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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.W. et al., Persons Coming Under  
the Juvenile Court Law.

B249077

(Los Angeles County  
Super. Ct. No. CK81727)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

N.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Carlos E. Vazquez, Judge. Affirmed.

David A. Hamilton, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Kimberly Roura, Senior Associate County Counsel, for Plaintiff and Respondent.

N.B. (mother) appeals the juvenile court's April 22, 2013 order declaring her two children dependents of the juvenile court and removing them from her care. We find the court's findings and orders supported by substantial evidence, and thus we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Detention**

Nine-year-old M. (born Jan. 2004) and five-year-old J. (born May 2007) are the children of mother and William W. (father) (deceased). On January 29, 2013, the Department of Children and Family Services (DCFS) received a report that mother had left the children with maternal grandmother three weeks earlier and had not returned. Maternal grandmother lived with her husband (grandfather) and an adult cousin, whom the reporting party suspected of using methamphetamine or cocaine. Maternal grandmother's home was reported to be filthy and infested with cockroaches.

A children's social worker (CSW) visited the children's school on February 1, 2013. The principal's secretary reported that the children's school attendance was poor and mother was "in and out of the picture." M. "smells and the other children [do] not want to be around her." M. had arrived at school that morning not wearing her school uniform and had told the secretary that she did not have any clean clothes to wear. The principal said mother was "difficult to find" and the children had to be referred to the Abolish Chronic Truancy Program because of chronic absences. Further, mother "was erratic and [the principal] thinks she was on drugs . . . because of her erratic behavior." The principal said mother's cousin, Hansel, seemed to help care for the children, but took J. home from school on the handlebars of his bike with no helmet, which the principal thought was unsafe.

M.'s teacher reported that M. had not been progressing academically or doing her homework. She was concerned about M.'s poor hygiene and lack of supervision after school. J.'s kindergarten teacher said he came to school "a little bit dirty," and sometimes had no socks or shoelaces. His academic performance was average. J.'s

teacher said he had been emotional and she had seen him under the table in a fetal position sucking his fingers. He told her his mother had gone away and he missed her. He reported that his grandparents and cousin cared for him.

The CSW interviewed J. on February 4, 2013. He said he lived with his grandma, grandpa, sister, and cousin Hansel. He said his father had died. His mother no longer lived with the family because she had taken a job in Los Angeles, but she saw the children frequently. J. was not able to provide a statement about drug or alcohol use in the home.

M. told the CSW that mother had moved to Los Angeles four days before M.'s birthday (i.e., in late Dec. 2012) because mother had a job there, but M. saw mother every day and talked to her on the phone. M. denied any drug or alcohol abuse in the home. M. said she took a bath every day and grandmother washed her clothes.

The CSW visited the family home on February 4, 2013. The apartment was small and crowded, but neither filthy nor roach infested. Grandmother said she worked in El Monte and left for work each day at 5:00 a.m. Mother had moved to Los Angeles to take a job, but visited the children regularly. Mother had wanted to take the children with her but did not have the space, so grandmother said the children could remain with her. Grandmother said her cousin, Hansel, did not live with the family but had been helping to care for the children. Grandmother denied any drug or alcohol use by anyone in the household.

Mother said she had taken a job in Los Angeles caring for an elderly lady. She could not take her children with her, so they remained with grandmother. Mother said she visited the children and spoke to them on the phone. Mother denied any drug or alcohol abuse and agreed to participate in an on-demand test. DCFS was unable to verify mother's employment.

Mother and Hansel tested positive for amphetamines, methamphetamines, and marijuana on February 8, 2013, and grandfather tested positive for amphetamines and methamphetamines on February 15, 2013. Mother claimed that the day she drug tested she took medication for a toothache, but she was not able to tell the CSW the name of the

medication. Mother said she would bring the medication to the CSW the following week, but she failed to do so.

The CSW spoke to the parole department and learned that grandfather had been on parole from 1979 to 2012. Grandfather's parole officer said grandfather has "a file as thick as an old phone book" and was regularly jailed for violating his parole. He said grandfather was a habitual drug user who spent his days recycling and then used the money to buy drugs. He said grandmother knew grandfather was using drugs and that he would not trust grandfather to care for children.

