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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B256529
(Los Angeles County
Super. Ct. No. DK02946)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

PAUL N.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Tony L. Richardson, Judge. Affirmed in part; reversed in part.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel for Plaintiff and Respondent.

The juvenile court declared the teenage children of Paul N. (Father) dependents of the court under Welfare and Institutions Code section 300, subdivisions (b) and (j) (failure to protect).¹ Father argues that there is insufficient evidence to support the court's jurisdictional findings as to either child. We will reverse the jurisdictional order as it relates to conduct of Father and affirm the judgment in all other respects.

FACTS AND PROCEEDINGS BELOW

The children, Paul (born January 1998) and Claire (born July 2001) lived with their mother in Louisiana most of their lives. While in Louisiana, Paul had numerous contacts with law enforcement and was placed on probation. In July or August 2013, a Louisiana court sent Paul to live with Father in California. In October of that year, Claire came to live with Father as well because mother was financially unable to care for her.

In November 2013, the Department of Children and Family Services (DCFS) received a referral alleging that Paul had expressed suicidal thoughts and threatened to kill Father. According to the referral, Paul reported that Father drank alcohol on a daily basis, treated Paul "like a dog," and had threatened to send him to juvenile hall or jail. The reporting party indicated that Paul was "emotionally agitated," and, therefore, was not asked any further questions. The referral noted that Paul's arm was wrapped in a bandage because he previously had cut himself.

In the course of investigating this referral, DCFS learned that once in Father's custody Paul enrolled in high school. At the time of the referral the referring party recommended that Paul participate in transitional counseling. Father never followed through with this recommendation, claiming he had no medical coverage for Paul.

Paul was interviewed by a DCFS worker. The worker reported that, according to Paul, Father drank vodka all day, every day. Paul also claimed that approximately

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

three weeks earlier Father had been drinking and yelled at him. Father also grabbed Paul's arm and approached him in a threatening manner. Paul pushed Father away. Father then threatened to call law enforcement and have Paul sent to juvenile hall.

Paul was placed on a 14-day psychiatric hold for suicidal ideations. He was discharged later in November 2013. Two days after Paul's discharge, a DCFS worker met with Father at the family home. Father informed the worker that he obtained custody of Paul through the juvenile court in Caddo Parish, Louisiana, in July 2013. After Father assumed custody of Paul the children's mother made arrangements for Father to also care for Claire. Father told the worker that Paul did not follow Father's rules. Paul had been admitted to eight or 10 hospitals in Louisiana and Father believed Paul was accustomed to being institutionalized. Father also told the worker that he did not want institutionalization for Paul.

While at the family home, the worker spoke with Claire who appeared "neat and clean without any marks or bruises." Claire stated that she had been living with Father for approximately two weeks and she was "doing fine" but missed her mother and wanted to return to her. She told the worker that Father "takes well care of her and Paul." She gets enough to eat and is not hit or yelled at. She had never seen Father strike Paul and no one had touched her "in her private area." Claire confirmed Father's claim that Paul does not follow Father's rules and denied that the chores Paul was given were hard. Finally, Claire acknowledged that Father "drinks everyday" but insisted that he "is good to the family and his drinking is not affecting his parenting." The worker found no safety factors in the home and that the home appeared appropriate for Paul and Claire.

A day or two after the DCFS worker's initial interview with Paul he was transported to Gateway Mental Health Center. The worker interviewed him there. Paul reported that he was suicidal and did not want to return to Father's home. He informed the worker that he had a history of multiple hospitalizations in Louisiana and felt like hurting himself on a daily basis. The worker also spoke to a children's social worker in

Louisiana who told her that Paul was diagnosed as Major Depressive Disorder with psychotic features and was found to be suicidal.

The DCFS worker spoke with Paul's Los Angeles County probation officer who confirmed that Paul had mental health issues and was suicidal. The probation officer explained that she had agreed to supervise Paul as a courtesy to the probation department in Louisiana but that Paul was not on probation in California because he had not committed any crimes in this state. In Louisiana, Paul had been placed on probation for drug-related offenses, assault, and resisting arrest. The probation officer also told the DCFS worker that she had initially arranged for Family Preservation Services to assist Paul and Father but the services were terminated due to Paul's numerous hospitalizations. In conclusion, the probation officer expressed the opinion that Father "is an[] alcoholic and is in denial" and that although "[h]e is trying his best" he "is not equipped to deal with Paul with a substance abuse problem."

