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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re MORGAN M., a Person Coming
Under the Juvenile Court Law.

B255261

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK01576)

Plaintiff and Respondent,

v.

KATHERINE M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Debra Losnick, Commissioner. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal for Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Navid Nakhjavani, Deputy County Counsel, for Respondent.

Katherine M. (Mother) appeals from orders issued by the juvenile dependency court finding jurisdiction over her daughter. Mother contends the dependency court's jurisdictional orders are not supported by substantial evidence. Mother's implicit end goal is to return to the status quo prior to the dependency proceedings, which would be the continuation of a family law court judgment of dissolution giving Mother primary physical custody of her daughter. We affirm the dependency court's orders.

FACTS

Background

Mother and M.M. (Father) were married in 2000, and are the parents of Morgan M., born in 2002. In 2005, the family law court entered a judgment of dissolution which provided that Mother and Father would share joint legal custody of Morgan, and that Mother would have primary physical custody. The dependency court has now issued orders granting Father sole legal and physical custody of Morgan, and terminating the court's jurisdiction. Father is not involved in the current appeal.

In September 2013, the Los Angeles County Department of Children and Family Services (DCFS) received a referral from a school counselor reporting that Morgan was a possible victim of emotional abuse and general neglect by Mother. A children's social worker (CSW) responded to the referral. When the CSW contacted Mother by phone, she became irritated and stated that she had called the police to report Morgan's violent behavior. During an ensuing face to face meeting, the CSW noted that Mother seemed upset and was very difficult to follow in conversation, jumping between past and present events. Mother said that Morgan was at Father's home, but told the CSW not to talk to Morgan, and threatened to stop talking to the CSW if she planned on going to Father's home.

Mother showed bruises on her legs and arms to the CSW and claimed they were from Morgan kicking or hitting her. Mother claimed that, earlier that day, Morgan had called Mother a "mother fucking bitch" and a "cunt," and had kicked her. Mother also accused Morgan of threatening to kill her. Mother had called the police, but then decided to seek help from Morgan's school.

Mother stated that she and Father separated when Morgan was approximately 12 to 18 months old. After the parents were divorced, there was a family law court custody order giving them joint custody. Mother accused Father of saying negative things about her to Morgan, and speculated that this could be the cause of Morgan's behavioral problems. Mother stated both that Father was not spending much time with Morgan, and that he was manipulating Morgan. Mother stated that Father often traveled for work, and Morgan would have to stay with Father's mother.

Mother reported she worked as a teacher, and felt overworked and stressed. She described an incident in the past year when she took her students on a field trip and took Morgan along. Morgan was a student at the same school, but not enrolled in Mother's class. Mother stated she got in trouble and that school administrators thereafter started "writing her up." She also believed the school began treating Morgan differently after this incident, accusing Morgan of being absent and preventing her from getting into a magnet school. All of this was stressful for Mother. When the CSW indicated that she would need to interview Morgan, Mother stated that she did not know Father's address.

After talking to Mother, the CSW spoke with Morgan's school counselor, Ms. W., who reported that she received a phone call from Mother on September 12, 2013, and Ms. W. could hear Morgan screaming in the background. Ms. W. asked to speak to Morgan. When Morgan got on the phone, she stated that Mother was refusing to take her to school again. Ms. W. told Morgan to calm down and put Mother back on the telephone. When Mother got back on the phone, she said that Morgan had hit her, and that she (Mother) needed to go to the hospital. Ms. W. asked Mother to try bringing Morgan to school first. Twenty minutes later, Ms. W. called back to Mother's home, at which time Mother stated that Morgan was still hitting her and that the police had been called. Mother arrived at school shortly thereafter, sent Morgan to her class, and started crying, telling Ms. W. that Morgan had assaulted her. When Ms. W. commented that Morgan had good grades, was a calm student, that the behaviors that Mother was attributing to Morgan did not fit Morgan's character, and had never been exhibited at school, Mother acted "nervous" and

“unstable,” causing the CSW to think that Mother might be suffering from mental health issues.

