ashely to the DCFS office. The child appeared to be developing properly, and could walk and babble. She had a runny nose and diaper rash. PGM indicated that Mother and Father are “very involved in their gang.” PGM wished to have

¹ Undesignated statutory references in this opinion are to the Welfare and Institutions Code.

² Mother did not appear in the dependency court and is not a party to this appeal.

legal guardianship of Ashely, and expressed concern that the child would otherwise be roaming the streets with Mother, who engages in dangerous activities.

DCFS detained Ashely on February 18, 2011, and placed her in foster care. The social worker located Mother, who, when told that Ashely was detained, said “Okay,” and seemed very disinterested. She did not ask why the child was detained or where she was living. Mother denied leaving Ashely for long periods with PGM; however, the social worker brought to Mother’s attention a prior referral dated October 19, 2010, in which Mother agreed to take care of the child and not leave her with PGM, who lacked suitable housing. Mother did not schedule any visits with Ashely following the child’s detention.

DCFS learned that Father was incarcerated. His criminal record encompasses juvenile and adult arrests. Father (born in 1990) has a 2005 delinquency petition for possessing a loaded firearm; a 2007 petition for possessing a concealed weapon; a 2009 arrest; a January 2010 conviction for carrying a loaded firearm in public; and a May 2010 arrest for being a felon in possession of a firearm and for violating probation.

A petition was filed alleging that Mother and Father made an inappropriate plan for Ashely’s care and failed to provide her with the necessities of life. The court found a prima facie case for detaining Ashely and removed her from parental custody. The 60-year-old paternal great grandmother was evaluated as a possible caregiver for Ashely, but was deemed unsuitable because she has an arrest for battery on a police officer, and her spouse has an arrest for attempted murder. Also, there are three adults living in her one-bedroom house.

In its March 2011 jurisdiction report, DCFS stated that it was investigating whether Father was in a medical facility at Vacaville State Prison. In an interview, PGM noted that Mother (who is in her early 20’s) just wants to party with gang members and has abdicated responsibility for her four children, so PGM gradually came to take full-time care of Ashely. PGM voiced anger at the social workers, for not providing enough assistance to her family. PGM’s daughter Amber confirmed that there was no water or electricity at PGM’s home since September 2010. Amber stated that Father was present

at Ashely's birth. He has not cared for the child, but PGM has tried to meet the child's needs. Mother's family is unwilling to take custody of Ashely because they already care for Mother's older children. They do not want to encourage Mother to continue her irresponsible behavior by assuming that her family is available to take care of every child she produces.

Father submitted a statement seeking status as a presumed parent. Father stated that he provided financial support for Ashely until his incarceration. His name is on Ashely's birth certificate and he was present at her birth. At a hearing on May 2, 2011, Father denied the allegations in the petition. The court found that Father is Ashely's presumed father.

DCFS sought to interview Father in jail, but the deputies could not locate him. Mother refused to speak on the phone with the social worker. Father was paroled shortly before the jurisdiction hearing. He was residing with PGM. Father told the social worker that the firearm police found in PGM's home "was not his" and "they pinned it on me" to arrest him for a probation violation. Father indicated that he spoke to Mother "a couple of times. All I asked her was to take care of Ashely and she always told me she would and from one day to the next she dropped Ashely off at my mom[']s and never came back for her." Father explained that he did not make an appropriate plan for Ashely because he did not know what was happening.

The jurisdiction hearing was conducted on September 27, 2011. Father testified that he went to prison when Ashely was 28 days old. During the initial 28 days, he did not live with Ashely, but purchased hygiene items and milk for her, and contributed money. During his imprisonment, he believed that Mother was caring for Ashely: she assured him that everything was fine and that she would collect welfare for the child. He had difficulty staying in contact because no one accepted his collect calls or wrote letters to him. He did not realize that Mother left Ashely with relatives, and learned of Mother's absence shortly before Ashely was detained.

Father was released from prison on September 4, and now lives with PGM while searching for employment. Father knows that PGM recently lost custody of his younger

brothers. He did not know that PGM's house had no electricity or running water while Ashely was staying there. If given custody of Ashely, Father would make sure she is out of harm's way, has food on the table, and is cared for. If Father cannot have custody, he wants Ashely to be with the paternal great grandmother and his sister Amber. Father was aware of the dependency proceeding, but was not contacted by DCFS during his incarceration.

Over Father's objections, the court sustained two allegations. First, Mother made an inappropriate plan for Ashely's ongoing care and supervision, leaving her with PGM for several months when PGM's home lacked utilities and PGM absented herself for a week, leaving Ashely without adult supervision. This placed the child at risk of physical and emotional harm. Second, Father failed to provide Ashely with the necessities of life, including food, clothing, shelter and medical care, placing her at risk of harm. Further, Father failed to make an appropriate plan for Ashely's care. The court dismissed a third count at the request of DCFS.

