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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B240557

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK91814)

Plaintiff and Respondent,

v.

A.H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Margaret S. Henry, Judge. Affirmed.

Linda J. Vogel, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattl, County Counsel, James M. Owens, Assistant County Counsel, and Denise M. Hippach, Deputy County Counsel, for Plaintiff and Respondent.

A.H. (Mother) appeals from the juvenile court's jurisdictional and dispositional orders. She contends there is insufficient evidence to support the jurisdictional findings made under Welfare and Institutions Code section 300, subdivision (b).¹ We affirm.

BACKGROUND

On August 1, 2011, the Los Angeles County Department of Children and Family Services (DCFS) received a referral, alleging four-month-old L.P. (Minor) was being sexually abused by a maternal uncle, "would not stop crying" and had an "inflamed" navel. DCFS later determined the sexual abuse allegation was unfounded. DCFS did not detain Minor based on the allegations in the referral, but for other reasons, as explained below.

As set forth in the February 10, 2012 detention report, on August 2, 2011, a social worker and a police officer(s) visited the two-bedroom apartment where 18-year-old Mother and Minor lived with Minor's maternal grandfather and Minor's 21-year-old maternal uncle.¹ According to the social worker, Mother "appeared incoherent" and "had trouble following the conversation." The social worker "found it difficult to obtain information from [Mother] about the child."² Mother told the social worker she and Minor shared a bedroom. Minor and Mother slept in the same bed in a room the social worker described as "cluttered with clothing, luggage, and other effects, that were stacked in the room." The social worker told Mother Minor could not sleep in Mother's bed or in the cluttered bedroom. Mother and grandfather stated Mother and Minor would sleep in the other bedroom and they would purchase a crib the following morning. The

¹ Minor's father, D.P. (Father), was incarcerated during these dependency proceedings and is not a party to this appeal.

² Several months later, Mother told a social worker she was nonresponsive when the social worker came to investigate the referral because "she was shocked by the allegations" of sexual abuse.

social worker observed there was no formula in the home for Minor.³ The social worker requested Mother go to the store to purchase formula. When Mother returned from the store with the formula, the social worker “initiated a safety plan,” regarding Mother’s agreement to make other sleeping arrangements for Minor.

On August 4, 2011, the social worker returned to Mother’s home to check on Minor’s sleeping arrangements. Grandfather knocked on the door to Mother’s bedroom several times, but Mother did not respond. The social worker urged Mother to come out of the bedroom. Mother eventually complied. When she exited the room with Minor, Mother appeared to the social worker to be “disheveled and incoherent.” Mother did not respond when the social worker asked her if she had obtained a crib for Minor.

Grandfather explained the crib they had obtained “was broken on the sides.” The social worker “observed the crib which was dented on both sides, and posed a safety hazard for the baby.” The social worker told them Minor could not sleep in that crib, and asked if they needed assistance in obtaining another crib. Mother “shook her head no.”

According to the social worker, “Mother was unresponsive, and presented with a blank stare, [The social worker] attempted to engage the mother in conversation, and mother did not respond, and continued to stare at [the social worker], for the duration of the visit.” The social worker asked grandfather if he knew “what was going on with his daughter,” and he said he did not. The social worker called the Psychiatric Mobile Response Team (PMRT) to assess Mother’s mental state.

The same day, PMRT and police officers responded to Mother’s home. As reported by DCFS in the detention report, PMRT assessed Mother and determined she “suffered from seizures, had low cognitive functioning, and had previously received mental health services.” During the assessment, Mother “was unable to follow the discussion, and often appeared overwhelmed and frustrated.” According to DCFS, “Mother denied that she would harm herself, or others, and refused to go in for services,

³ A medical evaluation on August 5, 2011 showed Minor “was within normal weight and height limits” and had an umbilical hernia which was “asymptomatic.”

or further assessment.” Mother reported she was not currently receiving medical care for her seizures.

On August 4, 2011, after the PMRT assessment, DCFS initiated a Voluntary Family Reunification contract with Mother and placed Minor in foster care. In subsequent meetings with the social worker, Mother agreed to participate in parenting classes and individual counseling. She also agreed to submit to a mental health evaluation and a physical examination to determine the cause of her seizures.

On November 16, 2011, Mother participated in an “up-front” assessment with a marriage and family therapist intern to assess case issues and Mother’s need for services. The assessor had been trying to meet with Mother since September 2011, but Mother had failed to attend two previously-scheduled appointments. DCFS reported on the results of this assessment in the detention report. The assessor recommended Mother submit to a neurological evaluation for her seizure disorder, a psychiatric evaluation and psychological assessment/testing, and participate in individual therapy and parenting. The assessor’s diagnostic impression of Mother included Adjustment Disorder with Depressed Mood and Epilepsy. The assessor recommended Mother be evaluated for other mental and psychotic disorders, Asperger’s, and learning disabilities. Mother told the assessor she had a history of marijuana use, with her last use in September 2011.