The CSW then spoke with Morgan at the school. Morgan stated she was 11 years old, and in the sixth grade. Morgan reported she had a lot of friends and liked her teacher. She was in advanced math and language arts. She denied being spanked or hit by either parent, denied ever seeing her parents use illegal substances, denied seeing her parents engage in physical altercations, and said she felt safe both at home and at school.

The CSW spoke with Father at his home. Father was concerned about Mother’s mental health. He reported that the maternal family had attempted to convince Mother to seek help, but Mother refused. Father said Mother called him on a regular basis, claiming that Morgan was hitting and kicking her, but there was no evidence to these claims. Father stated Mother was “very high strung,” and described her home as “chaotic.” Father believed Morgan was protective of Mother and did not want to disclose what was occurring in the home. Morgan previously informed Father that Mother had trouble getting out of bed. Father explained that Morgan liked school and liked being on time for school, but at times Mother would not wake up to take her. Father reported that on September 10, 2013, Morgan called him to complain that Mother was not taking her to school. Mother then spoke with Father and assured him that she would take Morgan to school. That evening, Morgan spoke with Father and told him that she had missed school because she was sick. When Father asked Morgan about her illness and reminded her that she had not mentioned being sick that morning, Morgan stated she did not want to talk about it. Morgan also missed school on September 11, 2013. She was late to school on September 12, 2013. Father agreed to attend a Team Decision Meeting (TDM) on September 19, 2013.

On Saturday, September 14, 2013, Mother left a voicemail message for the CSW. In her message, Mother said that she was unable to keep Morgan from hitting her. When the CSW called Mother back on Monday, September 16, 2013, Mother said everything was fine, she and Morgan had a great weekend together, and that “things have never been better.” When the CSW inquired about the voicemail, Mother replied that the message

was a mistake, and that Morgan had not been hitting her. Mother declined to attend the TDM, stating she had to work. When the CSW reminded Mother that she was not employed at that time, Mother said that she was going to be looking for work. When the CSW said the meeting would take only about one hour, Mother started complaining about DCFS's involvement with her family, and that she would call back. When Mother subsequently called back the CSW, Mother said that DCFS's investigation was hurting Morgan. Mother also asked the CSW what she could do to stop Father from talking to Mother's family. When the CSW again asked Mother whether she would be willing to attend a TDM, Mother replied "no" and hung up the phone.

Over the course of the next several days, Mother called DCFS numerous times to complain about the CSW. As a result, a second CSW was assigned to work with Mother. (The initial CSW apparently continued with her investigation, just not directly dealing with Mother.) On September 18, 2013, Mother called the original CSW, stating that she had done some research and had determined that the CSW was acting illegally. During the course of this call, the CSW reminded Mother that she had been invited to a TDM, and told Mother that she could discuss any concerns she may have about the case at the TDM. Mother responded by claiming that she had never been invited to attend a TDM. The second CSW thereafter talked to Mother in an attempt to set up a TDM. Mother stated she did not want to attend a TDM and indicated she was going to "get an attorney involved" because she was a "victim."

The original CSW spoke with the paternal grandmother, who expressed concerns about Mother's mental health and need for mental health treatment. When asked about Morgan's reported violent behavior, the paternal grandmother said that such behavior would be "definitely out of character" for Morgan, and that she had never behaved in such manner in the paternal grandmother's home.

The original CSW spoke with Mother's cousin, "Todd," who stated he did not know why Morgan was so rebellious, but speculated that the child was dealing with issues stemming from her parents' divorce. Todd stated that Mother was taking medication and had been seeing a psychiatrist. He believed Mother's medication was to

treat anxiety. Todd said that something had happened recently, and Mother had stopped seeing her psychiatrist. He described Mother as maybe having a “personality disorder” and being “manipulative.”

When interviewed by the original CSW, the maternal grandmother said that she had “nothing positive” to say about her daughter. The maternal grandmother indicated that Mother needed mental health treatment, but refused to get it. She also reported that Mother had prescriptions for anxiety, depression, and sleeping. The maternal grandmother described Mother as “very irrational” and “very unbalanced.” She believed Morgan was “completely isolated” because Mother would spend her time sleeping or talking on the telephone, leaving Morgan alone.

