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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MARCUS C., a Person Coming
Under the Juvenile Court Law.

B250527
(Los Angeles County
Super. Ct. No. CK98587)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marilyn Mordetzky, Juvenile Court Referee. 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.

T.C. (Mother) appeals the dependency court's jurisdictional finding under Welfare and Institutions Code section 300, subdivision (b)¹ that she was unable or unwilling to provide her 13-year-old adopted son Marcus C. (Marcus) with appropriate care to address his attention deficit hyperactivity disorder (ADHD). We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. Detention

Marcus, born in 2000, had resided with Mother since he was one and one-half years old and was adopted by Mother in 2007. Marcus is her cousin. Other children in the family who live with Mother are Jeremiah B. (Jeremiah) (born 1999) and J.B. (born 2001); Mother's daughter T.B. lives with her father Johnnie B. Mother's boyfriend L.G. is a frequent visitor to the home.

On February 12, 2013, Marcus told classmates and faculty at his school that Mother beats him on the soles of his feet using a belt. The last incident occurred on February 8, 2013 when Mother beat him for receiving an "F" on his report card. Mother beat him on the soles of his feet because it would not leave marks. Marcus had bruises on his arms from trying to block the belt. His siblings were in the other room and heard him getting hit. Mother also forced him to drink liquid soap after he called his sister J.B. a "bitch." Marcus related that often Mother made him drink dishwasher soap, and if she did not have soap available, he would bite a bar of soap. When he misbehaved, Mother would send him to his room or he would get "whooped." She would tell him he looked like the devil, acted like the devil, and was the devil. Mother told him she wanted him to leave and he would go to jail.

Marcus explained that he had not told anyone about the beating because he was afraid he would get in trouble and would "get whooped." Marcus stated he wanted to live with his biological parents, and communicated with his biological father on Facebook until April 2012 when his Mother shut the account down. He admitted that he

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

got in trouble regularly at school and at home, and often did so in order to visit his biological mother. Marcus claimed that when Jeremiah and J.B. misbehaved, they were only sent to their rooms. Mother gave Marcus's Christmas gifts to Jeremiah, and when Jeremiah's bike was stolen, Mother gave him Marcus's bike. J.B. called him a crack baby, and Marcus told the social worker his siblings would lie about how Mother treated him.

Mother and L.G. would argue after L.G. got drunk and L.G. would hit Mother. Approximately a year before, the police had come to the house. L.G. had broken a window to get inside. According to Marcus, the domestic violence occurred on weekends when the other children were visiting their biological father. Marcus shared a room with Jeremiah where he had his own bed, but when he was in trouble he would have to sleep on the floor.

The social worker visited Mother's home on February 12, 2013. No one answered the door and the social worker saw Jeremiah and J.B. playing in a neighbor's front yard. The social worker greeted the children and asked if anyone was home. Jeremiah went into the backyard and L.G. came to the front door. L.G. told the social worker Mother was not home. L.G. permitted the social worker to enter the home where she interviewed him privately. L.G. denied that Mother hit Marcus, and L.G. told the social worker Marcus had a long history of stealing, lying, and defiance. Marcus had been expelled from several schools. L.G. had seen Marcus wrap a jump rope around a doll's head and hang it off the bunk bed and hit it. Marcus was disciplined by being sent to his room and told to do his homework. Jeremiah and J.B. were well behaved.

The social worker also interviewed Jeremiah and J.B. Jeremiah denied seeing Mother hit Marcus. Jeremiah stated that Marcus told "weird stories" and Marcus had claimed that Mother locked him in the garage. Mother would discipline Jeremiah by taking away his privileges, and disciplined all three of the children in the same way. Jeremiah had observed L.G. drinking occasionally, but stated L.G. did not drink every day. If Mother and L.G. were mad at each other, they would yell and L.G. would leave

the house. J.B. would not speak to the social worker alone and the social worker interviewed J.B. at Mother's place of work. J.B. appeared nervous and guarded. J.B. stated that when she got in trouble, she would go sit in her room, and that all of the children were disciplined in the same way. She believed Marcus obtained his bruises while playing in the yard. J.B. reported that Mother and L.G. did not argue in front of the children.

Mother told the social worker that she did not spank Marcus, and that she did not have a way to discipline him. Marcus had a long history of lying and stealing and Mother believed his behavior was out of control. Mother had called the postadoption hotline approximately two weeks earlier to ask about her options to have him removed. When the social worker asked whether Mother hit Marcus on his feet, Mother denied doing so and told the social worker she was a director at a day care center and hitting Marcus would jeopardize her job. Mother stated that Marcus had lied to his kindergarten teacher and stated Mother had locked him in the garage. Mother called Marcus a "compulsive liar."

