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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S. C., a Person Coming Under the
Juvenile Court Law.

B237954
(Los Angeles County
Super. Ct. No. CK88342)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

HOLLIE H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Margaret Henry, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and
Respondent.

Hollie H., mother of S. C., appeals from the judgment entered after the juvenile court declared her daughter a dependent child and removed her from her parents' custody. Although mother does not contest the jurisdictional finding against father under Welfare and Institutions Code section 300, subdivision (g),¹ and father does not appeal, she contends that the evidence is insufficient to support the jurisdictional finding against her under section 300, subdivision (b), and that, in any case, the court should not have removed the child from her custody. We disagree and thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Mother's Relationship with Her Child, the Section 300 Petition and Detention*

According to the Department of Children and Family Services (DCFS), the family came to its attention on November 9, 2010, based on a report alleging that the child, then 14 years old, "was an alleged victim of Physical Abuse, Emotional Abuse and General Neglect by her mother. Reporter stated that the child . . . has been homeless, sleeping on buses and trains for the past ten days, this after an altercation with her mother on 10/30/10. Child was disciplined for being disrespectful. Child reported a history of being hit on arms, face and being 'beaten' by her mother. . . . [¶] Reporter also stated that child . . . 'has issues with her mother' but exaggerates the abuse. . . . Reporter stated S. is associated with the 'Roll'n 60's Crip Gang.' Reporter stated S. had no visible bruises or marks. Reporter was concerned about mother, who had not reported her child . . . to be missing. The allegations of physical abuse, emotional abuse and general neglect were deemed unfounded. The allegations of caretaker absence/incapacity were deemed substantiated." Mother indicated that she had been released from prison several months prior, she "does not have a good relationship with her daughter and daughter wants to 'run her own program.' The daughter ran away from home and mother did not file a police report. Mother is currently unemployed, but open to services with the department and is very cooperative."

¹ Statutory references are to the Welfare and Institutions Code.

After a meeting on December 23, mother voluntarily signed a case plan, including placement of her daughter with a foster family, family reunification between mother and daughter, counseling for mother and daughter and monitored visits between mother and daughter with daughter's consent. During the supervision period, the child "has been A WOLING, Probation pick-up, child has been reported to be stealing and staying out past her curfew numerous times."

On May 16, 2011, a school counselor called the social worker, reporting that, although S. had been dropped from the school roster on May 10, she nevertheless came to school that day. The social worker picked S. up from the school and placed her in a group home. On May 21, S. was arrested on a probation warrant and sent to juvenile hall. She left juvenile hall on May 27 and then was placed in a foster home. On June 1, the foster mother brought S. to the DCFS office, stating that the child "had problems getting back to her residence at a reasonable hour," coming home at 1:00 a.m. and 3:00 a.m. on separate nights. The social worker "contacted mother to see if she wanted her daughter to return home. Mother stated that she does want her daughter to return home, if he[r] daughter would follow her house rules. The child . . . was asked if she wanted to return to the home of her mother with DCFS services in place. S. refused to return home to her mother." The child then was placed in a new foster home and "agreed to abide by the house rules and regulations." On June 6, the foster mother reported that the child had left the residence that day and failed to return. Neither mother nor father knew the child's whereabouts.

On June 17, while the child's whereabouts still were unknown, DCFS filed a section 300 petition, under subdivisions (b) and (g), seeking juvenile court jurisdiction over the child, who then was 15 years old. As relevant, the petition alleged against mother under section 300, subdivision (b), that she is "unable to provide ongoing care and supervision of the child. The child refuses to reside in the mother's home and care. The mother's unwillingness and inability to provide ongoing care and supervision of the child[] endangers the child's physical health and safety, and places the child at risk of physical harm, damage and danger." Under section 300, subdivisions (b) and (g), the

petition alleged that father “has failed to provide the child with the necessities of life, including food, clothing, shelter and medical care. The father’s failure to provide for the child[] endangers the child’s physical health and safety, and places the child at risk of physical harm, damage and danger.”