On September 20, 2013, the second CSW talked to Mr. M., the principal at the elementary school where Mother previously taught. Mr. M. reported that Mother had filed a workers’ compensation claim against the school five years earlier, claiming that Mr. M. had caused Mother’s stress-related injuries. The claim proved unsuccessful. Mr. M. indicated that Mother had transferred out of his school. Mr. M. recalled that while Mother was employed as a teacher, she had contacted another employee at the school and expressed suicidal thoughts. In his opinion, Mother was “spiraling down” at that time and was difficult to deal with.

On September 23, 2013, DCFS received a telephone call from Cristina Santos, a mental health professional with the Los Angeles Police Department’s System-Wide Mental Assessment Response Team (SMART). Santos indicated that Mother had called 911, claiming Morgan had attempted to stab her to death. When law enforcement arrived at the family home, Mother recanted. Santos reported that Mother appeared paranoid and demonstrated bizarre behavior. Mother refused to acknowledge calling 911.

On September 24, 2013, the second CSW and a supervising CSW talked to Morgan at the paternal grandparents’ home. Morgan described the 911 call events as follows. Morgan had picked up a kitchen knife that she found under a blanket, and then, “out of nowhere,” Mother had immediately called 911, stating that Morgan was trying to kill her with a knife. Morgan said she was handcuffed by police officers who responded

to the call. Morgan stated that Mother's behavior had regressed over the past few weeks and that she did not feel safe in Mother's home after this latest incident.

On September 24, 2013, Mother contacted DCFS, again indicating that she had never been invited to a TDM. Mother stated she wanted to attend a meeting and wanted to do what was best for Morgan. DCFS scheduled a TDM for Mother for September 26, 2013. On September 25, 2013, Mother contacted the supervising CSW and said that she did not want to attend the TDM because she wanted more time to gather "support persons" to attend the meeting with her.

The Dependency Court Proceedings

On October 1, 2013, DCFS filed a section 300 petition on behalf of Morgan. The agency's initial reports showed the events summarized above, followed by its assessment that Mother's erratic behavior and statements during DCFS's investigation, coupled with her mental health background, demonstrated that Morgan was at risk of harm in Mother's custody. DCFS opined that Mother's mental health issues were beginning to cause her to have delusions that Morgan wanted to kill or physically harm Mother. DCFS concluded that there was no evidence to support Mother's belief that Morgan wanted to harm her, and expressed concern that Mother's delusions could cause her to attack Morgan, the unmistakable implicit suggestion being that Mother might act in an unwarranted fear of the need for self-defense. The dependency court found a prima facie case for detaining Morgan, and ordered Morgan released to Father's custody.

DCFS thereafter interviewed Morgan again, this time regarding Mother's hospitalization in May 2013. Morgan reported that she was not home when Mother was taken to the hospital. Morgan recalled that Mother stayed in the hospital for three or four days. On other topics, Morgan reported that Mother slept "a lot" and also: "I would take care of myself because [Mother] slept too much." Morgan also described another incident that occurred only a few months earlier when she was in the garage and Mother locked her out of the car and drove off, pretending to leave Morgan behind. Morgan stated she chased Mother's car down the alley and was crying. Morgan again described the events surrounding Mother's 911 call. Morgan stated officers handcuffed her to a

chair for several hours until she was released to Father's custody. Morgan stated she wanted to live with Father because she felt safe there.

DCFS also interviewed Mother again. Mother denied being bipolar or having been diagnosed as being bipolar. Mother reported that she had Attention Deficit Hyperactivity Disorder (ADHD) and had been taking Adderall to treat her ADHD for the past 11 months. Mother also reported she was depressed and had been seeing a psychiatrist named Dr. Rutenbirgh. Mother indicated she had seen Dr. Rutenbirgh three times. Mother acknowledged she needed help and wanted to enroll in conjoint counseling with Morgan, but stated she was capable of caring for Morgan.

