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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re S.F. et al., Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.F.,

Defendant and Appellant.

B242774

(Los Angeles County
Super. Ct. No. CK93301)

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

Julie E. Braden, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County
Counsel, Stephen D. Watson, Associate County Counsel.

M.F. (mother) appeals jurisdictional findings and dispositional orders made with respect to her four children, 17-year-old S.F., 14-year-old C.F., 12-year-old N.F., and 10-year-old P.F. Mother contends the juvenile court lacked substantial evidence to sustain a non-detained petition alleging neglect of the children within the meaning of Welfare and Institutions Code section 300, subdivisions (b).¹ We reject mother's contentions and affirm the orders under review.

FACTS AND PROCEDURAL BACKGROUND

1. Events leading to the filing of the non-detained petition.

The family's child welfare history, set out in the detention report, commenced in January of 2007, with a referral from a mandated reporter indicating three of the four children consistently were tardy or absent from school, their skin, hair and clothing were not clean, and the home had inadequate food. Mother stated she could not control the children or get them to attend school. The referral was closed as inconclusive.

In February of 2010, a referral from a mandated reporter indicated the family had completed the School Attendance Review Board (SARB) process and the case had been referred to the District Attorney. However, the two youngest children continued to arrive hours late for school. Also, although mother had been provided referrals, C.F. still attended school in a dirty and unkempt condition. As a result of this referral, the parents were provided voluntary family maintenance services.

On October 14, 2010, a mandated report indicated N.F. and P.F. had missed ten days of school and mother made excuses for their failure to attend, including stating S.F. failed to take them to school or mother had to clean the house. The reporting party indicated the children were willing students but could not read. The referral was closed as substantiated.

¹ Subsequent unspecified statutory references are to the Welfare and Institutions Code.

On March 8, 2011, the voluntary family maintenance contract was terminated because the children were attending school and it appeared the hygiene issues had been mitigated. However, the case worker indicated mother made excuses and needed significant prompting to comply with services.

On November 23, 2011, a referral alleged N.F. and P.F. had serious truancy issues and head lice. This referral was “evaluated out.”

On January 31, 2012, the Department received the instant referral alleging general neglect. The reporting party stated P.F. and N.F. had been arriving at school with head lice since the start of the school year in September of 2011. On January 24, 2012, the school secretary purchased lice shampoo and delivered it to the family’s home. The next day, the children returned to school with live lice crawling in their hair, causing other students discomfort. The children were sent home and had not returned.

On the evening of February 6, 2012, a social worker visited the family’s one-bedroom home. The home had adequate food and was moderately clean. The children slept on a bed and a bunk bed in the bedroom with covers but no sheets; mother and father slept on a mattress in the living room. Mother had considerable trouble rising from the mattress, as if she were in pain. Mother denied neglect of the children and stated the family did not have money for detergent or lice shampoo. Mother showed the social worker the shampoo the school had purchased but indicated, “the children have a lot of hair.” Mother stated she takes the children to school, which is 10 minutes away, but admitted the children often were late because they are hard to awaken. Mother indicated she has a condition which causes hemorrhaging, bloating and swelling two weeks before the onset of her menstrual cycle and she is bedridden for nine days at a time due to this condition. Mother reported the family was having financial problems and the gas had been turned off. Father perpetrated domestic violence against mother in 2006, but it was not a current issue.

C.F., N.F. and P.F. all reported bathing daily and having clean laundry. S.F. said he and his siblings did laundry due to mother's physical condition. S.F. also indicated he sometimes is late for school because he takes his siblings to school. N.F. and P.F. made excuses regarding their poor school attendance, including a lack of clean clothes.

On February 1, 2012, the school referred mother to El Centro Del Pueblo. Mother appeared at the agency that day but failed to return for an intake interview. The El Centro counselor indicated mother previously had been referred to the agency but complied only when she had been "backed into a corner."

On March 5, 2012, the social worker made an unannounced visit. Mother was in pain and father indicated he would ensure the children attended school on a daily basis. However, the Department continued to receive reports of ongoing hygiene and truancy issues with respect to P.F. and N.F. On March 9, 2012, the social worker made another unannounced visit and found the home much cleaner but P.F. and N.F. said they had cleaned it. Mother stated the children did not attend school that day because mother forgot to wake them and mother had to go to court to fight eviction. P.F. said she did not go to school because she forgot to wash her clothes. N.F. said she was supposed to visit the doctor that day but did not. When the social worker confronted mother regarding the children's poor school attendance, mother cried and said she was experiencing stress due to her medical condition, the pending eviction and because S.F. fainted on January 31, 2012, possibly due to epilepsy or a tumor.