Approximately three years earlier Mother had gone to the Children's Bureau for health services. Marcus was diagnosed "with ADHD and another diagnosis 'they never heard of.'" The Children's Bureau recommended medication, but Mother did not want to put Marcus on medication. Marcus attended therapy for approximately one month. Mother did not believe the services were effective and added that she did not think it was fair for the other children to miss out on basketball and track practice because Marcus had to have therapy. Mother denied any domestic violence between her and L.G. She denied calling Marcus the "devil" but stated he did not act appropriately. Mother also denied taking away his bicycle.

Mother did not want Marcus to return home. The social worker explained that Marcus would be removed with the expectation to return to Mother's care and reunification services would be provided to her, and that the mental health and case management services would help Marcus. Mother voiced concern that she would be

fired for attending court proceedings and stated she had missed work for several days to care for Marcus during past school suspensions.

On February 13, 2013 a team decision meeting (TDM) was held with Mother, L.G., and several Department of Children and Family Services (DCFS) personnel. The participants agreed that Marcus would remain in an out-of-home placement, DCFS would file a petition, refer Mother for services, and refer Marcus for psychological evaluation and medication support. DCFS would refer the family for postadoption services. During the meeting, Mother told DCFS that Marcus urinated in plastic bottles and “tweek[ed]” by irregularly blinking and twitching his mouth.

DCFS evaluated Marcus’s risk at high based upon Mother’s inappropriate discipline, Marcus’s mental health diagnosis, and the unresolved domestic violence and substance abuse issues in the home.

Mother had five prior referrals dating from January 2003. All of the referrals were deemed unfounded. In October 2004, the caller stated Mother’s house was a “mess” and that “drugs go in and out of the house.” In March 2007, Mother’s older child, 16 year-old minor T.C., told a mandated reporter² that Mother had hit her. No visible marks or bruises were observed. Later, T.C. backpedaled and stated that Mother did not hit her or her siblings. Marcus denied any abuse. In October 2009, it was alleged Mother had been taking her children to L.G.’s house on weekends and that L.G.’s son sexually abused his half-sister. Mother, a mandated reporter, stated she would have reported the incident if she had seen or known about it.

DCFS’s petition filed February 15, 2013, alleged counts under section 300, subdivision (a), (b), and (j) that Marcus, J.B. and Jeremiah were at risk. In particular, the counts under section 300, subdivisions (a) and (b) were based on Mother’s beating of

² Teachers, psychiatrists, psychologists, clinical social workers and other mental health professionals are “mandated reporter[s]” (Pen. Code, § 1165.7, subd. (a)) and, as such, have an affirmative duty to report suspected child abuse or neglect to a child protective agency or other appropriate authority. (Pen. Code, § 11165.9.) Failure to report suspected abuse is a misdemeanor. (Pen. Code, § 11166, subd. (c).)

Marcus's feet and forcing him to drink dishwasher soap (counts a-1, b-1); Mother's arguments and physical altercations with L.G. (counts a-2, b-2); L.G.'s presence in the home (count b-3); and Mother's failure to obtain adequate medical care for Marcus's ADHD (count b-4). Counts j-1 and j-2 alleged Mother's conduct towards Marcus endangered Jeremiah and J.B.

On February 15, 2013, the dependency court ordered Marcus detained, but released Jeremiah and J.B. to Mother. The court set a jurisdictional hearing for March 15, 2013.

2. *Jurisdiction*

Marcus was placed in foster care, while Jeremiah and J.B. remained with Mother. On February 28, 2013, the social worker interviewed Mother, who stated that none of Marcus's allegations of abuse were true. Marcus had told her that he misbehaved because he wanted to be with his biological mother. Marcus had been with Mother since he was a year and a half old. Mother stated, "[t]wo weeks ago I was crying for help. I needed to speak to someone about his behavior. He needs counseling and medication. He's had problems since day one. He got kicked out of Kindergarten for bringing a knife to school. If Marcus is not happy here with me, then he can go. I just want him to be happy. I love Marcus and I know he loves me too." She reported that Marcus had problems using the bathroom to urinate and would urinate in a water bottle and put it under his bed or under a sink in the bathroom. Marcus had stolen money from the teacher's purse and personal items from other students. Mother denied that she and L.G. had fought or hit each other, stating that Marcus was a compulsive liar.