Dr. Rutenbirgh spoke with the DCFS Dependency Investigator (DI) by telephone in November 2013. Dr. Rutenbirgh stated he first met with Mother in June 2013, and had seen her three times since. He prescribed Adderall, Trazedone, and Klonopin for Mother, whom Dr. Rutenbirgh diagnosed with ADHD, depression, and anxiety. He said that Mother would be stable and symptom free as long as she took her medication on a regular basis and continued with treatment.

DCFS interviewed Father again. Father expressed concerns for Morgan's safety in Mother's custody. He believed Mother was "not okay," and reiterated that she had been admitted to Aurora Charter Oak Hospital in May 2013 because she wanted to kill herself.

The maternal grandmother believed it was best for Morgan to live with Father. The maternal grandmother stated that Mother was not getting the right mental health treatment. She reported that Mother had been depressed for years, had gone to the emergency room multiple times due to anxiety attacks, and had attempted to harm herself on more than one occasion. The maternal grandmother reported that Mother would self-medicate and sleep a lot. The paternal grandmother also believed Mother needed help and stated her biggest concern was Mother's "unpredictability."

In its jurisdictional and disposition report filed in December 2013, DCFS offered its conclusions that Mother had an "enmeshed and explosive relationship" with Morgan, and that Mother was unable to make objective decisions because her emotions would get in the way. Additionally, Mother's mental health issues caused her to have delusions that

Morgan wanted to kill her. DCFS opined that Mother's delusions could result in Mother attacking Morgan in the future. DCFS recommended Mother be ordered to participate in a psychological or psychiatric evaluation. DCFS included copies of two medical reports prepared around the time of Mother's hospitalization in May 2013. A report from Aurora Charter Oak Behavioral Health Care (which operated the hospital) indicated that Mother suffered from "major depressive disorder, recurrent, possibly with psychosis." A report from Barrington Psychiatric Center noted Mother underwent a psychological evaluation in late April 2013 prompted by Mother's claim of anxiety and stress from conflicts at work. The Barrington evaluation diagnosed Mother with generalized anxiety disorder, depressive disorder, and Attention Deficit Disorder, "per patient report." The report's summary concluded that Mother was diagnosed with a depressive disorder, not otherwise specified, generalized anxiety, Attention Deficit Disorder, and that she was temporarily "totally disabled on a psychiatric basis."

In a report filed in March 2014, DCFS indicated that the DI had tried to contact Mother several times during December 2013 and January 2014, but had not heard back from Mother. DCFS further reported that Mother did not visit with Morgan in December 2013 or January 2014, but did have telephonic contacts. Morgan wanted to have visits with Mother, but did not want to return to her custody. Morgan felt safe and stable with Father and wished to continue living with him. By March 4, 2014, Mother had three monitored visits with Morgan. DCFS further reported that Mother was not attending any counseling services and recommended the juvenile court sustain the petition.

At a contested hearing on March 11, 2014, Mother testified she was not enrolled in counseling, but had been seeing Dr. Rutenbirgh, who had prescribed Klonopin, Trazadone, Adderall, and Lexapro, but her benefits had stopped in February 2014. Mother explained that the Lexapro was not working out for her, so she stopped taking the medication. Mother testified she could not recall what mental disorder she had been diagnosed with prior to May 2013, but believed she did have a diagnosis because she was prescribed medication. She speculated her diagnoses had to do with anxiety and ADHD.

Mother acknowledged she was hospitalized at Aurora Charter Oak Hospital from May 13 through May 17, 2013.

Mother explained the circumstances surrounding her May 2013 hospitalization as follows: She was at the school to see Morgan's orchestra performance and to go the school office to get a "return to work form." When the office could not find the form, Mother left the office area to go see Morgan's performance at the auditorium. On the way out, Mother got the form and then walked out and went home. Later, she "sitting on the floor of my home . . . and I was . . . looking at my cell phone, ordering [a] DVD, and there was a knock at my door, [and] seven police officers at my door" Mother explained that she later learned that a school worker had reported that Mother said something which prompted a police report. According to Mother: "I think you have the reports . . . I never spoke to her saying I said something I obviously did not do or would not do." Mother testified that she had been handcuffed, and placed in a cell. Mother stated that as result of her detainment, Morgan was left at school with nobody to pick her up. Mother denied she had any suicidal ideations, denied making any statement to that effect, and said the only medication she was given during her hospitalization was for her back pain.