Paul was discharged from Gateway Mental Health Center later in November 2013. Two days after Paul's discharge, Father learned that Paul had used a social network site to conduct a drug transaction with a friend. Father sent a message to Paul's friend that he would not allow Paul to engage in drug activities. Father and Paul then began to argue about the incident and Paul cut his wrist with a pen. Father contacted law enforcement and Paul was placed on a suicide hold at Community Hospital. At the hospital Paul reported previously having attempted to kill himself on six occasions. During this latest incident, Paul took seven Seroquel pills and cut his arm. Paul also stated that he was going to kill Father by pushing him out of a window, shooting him, or stabbing him. The police notified Father of the threats.

In December 2013, Paul was transferred to Augustus Hawkins Psychiatric Hospital where he was treated with Lexapro and Melatonin, started receiving daily therapy, and met daily with a psychiatrist. While there Paul informed a therapist that

Father was forcing Claire to sleep in the same bed with him.² Also in December 2013, DCFS was informed that Father, who was having pain in his hip, had gone to the hospital with Claire. There, he was found to be intoxicated and given a treatment of Librium prior to his release. Father and Claire arrived and departed in a taxi.

DCFS conducted a team decision meeting with Father in January 2014. A report of that meeting stated that Father was “overwhelmed with Paul and is unable to care for him due to the severity of the teen’s mental illness.” Nevertheless, the report noted, Father still wanted to visit Paul. He agreed to Paul’s detention, but hoped to be able to reunify with him after participation in some services. DCFS determined Claire could safely remain in Father's custody.

On January 7, 2014, DCFS filed a petition to have Paul and Claire declared dependents of the court under section 300, subdivisions (b) and (j) (failure to protect).³

² The circumstances of this bed-sharing were explained to the worker’s satisfaction and no further action was taken on this subject.

³ Section 300, subdivision (b) provides in relevant part that a child may be declared a dependent child of the court 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 willful or negligent failure of the parent or guardian to provide the child with . . . medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . 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.”

Section 300, subdivision (j) provides in relevant part that a child may be declared a dependent child of the court if “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

The petition alleged that Paul “suffers from mental and emotional problems including a diagnosis of Bi-Polar Disorder, Mood Disorder, suicidal ideation and suicide attempts, resulting in numerous hospitalizations” and that his father and mother “are unable to provide appropriate parental care and supervision of the child due to the child’s mental and emotional problems.” It further alleged that the parents’ inability to provide appropriate care and supervision placed both Paul *and* Claire “at risk of physical harm and damage.”

The petition further alleged that Father “has a history of alcohol abuse and is a current abuser of alcohol, which renders [him] incapable of providing the children with regular care and supervision”; that he has been under the influence of alcohol while the children were in his care; and that Father’s “alcohol abuse endangers the children’s physical health and safety, and places the children at risk of physical harm and damage.” The petition contained the same allegation regarding Father’s alcohol use as the basis for jurisdiction under subdivisions (b) and (j).

At the detention hearing the juvenile court found a prima facie case to detain the children and that they were minors described by section 300, subdivisions (b) and (j). The court released Claire to Father’s custody and ordered Family Preservation Services for the family.

In its February 2014 Jurisdiction and Disposition Report, DCFS noted that Paul had been placed at Harbor View Adolescent Center, a residential placement recommended by the Department of Mental Health. He was residing there at the time of the hearing.

In preparing the Jurisdiction and Disposition Report, a DCFS investigator spoke to Paul, Paul’s therapists, Claire and Father about the allegations in the petition. Paul told the investigator that he never wanted to come to California and did not like living with Father so he claimed to be suicidal. Paul also said that he felt better after taking his medication. He reported that Father did not want him medicated and when he lived with

Father he was not taking his medication. Regarding the allegations of Father's alcohol abuse, Paul stated that Father "drinks all the time" and often fell asleep with a bottle in his hand. Paul said he could not tell whether Father acted differently when he was sober because Father was never sober. Paul, however, did not believe Father's drinking affected his parenting abilities.