The social worker noted a school attendance log indicated P.F. and N.F. are either late or absent on a weekly basis and, when the issue is addressed with mother and father, they make excuses. On March 15, 2012, P.F. was 30 minutes late and her shirt was "filthy." On March 18, 2012, P.F. arrived at school without having bathed over the weekend. On March 23, 2012, P.F.'s teacher reported the child "smelled of something very unpleasant, something like urine." N.F. and P.F. reported there was no gas or electricity in the home.

The school principal indicated the family would be referred to SARB to address persistent truancy issues. Also, N.F. and P.F. had hygiene and truancy issues at the two schools they previously attended and mother became volatile when she was criticized by school staff at the prior school. S.F.'s current school counselor said S.F. would not graduate due to numerous absences and poor grades.

On March 23, 2012, the social worker interviewed S.F.'s doctor who reported S.F. fainted sometime in January and was taken to the emergency room where the parents were instructed to follow up with his primary physician in a couple of days. However, mother did not take S.F. to the doctor for more than a month. The doctor indicated an EEG had been approved to determine if the child had a seizure or some other condition. The doctor's assistant, Rita Soriano, indicated mother took S.F. for an EEG on March 26, 2010, and it was normal. Soriano advised the social worker it appears S.F. had a seizure due to marijuana use, which is very uncommon.

The medical assistant to N.F.'s doctor, Stella Gomez, indicated N.F. recently had been in the office complaining of abdominal pain and mother was instructed to return with the child for a urinalysis to rule out a urinary tract infection. However, mother failed to return and told Gomez she did not have time to bring the child to the office. Gomez advised mother the infection, if left untreated, could spread to N.F.'s kidneys.

Mother told the social worker the school was out to get her and mother did not follow through with the urinalysis for financial reasons.

The detention report concluded N.F. and P.F. had persistent hygiene and truancy issues which have had an adverse impact on their education, and the parents had failed to follow through on medical issues affecting S.F. and N.F.

On May 2, 2012, the Department filed a non-detained petition which alleged mother and father: (1) failed to obtain timely necessary medical treatment for S.F. after he suffered a seizure in January of 2012; (2) failed to obtain recommended medical treatment for abdominal pain N.F. experienced in March of 2012; and, (3) failed to obtain necessary medical treatment for N.F. and P.F., resulting in recurring head lice.

At the detention hearing, the juvenile court released the children to mother and father and ordered the Department to provide family maintenance services.

2. Jurisdiction report.

The jurisdiction report filed May 31, 2012, indicated that, during an interview two weeks earlier, mother told the social worker that on January 31, 2012, her adult daughter brought S.F. home after he fainted at a friend's house. Once home, S.F. had no complaints and mother did not take him to the hospital. However, three days later, S.F. complained of dizziness, lack of vision and chest pains. Mother took S.F. to the emergency room and was told to take S.F. to his family doctor. Mother claimed she did so the following week and the doctor ordered tests to rule out epilepsy or a tumor. They had to wait for Medi-Cal to approve the test and S.F. was examined by a neurologist immediately after mother was informed it had been approved.

However, the medical assistant to S.F.'s doctor, Soriano, stated mother made an appointment for S.F. on February 23, 2012, but did not appear. Mother and S.F. walked into the office for an examination on March 1, 2012. When the doctor reviewed a form completed by S.F., not mother, which indicated S.F. had suffered a seizure, the doctor ordered urinalysis and blood tests. On March 26, 2012, after the doctor had obtained the results of these tests and authorization for an EEG, mother was instructed to schedule an EEG examination.

In a supplemental report, the Department noted S.F. underwent an EEG on March 26, 2012, which was normal. The neurologist opined S.F. had suffered “one seizure vs syncope as reaction to Marijuana use.”

With respect to N.F., mother said she did not take N.F. for a urinalysis because mother lost the paperwork the doctor had given her and she did not return to the office for new forms because she did not want to be “scolded” by the doctor. Mother also stated N.F.’s abdominal pain was due to N.F.’s menstrual cycle. Mother asserted she suffers from the same monthly pain and N.F. had not complained of pain since the day mother took her to the doctor.

Medical assistant Soriano indicated the doctor ordered a urinalysis for N.F. but mother never returned with the child to complete the examination. Soriano said the urinalysis remained necessary.

