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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.P., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

KATHLEEN P.,

Defendant and Appellant.

B239627

(Los Angeles County
Super. Ct. No. CK23417)

APPEAL from an order of the Superior Court of Los Angeles County.

Elizabeth Kim, Referee. Affirmed.

Thomas S. Szakall, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and
Jessica S. Mitchell, Associate County Counsel, for Respondent.

Kathleen P. (mother) appeals from the order declaring her son, K.P., a person described by Welfare and Institutions Code section 300, subdivision (b). Mother's sole contention on appeal is that the jurisdictional finding was not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

K.P. and his older sister, Ka., were detained in December 1995 after K.P. was born with a positive toxicology for methamphetamine.¹ The family reunified in 1997. Ten years later, the Department of Children and Family Services (DCFS) found referrals for sexual abuse (June 2007) and for general neglect and emotional abuse (November 2007) inconclusive. K.P. was 15 years old when he came to the attention of DCFS again in April 2011. At the time, K.P. and mother were living in the home of maternal grandmother, who was physically disabled. Grandmother's Adult Protective Services social worker referred K.P. to DCFS for general neglect. When a social worker visited the home on May 3, she observed that it was dirty and "extremely cluttered" with boxes everywhere and trash "all over;" the refrigerator was packed with a mixture of fresh and rotten food. Mother told the social worker that she had been diagnosed with severe manic depressive disorder, anxiety and panic attacks and mild agoraphobia; mother was prescribed Zolax, Alprozolam and Vicodin; she occasionally drank alcohol and smoked marijuana but not in K.P.'s presence; mother blamed the clutter in the home on grandmother's hoarding. The social worker observed K.P. to be neat and clean, well nourished and not apparently neglected; K.P. told the social worker that he is well cared for and feels safe; he explained that mother cooks and cleans every day, but the house gets messy because no one helps her; K.P. said mother and grandmother both "save everything."

¹ Mother has five children. Kandace, Kassandra and Ka. were adults by the time this dependency case was filed as to K.P. Another child, Anthony B., was being raised by his father and is not a party to this appeal.

At an unannounced follow-up visit a few weeks later, the social worker observed the home to be clean and neat and the refrigerator filled with fresh food; K.P. appeared happy and well nourished and did not exhibit any signs of neglect. DCFS recommended that mother receive a psychiatric evaluation so as to be prescribed appropriate psychotropic medication, as well as a psychological evaluation and individual therapy to improve her coping skills; it also recommended mother participate in a drug and alcohol program and parenting classes.

The social worker went to the home on July 26 for a home assessment and to notify mother of a Team Decision Making meeting. Mother reported that she was back on her medication and doing well. K.P. appeared physically and mentally healthy and did not show any signs of neglect. The home was generally neat and clean. At the team meeting, mother agreed to a Voluntary Family Maintenance contract which included taking her prescribed medications, participating in individual therapy, attending Alcoholics Anonymous and random drug and alcohol testing. Mother was told that if she tested positive for any substance other than marijuana (for which she had a prescription), or if her marijuana levels were too high, she would be required to complete a substance abuse program.

On September 13, mother tested positive for amphetamines and methamphetamines. When confronted with her positive drug test, mother blamed her relapse on DCFS's intervention in her life. Mother was told to enter a drug program as soon as possible. In a meeting with the social worker the next day, K.P. said mother told him about her positive drug test but he continued to maintain that mother did not use any drugs in his presence. When mother is having a "mood swing," K.P. said, he stays busy with school activities.

Mother tested positive for methamphetamines again on October 26. At an unannounced home visit on November 1, mother stated that she had been unable to enroll in a drug program because she was taking care of maternal grandmother, who had been unwell. Mother identified the man who was present in the house that day as "Jimmy" and said he was "just a friend." Later, after mother admitted that Jimmy was someone

she had in the past used drugs with, mother agreed to ask Jimmy to leave because his presence put K.P. at risk.²

Mother enrolled in a drug program and at a meeting on November 10, she was told to be reassessed at a mental health clinic for her depression, anxiety and medication management. When the social worker interviewed K.P. at school on November 30, K.P. was reluctant to talk to her for fear something he said would cause DCFS to remove him from mother's home. Eventually, K.P. admitted that his grades had gone down; he stays at school from 7:00 a.m. until 9:00 p.m. to avoid problems at home, including arguments between mother and K.P.'s adult sister about mother's ability to manage the household; maternal grandmother was in the hospital and mother spent most of her time there; Jimmy was still living with them; mother was drinking more and on one occasion Jimmy had to stop mother from going motorcycle riding when she was inebriated; mother and Jimmy smoked "incense," which K.P. believed was legal. In an unannounced visit on December 22, the social worker found K.P. home alone. He explained that mother was at the hospital visiting grandmother. K.P. said that mother seemed to be drinking less and he was feeling more optimistic.

