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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

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

B241080

(Los Angeles County
Super. Ct. No. CK91811)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

ANTHONY S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite D. Downing, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Appellant Anthony S. (father) appeals from the juvenile court’s jurisdictional and dispositional orders establishing dependency jurisdiction over his daughter Samantha (born May 2010) and requiring him to submit to random drug testing as part of his reunification plan. Father contends substantial evidence does not support the juvenile court’s jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b)¹, that past instances of domestic violence between him and Samantha’s mother, Laura C. (mother),² placed Samantha at current substantial risk of serious physical harm. Father further contends the court abused its discretion by ordering him to submit to random drug testing because there was no evidence that he had any substance abuse problem.

Substantial evidence supports the juvenile court’s jurisdictional findings, and the juvenile court’s drug testing order was not an abuse of discretion. We therefore affirm the juvenile court’s orders.

BACKGROUND

Detention and section 300 petition

On January 31, 2012, West Covina Police Officer Flamenco contacted the Department of Children and Family Services (the Department) and informed the Department’s social worker that police officers had served and executed a search warrant at the home in which Samantha resided with her mother, maternal grandmother, mother’s boyfriend Robert O., minor siblings Destiny (age 5), Cruz (age 6), and Adam (age 17), and adult siblings Gabriel and Alexander. Officer Flamenco reported that the home was a known gang location and had been the subject of many criminal investigations involving various family members over the years. Previous law enforcement related searches of the home had yielded narcotics, weapons, and gang paraphernalia. During the January 31, 2012 search, officers recovered a firearm and ammunition. Adult sibling Gabriel told police officers that a “homie” had brought the firearm to the home after

¹ All further statutory references are to the Welfare and Institutions Code.

² Mother is not a party to this appeal.

gunshots were fired at the home. The adult siblings and mother's boyfriend were arrested on weapons possession charges.

Mother had a lengthy child welfare history consisting of numerous referrals between 1998 and 2011 for mother's substance abuse, and for physical and sexual abuse of an older child by one of mother's male companions. A referral had been generated in June 2010 after Samantha was born prematurely and mother admitted to using methamphetamine during her pregnancy. That referral was closed after the allegation of general neglect was found to be inconclusive.

On January 31, 2012, the Department's social worker spoke with mother, who identified father as Samantha's father and provided an address for him. Mother agreed to submit to an on-demand drug test that day and tested positive for methamphetamine.

On February 2, 2012, the social worker again spoke with mother, who admitted using methamphetamine in the past but denied doing so currently. Mother said that father was in contact with Samantha and that the child has gone "back and forth" between mother's home and father's. Mother further stated that Samantha had lived with father for a time when mother was unable to care for the child, and that mother "[j]ust recently . . . got [Samantha] back." She said that father "always" willingly returned Samantha to her care.

Mother admitted to "a couple incidents" of domestic violence with father, that involved "[p]ushing, shoving, [and] throwing stuff" while Samantha was present. When asked about the number of domestic incidents with father, mother replied "[one] time he pushed the dresser on me and the [second] time, he kicked the 'A/C' . . . I'd say [four] different times."

On February 3, 2012, the social worker interviewed minor siblings Cruz and Destiny at their school. Both children were wearing dirty clothing and appeared not to have bathed for several days. Destiny told the social worker that the maternal grandmother and adult sibling Gabriel both hit her "sometimes," Gabriel with a belt and the grandmother with a stick. When asked whether she had seen any of the adults hit one

another, Destiny responded “[o]nly my brother [Gabriel] and his girlfriend.” The child later disclosed that she had seen Robert O. push mother into the garage.

The Department detained Samantha, Cruz, and Destiny on February 7, 2012. On February 10, 2012, the Department filed a section 300 petition on behalf of the three children alleging that they were at risk of harm because of domestic violence between mother and Robert O., domestic violence between mother and father, domestic violence between Gabriel and his female companion, physical abuse by Gabriel and the maternal grandmother, the presence of a firearm in the home and within access of the children, gang activity and gunshots being fired at the home, medical neglect, and mother’s substance abuse.

At the time of the February 10, 2012 detention hearing, the Department had been unable to locate father at the address mother had provided. The juvenile court found father to be an alleged father and ordered the Department to make efforts to locate him. The juvenile court further ordered Samantha, Cruz, and Destiny detained in foster care and then continued the case for a pretrial resolution conference.

Father appeared at the March 16, 2012 pretrial resolution conference and provided the juvenile court with a signed statement requesting presumed father status for Samantha. Father’s counsel asked the court to release Samantha to father’s care. The juvenile court did not change its alleged father finding but gave the Department discretion to liberalize father’s visits and to release Samantha to his care.

