

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re DANIEL T., a Person Coming Under
the Juvenile Court Law.

B250094
(Los Angeles County
Super. Ct. No. CK99155)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANGELICA C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. D. Zeke
Zeidler, Judge. Reversed.

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

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

Angelica C. (Mother) appeals from the juvenile court's May 29, 2013 jurisdictional and dispositional orders, contending that substantial evidence does not support the court's order declaring minor Daniel T. II a dependent of the court pursuant to paragraph b-3 of the petition alleged under Welfare and Institutions Code section 300, subdivision (b) (failure to protect) based on Mother's alleged drug use.¹ She also contends that the court abused its discretion in making a dispositional order requiring her to submit to random drug testing. Mother does not appeal from the orders sustaining other allegations under section 300, subdivisions (a) (serious physical harm) and (b). Daniel T. (Father) is not a party to this appeal.

We conclude that because Mother's drug use was remote in time and had no causal nexus to substantial risk of serious harm to the minor, the jurisdictional order based on Mother's alleged drug use is not supported by substantial evidence. We also conclude that the court abused its discretion in requiring Mother to submit to random drug testing. We reverse only as to the challenged jurisdictional and dispositional orders.

BACKGROUND

A. The detention report and hearing

The Department of Children and Family Services (DCFS) reported the following in connection with a detention hearing before the juvenile court to determine whether the minor should be removed immediately from the care of Mother and Father.

The minor, who was born in 2008, came to the attention of DCFS on January 4, 2013, when DCFS received a referral from sheriff's deputies that Mother, Father, and the minor were living in squalid, unsanitary conditions. The deputies reported to DCFS that the living room was a "mess." A kitchen knife was on the kitchen counter and moldy food was "left out." The entire house stank of urine. The family slept in a converted garage, which had spider webs on the ceiling. Mother told the deputies that Father had been teaching the minor how to shoot a "BB gun" a few days earlier. Mother said the "BB gun" belonged to a third person, who owned the residence, and that "it was an

¹ Undesignated statutory references are to the Welfare and Institutions Code.

accident the child got a hold of the BB gun.” The minor appeared to be clean and was very articulate.

On January 4, 2013, DCFS interviewed the minor, who stated that Father hit Mother ““on back with a bed””; ““my mommy doesn’t drink or smoke; daddy smokes cigarettes.””

On January 4, 2013, DCFS interviewed Father, who stated the following. Father denied any domestic violence. He smoked cigarettes and marijuana, and drank alcohol ““occasionally around holidays.” He had been arrested for burglary in 2008 and was on probation.

On various dates from January 4 to January 31, 2013, DCFS interviewed Mother, who stated the following. She believed the living conditions were inappropriate, but had nowhere else to go; she did not “agree” with Father’s teaching the minor to shoot the “BB gun”; she did not drink or use any drugs; before the minor was born, Father had “socked her in her ribs and she ‘almost died;’” and Father had grabbed her a month earlier when they were discussing finances. Mother was ambivalent regarding her relationship with Father because of their continuous arguing in front of the minor. She had been bruised when Father grabbed her back a month earlier. The minor had witnessed that event and stated, ““stop, leave my mommy alone.”” Father had a drinking problem. Mother had used methamphetamine six years earlier and had last used marijuana in August 2012. She denied current drug use.

In late January 2013 Mother moved into a shelter. She told DCFS she had obtained a restraining order against Father but had not served him because she did not know his current whereabouts. She also reported the minor told her that Father had shown him how to “smoke weed.” She said Father had made threats to her over the Internet; she was planning to find permanent housing; and she was afraid of Father.

DCFS was unable to contact Father again until March 7, 2013. Via telephone, Father stated he was not going to cooperate with DCFS and defended his showing the minor how to shoot the “BB gun,” shouting, ““what’s wrong with showing my son how to be a man.””