On January 13, 2012, the social worker learned that in the prior two weeks mother had been hospitalized twice and incarcerated once (to clear warrants relating to getting her driver's license back). Mother did not drug test for several weeks and on January 17, she was terminated from her drug program for non-attendance. On January 19, mother admitted to the social worker that she was drinking more beer than usual. K.P. told the social worker that mother and Jimmy leave together at night and do not come home until after he is asleep.

K.P. was detained on January 25 and placed in foster care. DCFS filed a section 300 petition on January 30. As sustained, paragraph b-1 of that petition alleged that mother "has a fifteen year history of illicit drug use and is a current abuser of

² Jimmy, it turns out, was involved in an ongoing dependency case of his own, in which it was alleged that he left his son and step-daughter with a registered sex offender, and that he had a history of drug use.

methamphetamine, amphetamine, marijuana and alcohol, which renders the mother incapable of providing regular care and supervision of the child. On prior occasions, the mother possessed, used and was under the influence of illicit drugs and alcohol while the child was in the mother's care and supervision. On 8/8/11, 9/8/11 and 10/25/11, the mother had positive toxicology screens for methamphetamine and amphetamine. Remedial services failed to resolve the family problem in that the mother failed to regularly participate in a substance abuse rehabilitation program, failed to regularly participate in random drug testing and continued to use illicit drugs and abuse alcohol."

Paragraph b-2 alleged that mother "has emotional problems, including self-reported symptoms of Depression and Anxiety, which renders the mother incapable of providing regular care and supervision of the child. The mother does not regularly take the mother's psychotropic medication as prescribed and does not regularly participate in mental health counseling. Remedial services failed to resolve the family problem, thereby endangering the child's physical health and safety and places the child at risk of physical harm and damage."

The trial court found a prima facie case that K.P. was a person described by section 300, subdivision (b) had been established and continued the matter for adjudication and disposition. Prior to the adjudication hearing, the court ordered K.P. released to his adult sister, Kandace, over DCFS objection.

According to the report for the contested adjudication hearing, K.P. denied knowing anything about mother's drug use other than the fact that she tested positive. His sister Kandace described mother as a "functioning addict" and said that mother had been using drugs for as long as she could remember. Kandace recalled that mother's depression problems began in 2007, after she discovered a former boyfriend had been sexually abusing another sister, followed shortly thereafter by maternal grandmother's cancer diagnosis. Mother missed appointments with the family preservation worker, was sometimes uncooperative and did not always follow through. Mother blamed DCFS for her problems. Mother wanted to reunify with K.P., and Kandace was willing to become K.P.'s Legal Guardian if reunification was not successful. In a Last Minute Information

For The Court, DCFS reported that mother denied a 15 year history of substance abuse, but admitted using methamphetamines in September and October 2011, after having not used drugs for 10 years. Mother also admitted drinking alcohol, but denied she had an alcohol problem.

At the adjudication hearing, K.P. testified that one of his sisters takes him to and from school. He stays at school until 9:00 p.m. to participate in extra-curricular activities; he did not tell the social worker that he does so to avoid going home. When he gets home, Jimmy usually makes food for him. Jimmy and his mother go out to a bar together three or four times a month; they come home after K.P. is in bed. K.P. has occasionally seen his mother under the influence of alcohol. She has never driven him when she has been under the influence. K.P. believes that mother is sometimes depressed, but does not believe her depression interferes with her ability to take care of him. When mother is depressed, she lays in bed for two or three days. K.P. feels safe in his mother's care.

Mother's counsel argued that, even if all the allegations against mother were true, DCFS had not met its burden of proving how K.P. was put at risk by the allegations of the petition: "We're at a situation where all the evidence presented before the court seems to indicate that [mother] is a functioning addict. Even if she's an addict, she's functioning. Her child goes to school. Her child is in band. He takes part in many extra-curricular activities. [¶] The department has not produced any evidence how he's neglected. He's going to school. He goes to the doctor. He's fed every day. The child indicates that he enjoys living with his mother. There is no evidence as to how [mother's] drug abuse has put this child at risk. [¶] . . . There is not evidence as to her mental health neglect puts this child at risk of any kind of abuse. She takes her medication. There is no evidence that because she's depressed she's not taking care of her son. [¶] . . . All the evidence suggests that even if she's using or testing positive, she's providing appropriate care for her son." K.P.'s counsel joined in mother's argument: "[K.P.] is being well taken care of. He's doing well both at home and at school, and I would ask that the petition be dismissed." But DCFS took the position that,

“[K.P.] is not being well taken care of. He is taking care of himself.” DCFS argued that the nexus between mother’s drug use and the risk to K.P. is supplied by section 300.2, which makes a substance abuse free home environment “a necessary condition for the safety, protection, physical and emotional well being of the child.”