Mother testified about the 911 call. She and Morgan had an argument, and shortly afterward, Mother saw Morgan with a steak knife. Mother stated she was not in fear for her own safety, but for Morgan's. She said she called 911 for help. Mother testified that when the officers arrived at her home, she realized they were not there to help Morgan. Mother stated Morgan was not a danger to anyone. She denied telling the officers that Morgan wanted to kill her.

On cross-examination, Mother denied ever reporting that Morgan had physically abused her. She said she never told any social worker that Morgan physically hit her, causing bruises. When asked whether she had been diagnosed with a mental disorder upon her discharge from Aurora Charter Oak Hospital, Mother testified: "I was on the phone with them yesterday. I am aware of what you have in the papers, and it is incomplete medical records. They even told me it was incomplete. So when I got out on

the 17th, my understanding is they took my insurance card out of my wallet. The police charged my insurance. My insurance ran out on the Friday. That's why I got out on a Friday, and I paid for medical records as I walked out with my cousin." Mother claimed the only thing she was told upon her release was "good luck."

When questioned about her medications, Mother testified that because she had been out of work, her insurance through the Los Angeles Unified School District had expired, but she was trying to arrange coverage with Medi-Cal.

On March 12, 2014, the juvenile court heard argument from counsel. Mother's counsel argued there was no evidence to demonstrate how her mental health issues had negatively affected Morgan. Counsel for DCFS argued that Mother was involuntarily hospitalized in May 2013 and her assessment stemming from that hospitalization revealed she suffered from depressive disorder recurrent, possibly with psychosis. Counsel went on to argue that in addition to Mother's mental health diagnoses, her actions were troubling, particularly the incident where mother called 911 believing Morgan was going to stab her, and another incident where she locked Morgan out of the car and drove away while Morgan chased after the car down an alley. Father's counsel asked that the petition be sustained.

The juvenile court indicated the only part of Mother's testimony it found credible was her statement that she decided on her own to take less of the prescription medication than she was required to take by her treating psychiatrist. The court further explained that the instant case was distinguishable from *In re A.G.* (2013) 220 Cal.App.4th 675, relied on by Mother's counsel during argument. The court found that Mother was not in control of her actions and did not have an understanding of what was going on with respect to herself or Morgan. The court sustained the petition as follows:

"(b)(1) Mother . . . has history of mental and emotional problems including a diagnosis of suicidal ideation, depression, and anxiety which render[s] the mother unable to provide regular care for the child.

On 05/13/2013 and prior occasions, the mother was hospitalized for the evaluation and treatment of the mother's psychiatric condition.

The mother’s mental and emotional problems endanger the child’s physical health, safety and well being and place the child at risk of physical harm, damage and danger.” (Emphasis added.)

The court declared Morgan a dependent of the court; it ordered her placed with Father, and terminated the court’s jurisdiction with an order for monitored visits for Mother.

Mother filed a timely notice of appeal.

DISCUSSION

Mother contends the evidence does not support the dependency court’s decision to assert jurisdiction over Morgan. Specifically, Mother argues the evidence does not show that she posed a substantial risk of harm to Morgan, at the time of the March 11-12, 2013 adjudication hearing and looking forward. Mother argues the evidence was not sufficient to demonstrate a causative link between her psychological and emotional problems on the one hand, and any present or potential future harm to Morgan on the other hand. We disagree.

Our court, as have other courts, recently examined the issue of what may be called “causation” in the context of dependency court proceedings. (See, e.g., *In re Rebecca C.* (2014) 228 Cal.App.4th 720; *In re James R.* (2009) 176 Cal.App.4th 129.) While we agree with Mother, as an abstract proposition of law, that the responsible social agency must show a link between a parent’s actions and a risk of harm to a child, we are satisfied that the evidence is sufficient in her case to support dependency court jurisdiction in the current case.