At the detention hearing, also on June 17, the juvenile court issued a protective custody warrant for the child, found a prima facie case for detaining her and ordered DCFS to provide family reunification services. If the child were located, the court ordered monitored visits for mother and unmonitored visits for father and gave DCFS discretion to release the child to father or an appropriate relative or extended family member.

2. *The Juvenile Court’s Jurisdiction and Disposition*

In the jurisdiction and disposition report, dated July 8, DCFS indicated that the child’s whereabouts remained unknown. According to father, “he has not heard from S. since she ran away from placement on 6/6/11. He indicated in the past the minor has contacted him and met with him to obtain money and food. He stated, ‘She’s smart and knows how to hide very well. When she calls me she does so from a restricted number. In the past I’ve met with her at a certain location and given her some cash to buy food. She never tells me where she is or who she’s staying with.’ The father indicated he has not had any contact with his child since the above mentioned date.” “The mother reported she has posted flyers and spoken to some of S.’s friends in hopes of finding her. She stated, ‘I know [the child’s] claiming to be affiliated with the 60’s gang so I’ve gone to their territory asking for my daughter. No one is able to give me any information. I have no idea where she could be.’ The mother reported S. has not contacted her since she left placement.”

Regarding the allegation against her, mother stated, “‘S. was distant and shy. She didn’t have a lot to say. I wasn’t really around for her when she was growing up. I just got released from jail last year and came home to a grown teenager. The first time I was incarcerated for second degree robbery and got locked up for 5 years. S. was only a few months old. When I was released she was approximately 5 or 6 years old. Sixteen

months later I got incarcerated again for forgery and this time I was locked up for 9 years. When I returned home last year I tried to work things out with her but it was difficult. The first day I was back she didn't spend the night at the house because she didn't want to see me. She said she heard so many bad things about me[.] I guess she was embarrassed of me.

“You have to understand my position. S. is 15 years old[.] I left her when she was a baby and I've been out of her life for 14 years. When I left her I knew she was going to be okay. She was with her father and her auntie. They took care of her until her auntie died when she was 7 years old. After that my family picked up and tried to raise her. I don't know what went wrong. When we were together her father wasn't into drugs or none of that. So many things happened and went wrong while I was gone. I hate myself for not knowing any of this was happening to my child and for not being there with her when she was growing up and needed me the most. I knew coming back home wasn't going to be easy but it was almost like she challenged me every step of the way.

“I think it was my fault too because I couldn't tell her what I meant. I couldn't communicate with her. She asked me once if I regretted leaving her and my honest answer was no. She didn't let me explain, she took it the wrong way and said I didn't love her and left. That's when all the problems became worse. I meant to tell her I didn't regret it because I didn't want her to have the same lifestyle as me. I wanted her to grow up with good people and have a different life. She took it as though I didn't have any regrets for my actions or leaving her. I spoke to my pastor and other church members about my situation. I know I shouldn't have said what I did the way I did. A fifteen year old mind wouldn't understand the complexity of my answer. In her head she thought I didn't have any regrets for leaving her at all and that I never cared about her. That's not at all what I meant.

“It's not that I don't want my daughter because I do but I understand we need a lot of help to work on our relationship. I want her back and I'm willing to take her. It's just that I know she will leave my home if you guys place her back without any counseling services. I want to start on my counseling and have conjoint counseling

with her. I want to work on our relationship. If she is found and if counseling services are not yet available I will still take her in. I would rather have counseling in place first but she's my daughter[.] I'll still do anything for her. I'm just scared she will leave again.'

"The mother further stated, 'I know because of our history and the way she feels about me not being in her life that she will run away. The risks of her fleeing again without any services for us to work on our relationship and our communication are very high. I'm scared of what can happen to her out there. I don't want her to go down the same path as me.' . . . 'I want her to come back, I want her with me but she doesn't want the same. I cannot force her to stay and I cannot control her behavior. I would rather have her come back to the house once we have therapy in place so we can work on our problems but if that's not the case I'll still take her back. She's my daughter and I will never turn my back on her. . . . I do want her[.] I just want us to start our counseling. We both need that.'