The trial court sustained the amended petition, finding K.P. to be a person described by section 300, subdivision (b). Finding return to mother presented a substantial risk of danger to K.P.’s physical and emotional well-being, the court ordered K.P. remain placed with Kandace, on the condition that she not discuss the case with him and that K.P. participate in individual counseling. Mother timely appealed.³

DISCUSSION

A. *Substantial Evidence Supports the Jurisdictional Order*

Mother contends the jurisdictional finding was not supported by substantial evidence. She argues there was no evidence that K.P. was harmed by mother’s admitted substance abuse and mental health problems, nor was there any evidence of a risk of future harm. We find no error.

We begin, as always, with the standard of review. We must affirm the dependency court’s jurisdictional order if it is supported by substantial evidence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 575–575.) On appeal, “ ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

In relevant part, section 300, subdivision (b) allows the dependency court to take jurisdiction where 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 [the parent] to adequately supervise or protect the child . . . or by the inability of the parent or

³ Although K.P. joined mother’s argument at the adjudication hearing, he does not appeal from the jurisdictional or dispositional orders.

guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse The child shall continue to be a dependent child pursuant to this subdivision only as long as is necessary to protect the child from risk of suffering serious physical injury or harm.” Section 300.2 reads in part: “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.”

Dependency jurisdiction may be based on evidence that a parent has a substance abuse problem. (See *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022 [§ 300, subd. (b) jurisdiction cannot be based on single episode of parental conduct absent evidence that either parent “has an ongoing substance abuse problem”]; but see *In re J.K.*, *supra*, 174 Cal.App.4th at p. 1436 [§ 300, subd. (b) jurisdiction may be based on a prior incident of harm standing alone]; see also *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261 [same].) In *In re Alexis E.* (2009) 171 Cal.App.4th 438, the father's use of medical marijuana supported dependency jurisdiction where it was shown that father began using marijuana even before he had a prescription; by using it in the home he subjected the children to second hand smoke; his use had a negative effect on his demeanor towards the children and others; the psychiatrist who treated the father for major depression and recurrent and severe panic disorder and managed his prescription drugs, did not manage the father's use of medical marijuana use; and the literature on marijuana use states that one effect of such use is intense anxiety or panic attacks. (*Id.* at pp. 451-454.)

Here, the court's finding that mother had a 15 year history of substance abuse and was a current abuser of amphetamines, methamphetamines, marijuana and alcohol was supported by substantial evidence. It was undisputed that K.P. was born with a positive toxicology for methamphetamine. Although mother maintained she had not used drugs for 10 years, in 2011 she tested positive for methamphetamine several times and then stopped random drug testing. Her adult daughter characterized mother as a “functioning addict” and said she had been using drugs for as long as the daughter could remember.

Like the father in *Alexis E.*, although mother had a medical marijuana prescription valid from December 29, 2011 until December 28, 2012, there was evidence that she used marijuana before obtaining that prescription. Under *Alexis E.*, doing so constitutes substance abuse. There was also substantial evidence that mother abused alcohol, including K.P.'s statement that mother and Jimmy drove while under the influence. That mother's substance and alcohol abuse had an adverse effect on K.P. can reasonably be inferred from his statement to the social worker that he stayed at school from 7:00 a.m. until 9:00 p.m. to avoid having to deal with problems at home. The trial court was entitled to credit that evidence even though K.P. testified he never made this statement. (See *In re N.M.* (2011) 197 Cal.App.4th 159, 168 [on a claim of insufficiency of the evidence to support a jurisdictional finding, conflicts in the evidence are resolved in favor of the prevailing party].) This evidence was sufficient to support a finding that K.P. was harmed by mother's current substance and alcohol abuse, which in turn was sufficient to support dependency jurisdiction under section 300, subdivision (b).

Mother's reliance on *In re James R.* (2009) 176 Cal.App.4th 129 and *In re B.T.* (2011) 193 Cal.App.4th 685, 689, for a contrary result is misplaced. In both of those cases, there was evidence that the mothers drank beer, but no evidence that their drinking rendered them incapable of taking care of the children. Here, the evidence that mother sometimes stayed in bed for days at a time (which K.P. attributed to depression but may equally have been attributable to substance abuse), that Kandace and not mother transported K.P. to and from school each day, that Jimmy and not mother prepared meals for K.P., and that K.P. stayed at school to avoid going home, is sufficient to support a finding that mother's substance abuse rendered her incapable of caring for K.P.

Because we find evidence of mother's substance abuse sufficient to support jurisdiction under section 300, subdivision (b), we need not decide whether there is also substantial evidence to support the trial court's alternative jurisdictional findings based on mother's mental health issues. (See *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 ["When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the

juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence."].)

DISPOSITION

The order declaring K.P. a person described by section 300, subdivision (b) is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.