Johnnie B., Marcus's father, told DCFS that he believed Marcus's allegations. "There ain't no way he can act like that on his own. Marcus spent the night a couple of times but he was always in trouble. When [Mother] treated Marcus bad, the kids would treat him bad too. On Thanksgiving, Marcus was left in his room all day and couldn't participate. He needed to be with family. In 2007, Jeremiah told me that [Mother] slapped him and knocked him out. But she has the kids coached and they didn't say a

thing. [Mother] and [T.C.] fought and she left at 16.” T.B., one of Mother’s older children with Johnnie B.,³ “fought with [Mother] once and walked out of the house with a bloody lip and I couldn’t take her because the Sheriff said it wasn’t my weekend.” T.B. had told Johnnie B. that Mother and L.G. fought and L.G. drank.

Marcus told the social worker that he got an “F” in math and Mother told him she was going to beat the “F” out of him. She made him lie on the bed and beat the soles of his feet. Mother poured dishwashing liquid down his throat and Marcus vomited. Mother made him clean up the vomit with his shirt. Mother made Marcus copy from the dictionary and he did not go to sleep until 3:00 a.m. For dinner the next day he had noodle soup while the rest of the family ate crab legs. Mother hit him on the head with a broom and he has a scar and a bald spot from it. Marcus admitted that he got in trouble at school for lying and acting up but did not know why he did the things he did. “They tell me I ‘tweek’ and fidget a lot and blink a lot. They say I am a crack baby. Maybe medication will help me.” He complained that he was always locked up in his room at home, while at school he had freedom.

Jeremiah denied Mother hit Marcus, stating he and Marcus shared a bedroom and he would know if Marcus was being hit. J.B. also denied Marcus was abused, stating Marcus was confined to his room when he misbehaved. She stated she felt better when he was not there. T.B. stated that Marcus was in trouble every day. Jeremiah and J.B. denied that L.G. and Mother fought.

Marcus’s school disciplinary record reflected 21 incidents between May 2011 and February 2013, including five suspensions, stealing from other students, urinating in a bottle, disrupting class, calling students names, making sexually explicit comments to girls, refusing to attend class, refusing to complete his work, and selling slingshots at school.

³ T.B. resides with Johnnie B. The other three children (Jeremiah, J.B., and Marcus) visit Johnnie every other weekend. The record does not reflect where T.C. lives.

Marcus's mental health history disclosed that in 2003, at the age of three, Marcus was angry and mean towards the other children in the house. He was defiant, did not listen to direction, and terrorized other children his age. In 2004, Marcus was bonded to Mother but exhibited temper tantrums and outbursts. Mother expressed concern that Marcus exhibited symptoms of ADHD: he had a short attention span, became easily frustrated, and would throw a tantrum if he did not get his way. In 2005, at the age of five, Marcus had behavioral issues connected to his relationship with his birth mother. He was referred to counseling. In 2006, an individualized educational program was requested to evaluate Marcus for behavioral and learning disabilities. That year, it was also reported that Marcus was improving but he continued to be defiant and engage in petty theft.

Mother did not want to reunite with Marcus or receive reunification services.

On March 12, 2013, it was reported that Marcus had a severe inguinal hernia which would require surgery. Mother was unaware that Marcus had a hernia. Marcus told the social worker that the swelling in his testicle started last year, and he told Mother, but she just "looked at it and walked away."⁴

At the March 21, 2013 adjudication hearing, the court took testimony from Marcus in chambers without Mother present. Marcus testified that Mother hit him on the soles of his feet with a belt. Jeremiah and J.B. were in the other room and he believed they could hear Mother hitting him. Afterwards, Mother took him downstairs forced him to drink dishwasher soap. He vomited and Mother made him clean it up with his favorite shirt. J.B. was in the kitchen at the time and laughed at him. Mother made him throw the shirt away afterwards. Mother made him sit in the garage for a while, and then told him to go lie on the floor in his room. Marcus testified that while Mother was driving, she would look at him in the rearview mirror and call him "the devil" and tell him he looked like a demon. She would tell him that was why his parents did not want him and why

⁴ The court dismissed an amended petition filed March 25, 2013 alleging an additional count that Mother failed to seek proper medical treatment for Marcus's hernia.

they left him. Mother hit him on the head with a broom, leaving a scar. He witnessed L.G. having an argument with Mother.

Marcus loved Mother and believed she loved him. Marcus denied that he was making things up to get back at Mother or get out of her house. He believed he was treated differently than Jeremiah and J.B.

