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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.V., a Person Coming Under the
Juvenile Court Law.

B258788
(Los Angeles County
Super. Ct. No. DK05056)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANGELA V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Steven
Klaif, Juvenile Court Referee. Affirmed with directions.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Mother Angela V. appeals from the judgment entered after the juvenile court sustained jurisdictional findings against her under Welfare and Institutions Code section 300, subdivision (b)¹, in relation to her daughter J.V. Mother contends that substantial evidence does not support the jurisdictional findings. We affirm the judgment with directions.

FACTUAL AND PROCEDURAL BACKGROUND

On February 14, 2014, the Department of Children and Family Services (DCFS) received a referral regarding J.V., then age one, whom mother had brought to the emergency room due to low body temperature. The reporting party indicated that mother has mild mental retardation and attention deficit hyperactivity disorder and that she lives with the child in the home of a mentor assigned to her through a center providing services to persons with developmental disorders. Mother stated that the child was the product of rape; mother may have had some continued communication with the man she stated was the father.² Mother acknowledged being diagnosed with mild mental retardation, attention deficit hyperactivity disorder as well as depression.

The hospital admitted the child on February 14 based on hypothermia, failure to thrive and developmental delay. A hospital doctor opined that the fluctuation in body temperature might have been caused by a cold virus and “that the concern was that the child has some delays as the child has not been observed to say any words, is unable to eat well.” Medical records indicated “some concern for the nutritional status of [the child] as well as her development. [The child] is not eating solid foods and the mother hasn’t been feeding her throughout the day. [The child] is also not walking, talking, cruising, and has poor fine motor skills.” A hospital social worker expressed concern

¹ Statutory references are to the Welfare and Institutions Code unless otherwise noted.

² After DNA testing, the juvenile court determined that the man alleged by mother to be the father was the biological father. He denied having raped mother, said the child was the result of a consensual encounter and reported he never was charged with rape. Father is not a party to this appeal.

based on the mother's report that she was sad and depressed. The hospital discharged the child on February 16 with a recommendation that the child receive nutritional drinks "and a regular diet to increase her caloric intake. Mother and her mentor . . . received extensive counseling on appropriate interventions to help [the child's] developmental delay."

At a meeting on March 19, a DCFS nurse reported "that the mother needs prompting and [to] constantly be reminded to feed the child." A nurse who saw mother and the child regularly indicated "that the mother takes a lot of prompting such as getting up, getting the child ready for the day and getting herself ready." "[M]other disclosed she has been meeting men online since she was 12 years old. . . . The mother admitted that an online guy . . . told her that he would get on a plane, beat her up and chop her head off if she broke up with him. The mother stated that he told her he would find her and slit her throat. The mother admitted to having continued communication with [this man] after these threats. The mother did not appear to understand the safety concerns surrounding these threats."

DCFS received a second referral on April 23 in which the reporter expressed "concern[] that mother is not providing adequate care and stimulation for [the child]. Mother's clock is set for her to feed [the child] for breakfast but she turns it off and goes back to sleep. Mother will feed [the child] around 10:30 am or 11:00 am and [the child] is usually up at 7:30 am whimpering. Reporter states mother does not change [the child] timely. [The child] will reek of urine as it leaks onto her clothing. Also [m]other does not play or stimulate [the child] in any way. Mother has a mind of a child, she is very rebellious, and argues with caregiver. Mother does not bathe the baby adequately."