Regarding N.F. and P.F.’s head lice, mother indicated the children got lice at their two previous schools, and there had been three infestations at their current school, which mother believed were related. Mother claimed she would eliminate the lice with shampoo and anti-lice treatments whenever the school notified her of an infestation. Recently, mother used the shampoo provided by the school, gel, a comb and a spray but the next day the children still had lice. Mother kept the girls out of school for the rest of the week, cut their hair to make it easier to examine their heads and claimed the children do not now have head lice.

A Last Minute Information form filed July 6, 2012, indicated S.F. recently told the social worker that in January of 2012, he passed out from a “head rush” after smoking marijuana at a friend’s house. When the “head rush” recurred every time he attempted to stand, his friends called his adult sister who took him home. S.F. felt better when he got home and told his family he did not need to go to the hospital. Two days later, S.F. went to the hospital but the doctor found nothing wrong. S.F. claimed he went to his family doctor the following Monday and was referred to a specialist. S.F. recalled all of these things occurred in February.

N.F. told the social worker the abdominal pain for which she went to the doctor stopped after three weeks. She was supposed to return to the office, but never did. On July 5, 2012, N.F. again experienced pain on her left side. Mother told N.F. she would take the child to the doctor the next day if the pain persisted. However, the pain subsided.

S.F. said mother consistently used lice shampoo but the girls have had an ongoing problem with lice for the last three years. N.F. said she got lice from a friend and the lice never fully disappeared. Mother used lice-killing shampoo on N.F. the day before the interview but did not comb the lice out. Mother said the lice would fall out when N.F. showered and claimed the children no longer had head lice. P.C. stated mother uses lice killing shampoo on her “but not all the lice die.”

3. Adjudication and disposition.

On July 6, 2012, after receiving the social reports into evidence and hearing the argument of the parties, the juvenile court stated: “[T]his case is a continuing effort where the parents, for one reason or another fail to follow up. [L]ooking at the medical [issues], it appears that this is a case where things come up, [but] the parents don’t get to it [T]he court has a concern that if there was not court jurisdiction, there was not follow up services happening. The parents have not been diligent about it.”

The juvenile court sustained the allegations of the petition, declared the children dependents and ordered the parents to maintain physical custody of the children. The juvenile court ordered the Department to provide family maintenance services and ordered mother and father to complete a parenting class and to participate in “services to ensure the children attend school regularly . . . and . . . keep up to date on all medical appointments”

CONTENTIONS

Mother contends there is insufficient evidence to warrant the assertion of dependency jurisdiction over the children pursuant to section 300, subdivision (b).

DISCUSSION

1. *Standard of review.*

At a jurisdictional hearing, the juvenile court determines by a preponderance of the evidence whether the child named in the petition falls within any of the categories specified in section 300. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1082; § 355, subd. (a).) Section 300, subdivision (b) permits dependency jurisdiction, as relevant here, 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 willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment” (§ 300, subd. (b).)

To find jurisdiction under section 300, the juvenile court must determine whether circumstances at the time of the hearing subject the child to the defined risk of harm. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261; *In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) Evidence of past events may have a probative value in finding jurisdiction, but only if circumstances existing at the time of the hearing make it likely the child in the future will suffer the same type of serious physical harm or illness as alleged in the petition. (*In re Janet T., supra*, at p. 388.) In reviewing a juvenile court’s jurisdictional finding, we apply the substantial evidence test. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

2. *Failure to obtain medical treatment for S.F.*

On January 31, 2012, S.F. lost consciousness at a friend’s house after smoking marijuana. Although mother was aware S.F. had fainted, she took him to the emergency room only when he complained of dizziness and chest pains three days later. At the emergency room, mother was advised to take S.F. to his regular doctor. However, mother did not take S.F. to his regular doctor until March 1,

2012, more than a month after the fainting incident. Also, even when mother took S.F. to the doctor, it was S.F., not mother, who told the doctor about the fainting incident.

Based on this evidence, the juvenile court reasonably could conclude mother's delay in seeking medical treatment for S.F. created a risk of harm to the child and that mother's past conduct made it likely S.F. would be exposed to the same type of harm in the future. The juvenile court need not wait until a child has suffered actual harm to take action. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598; *In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3; *In re Eric B.* (1987) 189 Cal.App.3d 996, 1004.)