Marcus denied that he was having trouble at school or that his grades were poor, although he admitted he sometimes lied and got in trouble at school. He did not tell anyone at school (his coach or teacher) about his hernia because he was nervous and embarrassed. He wanted to visit with his biological mother. He admitted that he had gotten into trouble so he would be sent to visit his biological mother.

The dependency investigator testified that no one at Marcus's school was interviewed to determine whether he showed any signs of being physically abused, nor was there any such evidence. She found Jeremiah and J.B.'s accounts of what happened at Mother's home to be believable. She could not tell if either child had been coached.

Both Jeremiah and J.B. testified that they never saw Mother beat Marcus's feet, nor did they see her hit him with a belt or a broomstick. They did not see Mother put dishwasher soap in his mouth.

Mother is the director of a learning academy. Marcus is her first cousin's son. She adopted him because she loved him and did not want him to be in foster care. They live in a big house, and you can hear everything. Marcus had been suspended from school because of his behavior. He went to an alternative school for awhile. In 2005 or 2006, she learned Marcus had ADHD. She was told he should be put on medication. She spoke to Marcus about being on medication when he was about eight years old and they both decided he would do better without medication. To help him with his ADHD, she tried to keep a close eye on him at school and tried to get him involved in sports and keep him occupied. She spoke to someone in adoptions assistance about two weeks before the February 8, 2013 incident to get some assistance. To Mother, medication was the last resort but she was willing to put him on medication if that would help him. When

Mother learned Marcus had ADHD, they had three or four sessions of therapy, but Mother stopped the therapy because she did not believe it was helping Marcus. She did not consider using medication although the therapy was not working.

Mother denied hitting Marcus on the soles of his feet with her belt. She admitted swatting Marcus with her open hand on his bottom through his clothing, but stopped doing so when he was five or six years old. She disciplines the children now by sending them to their rooms, and this discipline has been successful. With Marcus, sometimes discipline would work and other times he would go back to school and misbehave again. The children all copy out of the dictionary when they are playing school.

Mother conceded that Marcus did not want to live in her home. Mother used to permit Marcus's biological mother to come visit them with her boyfriend, but when Mother learned Marcus's biological mother was using methamphetamine, Mother put an end to the visits.

When asked what she would do to mitigate the conflict with Marcus if he were to be returned to her home, she stated that she would need wraparound services and everything available. She did not want Marcus to make up stories about abuse again if she had to discipline him.

The dependency court dismissed the allegations of counts b-1 through b-3, and dismissed Jeremiah and J.B. from the petition. The court sustained count b-4 as amended to reflect that Mother was unable and unwilling to provide appropriate care for Marcus's mental and emotional problems which concluded ADHD that had gone untreated for six years, and that her unwillingness created a substantial risk of physical and emotional harm to Marcus. The court ordered reunification services, including monitored visitation with Mother, wraparound services, individual counseling, and assessment for psychiatric evaluation and psychotropic medication.⁵

⁵ The dependency court did not address counts a-1, a-2, j-1 or j-2, but the petition and minute order indicate they were dismissed. The two counts under j-1 and j-2 were

DISCUSSION

Mother contends there is insufficient evidence of her unfitness as a parent or neglectful conduct that caused Marcus to suffer a serious risk of harm or illness, citing *In re Precious D.* (2010) 189 Cal.App.4th 1251 (*Precious D.*). She argues that no evidence at the time of the jurisdictional hearing showed that Mother was unable or unwilling to address Marcus's ADHD and related behavior: she sought treatment for his behavioral issues, including trying therapy and rejecting medication after consulting with Marcus, and contacted DCFS several weeks before the incident to inquire about wraparound services for Marcus; furthermore, she indicated at the time of the jurisdictional hearing that she was willing to try medication as the last option, relying on *In re Rocco M.* (1991) 1 Cal.App.4th 814 and *In re James R.* (2009) 176 Cal.App.4th 129. In addition, she argues that no evidence linked Mother's actions to any risk of serious physical harm: Marcus had had behavioral issues for the past 10 years, and Marcus admitted he acted out intentionally in order to see his biological mother. Thus, she argues, Marcus created his own risk of serious physical harm. Further, his lengthy school disciplinary record was not evidence he suffered from any serious physical injury or was at risk of injury. Mother lastly argues that emotional harm does not support section 300, subdivision (b) jurisdiction, citing *In re Daisy H.* (2011) 192 Cal.App.4th 713.

Section 300, subdivision (b) provides that jurisdiction may be founded upon "the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment." 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 minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M., supra*, 1 Cal.App.4th at p. 820.) "Subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the

not adjudicated; however, since those counts related to Jeremiah and J.B. and they were dismissed from the petition, we deem those counts to have been dismissed.

child is exposed to a substantial risk of serious physical harm or illness.” (*Id.* at p. 823, italics omitted; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 399.)

At the jurisdictional hearing, the dependency court’s finding that a child is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) We review the dependency court’s jurisdictional findings for substantial evidence, and review the evidence in the light most favorable to the dependency court’s findings and draw all reasonable inferences in support of those findings. (*In re John M.* (2013) 217 Cal.App.4th 410, 418–419.)

We disagree with Mother’s analysis. First, in *In re Precious D.*, *supra*, 189 Cal.App.4th 1251, the minor engaged in various activities harmful to herself, including running away, skipping school, and associating with the ““wrong crowd,”” and talking to ““older guys”” on the phone, yet there was no evidence of neglectful conduct by the mother. (*Id.* at p. 1254.) *Precious D.* found insufficient evidence supported jurisdiction under section 300, subdivision (b) because the dependency court made only one finding critical of mother’s parenting skills—that she and Precious were not communicating, a fact that was contradicted by the record which showed that Precious and her mother communicated on a daily basis. Further, *Precious D.* found the mother could not be faulted for failing to initiate family therapy because mother was willing to participate in therapy, but Precious was not. (*Id.* at p. 1259.)

Here, Mother’s failure to obtain medical treatment for Marcus’s ADHD—whether it be therapy or medication—shows poor judgment and an inability to care properly for Marcus’s medical needs. Section 300, subdivision (b) provides a basis for jurisdiction where a parent fails to obtain necessary medical treatment for a child. Mother does not dispute Marcus had a diagnosis of ADHD, an illness that causes disruptive behavior. Contrary to Mother’s assertion, Marcus’s poor behavior does not solely stem from his desire to see his biological mother; rather, based upon the record, Marcus is suffering at

home and in school from poor behavior and an inability to control his impulses due to untreated ADHD.

Second, we disagree that there must be a present risk of harm. In *In re Rocco M.*, *supra*, 1 Cal.App.4th 814, the court stated: “[w]hile evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm” and “[t]hus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ [Citations.]” (*Id.* at p. 824, italics omitted.) *In re Rocco M.* was rejected by *In re J.K.* (2009) 174 Cal.App.4th 1426, 1436–1437. As *In re J.K.* explained, after *In re Rocco M.*, the statutory scheme was altered. Subdivision (b) of section 300 now allows for jurisdiction 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 failure or inability of his or her parent . . . to adequately supervise or protect the child.” “[T]he use of the disjunctive ‘or’ demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction under these subdivisions.” (*In re J.K.*, at pp. 1434–1435, fn. omitted.)

However, *In re J.N.* (2010) 181 Cal.App.4th 1010 disagreed with *In re J.K.*, *supra*, 174 Cal.App.4th 1426, to the extent *In re J.K.* concluded that subdivision (b) of section 300 authorized dependency jurisdiction based on a single incident resulting in harm, absent current risk. (*In re J.N.*, at p. 1023.) There, the mother and father were involved in an automobile accident after drinking where two of their three children were injured. The parents denied alcohol abuse problems, and there was no evidence of such abuse. (*Id.* at pp. 1014–1018.) *In re J.N.* found insufficient evidence supported jurisdiction based upon this one incident because there was an absence of current risk. (*Id.* at p. 1026.) *In re J.N.* did not hold, however, that dependency jurisdiction could never be based on a single incident: “In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all

surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*Id.* at pp. 1025–1026.)

Here, there was not a single incident of endangering conduct, but rather Mother's pattern of neglect in the treatment of Marcus's ADHD. Mother showed ongoing poor judgment in failing for several years to obtain treatment for Marcus's ADHD. She concluded after a handful of sessions of therapy that it was “not working” and discontinued therapy. She consulted with an eight-year-old child on whether he should use medication rather than consulting with a medical doctor. In the face of Marcus's ongoing and numerous difficulties at school Mother did nothing to help him. We find jurisdiction proper.

Lastly, we disagree with Mother's argument that emotional harm to Marcus cannot support dependency jurisdiction. Marcus was suffering here from more than emotional harm; instead, he suffered from the unabated symptoms of ADHD exacerbated, in part, by the failure of Mother to obtain treatment for his ADHD.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.