On May 16, DCFS filed a section 300 petition against mother alleging under subdivision (b): (1) "On prior occasions, the child[']s . . . mother . . . is unable to provide the child with adequate parental care and supervision in that the mother failed to feed the child on time, failed to wake up to change the child and to feed the child when the child was hungry, despite the mother being regularly reminded to feed the child. On a prior occasion, there was moldy food in the child's diaper bag when the mother returned from

community outings. The mother's inability to provide the child with adequate parental care and supervision endanger[s] the child's physical health and safety and place[s] the child at risk of physical harm and damage"; and (2) "[t]he child[s] . . . mother . . . suffers from mental and emotional problems including a diagnosis of [d]epression and [d]evelopmental [d]elay, which renders the mother incapable of providing the child with appropriate parental care and supervision. The mother failed to take the mother's psychotropic medication as prescribed. The mother's mental and emotional problems endanger the child's physical health and safety and place the child at risk of physical harm and damage." At the detention hearing, also on May 16, the juvenile court ordered J.V. released to mother on the conditions that mother continue to reside with her mentor and that DCFS take part in family maintenance services, including a parenting class.

In a June 9 report, DCFS noted that, on May 21, mother had received a new mentor and that mother and the child had moved into the new mentor's home. Mother's new mentor reported that she had "to remind [mother] that [the] baby is up. When she (mother) wakes up, she is good with taking care of her baby. Whatever I tell her, she is good and she feeds the baby but it might be like 10:00 am, when she feeds her baby. But she does remember to feed the baby. [¶] . . . [¶] . . . The only thing is when her baby gets up at 8:00 am, she doesn't get up at that time, and she wakes up later. . . . The mother needs to be reminded about the time . . . with the baby.'" The new mentor reported that she gave mother medications daily. A nurse who worked with mother on a regular basis reported that she too had concerns with mother not waking in a timely manner in the morning to care for the child.

A July 21 report indicated that mother's new mentor had reported that she reminds mother to check the baby's diaper and "mak[es] sure that [mother] is taking good care of the baby. . . . [The mentor] [is] working with [mother] [o]n getting up earlier in the morning and feed[ing] the baby a little bit earlier and she's working on it and she's getting better.'" Mother's therapist indicated that mother had missed her counseling sessions in June as well as an appointment with her psychiatrist. Mother did not enroll in parenting classes as ordered by the juvenile court on May 16.

At the jurisdictional hearing, also on July 21, DCFS stipulated to removing the statements of mother's former mentor from the exhibits. The juvenile court declared that the former mentor's "statements will not be considered and are not admitted into evidence." DCFS submitted to striking the sentence in the first allegation under section 300, subdivision (b), that, "[o]n a prior occasion, there was moldy food in the child's diaper bag when the mother returned from community outings." The court sustained the allegations, stating that "[a]ll these services are in place, but the problem still persists. . . . I want a supplemental disposition report to address . . . exactly what [DCFS] will be able to do to ensure stability and work toward[] terminating jurisdiction. . . . But I'm finding by a preponderance of the evidence that the petition is true as plead[ed]. The child comes within . . . section 300[,] subdivision (b)." The July 21 minute order indicates that the "[p]etition is ordered amended by interlineation as reflected on its face[,]" but no interlineation is indicated on the petition in the record.

Before disposition, DCFS reported that it had been unable to reach mother's therapist to determine if mother had resumed her sessions, but mother and her new mentor stated that mother recently had attended one or two sessions. Mother reported that she had been waking up earlier to care for the child. Mother's mentor indicated that mother had improved in her ability to wake up to care for the child and that, although mother still needs prompting, "mother was getting better" at caring for the child. According to the mentor, "when the mother was on the computer, watching TV or talking to someone on the phone, the mother does not check the baby and . . . [the mentor] was really working hard with the mother to be more observant of the baby when she was doing these things." The mentor stated that "the mother talks on the phone to a guy who resides out of state." Mother recently had seen her psychiatrist. DCFS recommended six months of family maintenance services and continuance of the case under section 360, subdivision (b).³ At the disposition hearing, on August 11, mother's counsel stated that,

³ Section 360, subdivision (b), provides that, "[i]f the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the

although mother had objected to the jurisdictional findings, she did not object to the matter proceeding under section 360, subdivision (b). The court thus ordered the child placed with mother and the case to continue under section 360, subdivision (b). Mother filed a timely notice of appeal. (§ 395, subd. (a)(1); see *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [jurisdictional findings reviewable on appeal from the judgment following disposition].)⁴