Welfare and Institutions Code, section 300, subdivision (b), provides in relevant part that the dependency court may adjudge a child to be a dependent of the court when he or she has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of a parent’s inability to provide regular care for the child due to the parent’s mental illness, developmental disability, or substance abuse. Under the “risk of harm” element of section 300, subdivision (b), the social agency must show that, at the time of the jurisdictional hearing, “the child is at substantial risk of

serious physical harm in the future” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) Under this standard, evidence of past circumstances is not sufficient alone to support a jurisdictional finding; there must be some reason “beyond mere speculation to believe [physical harm will occur going forward].” (*In re James R., supra*, 176 Cal.App.4th at pp. 135-136.)

In the current case, it cannot be doubted that Mother has an unfinished history of mental and emotional instability. Further, the evidence in the record, when reviewed in the light supportive of the dependency court’s orders as it must be on appeal (see, e.g., *In re Savannah M., supra*, 131 Cal.App.4th at p. 1393), supports the conclusion that Mother’s condition is growing progressively more disabling. The evidence also supports a dual-pronged finding that Mother has acted voluntarily in the recent past in accountable ways to address her problems, but that her efforts have been and continue to be accompanied by significant denial about the extent of her problems and her ongoing need for treatment. All this said, we are also mindful that, without a history of past abuse or neglect of a child, it is often ““nearly impossible”” to project whether the child is at a substantial risk of future suffering from abuse or neglect. (See *In re James R., supra*, 176 Cal.App.4th at p. 136, and cases cited therein.) Further, future harm to a child ““may not be presumed from the mere fact of mental illness of a parent.”” (*Ibid.*)

We are satisfied that the dependency court’s finding that there was a risk of harm to Morgan at Mother’s hand is sufficiently supported by the evidence to sustain the court’s jurisdictional orders. Mother accurately states that the evidence shows she and Morgan lived together throughout Morgan’s life, and does not show any past incident of physical violence between them. Mother also accurately states that the evidence shows several interested persons (Father, school officials, maternal and paternal grandmothers, and maternal cousin) expressed concern about Mother’s emotional stability, but further shows that none actually reported any physical aggression by Mother toward Morgan. Further, Mother accurately states that the evidence shows she was admitted at Aurora Charter Hospital in May 2013 on a 72-hour hold, but further shows the hospital’s discharge records indicate her problem could be addressed after discharge. Further, the

records show no indication that she posed a physical threat to herself or others, including Morgan. A psychological evaluation at roughly this same time also gave no indication that Mother posed a physical threat to herself or others, including Morgan.

Despite the summary in the above paragraph, DCFS expressed concern that Mother's mental health issues were causing her to have delusions that Morgan wanted to physically assault or kill Mother. Mother made false accusations against Morgan to the child's teacher, the social worker, and to police. The latter accusation came in the form of a 911 call, which resulted in police responding to the family home where they handcuffed Morgan. Given the totality of the circumstances, we find it reasonable for DCFS to see a risk of harm, and for the dependency court to find a risk of harm. Specifically, Mother could well act in a psychologically unstable, unreasonable belief in the need to use self-defense against Morgan. Mother is correct that there is "no history" of Mother physically moving against Morgan, but we do not find this necessarily defeats a finding of risk of harm. After the 911 incident, Morgan stated that she did not feel safe living with Mother. DCFS, the dependency court and our court share the same fear. We do not believe it is necessary for the assertion of dependency court jurisdiction for DCFS and the dependency court to await the news story about a parent attacking and harming a child in the delusional and unreasonable belief in the need for self-defense. It was reasonable for the dependency court to find that Mother's next step after a resort to calling the police to defense against a non-existent threat will be a resort to self-defense against a non-existent threat. For all of these reasons, we will not reverse the dependency court's jurisdictional findings and orders.

DISPOSITION

The dependency court's orders are affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.