The investigator conferred with Paul's therapist at Harbor View. The therapist informed the investigator that Paul was diagnosed with "Depressive Disorder NOA [Not Otherwise Specified]" and prescribed Clonidine, Lexipro, and Trazodone. Paul's therapist also stated that Paul willingly took his medication and asked for help to alleviate stress.

The investigator obtained information from Augustus Hawkins Psychiatric Hospital where Paul had previously been evaluated. According to the information contained in that psychiatric evaluation Paul stopped taking his medication when he moved to California because Father felt the medication would kill his brain cells and cause side effects.

Father told the investigator that there was nothing wrong with his parenting skills. He felt capable of caring for Paul and told the investigator that he "got [Paul] off the meds before he even came . . . to California[]" because he did not want Paul on medication. Father explained that he was having problems with alcohol due to his addiction to pain medication. He told the investigator that when he tried to stop taking his pain medication, he went through withdrawals so he drank alcohol "in order to get some sleep." Father admitted that he used to consume large amounts of vodka every day but claimed that he stopped drinking since he started taking the Librium a month or two ago. He stated that he was no longer consuming alcohol at the time of the interview in February 2014.

Father was referred to random alcohol testing. Reports from the testing laboratory showed that in February 2014, Father "could not provide a urine specimen" to conduct

the alcohol testing. He did not submit to testing on March 13, March 28 or April 11, 2014. Father again “could not provide a urine specimen” in April 2014. In all, Father was scheduled for seven tests between January and April 2014. He tested negative on two tests, was unable to provide a urine sample on two other tests and missed three tests.

Claire, told the DCFS investigator that Paul and Father argued every day until Paul started cutting himself. Claire first stated that Father was no longer drinking alcohol but then admitted that “the other day” Father “had just a little shot.” The investigator concluded that Paul had mental health issues, including a diagnosis of Depressive Disorder and that Father needed services to assist him with his alcohol abuse issues and Paul’s mental health issues.

In April 2014, Paul and another resident ran away from Harbor View. Paul was subsequently located and placed at San Gabriel Children’s Center in Covina. At the jurisdictional hearing in May 2014, the court received into evidence the DCFS reports described above and heard testimony from Claire, Father and Paul.

Claire testified that when she first moved to California, Father was “drinking a lot,” but that he had since stopped. Claire said that she had not seen Father drinking for “a couple of months.” When she first moved in with Father, she would see him drinking “every single morning [and] all through the day.” She feared that Father would get drunk and hurt her or Paul. She said she felt more comfortable, however, when Father stopped drinking.

Father testified next. When asked what he did to maintain sobriety, Father replied, “I do a lot of praying and, you know, volunteer at church and go to church, and I go to a drug and alcohol class once a week.” Father stated he had not submitted to alcohol testing because he needed a hip replacement and the pain medication he was taking made it difficult for him to urinate. Father said he did not want Claire to return to mother’s custody because she “smokes marijuana, and I just don’t think that’s good for Claire to be around.” Father confirmed that he believed Paul belonged in jail “for his own safety,”

referencing Paul's recent escape from the Harbor View facility. On cross-examination, Father testified that if a doctor told him that Paul needed medicine he would give Paul that medicine.

Paul testified that he wanted to live with his mother in Louisiana "but I really don't think that's an option at this moment in time." Asked what he meant when he told DCFS that Father worked him "like a dog," Paul responded that when he lived with Father he was required to perform numerous chores—cleaning the garage, cleaning the kitchen, washing dishes, taking out the trash—and had no spare time to himself. Paul conceded that he had "mental health issues" which he identified as "depression, anxiety." He testified that Father did not believe him and thought his mental health issues were all made up. Father also would not permit Paul to take his medication. When Paul expressed suicidal ideations, Father told him he was just "looking for attention." Paul testified that made him feel "more sad."