According to the detention report, on January 19, 2012, Mother and Minor’s maternal grandmother participated in a meeting with DCFS personnel, including the new social worker who was assigned to the case on September 22, 2011. Grandmother informed DCFS Mother had petit mal seizures. Mother referred to her condition as “eye seizures.” The social worker learned from a public health nurse that petit mal seizures “include symptoms of eye blinking.” Grandmother also informed DCFS Mother had a learning disability and had received services in 2004 from the Department of Mental Health through the Los Angeles Unified School District. Grandmother stated Mother received social security income for her “learning disability.” DCFS continued to request Mother “see a neurologist for her seizures, have a psychological exam, and participate in individual counseling.” Mother told the social worker she would submit to an eye

examination for her seizures, but the social worker explained she needed a neurological examination.⁴ Mother agreed (again) she would submit to these examinations and enroll in individual counseling. Mother had started taking parenting classes on January 5, 2012 and was attending regularly.

After the January 19, 2012 meeting with DCFS, Mother signed a release allowing DCFS to obtain medical records from Mother's pediatrician. DCFS received the medical records on January 31, 2012. As reported in the detention report, Mother's last recorded medical visit was August 26, 2010, when Mother was 17 years old. In 2002, Mother was diagnosed with a seizure disorder and ADHD (attention deficit hyperactivity disorder). The medical records indicate Mother's seizure disorder was "probably petit mal." Mother underwent an EEG (electroencephalogram) in February 2002, and the doctor reported the results as follows: "Abnormal EEG showing evidence [of] seizure activity. Recommend the use of high dosage anti-convulsant therapy if clinically indicated." In 2003, Mother's pediatrician prescribed Zarotin, a medication to treat her seizures. According to DCFS, Mother's current medical condition was unknown. DCFS reported Mother "could not tell [the social worker] the last time she had a seizure."

Due to Mother's failure to comply with her voluntary family reunification case plan, on February 6, 2012, DCFS obtained a court order authorizing Minor's removal from Mother's custody. On February 10, 2012, DCFS filed a dependency petition under section 300, subdivision (b), alleging Mother's seizures, mental and emotional problems (Adjustment Disorder with Depressed Mood), failure to obtain medical treatment for these conditions, and history of marijuana use endangered Minor and placed Minor at risk of harm. Neither Mother nor Father attended the detention hearing. The juvenile court ordered Minor detained from her parents' custody and ordered reunification services and monitored visitation for Mother and Father (once he was out of custody). Father was in county jail, and the juvenile court ordered him to be brought out for the next hearing.

⁴ As reported in DCFS's March 23, 2012 interim review report, the doctor's office where Mother scheduled an eye examination informed the social worker "eye seizures do not exist."

On March 9, 2012, DCFS filed a first amended dependency petition under section 300, subdivision (b), including the same allegations against Mother as those in the original petition, and adding an allegation about Father's "extensive criminal history of convictions including but not limited to absconding from parole, assault with a deadly weapon and criminal threats for which he is currently incarcerated."⁵

Also on March 9, 2012, DCFS filed a jurisdiction/disposition report. In it, DCFS reported on the social worker's March 2, 2012 interview with Mother. Mother denied she had seizures while taking care of Minor. She admitted she had a seizure two months before the interview, while Minor was in foster care. Mother did not go to the doctor because the seizure "wasn't that bad." She was not taking medication and was not under a doctor's care for the seizures. According to Mother, "[s]harp objects and being around a lot of people" caused her seizures. Mother described her seizures as follows: "They last for at least 15 minutes. I don't drop anything, but things like slow down. It's like when you wake up in the morning and your eyes blink a lot. That is kinda what it is like when I have a seizure, when it is over I still remember what I was doing." Mother believed she could take care of Minor notwithstanding the seizures.

During the same interview, Mother admitted she was depressed, but stated the only reason she was depressed was because Minor was removed from her care. Mother stated she planned to submit to a mental health assessment. Mother also stated she started smoking marijuana in 2009 and last used it one or two times in January 2012. Mother denied she smoked marijuana in Minor's presence, but admitted she would take care of Minor after she finished smoking. Mother also denied current marijuana use, but

⁵ On March 23, 2012, DCFS submitted a last minute information for the juvenile court, setting forth information about Father's criminal history. Father's parole agent informed DCFS Father was incarcerated because he violated his parole in July 2011 by absconding and then assaulting his step grandfather with a knife and making criminal threats against his step grandfather. This was Father's second parole violation after Father was released from prison and placed on parole in June 2011. Father was due to be released from custody and placed back on parole on April 18, 2012.

stated she would smoke it again in the future after Minor was returned to her custody. Mother missed a drug test in February 2012.

