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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re COLE J., a Person Coming Under the
Juvenile Court Law.

B243444
(Los Angeles County
Super. Ct. No. CK92623)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.J.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Daniel Zeke Zeidler, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Appellant L.J. (mother) appeals from the juvenile court's jurisdictional finding and dispositional order. She contends that insufficient evidence supports the juvenile court's finding under Welfare and Institutions Code section 300, subdivision (b).¹ She also argues that the juvenile court erred in removing her son, Cole J. (Cole, born Mar. 1995), from her custody.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Detention Report and Section 300 Petition

On March 12, 2012, the Department of Children and Family Services (DCFS) received a referral from Cole's high school alleging that he was a victim of emotional abuse and general neglect by mother. The night before, mother caught Cole outside the home smoking marijuana with a friend, and began yelling and screaming and throwing rocks and bricks at them. She was "very drunk." Cole believed that mother threw him out of the house, so he stayed the night with a family friend and church youth counselor, Eric H. (Eric). Eric spoke with mother over the telephone and said that she sounded "erratic, loud and intoxicated." He also said that Cole had previously complained to him about mother's heavy drinking and combative behavior.

When Cole went to school the next day, he was crying, upset, and extremely emotional. He told the school counselor that mother was a heavy alcoholic who drank day and night. He said that her chronic drinking caused her to sometimes stay home from work and, as a result, she had been terminated from four or five jobs in the past five years. While Cole was speaking to a counselor, mother went to the school, did not acknowledge anyone, took a cellular telephone from Cole, said she had changed the home telephone number, and walked out. She refused to participate in a meeting with DCFS, would not take part in fashioning a safety plan for Cole, and refused to take any

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

phone calls from the social worker. When the social worker called the home telephone line, it had been changed and the new number was not provided.

A school counselor told the social worker that Cole was a great student, but had experienced “a lot of problems because of his home environment,” which was beginning to affect his grades.

That same day, Cole accompanied the social worker, two family friends, and three police officers to his home.² When they arrived, Cole’s backpack and books were outside, next to mother’s car. Mother quickly came outside and began yelling at Cole to hug and apologize to her. She was walking back and forth “in an agitated way,” and appeared to be “very drunk.” When asked if Cole could stay with Eric, mother yelled that Cole was “an adult and he [could] do what he want[ed]” and that he could stay with Eric for a few days. Mother declined to sign a safety plan indicating that she was allowing Cole to stay with Eric, saying that she would not sign anything without her lawyer. She said that she would not attend a Team Decision Making (TDM) meeting scheduled for March 15, 2012, or any other meetings; she also stated that she would not go to court.

As Cole packed some of his things, mother handed him a box, saying, “you know what this is.” It was a box containing Cole’s deceased father’s ashes.³ The child was crying. On the way to Eric’s home, Cole told the social worker that mother was a good woman, but unpredictable, awful, and depressed when she drank, which was often. He said that he was used to it, as he had dealt with it his whole life, but said that he “really need[ed] the protection of DCFS.” Cole also indicated that during previous DCFS investigations, he had lied to social workers in order to protect mother.

² One of the police officers said that he had been to the house many times, as Cole and mother would get into disagreements that would escalate to the point where the police were called. Cole indicated that this always happened when mother was drunk.

³ Cole’s father passed away on June 1, 2007, from Lou Gehrig’s disease.

DCFS held the TDM meeting on March 15, 2012. Despite the social worker's four telephone calls encouraging mother to come, she did not attend. That same day, DCFS took Cole into protective custody. The social worker noted that mother was drunk on the day that Cole was detained; the social worker also stated that mother was drunk when she called to speak to the social worker.

On March 20, 2012, DCFS filed a section 300 petition on behalf of Cole, based on mother's alcohol abuse. The social worker left a voicemail message for mother, advising her that there would be a detention hearing on March 20, 2012. Mother did not return the call.

Detention Hearing

Mother did not attend the March 20, 2012, detention hearing. The juvenile court found a prima facie case that Cole was described by section 300, detained him, and ordered family reunification services. The juvenile court further ordered monitored visitation, but prohibited visitation by anyone under the influence of alcohol. DCFS was instructed to refer mother to random and on-demand drug and alcohol testing.

A pretrial resolution conference was set for April 23, 2012.

Jurisdiction/Disposition Report

On April 23, 2012, DCFS reported that Cole had been placed with Christa and Thomas P., who indicated that Cole could stay with them "as long as he want[ed]." Cole told the social worker that he did not know if he wanted to go back home.

The social worker interviewed Cole. He said that mother had been an alcoholic since his childhood and was drunk three to four times per week. When drunk, mother would direct profanity at Cole, call him a "son of a bitch," and say that he was "the worst kid ever." She would also snap at him, scream, overreact to things, and become moody; but, she would apologize when she became sober. At times, mother would throw up and pass out on the toilet or couch, and it would take him a long time to wake her up. He further disclosed that mother would endanger him by driving under the influence with him in the car and he would try to stop her.