Jurisdiction and disposition

In April 2012, the Department reported that its social workers had met with father on March 7, 13, and 14, 2012. Father had agreed to submit to an on-demand drug test on March 14, 2012, and the test results were negative. Father expressed his willingness to submit to juvenile court jurisdiction and to do whatever was necessary to obtain custody of Samantha. He was visiting with Samantha every Friday from noon to 3:00 p.m. at a McDonald’s.

Father had a criminal history that included theft, receipt and possession of stolen property, and possession of tools for burglary. He was on probation until September 16, 2013.

Father lived with his mother in one bedroom of a home they shared with several other families. The room in which father and his mother resided had a bed, closet, bathroom, microwave, and a food supply. Father said he sleeps on the floor. The social worker advised father that if he were to gain custody of Samantha, the child would need appropriate sleeping quarters. Father responded that he would look for a larger apartment.

Father told the social worker that mother was a long-time methamphetamine user and that mother's boyfriend, 17-year-old son, and adult children also used drugs. Father admitted using methamphetamine in the past as a young adult, but found it to be "a waste." He said he had recently enrolled in an anger management program that was scheduled to begin on April 3, 2012.

Father denied using drugs and alcohol and denied engaging in domestic abuse. Regarding the allegations of domestic violence with mother, father stated: "The spousal abuse -- it's all the opposite. She was hitting me. This happened when Sam was barely born in, in early June 2010. All the kids were in my truck when that happened. Another one happened when I was visiting at the mall, and she kidnapped my daughter."

The social worker spoke with Cruz and Destiny on March 19, 2012. Cruz reported witnessing verbal altercations between mother and Robert O. and physical altercations between adult sibling Gabriel and his girlfriend. Cruz also reported that the last time he saw father, "I seen him kick at my mom's window at the house. I saw him kick the fan." Destiny reported seeing Gabriel hit his girlfriend and mother and Robert O. "push and pull themselves" but denied seeing father and mother fight.

The Department's investigator interviewed mother on March 12 and 13, 2012. When asked about the domestic violence allegations concerning father, mother stated: "The one with [father] happened, but it was right after the baby was born -- it was in my room. He has a really short temper. He never hit me. He would throw stuff. He would

kick the air condition[er]. The kids didn't see it. He would throw fits and kick stuff.” Mother also told the investigator, “[Father] doesn't do drugs, but he has a gang background, and so do I -- West Covina 13. But I don't think he's active.”

Father was incarcerated for burglary at the time of the April 24, 2012 combined jurisdictional and dispositional hearing but was present at the hearing in custody. He had not provided the Department with information confirming his enrollment in any programs.

Pursuant to the terms of a mediation agreement entered into by mother and the Department, the juvenile court sustained amended counts in the section 300 petition alleging that a sawed-off rifle had been discovered in the children's home within their access, the children were exposed to gang activities even after gunshots had been fired at the home, mother had an unresolved history of substance abuse, and the children were exposed to domestic violence between mother and Robert O. and Gabriel and his female companion.

After adjudicating the allegations of the section 300 petition that concerned mother, the juvenile court addressed count b-5, the sole count that applied to father, alleging domestic violence between mother and father.³ Father's counsel and Samantha's counsel both argued that count b-5 should be dismissed because the domestic violence incidents that occurred between mother and father were remote in time. Father's counsel further argued that there was “no nexus between history and any current risk,” and advocated addressing father's issues in anger management and parenting classes.⁴

³ The Department agreed to dismiss an identical count pled pursuant to section 300, subdivision (a).

⁴ The record on appeal did not contain a copy of the amended petition, including amended count b-5. The copy of the section 300 petition included in the record contains the handwritten notation, “AMEND” next to count b-5 but does not include any amended language. The unamended language of count b-5 states: “The child Samantha Y. [S.]'s mother, Laura [C.] and father Anthony [S.], have a history of engaging in violent altercations, in the children's presence. On a prior occasion, the father pushed a dresser onto the mother. On a prior occasion, the father kicked objects in the child's home. Such

The juvenile court stated that it would amend count b-5 to state that there were “unresolved issues of physical violence, since it is historical in nature” and sustained the count as amended. The court then declared Samantha, Cruz, and Destiny to be dependents of the court, and ordered them removed from their parents’ custody and suitably placed. Father was accorded family reunification services and ordered to participate in a parenting program and individual counseling to address domestic violence. The juvenile court further ordered father to produce six random on-demand drug tests and to complete a rehabilitation program if he missed any tests or produced a positive test. The court stated that father could complete the anger management programs in which he was currently enrolled and ordered him to comply with the conditions of his probation and parole, if applicable.

Father’s counsel objected to the drug testing requirement and asked the juvenile court for the basis of its drug testing order. The court responded: “I don’t know what else is going on in his criminal case. I don’t know the grounds of why he was stopped. I know he’s in custody for burglary. I don’t know if drugs are involved. [I] have very [little] information other than the fact that he’s currently incarcerated.”

This appeal followed.