DISCUSSION

“The purpose of section 300 is ‘to identify those children over whom the juvenile court may exercise its jurisdiction and adjudge dependents.’ [Citation.]” (*In re A.O.* (2010) 185 Cal.App.4th 103, 110.) To declare a child a dependent under section 300, the juvenile court must find by a preponderance of the evidence that the allegations are true. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see § 355, subd. (a).) We review the court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value. (*Matthew S.*, at p. 1319.)

Under section 300, subdivision (b), the juvenile court may adjudge a child a dependent of the court 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” “A jurisdictional finding under section 300, subdivision (b)[,] requires: ““(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.]’ [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) When the

child and the child’s parent or guardian under the supervision of the social worker for a time period consistent with Section 301.”

⁴ During the pendency of the appeal, mother’s counsel informed us by letter that the juvenile court had terminated jurisdiction over the case on February 9, 2015. We have obtained a copy of the minute order from that date and take judicial notice of it. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

jurisdictional finding is “based on the parent’s ‘inability . . . to adequately supervise or protect the child[.]’” DCFS must show “parental unfitness or neglectful conduct.” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1254.)

Confusion exists in the record regarding the sustained allegations against mother. At the jurisdictional hearing, DCFS stipulated to removing from the exhibits the statements of mother’s former mentor, and the juvenile court ruled that those statements would not be considered or admitted into evidence. DCFS also submitted to striking the sentence in the first section 300, subdivision (b), allegation that, “[o]n a prior occasion, there was moldy food in the child’s diaper bag when the mother returned from community outings[.]” which had been reported by the mentor. The July 21 minute order from the adjudication hearing provides that the petition is ordered amended by interlineation. Yet there is no interlineation on the petition in the record. And the court stated it found the petition true as pleaded. Mother argues that the reference in the first section 300, subdivision (b), allegation to the moldy food and the reference in the second section 300, subdivision (b), allegation to her failure to take her medication as prescribed are based on statements of her former mentor that the court excluded from evidence and thus cannot support the jurisdictional findings against her. DCFS does not oppose that argument. Given the court’s evidentiary ruling, DCFS’s stipulation to strike the statements of the former mentor from the exhibits and its non-opposition to mother’s argument on appeal, substantial evidence does not support the allegations regarding the moldy food and the failure to take medication as prescribed.

As to the remainder of the allegations against mother, substantial evidence supports them. Mother exhibited neglectful conduct by failing to tend to and feed the child in the mornings, often sleeping for hours after the child had been awake and in her crib. These conditions occurred despite mother’s supervision by a mentor and receipt of other services. When the child was in the hospital, a doctor expressed concerns about the child’s developmental delays and her inability to eat well, and medical records indicated the child had not been eating solid foods and mother had not been feeding her throughout the day. The child’s eating issues stemmed at least in part from mother’s failure to

transition her to solid foods. At the time of the jurisdictional hearing, on July 21, mother had not reported to her therapist in more than a month and had missed her recent psychiatrist appointment, despite having diagnoses of mild mental retardation, attention deficit hyperactivity disorder and depression and requiring daily medication. She also had not enrolled in the parenting classes ordered by the court on May 16. Mother's mentor reported that, although mother had made progress with caring for the child in the short time she had been staying with the mentor, mother still woke around 10:00 a.m. to feed the baby, long after the baby generally was up and waiting in her crib. Mother also continued an online relationship with a man who had threatened to harm her and did not appreciate the safety issues posed by such a relationship. Under these circumstances, jurisdiction was proper under section 300, subdivision (b).

DISPOSITION

The judgment is affirmed with directions for the juvenile court to strike the allegations in the petition regarding moldy food and mother's failure to take medication as prescribed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.