Next the social worker spoke with mother. She claimed that she was not an alcoholic, denied being drunk the day she caught Cole smoking marijuana, and denied kicking him out of the house. She admitted to drinking socially, but “never” to the point of being drunk, and she said that she drank wine or beer “about three times” per week, as well as a glass of wine “at brunch.” The report indicated that mother had been arrested in 2003 (under the influence/disorderly conduct) and 2006 (driving under the influence), and the police report from 2006 indicated that mother was “extremely intoxicated.” Mother tested negatively for drugs and alcohol on April 4, 2012.

Eric told the social worker that Cole had called him on four previous occasions stating that mother was drunk. He would complain that he could not study because mother was yelling at him. Previously, Cole told Eric that he felt safe, but “[t]his time, he said [that] he did not feel safe.”

Christa P. suspected that mother was an alcoholic. She assumed that mother was drunk when she called their house “ranting.”

Mother appeared at the April 23, 2012, pretrial resolution conference, and her attorney stated that she did not kick Cole out of the house. The matter was set for adjudication.

Last Minute Information for the Court

On August 3, 2012, DCFS reported that mother had refused to participate in on-demand drug and alcohol testing. She failed to appear for a May 29, 2012, on-demand test in Long Beach, which was the closest testing site to mother’s job in Costa Mesa. She claimed to be unable to test because of work. Mother participated in random drug and alcohol testing, and tested negative seven times between April 18, 2012, and July 25, 2012. She also took an eight-hour online parenting class, although online classes were unacceptable to DCFS; the social worker informed mother that she would have to attend a parenting class for a minimum of 20 sessions. Finally, mother claimed to be attending Alcoholics Anonymous (AA) meetings, but produced only an illegible list of signatures as proof.

Adjudication

At the August 13, 2012, adjudication hearing, Cole testified that ever since he was very young, mother would “constantly” drink wine in front of him, four or five days per week, “to the point where she would get really drunk.” He said that when mother was under the influence of alcohol, she would become irrational, use profanity, scream, repeat herself, stutter, start “nasty fights,” and say things that were “not very nice.” He said that mother “heighten[ed]” the stress and dysfunction in his life, which he tried to escape by smoking marijuana. He stated: “[T]here is definitely a lot of tension, and I was always extremely stressed about it. I felt like if I said one thing wrong like she would snap at me.” He indicated that his grades at school had declined from a 4.1 to a 3.3 grade point average. He described mother’s alcohol use during that period as “constant.”

Cole further testified that while he was under Christa and Thomas P.’s care, mother visited him on Sundays; while some of the visits went well, others were “bad.” Mother had arrived drunk to three visits and, during those visits, she would “repeat everything,” shift her attention from Cole to Thomas, and slur her words. He claimed that he could tell “100 percent” whether or not mother had been drinking.

Cole’s attorney asked the juvenile court to sustain the section 300 petition as pled.

Ultimately, the trial court dismissed count b-2 of the petition, which alleged that mother had kicked Cole out of the home, and sustained count b-1 of the petition.⁴ The juvenile court declared Cole a dependent of the juvenile court, removed him from mother’s custody, and ordered family reunification services. Mother was ordered to participate in individual counseling to address case issues, conjoint counseling with Cole at the discretion of the therapist, alcohol counseling, a full alcohol program with

⁴ Count b-1 alleged: “Cole’s mother . . . has a history of substance abuse and is a current abuser of alcohol, which renders the mother incapable of providing regular care and supervision of the child. On 03/11/2012, and on prior occasions, the mother was under the influence of alcohol, while the child was in the mother’s care and supervision. The mother[’s] alcohol abuse endangers the child’s physical health and safety and places the child at risk of physical harm and damage.”

aftercare, and weekly random and on-demand alcohol testing. Mother was granted monitored visitation with DCFS discretion to liberalize to unmonitored. Finally, the juvenile court ordered Cole to undergo on-demand testing for drugs and alcohol if it was suspected that he was using.

The matter was then set for a six-month review hearing on February 11, 2013.

Appeal

Mother's timely appeal ensued.

DISCUSSION

I. Substantial evidence supports the juvenile court's jurisdictional finding

Mother challenges the juvenile court's finding pursuant to section 300, subdivision (b), contending that there was insufficient evidence to establish that Cole was at a substantial risk of suffering serious physical harm as a result of mother's alcohol use. As the parties correctly agree, we review the juvenile court's order for substantial evidence (*In re David M.* (2005) 134 Cal.App.4th 822, 828), keeping in mind that the primary purpose of dependency proceedings is to serve the best interests of the child. (See *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.) "All conflicts must be resolved in favor of [DCFS] and all legitimate inferences indulged in to uphold the [findings], if possible." (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) We may not reweigh the evidence or redetermine the facts. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199–200.)