"The mother further reported she has tried to provide her daughter with the basic necessities of life but the minor fails to take it. She stated, 'I've given her everything you could possibly think of[.] since I've been out. I've tried to spend time with her and talk to her. I've given her food and clothing but she turns me down every time. I know she resents me for the years I wasn't with her. I know she has a grudge for what I said about having no regrets. That's why I think we need counseling to work on our communication. Unfortunately she is out of control and I don't know how to communicate with her especially now that she's a teen. We need help and I'm hoping you guys can help us.'"

Father reported that "he was currently working on his housing situation and was enrolled in a substance abuse program." He and his aunt cared for S. until she was seven when his aunt passed away and he was incarcerated. "There was really no relationship between S. and her mother. When her mother was released S. went to live with her and I spoke to her once in a while. I knew there was friction between them because S. is 15 years old and has a careless attitude. She wants to be grown and do whatever she wants.

She blames us for not being there for her and because of our history she feels as though we have no right to parent her in any way. [¶] . . . I found out from S. her mother didn't want to continue to take care of her because of her misbehavior. When I spoke to her mother she told me it wasn't that she didn't want to care for her but she felt as though they needed some kind of therapy and S. just didn't want to participate. Her mother said S. didn't follow her rules and wanted to come and go as she pleased. Soon after my daughter went to live with her mother I received a call from her telling me she didn't want to be there no more. . . .” Father said he could not care for his daughter because he did not have a stable home and was dealing with his substance abuse issues.

Neither DCFS nor mother or father had located S. DCFS reported, “The mother seems to be overwhelmed by this current case but continues to be productive in making efforts to locate her daughter. . . . The mother is devastated by the inability to effectively communicate [with] S. but maintains a positive attitude and is willing to participate in services to learn effective ways of parenting a teenager and tools for better communication. The mother understands S. has experienced many traumas growing up and seems to blame herself for not being able to be with her child throughout her childhood. The mother is able to identify her strengths and weaknesses and is persistent when asking for help and assistance.” DCFS coordinated with the probation officer assigned to S., who indicated that the probation department was requesting conjoint supervision with DCFS of S.

In an interim review report, dated August 17, DCFS indicated that S.'s whereabouts were still unknown, yet she was found on August 23 and placed in a group home. The juvenile court recalled the protective custody warrant.

In a second interim review report, dated October 6, DCFS indicated that S. had been placed in a foster home on September 8 and that mother had been arrested on August 17. According to DCFS, “S. reported that she was sexually assaulted during the time she was absent from her placement ‘AWOL’ on 8/22/11 while in the company of some of her friends. The male friend forced her to have sex with him in a vacant house.”

At the adjudication hearing, on October 14, the juvenile court declared S. a dependent, sustaining the allegation against mother under section 300, subdivision (b), and the allegations against father under section 300, subdivisions (b) and (g), and found clear and convincing evidence pursuant to section 361, subdivision (c), to remove S. from her parents' custody. According to the court, "the extent of progress the parents have made toward alleviating or mitigating the causes necessitating placement in foster care has been minimal." The court ordered family reunification services and monitored visitation for mother and father. It gave DCFS discretion to liberalize father's visits and directed DCFS to provide mother with visits a minimum of twice per month at her place of incarceration.

Mother filed a timely notice of appeal. (§ 395, subd. (a)(1); see *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [jurisdictional findings reviewable on appeal from the judgment following disposition].)

DISCUSSION

Mother contends that the evidence is insufficient to support the jurisdictional finding against her under section 300, subdivision (b), and that, in any case, the juvenile court should not have removed S. from mother's custody because mother could have made arrangement for S.'s care while she was incarcerated. We disagree.