The court found that Paul had mental and emotional health issues and that Father did not recognize their seriousness. The court also noted that Father drank "a lot" and the fact that he "can hold his . . . liquor" does not mean his "faculties are not impaired." Additionally, the court noted Claire's concerns about what may happen to her and Paul when Father is drinking. Claire had "expressed fear and concern to such an extent," the court found, "that it rises to the kind of risk that requires protection on her part as well as her brother."

The court sustained the petition under section 300, subdivisions (b) and (j) as pled and declared Paul and Claire dependents of the court. Claire was permitted to remain in Father's custody with family maintenance services. Paul was ordered removed from Father's custody and placed under the supervision of DCFS. Father was awarded family reunification services and granted visitation with respect to Paul.

Father filed a timely notice of appeal; the mother did not.⁴ We reverse the jurisdictional findings as to Father and otherwise affirm the judgment.

DISCUSSION

I. **THERE IS INSUFFICIENT EVIDENCE THAT FATHER FAILED TO PROVIDE PAUL WITH ADEQUATE MEDICAL TREATMENT.**

We first address respondent’s argument that we should refrain from considering Father’s appeal because jurisdiction would continue in any event based on the court’s uncontested finding that Paul’s mother’s failed to protect her son. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492, [jurisdiction finding involving one parent is good against both].) “However, when, as here, the outcome of the appeal could be ‘the difference between father’s being an “offending” parent versus a “non-offending” parent,’ a finding that could result in far reaching consequences with respect to these and future dependency proceedings, we find it appropriate to exercise our discretion to consider the appeal on the merits.” (*In re Quentin H.* (2014) 230 Cal.App.4th 608, 613.) Thus, Father is entitled to a review of the court’s jurisdictional findings even though dependency jurisdiction over Paul will remain in place because the finding as to Paul’s mother is unchallenged.

Turning to the merits of the jurisdictional order, the petition alleged, and the court found, that Paul “suffers from mental and emotional problems including a diagnosis of Bi-Polar Disorder, Mood Disorder, suicidal ideation and suicide attempts” and that Father is “unable to provide appropriate parental care and supervision of the child due to the child’s mental and emotional problems.” It is not grounds for dependency jurisdiction that a parent finds it beyond his ability to care for a child with a severe physical or mental

⁴ DCFS asks us to take judicial notice of events that transpired while this appeal was pending on the ground that those events provide further grounds for affirming the judgment. We deny that request because those subsequent events are irrelevant to our decision.

illness. As we discuss below there are less drastic alternatives for the care of a child in that situation.

A child may be declared a dependent child of the court if the parent willfully or negligently fails “to provide the child with adequate . . . medical treatment.” (§ 300, subd. (b).) The evidence in this case does not support a finding that Father failed to provide Paul with adequate medical treatment for his mental illness. The record shows that Paul has been hospitalized almost from the time he arrived at Father’s home. There is no evidence that Father attempted to interfere with Paul’s hospitalization. To the contrary, Father told DCFS that he agreed Paul needed to be detained. At the jurisdictional hearing Father admitted telling a DCFS worker that Paul belonged in “jail” but explained that what he meant by that was that he wanted Paul to be in an institution that would provide for his safety. There was evidence that at one time Father may have discouraged or prevented Paul from taking his psychotropic medications in the belief the drugs would damage Paul’s brain cells or have negative side effects. Father testified at the jurisdictional hearing, however, that he would give Paul whatever medicine a doctor told him Paul needed. To support the credibility of that promise Father testified that when a doctor at one of the hospitals sent medicine home with Paul he gave Paul that medicine. In any event, Paul is now in an institution where he will receive the appropriate medications. Dependency jurisdiction under subdivision (b) is only appropriate “so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” (*Ibid.*)

DCFS may be correct in its opinion that Father was “not equipped to deal with Paul” and was “overwhelmed” by the “severity of the teen’s mental illness.” But that assessment does not justify jurisdiction over Paul which can have severe and unfair consequences to Father in future family law or dependency proceedings. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.) The dependency scheme in general, and section 301, subdivision (a) in particular, provides parents and DCFS with ample room

for coordinating the care and treatment of a severely impaired child without judicial intervention (*In re Ethan C.* (2012) 54 Cal.4th 610, 637) and that is the route DCFS should have followed in this case.⁵ (See *In re Carmen M.* (2006) 141 Cal.App.4th 478, 482-483 [mother “overwhelmed” by her daughter’s behavior including suicidal ideations entered into voluntary family maintenance agreement under section 301].) Section 301, subdivision (a) specifically provides that if a voluntary plan of supervision of the child does not work out then the child welfare agency may file a petition to have the child declared a dependent child of the court.