When DCFS told mother the children would be detained, she "started yelling and screaming stating that no one will take her children away from her." She denied using drugs, but admitted "she was selling dope and touching this." She said she stopped when "this" (presumably, DCFS's involvement with the family) happened.

DCFS detained the children on February 26, 2013.

## **II. Jurisdiction and Disposition**

DCFS filed a juvenile dependency petition on behalf of M. and J. on March 1, 2013. As relevant here, paragraph b-2 of the petition alleged that mother "has a history of illicit drug abuse and is a current abuser of amphetamine, methamphetamine and marijuana which renders the mother incapable [of] providing the children with regular care and supervision. On 2/8/13, the mother had a positive toxicology screen for amphetamine, methamphetamine and marijuana. On prior occasions in 2013, the mother was under the influence of amphetamine, methamphetamine and marijuana, while the children were in the mother's care and supervision. The mother has a history of selling illicit drugs. The mother's substance abuse endangers the children's physical health and safety, placing the children at risk of physical harm, damage and danger."<sup>1</sup>

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<sup>1</sup> The juvenile court dismissed paragraphs b-1 and b-3, which alleged physical abuse of the children by caregivers and that mother failed to make an appropriate plan for the children.

On March 1, 2013, the court found a prima facie for detaining the children, concluding that substantial danger existed to their physical and mental health, and reasonable efforts had been made to prevent or eliminate the need to remove the children from their home. The children were ordered detained with their great-grandmother.

DCFS filed a jurisdiction/disposition report on April 22, 2013. It stated that during a telephone interview on April 5, 2013, mother said she did not have a drug problem and claimed she had used methamphetamines and marijuana only once because she was stressed. Subsequently, however, she said she had used drugs when in the Los Angeles area, away from the children, and said she had sold drugs until January 3, 2013, after which she stopped. Mother said she did not know that grandfather or Hansel was using drugs. Mother agreed to meet with the CSW in person on April 9, but cancelled the meeting.

DCFS records showed that the family received dependency court services from 2010 to 2012 because of domestic violence between mother and father. Father died of a heart attack on June 26, 2010, at age 38. The family received maintenance services until the court terminated jurisdiction on March 13, 2012. Case records showed that the children had a physical exam on September 12, 2012, at which time both were found to be obese and to have scabies and asthma.

Great-grandmother reported to the CSW that mother became hostile and disrespectful during a visit with the children when great-grandmother did not allow mother's male friend into the home. Mother later apologized and visited with the children at church on Easter. Mother reportedly did not show for a scheduled visit with the children on April 7.

In a "Last Minute Information for the Court," DCFS advised that mother failed to attend a MAT (multidisciplinary assessment team) meeting in person, but participated telephonically. Mother failed to take a scheduled drug test on April 9. On April 19, the CSW attempted to contact mother to reschedule the drug test, but was unable to reach her.

On April 22, 2013, the juvenile court found the allegations of paragraph b-2 true by a preponderance of the evidence. It ordered the children detained from mother and placed with the maternal great-grandmother. It ordered DCFS to provide family reunification services to mother, including random or on-demand drug tests. If mother missed any test or tested positive for any drug, the court said it would order full drug rehabilitation with random testing. The court further ordered mother to participate in parenting classes and individual counseling and granted mother monitored visitation of at least four hours per week.

Mother timely appealed.

## DISCUSSION

Section 300, subdivision (b) provides: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: . . . [¶] (b) 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 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.”

We review the juvenile court’s jurisdictional findings and orders under section 300, subdivision (b) for substantial evidence. (*In re R.C.* (2012) 210 Cal.App.4th 930, 940-941; *In re E.B.* (2010) 184 Cal.App.4th 568, 574-575.) Substantial evidence “is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value. (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 575; *In re J.K.* [(2009)] 174 Cal.App.4th [1426,] 1433.) We draw all reasonable

inferences from the evidence to support the findings and orders of the juvenile court. We adhere to the principle that issues of fact, weight and credibility are the provinces of the juvenile court. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)” (*In re R.C.*, *supra*, 210 Cal.App.4th at p. 941.)