Under section 300, subdivision (b), the juvenile court may adjudge a child a dependent of the court when "[t]he 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 . . . to adequately supervise or protect the child" "The purpose of section 300 is 'to identify those children over whom the juvenile court may exercise its jurisdiction and adjudge dependents.' [Citation.]" (*In re A.O.* (2010) 185 Cal.App.4th 103, 110.) "A jurisdictional finding under section 300, subdivision (b)[,] requires: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the child, or a 'substantial risk' of such harm or illness." [Citation.] [Citations.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) When the jurisdictional finding is "based on the parent's 'inability . . . to adequately

supervise or protect the child[]” DCFS must show “parental unfitness or neglectful conduct.” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1254.) To declare a child a dependent under section 300, the juvenile court must find by a preponderance of the evidence that the allegations are true. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see § 355, subd. (a).) We review the court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value. (*Matthew S.*, at p. 1319.)

The sustained section 300, subdivision (b), allegation against mother provided that mother is “unable to provide ongoing care and supervision of the child. The child refuses to reside in the mother’s home and care.” Substantial evidence supports the sustained allegation. When the juvenile court made its adjudication and disposition orders, mother was incarcerated, and no evidence suggested when, or if, she might be released. Mother was incarcerated for much of S.’s life from the time she was an infant until she was 14 years old. When S. lived with mother as a teenager, she ran away from home, and mother was unable to communicate with her and in fact did not speak with her during the dependency proceedings, instead once again becoming incarcerated about the same time S. was located.

In re Precious D., *supra*, 189 Cal.App.4th 1251, on which mother relies, does not warrant a different result. In that case, we reversed a jurisdictional finding under section 300, subdivision (b), on the ground that mother was unable to care for and supervise the child because the only finding “critical of Mother’s parenting skills or conduct” in relation to her incorrigible teenage daughter, who continued to run away from home and from foster placements during a period of voluntary family reunification, was that the mother and her daughter were not communicating. (*Id.* at p. 1259.) The finding was “not supported by substantial evidence because the record show[ed] that Mother and [her daughter] were in daily telephone contact. DCFS’s jurisdiction/disposition report also noted as a *family strength* that there was ‘open communication between the mother and the child, despite the current circumstances.’” (*Ibid.*) In addition, “DCFS admitted that it sought dependency court jurisdiction because

of [the child's] incorrigible behavior and her need for court-ordered services, not because of any neglectful conduct by Mother. It is also apparent that there was no neglectful conduct by Mother because Mother was not ordered to participate in any services except family counseling with [the child], when [the child's] therapist deemed it appropriate.” (*Ibid.*) DCFS made no claim that the mother was unfit to parent her daughter. (*Id.* at p. 1259, fn. 2.) In this case, in contrast, mother was not in contact with her child, and substantial evidence demonstrated that mother and daughter were not communicating. Moreover, unlike in *In re Precious D.*, where the mother had been involved throughout her child's life, mother here was incarcerated for most of her child's life, even at the time of adjudication. Thus, while *In re Precious D.* was a case of simply an incorrigible teenager without evidence of unfitness or parental neglect, this case involves both unfitness and parental neglect.

Mother's argument that, even if jurisdiction were proper, the juvenile court should not have removed S. from her custody pursuant to section 361, subdivision (c)(1), also fails.² As noted, mother was incarcerated when the juvenile court made its adjudication and disposition orders and thus unable to care for S. Mother claims that, although incarcerated, she should have been permitted to arrange for care of her daughter, which her counsel informed the court might be possible with mother's fiancé's sister. But that person was not present in court, and no evidence exists that mother's fiancé's sister was willing and able to care for S., particularly given S.'s emotional issues and tendency to run away, or that S. knew or had any relationship with the fiancé's sister. The court thus did not err by ordering removal under section 361, subdivision (c)(1).

² Section 361, subdivision (c)(1), provides that a juvenile court can order removal of a dependent child from his or her parent's physical custody upon clear and convincing evidence that “[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.”

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.