On April 5, 2012, the date of the adjudication/disposition hearing, DCFS submitted to the juvenile court the November 28, 2011 report from the up-front assessment conducted by a marriage and family therapist intern on November 16, 2011.⁶ The intern stated her impressions, in pertinent part, as follows: “[Mother] was calm, relaxed and cooperative during the interview. She also exhibited traits of catatonic behaviors (sitting still, gazed look and incoherence [sic]). She appear[ed] to be incoherent during some moments of the interview, looking gazed [sic] with prolong[ed], unfocused, eye contact. [Mother] would be hesitant and halting when responding to some questions. She was articulate, but soft spoken. She smiled during some moments of the interview, but she mostly presented with a flat and gloomy affect with disorganized speech. . . . She denied being depressed and or anxious, but she did mention that she is sad to not being [sic] able to wake up with her daughter. She reported to be[ing] healthy and she stated that she has ““Eye Seizures.”” The juvenile court received this document into evidence at the adjudication/disposition hearing, along with DCFS’s other reports described above.

DCFS also submitted to the court on April 5, 2012 an excerpt from the Diagnostic and Statistical Manual of Mental Disorders regarding Adjustment Disorder with Depressed Mood, which provides in pertinent part: “The essential feature of an Adjustment Disorder is a psychological response to an identifiable stressor or stressors that results in the development of clinically significant emotional or behavioral symptoms.” The depressed mood subtype “should be used when the predominant manifestations are symptoms such as depressed mood, tearfulness, or feelings of hopelessness.” The juvenile court took judicial notice of this excerpt.

⁶ DCFS previously reported to the court about this assessment in the February 10, 2012 detention report, as discussed above.

Mother appeared and testified at the April 5, 2012 adjudication/disposition hearing. She stated she received mental health services in 2004 for grand mal and/or petit mal seizures. She was prescribed the medication Depakote to treat the seizures. She stopped taking the medication more than five years before the date of the hearing because her seizures had stopped and her pediatrician's nurse told her she could stop taking the medication. Mother testified she last had a seizure two months before the hearing. She stated she had only had that one seizure in the last year and did not have any seizures during the time Minor was in her care. In the "past," she would have seizures once a week. Mother described her seizures as follows: "My eyes close for like five seconds. And I go back to what I was doing. I don't really know how to explain it." When Mother told a social worker her seizures lasted for 15 minutes, she meant the seizures she had when she was younger. This year, the duration of her seizures went down to five seconds. Mother admitted she did not know what was going on around her during a seizure. Mother stated she received social security income for a "learning disability" she described as "slow reading." Mother denied she was depressed.

Father, who was still incarcerated in county jail, appeared at the hearing and testified. Father stated he was incarcerated for violating his parole by making criminal threats. He was on parole after serving jail time for felony residential burglary. Father stated he was due to be released from custody on April 23, 2012.

The social worker who prepared the March 9, 2012 jurisdiction/disposition report and the March 23, 2012 interim review report also testified at the hearing. She testified Mother denied she had a seizure during the time Minor was in her care, and DCFS had no evidence indicating otherwise. She also testified Mother told her the reason she was depressed was because Minor was removed from her custody.

The juvenile court heard argument from all parties. DCFS's and Minor's counsel commented on Mother's demeanor. DCFS's counsel stated: "And I know the record doesn't reflect, I know the court observed it, but I think the same difficulties in answering the questions and the same mannerisms of someone who is either depressed or has some kind of mental health issues was the same concern back in August as it would be today

for the Department. [¶] And I know the court observed how the mother testified. And I just want to point out for the record at least, in county counsel's opinion that, you know, she [sic] a lot of the behavior explained in the report is the type of behavior you saw today when she was testifying." Minor's counsel stated: "I think it's clear to everyone who observed Mother's testimony today, that she's not fine."

The juvenile court commented, when Mother testified, she exhibited behaviors noted in the report from the up-front assessment—incoherence, unfocused eye contact, hesitant and halting responses to questions. The court stated: "This all describes exactly how she was on the stand today. Sometimes, she [would] come out with sentences that made perfect sense. And then she would answer a question that I knew she didn't mean to answer that way, it made no sense that she was answering that way. It was just like there would be pauses, it was like she went somewhere else. And I do think she clearly has a condition, and that it is a danger to her child."