Mother contends that substantial evidence does not support the allegations of paragraph b-2 that she is a current user of amphetamines, methamphetamines, and marijuana, and has a history of selling illegal drugs. We do not agree. On February 1, 2013, the children’s principal told the CSW that she suspected mother was using illegal drugs because of mother’s erratic behavior, and on February 8, 2013, mother tested positive for amphetamines, methamphetamines, and marijuana. Mother subsequently admitted using illegal drugs and selling drugs as recently as six weeks prior to the children’s detention. Mother failed to take a scheduled drug test on April 9 and could not thereafter be reached to reschedule a follow-up test.

Although mother claimed to have used drugs only once, the principal’s observations of mother’s erratic behavior at school, mother’s admitted drug sales, and mother’s positive drug test provided a more than adequate basis to support the juvenile court’s conclusion that mother had a history of using and selling illegal drugs. The court reasonably could infer from the principal’s observations that mother had begun using drugs well before mother’s positive drug test in February 2013 and, indeed, had done so while living with and caring for her children. This inference was supported by the fact that mother tested positive for *three separate* street drugs and by mother’s admission that she had stopped selling drugs in January 2013, about the same time she moved out of grandmother’s house to take the job in Los Angeles. If mother’s cessation of drug sales coincided with her move from grandmother’s house, as she claimed, then she necessarily was still selling drugs when she lived with grandmother and her children prior to that time. The juvenile court did not err in so concluding.

Mother also challenges the juvenile court’s conclusion that her drug use was sufficient to bring her children within the court’s jurisdiction, asserting that drug use “in and of itself does not bring a minor within the jurisdiction of the dependency court.”

Mother is correct that a parent's drug use *alone* has been held not to give rise to dependency jurisdiction, but she errs in contending that there was insufficient evidence before the juvenile court to establish a risk of harm to the children as a result of her drug use. Division Three of this district has held that a finding of jurisdiction under section 300, subdivision (b) as a result of a parent's substance abuse requires a showing that the parent suffers from "[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: . . . (1) *recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home* (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household) . . . ." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766, quoting Am. Psychiatric Assn. Diagnostic & Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR) at p. 199, italics added.) In the present case, there was ample evidence of mother's failure to fill "major role obligations" at home. Mother was taking care of her children on only a part time basis, having left the children with her mother and stepfather. The children were arriving at school dirty, did not have clean clothes, and were not attending school regularly. Both children suffered from obesity and other health problems, and M. was not doing her homework or progressing academically. Further, two of the three relatives in whose care the children had been left were themselves habitual drug users with criminal records, and thus were exceedingly poor choices as caregivers. Based on this evidence, the juvenile court could infer that mother was failing to fulfill her parental responsibilities as a result of her drug use.

The present case is distinguishable from *In re David M.* (2005) 134 Cal.App.4th 822, on which mother relies. In *David M.*, although the parents had a history of drug use and mental illness, the evidence was uncontradicted that their son was healthy and well cared for and mother tested negative for drugs approximately 18 times over a four-and-one-half-month period. (*Id.* at p. 830.) In the present case, in contrast, both children have significant health and hygiene problems, have exhibited difficulties at school, and

had been left with caregivers who are habitual drug users. Further, unlike the mother in *David M.*, who repeatedly tested negative for drug use, mother's single drug test in the present case was *positive* for amphetamines, methamphetamines, and marijuana, and mother failed to take her next scheduled drug test or to make any effort to reschedule it.

The present case is also distinguishable from *In re B.T.* (2011) 193 Cal.App.4th 685, where the mother was alleged to drink beer excessively. The court held that the mother's consumption of beer, standing alone, was not an adequate basis for dependency jurisdiction: "Here the evidence showed that Debra regularly drank beer, and various people opined that she drank more beer than they believed she should have. No one, however, opined that she neglected or endangered B.T.—or her other children for that matter—as a result. In fact, those family members who were asked about beer's effect on Debra's behavior stated it had no effect. . . . Moreover, between May 22 and July 9, Debra tested clean 11 times at frequent intervals, an unlikely feat for someone in the grip of a serious addiction." (*Id.* at p. 694, fn. omitted.) The present case is different: As we have said, there is in the present record evidence both of mother's neglect of the children and of her continued drug use.

For all of the foregoing reasons, substantial evidence supported the juvenile court's findings that M. and J. were at substantial risk of serious physical harm or illness as a result of mother's drug abuse.

**DISPOSITION**

The juvenile court's April 22, 2013 findings and orders are affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.