The court observed that the social worker spent an entire day at the county jail, trying to see Father, and Father waived his right to participate in the proceedings on July 25, 2011. This shows that Father knew about the dependency petition but "elected to not be involved, basically. So I do think what he did was neglectful, [] in terms of being responsible for his care and concern and developing a plan for the child." The court declared Ashely a dependent of the court. Moving to disposition, the court gave Father "only six months to basically get his act together." Father was ordered to participate in a parent education program and individual counseling to address parental responsibilities and family issues, and to comply with all conditions of parole. He is authorized to have monitored visitation.

DISCUSSION

The disposition order is an appealable judgment. (§ 395; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) "In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] 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." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

At the outset, we observe that "a jurisdictional finding against one parent is good against both. More accurately, the minor is a dependent if the actions of *either parent* bring her within one of the statutory definitions of a dependent. [Citations.]" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397, italics added; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16; *In re Maria R.* (2010) 185 Cal.App.4th 48, 60; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1212.) In this instance, the court properly sustained allegations that Mother left Ashely with PGM for months at a time, in a home without utilities, with no appropriate plan for Ashely's ongoing care and supervision. Mother did not participate in this dependency proceeding and has not challenged the jurisdictional finding against her. As a result, "the court's exercise of jurisdiction over the child is appropriate" and Father's claims that jurisdiction is improper are moot. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431.) The purpose of the dependency proceeding is "to protect the child, rather than prosecute the parent." (*In re Alysha S., supra*, 51 Cal.App.4th at p. 397.) Ashely must be protected due to Mother's behavior, regardless of Father's conduct, so jurisdiction is proper.

Father objects to the court's sustained findings under section 300, subdivision (b).³ A child falls within the ambit of the statute when there is (1) neglectful conduct by the parent; (2) causation; and (3) a substantial risk of physical harm or illness. (*In re*

³ The court may exercise jurisdiction under section 300 if "(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 by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

Rocco M. (1991) 1 Cal.App.4th 814, 820.) “[P]roof of current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b), which is satisfied by a showing that the child *has suffered* or there is a substantial risk that the child will suffer, serious physical harm or abuse.” (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) A showing under this subdivision can be based on evidence of prior conduct, in order to establish dependency jurisdiction. (*In re J.K., supra*, 174 Cal.App.4th at p. 1438.)

The courts afford special protection to “children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M., supra*, 1 Cal.App.4th at p. 824.) While an 11-year-old child may be old enough to avoid physical dangers and seek care from responsible adults if neglected by a parent, infancy is “an inherently hazardous period of life.” (*Id.* at p. 825.) The paramount concern is the child’s best interests. (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.)

Father was sent to jail 28 days after Ashely was born. He left Ashely in the care of Mother, who likes to party, associates with gangsters, and takes no responsibility for her children. Consistent with her history, Mother promptly abandoned Ashely. Father knew, or should have known, that Ashely was staying with his mother, who faced eviction from a squalid house that lacked electricity and running water. PGM, in turn, left Ashely without adult supervision when the child was just one year old. PGM was not a legal guardian and could not authorize necessary medical treatment for Ashely, such as childhood vaccinations. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 629.)

Dependency jurisdiction does not arise when a parent “relies on the temporary custodial assistance of suitable third parties” and it is shown that “the child receives good care.” (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 697.) The evidence shows that Father did not leave Ashely with a suitable caretaker who provided good care. In fact, the child was abandoned by everyone. DCFS stepped in when it received word that Ashely was left without any adult supervision at PGM’s home. Given Ashely’s tender age and vulnerability, the serial abandonments posed an inherent risk to her physical

health and safety. Father did not stay in touch with family members during his incarceration, and did not ensure that Ashely was properly housed and supervised. In short, Mother and Father engaged in a course of neglectful conduct that placed Ashely at substantial risk of harm.

When Father was released from prison in September 2011, shortly before the jurisdiction hearing, he went to live with PGM. PGM has an open DCFS case because she abandoned her minor children (along with Ashely) and lacks suitable housing. For his part, Father has a criminal history dating back to the age of 15: he has been in trouble with the law—and in and out of prison—almost constantly since then. He is currently on parole. Ashely does not even know Father, because he left for prison when she was 28 days old. According to PGM, Mother and Father are “very involved in their gang.” Father offers no assurances that Mother will not join his household. Given the facts, Ashely cannot live with Father and PGM because it would pose a substantial danger to her physical health, safety, protection, or physical or emotional well-being. (§ 361, subd. (c).)

Father argues that Ashely would not be at risk if he retains custody, because he plans to house her with the paternal great grandmother. Father cannot establish that he is capable of exercising proper and effective parental care when he has no suitable home of his own and “intend[s] to leave the baby for full-time care with relatives instead of day-care arrangements.” (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 600.)

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.