At the detention hearing held on April 24, 2013, the juvenile court determined as to Father that substantial danger existed to the physical or emotional health of the minor. The court ordered the minor removed from the care of Father and released to Mother's custody.

B. The section 300 petition

On April 24, 2013, DCFS filed a section 300 petition pursuant to subdivisions (a) (serious physical harm) and (b) (failure to protect), alleging that the minor came within the jurisdiction of the juvenile court.

As amended and sustained, paragraphs a-1 and b-1 of the petition alleged under section 300, subdivisions (a) and (b) that Father and Mother have a history of engaging in violent altercations in the minor's presence; that Father struck Mother in the minor's presence in 2013; that Father struck Mother's ribs on prior occasions; and that, within the last month, Father grabbed Mother in the minor's presence, inflicting bruising to Mother's back. Mother was unable to protect the minor and allowed Father to frequent the minor's home and to have unlimited access to the minor. Father's violent conduct against Mother and Mother's inability to protect the minor endangered the minor's physical health and safety and placed the minor at risk of physical harm.

As sustained, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Father has a history of substance abuse and was a current abuser of marijuana and alcohol, which rendered Father incapable of providing the minor with regular care and supervision. On prior occasions in 2013, Father possessed, used, and was under the influence of illicit drugs while the minor was in Father's care and supervision. Father's substance abuse endangered the minor's physical health and safety and placed the minor at risk of physical harm.

Paragraph b-3 of the petition, which is the subject of this appeal, alleged under section 300, subdivision (b) that Mother has a history of substance abuse, including methamphetamine, and was a current abuser of marijuana, which rendered Mother incapable of providing the minor with regular care and supervision. Mother's abuse of

illicit drugs endangered the minor's physical health and safety and placed the minor at risk of physical harm. This portion of the petition was sustained as well.

C. The jurisdictional and dispositional report

DCFS reported the following in connection with the jurisdictional and dispositional hearing, at which the juvenile court determines whether the minor shall be declared a dependent and issues orders for the minor's care.

In addition to the referral by sheriff's deputies on January 4, 2013, DCFS received a referral on January 14, 2013, alleging general neglect of the minor by maternal aunt and sexual abuse by maternal aunt's minor son that purportedly occurred in September 2012. Sometime after DCFS received that referral, maternal aunt reported that "Mother is a drug user and had unstable housing." Maternal great grandfather reported that he had not seen Mother or the minor since December 2012 and stated, "Mother was upset [maternal aunt] would not allow her to reside in [maternal aunt's] home due to Mother's alleged drug use." The referral was closed as inconclusive and unfounded.

On January 14, 2013, a person mandated to report child abuse told DCFS that Mother had been brought into the hospital for abdominal pain and claimed that Father had choked her on January 4, 2012. The minor initially told the mandated reporter that Father had choked him but later denied that Father had choked him and stated, "Daddy hit mommy." Because the family already had an open DCFS case, the referral was closed.

On May 15, 2013, the minor told DCFS that Father had spanked him and hit him hard in the stomach, causing him to throw up. He said Father had tried to spray something in his eyes. The minor stated that Father had tried to hit Mother. He said that Father had pushed Mother and "[s]ometimes she tries to call the cops but she doesn't."

On May 15, 2013, Mother told DCFS that Father became physically and verbally abusive toward her after she got pregnant. Father had been in and out of jail for four years. In May 2012, Father had a job and appeared to be doing well. In November 2012, Father grabbed Mother so hard that she sustained a bruise and a scar. The minor "didn't see it but he knew what happened." Mother stated that Father currently used marijuana

and alcohol. She suspected that he was also using methamphetamine. The minor told Mother that Father rolled marijuana joints in front of him. The minor also told Mother that Father had watched pornography in his presence while Mother was at school. Mother, who was then pregnant by Father, stated that Father had taken the minor to buy beer during a prenatal appointment.