The juvenile court struck the allegation regarding Mother's history of marijuana use (b-3).⁷ The court sustained allegation b-1, which states: "From 4/13/2011 through 8/26/2011, the child[']s . . . mother . . . placed the infant in a detrimental and endangering situation in that the mother suffered from ongoing seizures, while the child was in the mother's care and supervision. The mother failed and refused to obtain necessary medical treatment and medication for the mother's condition. Remedial services failed to resolve the family problem in that the mother continued to provide care of the child, while suffering seizures. Such a detrimental and endangering situation established for the child by the mother endangers the child's physical health and safety and places the child at risk of harm, damage and danger."

The court also sustained allegation b-2, which states: "The child[']s . . . mother . . . has mental and emotional problems, including a diagnosis of Adjustment Disorder with Depressed Mood, which renders the mother unable to provide regular care of the

⁷ Because the court struck this allegation, we did not set forth above the evidence presented at the adjudication/disposition hearing regarding Mother's marijuana use.

child. The mother failed to obtain mental health treatment for the mother's condition. Remedial services failed to resolve the family problems in that the mother's mental health condition remains untreated. Such mental and emotional condition on the part of the mother endangers the child's physical health and safety and places the child at risk of physical harm and damage."

The court further sustained allegation b-4, which states: "The child[']s] . . . father . . . has an extensive criminal history of convictions including but not limited to absconding from parole, assault with a deadly weapon and criminal threats for which he is currently incarcerated. The child's father[']s] criminal history and conduct endangers the child's physical safety and emotional well being and creates a detrimental home environment, placing the child at risk of physical and emotional harm and damage."⁸

The juvenile court declared Minor a dependent of the court and ordered her removed from her parents' custody. The court ordered monitored visitation and reunification services for Mother and Father. Mother's court ordered case plan included parenting, individual counseling, a mental health evaluation and a medical appointment to address her seizures.

DISCUSSION

Mother contends none of the allegations the juvenile court sustained is supported by substantial evidence. We disagree.

""When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]""

⁸ Given our conclusion below that jurisdiction is proper based on the allegations sustained against Mother, we need not review whether the juvenile court properly sustained the allegation against Father regarding his criminal history and incarceration. Father is not a party to this appeal.

[Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258-1259.)

Jurisdiction under section 300, subdivision (b), is appropriate where “[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 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.” (§ 300, subd. (b).)

Substantial evidence in the record demonstrates Mother had an ongoing issue with seizures. She had a seizure two months before the adjudication/disposition hearing. During a seizure, Mother did not know what was going on around her. Mother stopped taking medication to control her seizures and stopped going to the doctor to monitor her condition years before the adjudication/disposition hearing. During the eight-month period between the referral and the adjudication/disposition hearing, social workers, PMRT, an up-front assessor, DCFS’s counsel, Minor’s counsel and the juvenile court all observed Mother’s incoherence, difficulty answering questions and blank stares.

When a social worker visited Mother’s home to investigate the referral, Mother did not have any formula in the home for Minor or what the social worker deemed to be an appropriate place for Minor to sleep. As the social worker explained to Mother what DCFS believed Mother needed to do to protect Minor—obtain an appropriate crib—it did not appear to the social worker that Mother was following the conversation. At the follow-up visit a few days later, Mother was nonresponsive as grandfather knocked on her bedroom door and the social worker urged her to come out of the room with Minor.

Even when Mother emerged with Minor, she was still nonresponsive and incoherent. Mother had not secured a safe crib where her infant could sleep.

In August 2011, Mother consented to a voluntary reunification contract and Minor's initial placement in foster care. DCFS asked Mother to have her physical and mental health evaluated. Mother continually told DCFS she would submit to the evaluations. By April 2012, Mother still had not submitted to the evaluations. (Cf. *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1079 ["Kimberly has a major mental illness but manages it with medication and psychiatric and psychological supervision. The health professionals believe she is committed to sobriety and can adequately parent Arthur. Her psychologist described Kimberly as a loving and concerned parent. Harm to a child cannot be presumed from the mere fact the parent has a mental illness"].)

At the time of the April 5, 2012 adjudication/disposition hearing, there was a substantial risk Minor would suffer serious physical harm or illness as a result of Mother's failure or inability to adequately supervise or protect Minor, within the meaning of section 300, subdivision (b), based on Mother's medical history and her behavior during interviews with social workers, PMRT and the up-front assessor and at the hearing. For at least 10 years, Mother had been having seizures which caused her to lose awareness of her surroundings. Mother refused to have a doctor monitor her condition. Moreover, Mother frequently presented as incoherent and nonresponsive. She refused to have her mental health evaluated. It was evident Mother had physical and mental conditions which rendered her unable to provide regular care for an infant. The trial court did not err in sustaining allegations about Mother's seizures (b-1) and mental and emotional problems (b-2).

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.