II. THERE IS INSUFFICIENT EVIDENCE THAT FATHER’S DRINKING RENDERED HIM INCAPABLE OF PROVIDING PAUL AND CLAIRE WITH REGULAR CARE AND SUPERVISION.

The petition further alleged, and the court found, that Father “is a current abuser of alcohol, which renders [Father] incapable of providing the children with regular care and supervision” and that on occasions in 2013 Father “was under the influence of alcohol, while the children were in [Father’s] care and supervision.” Alcohol abuse by Father, the petition alleged, “places the children at risk of physical harm or damage.” (Section 300, subd. (b).)

⁵ Section 301, subdivision (a) states in relevant part: “In any case in which a social worker, after investigation of an application for petition or other investigation he or she is authorized to make, determines that a child is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the social worker may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the child’s parent or guardian, undertake a program of supervision of the child. If a program of supervision is undertaken, the social worker shall attempt to ameliorate the situation which brings the child within, or creates the probability that the child will be within, the jurisdiction of Section 300 by providing or arranging to contract for all appropriate child welfare services[.] . . . Nothing in this section shall be construed to prevent the social worker from filing a petition pursuant to Section 332 when otherwise authorized by law.”

California Rule of Court, rule 5.695(a)(1) and (2) provides that at the disposition hearing the court may dismiss the petition and place the child under a program of supervision as provided in section 301 and order that services be provided.

No evidence exists of a serious physical harm or illness or a substantial risk of such harm to Paul and Claire as a result of alcohol use by Father.

The evidence is undisputed that when the children initially began living with Father he was a heavy drinker. Claire and Father testified without contradiction, however, that prior to the jurisdictional hearing Father stopped drinking. DCFS argues that the court could infer Father had not stopped drinking on the basis of his three missed tests. (See page 8, *ante*.)

Even if Father had not become a teetotaler by the time of the jurisdictional hearing, DCFS provided no evidence to support its allegation that Father “is a current abuser of alcohol.” No one offered testimony linking Father’s alcohol use to his parenting judgment or skills. In their numerous contacts with Father, no DCFS worker or investigator reported that Father appeared to be under the influence of alcohol or any other drug.

The DCFS worker who visited the family’s home prior to the petition reported: “No safety factors were observed in the home and the home appeared to have been appropriate.” Claire told the worker during that home visit that “dad takes well care of her and Paul” and “is not doing anything wrong.” She also told the worker that Father “is good to the family and his drinking is not affecting his parenting.” Paul agreed with his sister that “alcohol doesn’t affect [Father’s] parenting.”

Nor is there substantial evidence to support the DCFS allegation that Father “was under the influence of alcohol, while the children were in [Father’s] care and supervision.” DCFS could cite only one instance of Father being impaired while the children were in his care. On that occasion Father needed to go to the hospital to have his hip examined and he took Claire with him in a taxi. We fail to see how this lone occurrence supports a finding that Claire was at risk of harm in Father’s custody. (Cf. *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1130, 1134-1135 [isolated incident of a slap on the face did not bring child within section 300, subdivision (b)].)

III. THERE IS NO FACTUAL BASIS FOR JURISDICTION UNDER SECTION 300, SUBDIVISION (J) AS TO FATHER.

Jurisdiction under section 300, subdivision (j) is derived from other jurisdictional bases. Here the subdivision (j) allegation repeats verbatim the subdivision (b) allegation as to Father's drinking. We have concluded that neither Paul nor Claire has been abused or neglected by Father as defined in subdivision (b). Therefore, as to Father there is no basis for jurisdiction under subdivision (j).

DISPOSITION

The judgment is reversed as to the jurisdictional findings pertaining to Father. In all other respects the judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.