Section 300, subdivision (b) provides, in relevant part, that a child may fall within the jurisdiction of the juvenile court if that "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." (§ 300, subd. (b).) Three elements are necessary for a jurisdictional finding under section 300, subdivision (b): "(1) neglectful conduct by the parent in one of the specified forms;

(2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Here, mother does not dispute the first two elements specified in *In re Rocco M.*, *supra*, 1 Cal.App.4th at page 820. Thus, we only consider whether substantial evidence supports the juvenile court’s finding that Cole was at a substantial risk of serious harm. We conclude that there is such evidence.

Mother had a lengthy history of significant alcohol use and often drank wine to excess. When she drank, she became unpredictable; she threw up and passed out, and sometimes it took Cole a long time to wake mother up. Sometimes she missed work because of her drinking. And, mother drove Cole in her car while she was under the influence, making Cole feel unsafe.

On March 11, 2012, mother found Cole and a friend smoking marijuana, and she began yelling, screaming, and throwing rocks and bricks at them.⁵ Not surprisingly, Cole said that he did not feel safe and indicated that he “need[ed] the protection of DCFS.”

Mother’s alcohol abuse coupled with her erratic, violent conduct indisputably placed Cole at substantial risk of serious physical harm.

In urging us to reverse, mother argues that because Cole was 17-1/2 years old and had demonstrated his ability to take action to ensure his safety if mother was drinking, he could not have been at risk of serious physical harm. We cannot agree. Cole was still a minor and subject to the juvenile court’s jurisdiction. In fact, Cole told the social worker that he “need[ed] the protection of DCFS.” The juvenile court was not “compelled to hold its protective power in abeyance until harm to [Cole was] not only threatened but actual. The purpose of dependency proceedings is to prevent risk, not ignore it.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1004.)

To the extent mother relies upon *In re Rocco M.*, *supra*, 1 Cal.App.4th 814 for the proposition that a parent’s use of alcohol does not constitute risk to an older child, we are

⁵ In the reply brief, mother asserts that Cole was not present when she threw an object at the car. The detention report indicates that he was.

not convinced. In that case, the court was discussing an 11-year-old child's ability to access and ingest the parent's drugs. (*Id.* at p. 825.) Here, the issue was not whether Cole had access to mother's alcohol; rather, the issue was the risk to Cole presented by mother's conduct while under the influence of alcohol, which she "often" was. His age is irrelevant when considering the fact that she drove under the influence with him in the car. The California Supreme Court has long recognized "the horrific risk posed by those who drink and drive." (*Burg v. Municipal Court* (1983) 35 Cal.3d 257, 262.)

Mother further argues that because she had made significant efforts to change her behavior by the time of the adjudication hearing, the juvenile court should not have sustained the section 300 petition. Mother's evidence was simply not enough. At the onset of these proceedings, mother refused to cooperate with the social worker, declined to sign a safety plan, and failed to attend the TDM meeting or the detention hearing. While mother took an eight-hour online parenting course, that class was not approved by DCFS. She also claimed to be attending AA meetings, but her proof was illegible signatures. And, she minimized her alcohol consumption. While mother participated in random drug and alcohol testing, she refused to participate in on-demand drug and alcohol testing. Last, despite the juvenile court's order to the contrary, mother appeared drunk for three visits with Cole.

Additionally, mother claims that the juvenile court should have considered the fact that Cole was using marijuana. It did. At the adjudication hearing, the juvenile court ordered on-demand drug testing of Cole if it was suspected that he was using.

In re Drake M. (2012) 211 Cal.App.4th 754, 768 does not compel reversal. In that case, DCFS failed to show a link between the father's use of medical marijuana and a risk of serious physical harm to the child. Here, as set forth above, mother's use of alcohol placed Cole at risk of serious physical harm.

II. *The juvenile court properly ordered removal*

Mother objects to the juvenile court's order removing Cole from her custody.

The juvenile court is empowered to remove a dependent child from the physical custody of the parent with whom the child resided when the section 300 petition was filed

if the juvenile court finds clear and convincing evidence that “(1) There 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.” (§ 361, subd. (c)(1).) We will affirm a removal order so long as it is supported by substantial evidence. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 463.)

For the same reasons set forth above, substantial evidence supports the juvenile court’s removal order. Mother claims that removal was not justified because Cole had previously demonstrated that he was capable of removing himself from the home. However, such an assertion is just an admission that removal was necessary. Furthermore, it seeks to place Cole in the position of having to determine for himself when he is not safe and to react accordingly. This approach would circumvent the dependency system, the paramount purpose of which is to protect a child’s best interest. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673.)

Finally, mother argues that there was an alternative to removal, namely it could have “easily” imposed a “‘no alcohol’ restriction on [mother] and continued random testing.” But, that would have required cooperation on mother’s part, which, at least at the onset of these proceedings, she was not willing to provide. And, significantly, despite the juvenile court’s order to the contrary, mother attended at least three visits with Cole while she was drunk. Under these circumstances, ample evidence support the juvenile court’s removal order.

DISPOSITION

The juvenile court's orders are affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.*
FERNES

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.