Mother stated that she had used methamphetamine between the ages of 15 and 18. She said, “It was recreational and it was just one of those things where I would be in the wrong place at the wrong time. I stopped everything and I even stopped smoking cigarettes when I was 20. I smoked marijuana but the last time was in August (2012). My son was at my aunt’s house and I went to a house party. I haven’t smoked since.” Mother was born in 1986.

D. The jurisdictional and dispositional hearing

On May 29, 2013, Mother filed a waiver of rights form, pleading no contest to the allegations in paragraphs a-1, b-1, and b-2 of the petition alleged under section 300, subdivisions (a) and (b). Mother submitted as to paragraph b-3 of the petition at issue here on the basis of DCFS’s reports as to the drug use allegations under section 300, subdivision (b).

The juvenile court found that Mother had freely and voluntarily waived her constitutional right to trial as to the allegations to which she had pleaded no contest. As to the contested allegations of paragraph b-3 concerning Mother’s drug use, Mother’s counsel argued that Mother’s past methamphetamine use had been occasional and experimental. She “stopped when she was 18.” The court stated, “When you combine the meth history with the subsequent marijuana use, with the unstable lifestyle, it appears that there’s a direct correlation between the substance abuse and the risk factors. Even if I’m wrong about that, for disposition there would still be sufficient grounds to at least have the mother be drug testing and refraining from drug use.” The court sustained the allegations as amended and found the minor a person described by section 300, subdivisions (a) and (b).

The juvenile court declared the minor a dependent of the court, removed him from the care of Father, and ordered him placed in Mother's care under the supervision of DCFS. The court ordered family maintenance services for Mother, including five random or on-demand drug tests and the condition that if Mother missed any tests or tested positive for drugs, she would be required to enroll in a drug treatment program. The court also ordered family reunification services for Father and individual counseling for the minor. Mother appealed.

DISCUSSION

A. Insufficient evidence supported the juvenile court's jurisdictional order as to the drug use allegation in paragraph b-3 under section 300, subdivision (b)

Mother contends that because there was no evidence that Mother was currently using any drugs, DCFS failed to show how the minor was at risk of serious physical harm and insufficient evidence supported the juvenile court's jurisdictional order as to the allegation in paragraph b-3 under section 300, subdivision (b). We agree.

Initially, we note that Mother pleaded no contest to allegations under section 300, subdivisions (a) and (b) in paragraphs a-1, b-1, and b-2. The juvenile court sustained the allegations of the petition as to both Mother and Father. Citing *In re Alysha S.* (1996) 51 Cal.App.4th 393 for the proposition that a jurisdictional finding against one parent is good against both, DCFS argues that we can affirm jurisdiction over the minor based on the uncontested counts. However, the sustained finding in paragraph b-3 that Mother's drug use caused or will cause a substantial risk of serious harm to the minor impacts Mother because it requires her to submit to random drug testing. This in turn may impact future placement and reunification orders. (*In re John S.* (2001) 88 Cal.App.4th 1140, 1143 [court may address jurisdictional challenge that might impact placement and reunification orders, even though allegation sustained against one parent will support exercise of court's jurisdiction].) Therefore, we shall address the merits of Mother's appeal.

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of

Court, rule 5.684(f).) “““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.]” [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.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if “[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 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. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.”

“A jurisdictional finding under section 300, subdivision (b) requires: ““(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.] [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) DCFS has the burden of showing specifically how the minor has been or will be harmed. (*Id.* at p. 136.)

As sustained, paragraph b-3 alleged under section 300, subdivision (b) that Mother had a history of substance abuse, including methamphetamine, and was a current abuser of marijuana, which rendered Mother incapable of providing the minor with regular care

and supervision. It alleged that Mother's abuse of illicit drugs endangered the minor's physical health and safety, and placed the minor at risk of physical harm and damage.