DISCUSSION

I. Standard of Review

We review the juvenile’s court’s jurisdictional findings under the substantial evidence standard. (*In re David M.* (2005) 134 Cal.App.4th 822, 829; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court’s conclusions, resolve all conflicts in the evidence, and make all reasonable

violent conduct on the part of the father against the mother endangers the child’s physical health and safety and places the child at risk of physical harm, damage and danger.” The Department’s counsel attempted to obtain the amended petition by filing a letter with the juvenile court clerk pursuant to California Rules of Court, rule 8.340 notifying the clerk that a portion of the record was missing. The juvenile court clerk filed a supplemental clerk’s transcript containing a clerk’s certificate informing the parties that it was unable to locate the amended petition, including amended count b-5.

inferences from the evidence in support of the court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We review the juvenile court's dispositional orders for abuse of discretion. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

II. Jurisdictional Findings

Father contends the juvenile court's jurisdictional findings regarding domestic violence under section 300, subdivision (b) should be reversed because they are unsupported by substantial evidence. We advised appellate counsel that the record did not include a copy of the amended petition, including amended count b-5, and that we accordingly could not adjudicate father's challenge to the juvenile court's jurisdictional findings. We granted the parties an opportunity to file supplemental letter briefs.

In response, father's counsel filed motions to augment the record to include the reporter's transcript of hearing to settle the record held in the juvenile court on November 15, 2012, and a copy of the juvenile court's minute order setting forth the language of amended count b-5 of the petition. The amended count b-5 states: "The child Samantha [S.]'s mother . . . , and father . . . , have an unresolved issue of physical violence. On a prior occasion, the father pushed a dresser onto the mother. On a prior occasion, the father kicked objects in the child's home. Such violent conduct on the part of the father against the mother endangers the child's physical health and safety and placed the child at risk of physical harm, damage, and danger." We granted father's motions to augment the record on appeal.

The Department contends we need not address father's sufficiency argument based on count b-5 because jurisdiction over Samantha exists based on mother's conduct alone. In support of its position, the Department relies on *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, and *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127 for the proposition that a reviewing court can affirm the juvenile court's finding of jurisdiction over a child if any one of the statutory bases enumerated in the petition is supported by substantial evidence. In the instant case, because count b-5 is the only allegation in the petition that involves father, we are not persuaded by the Department's argument that we should refrain from addressing the merits of father's appeal.

There is evidence in the record that father and mother had a history of domestic violence. Mother stated there were at least four incidents of domestic violence involving father, including one in which he pushed a dresser on top of her. Father admitted to two incidents of domestic violence with mother, although he claimed both incidents occurred more than two years ago and mother was the one hitting him. Six-year-old sibling Cruz said that the last time he saw father, father “kick[ed] my mom’s window at the house” and “kick[ed] the fan.” There is no evidence that father’s domestic violence and anger management issues were ever resolved. Father claimed to have enrolled in an anger management program scheduled to begin on the day before the April 4, 2012 jurisdiction/disposition hearing; however, he did not provide any evidence of his enrollment at the time of the hearing.

Substantial evidence supports the juvenile court’s jurisdictional findings as to father.

III. Drug Testing Order

Father challenges the sufficiency of the evidence supporting the juvenile court’s drug testing order. He claims there was no evidence that he had a substance abuse problem or that his substance abuse was a condition leading to Samantha’s removal from his custody. He cites *In re Basilio T.* (1992) 4 Cal.App.4th 155, as support for his position. That case, however, is distinguishable. In *Basilio T.*, the children were removed from their parents custody as the result of domestic violence. (*Id.* at pp. 161-162.) The social worker observed that the mother behaved somewhat unusually and was obsessed with a fortune telling invention. There was nothing in the record, however, to indicate that either parent had a substance abuse problem. (*Id.* at p. 172.) In the instant case, father admitted being a past user of methamphetamine, a highly addictive drug. Although father denied being a current user of drugs, and his criminal record included no drug-related offenses, he had been arrested and convicted of several theft offenses and was incarcerated at the time of the disposition hearing for a burglary offense. The juvenile court expressed concern about the causes and circumstances of father’s theft-related offenses in light of his admitted past drug use. The juvenile court has broad

discretion to make virtually any order necessary for the well-being of the dependent child. (§ 361.2, subd. (b)(2); *In re Sergio C.* (1999) 70 Cal.App.4th 957, 960.) The juvenile court also has discretion to determine which services are appropriate for the care, supervision, custody, conduct, maintenance, and support of the child. (§ 362, subd. (a).) A juvenile court's dispositional orders for the reunification plan are reviewed for abuse of discretion. (*In re Christopher H.*, *supra*, 50 Cal.App.4th at pp. 1006-1007.) Under the abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) In light of father's admitted past drug use, the juvenile court's order requiring father to submit to six random drug tests and to enroll in a rehabilitation program in the event of a missed or positive test was not an abuse of discretion.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD