

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CARL M.,

Defendant and Appellant.

B253130

(Los Angeles County
Super. Ct. No. CK92642)

APPEAL from the judgment of the Superior Court of Los Angeles County,
Julie F. Blackshaw, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the County Counsel, John F. Krattli, County Counsel,
James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County
Counsel, for Plaintiff and Respondent.

The juvenile court sustained the allegations of a supplemental petition, and denied Carl M.'s (father) request for custody of his twin daughters, K.K. and Ka.K. Father appeals the jurisdictional and dispositional orders and contends there was no substantial evidence that (1) his criminal history and drug use presented a current risk to the twins, or (2) it would be detrimental to the twins to place them in his custody. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case was initiated after the twins' mother, A.E. (mother), was arrested for prostitution in Nevada in March 2012. At that time, Department of Children and Family Services (Department) received a referral that the twins, who were three years old, had been residing in the care of paternal aunt whose home was "dirty and cluttered with a cloud of cigarette smoke." On March 20, 2012, the Department filed a petition alleging that mother had neglected the twins by leaving them in "a filthy and hazardous home environment."¹ Father's whereabouts were unknown. The trial court detained the children and they were placed in the home of their half-sibling's paternal grandmother.

At the jurisdiction/ disposition hearing on July 13, 2012, the trial court sustained the petition under Welfare & Institutions Code section 300, subdivision (b), removed the twins from mother's custody, and ordered reunification services for mother.² The

¹ The petition was also filed on behalf of the twins' half-siblings, however, those children are not subjects of this appeal.

² All further statutory references are to the Welfare and Institutions Code.

twins remained in their foster care placement. Father's whereabouts were still unknown.

At the six-month review hearing on February 5, 2013, the court found that mother had been in partial compliance with the case plan and ordered the Department to provide her with further reunification services. Father's whereabouts were still unknown.

By the time of the 12-month review hearing on June 6, 2013, the Department had located father and he appeared at the hearing. The Department reported that father "had weekly monitored visits" with the twins, although it was unclear how long this had been occurring. The hearing was continued to August 7, 2013, at which point the court ordered the Department to evaluate father as a possible placement option for the twins. The court also terminated mother's reunification services on the ground that she had not complied with her case plan, and set a section 366.26 hearing for December 2013.

During the Department's investigation of father, the twins' current caretaker said that, during the 18 months the children had been detained with her, father had visited them " 'about eight times.' " ³ The Department noted that father was employed and his apartment was "appropriately furnished, clean [and] with no visible safety hazards." At a hearing on August 21, 2013, the Department reported that it was still waiting for father's "live scan results." The court ordered unmonitored visits for father and continued the hearing.

³ Apparently, during the months when the Department had been unable to locate father, he was in touch with the twins' caregiver.

On September 30, 2013, the Department reported that father had an extensive criminal history. In February 2006, he had been convicted of carrying a loaded firearm; in August 2008, he was arrested for spousal battery and false imprisonment; in March 2010, he was convicted of possession of a “narcotic controlled substance” and reckless driving; in August 2010, he was convicted of possession of a “narcotic controlled substance” and was ordered to participate in drug treatment; in September 2011, he was arrested for “[i]nfliction of corporal injury spouse/cohabitant”; in April 2012, he was convicted of reckless driving; in August 2012, he was convicted of evading a peace officer; in November 2012, he was arrested for domestic violence; and in February 2013, he was convicted of possession of a controlled substance and spousal battery. Father “acknowledged his criminal activity” and said he was “on probation and drug testing.”

The Department also reported that the children had told their caregiver that when they had visited father they slept on the floor and father had left them in the care of mother and “ ‘other people’ ” at times. In addition, the caregiver stated that when father returned the twins to her care, they were “ ‘filthy and hungry.’ ” The Department recommended that the court not release the twins to father due to his “lengthy criminal history, [and] recent felony conviction for possession of a controlled sub[s]tance and conviction for battery on a spouse/ex spouse/date,” and that father’s visits be changed back to monitored.

On October 16, 2013, the Department filed a subsequent petition under section 342⁴ alleging that father’s “history of domestic violence and drug possession as evidenced by [his] criminal convictions . . . renders [him] incapable of providing the children with regular care and supervision . . . and place[]s the children at risk of physical harm” The Department reported that father “denies drug use but admits to having in his possession drugs.” Father also acknowledged that he was intoxicated when he was arrested in 2011 for domestic violence. A police report for father’s arrest in connection with that incident stated that father “ ‘head butted [the victim] and slapped her in the face . . . [and] that [] father was intoxicated.’ ”

In the Jurisdiction Report for the supplemental petition, the Department noted that father had submitted to random drug and alcohol testing on four occasions since the last court date and had tested negative. Father had also attended domestic violence classes since June 2013 and had completed 29 out of the 52 court-ordered sessions. In addition, father had volunteered to take parenting classes, which he had participated in for 22 weeks.

At the jurisdiction hearing on the supplemental petition on December 9, 2013, the court heard testimony from father. Father testified that he had only lived with the

⁴ Section 342 provides that “[i]n any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the juvenile court has been terminated prior to the new allegations. [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.”

twins for about two weeks when they were two years old, and that afterwards, he had visited the twins several times a month for about six months. Father had then stopped visiting the twins because he and mother were no longer “on good terms.”

Father was asked about his conviction in February 2013 for possession of a controlled substance, and he testified that the substance was “crystal meth” and it was confiscated from him before he had “a chance to use it.” Father also said he had “been clean for a while” but that, prior to that time, his “drug of choice” was powder cocaine. Since his last conviction, father had enrolled in a domestic violence program, started attending Alcoholics Anonymous meetings, and voluntarily signed up for parenting classes.

The court sustained the supplemental petition’s allegations under section 300, subdivision (b), and found that “there’s still a risk the court believes from the extensive criminal history.” The court noted that father had “worked hard” and “commend[ed] [him] for that work,” but found that he “still ha[d] a ways to go.” The court further found that “pursuant to [] [section] 361.2 that placement of the children with the father would be detrimental to their safety, protection and physical or emotional well-being.” The children were ordered to stay in their current foster care placement, and father was provided with reunification services. Father timely appealed.

CONTENTIONS

Father contends that the juvenile court erred in sustaining the subsequent petition under section 300, subdivision (b) because there was no substantial evidence that his history of domestic violence and drug use presented a current risk to the twins. Father

also contends that the disposition order was in error because there was no substantial evidence that it would be detrimental to the twins to place them in his custody.

DISCUSSION

1. *Standard of Review*

We review the juvenile court's jurisdiction and disposition findings for substantial evidence. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) Substantial evidence is “evidence that is reasonable, credible, and of solid value.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) “ ‘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.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]’ ” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

2. *Substantial Evidence Supported the Court’s Finding That Father’s Substance Abuse and History of Domestic Violence Presented A Substantial Risk of Serious Physical Harm to the Children*

A child may be declared a dependent of the juvenile court under subdivision (b) of section 300, the failure to protect provision, when the court finds “[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”

“[T]hree elements must exist 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.’ [Citation.] ‘The third element “effectively requires a showing that at the time of the jurisdiction 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).” ’ ’ ’ (In re J.O. (2009) 178 Cal.App.4th 139, 152.)

“Cases finding a substantial physical danger tend to fall into two factual patterns. One group involves an *identified, specific hazard* in the child’s environment — typically an adult with a proven record of abusiveness . . . [the] second group involves children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (In re Rocco M. (1991) 1 Cal.App.4th 814, 824.)

Father contends that his drug use, by itself, was insufficient to show that the children were at risk of any harm, and that his criminal convictions for possession of drugs and domestic violence were not linked to any harm to the twins. In support of the first argument, he cites to *In re Destiny S.* (2012) 210 Cal.App.4th 999 in which the court held that a parent’s use of drugs “ ‘without more,’ does not bring a minor within the jurisdiction of the dependency court.” (*Id.* at p. 1003.) In that case, the court found there was no evidence the mother’s drug use caused her to neglect her child. “On the contrary, the undisputed evidence showed that at the time of this petition [the child’s] home was ‘neat and clean,’ . . . [the child] ‘ha[d] no behavioral or discipline issues and attends school regularly,’ ” and, although mother had years ago left alcohol within the child’s reach, at 11 years old, the child “ ‘was old enough to avoid the kinds of physical

dangers which make infancy an inherently hazardous period of life.’ [Citation.]” (*Id.* at p. 1004.)

Here, unlike in *Destiny S.*, there is “more” than just father’s use of drugs to support a finding that the twins were at risk of harm. The twins were both “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) In addition, the Department reported in September 2013 that the children “slept on the floor” at father’s house; were left with “other people,” as well as mother whose neglect was the basis for the initial petition in this case; and were “filthy and hungry” when they returned from a visit with father. Further, although father had tested clean on certain occasions during the months prior to the jurisdiction/disposition hearing, father also admitted two months before the hearing that he had illegal drugs still in his possession. This evidence suggested that father was continuing to use drugs and that it impaired his ability to adequately supervise and care for the twins.

The record also suggested that father’s substance use was intertwined with his violent behavior. With respect to his 2011 arrest for domestic violence, the police report noted, and father admitted, that he was “intoxicated” at the time. The police report also stated that father had “head butted [the victim] and slapped her in the face,” and father did not deny this violent behavior when the Department questioned him about the incident.

Although father had made efforts to address his substance abuse and history of domestic violence by attending a domestic violence program and Alcoholics

Anonymous meetings, father had also attended a drug treatment program in the past which did not lead him to reform his behavior. He was thereafter convicted again of possession of a controlled substance, and, as mentioned above, admitted to possessing drugs during the timeframe when the children were visiting him. All of this constituted substantial evidence in support of the juvenile court's finding that father's drug use and history of domestic violence placed the children at substantial risk of neglect and abuse.

2. *Substantial Evidence Supported the Disposition Order*

Father next contends that there was no substantial evidence that it would be detrimental to the twins to place them in his custody. In support of this argument, he points to evidence that he was willing to participate in classes and counseling, that he was employed and had an appropriate apartment, and that his last conviction for possession of drugs and spousal battery had occurred a year prior to the jurisdiction/disposition hearing. We hold there was substantial evidence supporting the court's decision.

The juvenile court analyzed father's request that the twins be placed in his custody under section 361.2. Section 361.2 governs placement of a child with a noncustodial parent when the child is initially removed from parental custody. "Even though section 361.2, by its terms, applies when the court first takes jurisdiction of a child, its procedures can be invoked at the six-month and 12-month review hearings [Citation.]" (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451; see also Cal. Rules of Court, rules 5.710(b)(2), 5.715(b)(3).) Here, father appeared at the 12-month review hearing and requested custody of the twins, therefore, the trial court

properly found that section 361.2 governed his request. Although the 12-month review hearing was continued to allow the Department time to investigate father as a potential placement option and the Department then filed a supplemental petition which further delayed the court's ruling on father's request, section 361.2 still applied because the request was initially made at the 12-month review hearing.

There is substantial evidence supporting the trial court's ruling that, at the time of the jurisdiction/disposition hearing, placement of the children with father would be detrimental to their safety. As noted above, although father's apartment was deemed "appropriate" by the Department and he was employed, there was evidence he did not provide adequate care to the twins when they were in his care. Father had the twins sleep on the floor during a visit, left them with "other people" including mother (whose neglect was the basis for the initial petition in this case), and when the twins returned from a visit, they were "filthy and hungry." In addition, although father had tested clean on several occasions in the months prior to the jurisdiction/disposition hearing, father also admitted that he had in his possession illegal drugs as recently as two months before the hearing. All of this evidence suggested that he was still using drugs and that his drug use impaired his ability to provide adequate care and supervision for the twins.

Father also argues that his battery conviction does not present a risk to the twins because they were not exposed to that incident. However, this conviction was not a remote or isolated incident, as he was convicted just a year prior to the jurisdiction/disposition hearing and had been arrested three times for spousal battery in the five years preceding the hearing. In addition, the children had never lived with

father, therefore, although the children were not physically exposed to prior incidents of violence, there was a risk that they would be if placed in father's custody. All of this constituted substantial evidence – despite father's willingness to participate in programs to address his drug use and history of domestic violence – that it would be detrimental to the twins' safety to place them with father at the time of the jurisdiction/disposition hearing.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.