We first note that Mother's use of drugs, especially methamphetamine, was remote in time. Mother reported to DCFS that she had experimented occasionally with methamphetamine between the age of 15 and 18. At the relevant time, Mother was 27 years old. Therefore, the last time she had used methamphetamine was almost 10 years earlier. She also reported that she had last used marijuana in August 2012, which was five months prior to the incident that caused the minor to come to the attention of DCFS. On that occasion, while the minor was being cared for at her aunt's house, Mother had smoked marijuana elsewhere at a party. Our review of the record shows only one other report related to Mother's drug use. Maternal aunt reported to DCFS that Mother was a drug user around September 2012. This was around the same time that the sheriff's department received a referral stating that maternal aunt was neglecting the minor and that maternal aunt's son was sexually abusing the minor. At best, that evidence indicated maternal aunt was aware Mother used unspecified drugs prior to October 2012. This was consistent with Mother's own statement that she had last used marijuana in August 2012 at a party outside the home and outside the presence of the minor.

Further, DCFS failed to show a nexus between Mother's drug use in August or September 2012 and earlier and any substantial risk of serious harm to the minor. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 453 [use of marijuana, without more, cannot support jurisdictional finding that such use brings minors within jurisdiction of dependency court].) While the evidence supported the sustained allegations that Father had used drugs in the presence of the minor and that Mother and Father had engaged in domestic altercations in the presence of the minor, there is no evidence that Mother's past drug use caused or will cause the minor to suffer serious physical harm. The juvenile court cannot rely on speculation to support a finding of jurisdiction. (*In re David M.* (2005) 134 Cal.App.4th 822, 829–830 [mother's past use of marijuana and mental health issues did not create a substantial risk of serious harm to minor].) Thus, the court erred in

tying Mother's "meth history with the subsequent marijuana use" to risk of serious harm to the minor.

We conclude that insufficient evidence supported the juvenile court's jurisdictional order as to the drug use allegation under section 300, subdivision (b) in paragraph b-3.

B. The juvenile court abused its discretion in making dispositional orders requiring Mother to submit to random drug testing

Mother contends that the juvenile court erred in making dispositional orders requiring her to submit to random drug testing. We agree.

When a minor is adjudged a dependent child of the court under section 300, section 362, subdivision (a) gives the juvenile court authority to "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court." The court may make orders to the parents as it "deems necessary and proper to carry out this section," including participating in a counseling or parent education program. "The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d).)

"The juvenile court has broad discretion to decide what means will best serve the child's interest and to fashion a dispositional order accordingly. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103–1104.) Its determination will not be reversed absent a clear abuse of that discretion. (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1005.)" (*In re Corey A.* (1991) 227 Cal.App.3d 339, 346.)

As stated, there was no evidence that Mother had a current drug problem or that her remote drug use had a nexus to the conditions resulting in the assertion of dependency jurisdiction. "A reunification plan "must be appropriate for each family and be based on the unique facts relating to that family." (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 172–173 [inclusion of substance abuse component in absence of evidence of substance abuse problem was error].) Thus, the juvenile court's comment

that even if substantial evidence did not support the jurisdictional findings, “there would still be sufficient grounds to at least have the mother be drug testing and refraining from drug use,” is unsupported by the evidence. We conclude that the juvenile court erred in making dispositional orders requiring Mother to submit to random drug testing.

Accordingly, we reverse the dispositional order requiring Mother to submit to random drug testing and including the condition that if Mother missed any of the tests or tested positive for drugs, she would be required to enroll in a drug treatment program.

DISPOSITION

The juvenile court’s May 29, 2013 jurisdictional findings and order are reversed only as to paragraph b-3 alleged under section 300, subdivision (b) of the Welfare and Institutions Code. The court’s May 29, 2013 dispositional order requiring Mother to submit to random drug testing, including the condition that if Mother missed any of the tests or tested positive for drugs, she would be required to enroll in a drug treatment program, is reversed.

NOT TO BE PUBLISHED.

MILLER, J.*

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.

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