3. *Failure to obtain urinalysis for N.F.*

In March 2012, mother took N.F. to the doctor after the child experienced three days of abdominal pain and was told to return with N.F. for urinalysis to eliminate the possibility of a urinary tract infection which might spread to her kidneys. However, mother failed to do so. When the abdominal pain returned, mother told N.F. to wait a day to see if the pain continued.

Mother contends there was no evidence connecting the urinalysis recommended in March to the abdominal pain N.F. experienced in July. Mother also argues urinalysis is not medical treatment and claims there was no evidence indicating a substantial risk of serious physical harm to N.F. or her siblings from the failure to obtain a urinalysis. Mother notes she has taken her children to approximately 100 medical appointments since 2000. She claims this level of attention to her children's medical care precludes a finding of causation under section 300, subdivision (b).

Mother's arguments are not persuasive. Although mother may have taken her children to the doctor for routine care in the past, her repeated failure to follow up with necessary medical treatment demonstrated the children were at risk of harm. None of the reasons proffered by mother excused her failure to return to the doctor's office with N.F. for the recommended urinalysis. Mother told the social

worker she was afraid the doctor would “scold” her for losing paperwork. Mother also stated she did not have time to follow up with the doctor and could not afford the test. Neither these reasons nor mother’s asserted belief N.F.’s abdominal pain was caused by her menstrual cycle permitted mother to ignore the advice of N.F.’s doctor that the child be tested to rule out a urinary tract infection. Finally, nothing in the record supports mother’s assertion urinalysis is not medical treatment.

In sum, despite being told N.F.’s abdominal pain in March of 2012 could be an infection that could spread to the child’s kidneys, mother did not return to the doctor’s office for a urinalysis. Mother’s failure to seek medical treatment for N.F. in July of 2012, when N.F. said the abdominal pain had returned, demonstrated the child remained at substantial risk of future harm. Thus, the evidence supported the juvenile court’s assumption of jurisdiction based on mother’s failure to obtain recommended medical treatment for N.F.

4. *Failure to address recurring lice infestations.*

Mother contends N.F. and P.F.’s recurring lice infestations were resolved at the time of the adjudication and the evidence indicated mother had made numerous attempts to control the lice, finally cutting the girls’ hair. Mother cites *In re Janet T.*, *supra*, 93 Cal.App.4th 377, for the proposition an infestation of head lice is an insufficient basis upon which to assert juvenile court jurisdiction.

In *Janet T.*, the Department alleged children were at risk because the mother failed to ensure school attendance and mother had mental and emotional problems. (*In re Janet T.*, *supra*, 93 Cal.App.4th at p. 382.) *Janet T.* found the failure to ensure school attendance insufficient to sustain a dependency petition. (*Id.* at p. 388.) Also, the Department failed to allege how the mother’s mental health problems created a substantial risk her children would suffer serious physical injury or illness. In attempting to fill this void, the Department relied, inter alia, on a single report indicating two of the children suffered from head lice, which the Department claimed demonstrated the mother’s inability to provide medical care. In this context, *Janet T.* stated: “[H]ead lice are a common

affliction of children everywhere [T]his temporary problem hardly amounts to a serious physical injury or illness as is required for a finding under section 300, subdivision (b). This is especially true where the affliction was completely ‘cured’ through the simple use of special shampoos and regular combing.” (*In re Janet T.*, *supra*, 93 Cal.App.4th at p. 390.)

Mother claims her children’s medical issues had been addressed by the time of the adjudication on May 2, 2012, and the lice infestation had been resolved. Thus, as in *Janet T.*, the evidence did not warrant jurisdiction as to N.F. and P.F.

However, the evidence showed mother was not diligent or successful in eradicating the head lice. Unlike the situation presented in *In re Janet T.*, *supra*, 93 Cal.App.4th 377, mother’s children had head lice for years and mother’s failure to eradicate the head lice contributed to poor school attendance by N.F. and P.F. Also, contrary to mother’s assertion, the evidence showed the children’s lice infestation was not resolved at the time of the adjudication. In a last minute social report, N.F. said mother used a lice shampoo on her head the day before the adjudication. However, after using the shampoo, mother did not comb the lice out, saying they would fall out when N.F. showered. P.F. said mother uses lice shampoo, “but not all the lice die.” Thus, although mother told the social worker the children no longer had lice, her assessment was suspect.

Additionally, mother’s failure to eradicate the head lice was part of a larger pattern of ignoring necessary medical treatment for her children and such conduct placed all of her children at risk of harm. Accordingly, the evidence supported juvenile court jurisdiction.

DISPOSITION

The orders under review are affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.