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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re DESTINY G., a Person Coming
Under the Juvenile Court Law.

B259395

(Los Angeles County
Super. Ct. No. CK81773)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

SYLVIA L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Amy Pellman, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

Sylvia L., the mother of one-year-old Destiny G., appeals from the jurisdiction finding and disposition order declaring Destiny a dependent of the juvenile court and removing her from Sylvia's custody after the court sustained an amended petition pursuant to Welfare and Institutions Code section 300¹ alleging that Sylvia has a history of alcohol and illicit drug abuse that resulted in the permanent removal of five other children from her care and was a current abuser of alcohol and illicit drugs, which rendered her periodically incapable of providing care and supervision for Destiny. While acknowledging the propriety of jurisdiction based on Destiny's father's own substance abuse, Sylvia contends there is insufficient evidence she was a current abuser of alcohol or illicit drugs to support the court's jurisdiction finding and disposition order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Dependency Petition

On June 24, 2014 the Los Angeles County Department of Children and Family Services (Department) filed a petition under section 300 alleging Sylvia had a history of alcohol and illicit drug abuse that had resulted in the permanent removal of Destiny's five older siblings and Sylvia's current abuse of alcohol and methamphetamine put Destiny at substantial risk of harm. The petition also alleged that Destiny's father, Adrian G., had a similar history of illicit drug use and his current abuse of methamphetamine endangered Destiny.

2. The Jurisdiction and Disposition Hearing

At the July 22, 2014 jurisdiction hearing the Department presented evidence that on June 5, 2014 it had received a referral that Sylvia and Adrian were living with Destiny in a converted garage without electricity, running water or a bathroom and were using methamphetamine. When the social worker arrived at Sylvia's home to investigate, Sylvia was not there; but the landlord expressed concern about Destiny's safety due to his belief that Destiny was exposed to domestic violence and drug use. He also stated that

¹ Statutory references are to this code.

various people were smoking something and going in and out of the converted garage at all hours of the night.² When the social worker located Sylvia on June 6, 2014, Sylvia began screaming and acting erratically. Fearing Sylvia was under the influence of alcohol or drugs while taking care of her daughter, the social worker called law enforcement for assistance. A police officer accompanied the social worker to Sylvia's home and arrested Sylvia on an outstanding 2009 warrant relating to her failure to complete court-mandated alcohol treatment classes following a conviction for public drunkenness. In his report the arresting officer stated Sylvia had admitted to using drugs earlier in the day. Sylvia refused to submit to a urine test. Four days later, on June 10, 2014, she submitted to a drug test; the results were negative for illicit drugs and alcohol. Sylvia tested negative for drugs and alcohol on June 10, 2014, July 15, 2014 and July 28, 2014. On August 11, 2014 she tested positive for a small amount of alcohol³ and negative for illicit substances.

Adrian initially denied using drugs but changed his story after a June 6, 2014 drug test was positive for methamphetamine. Adrian then explained to social workers he had used methamphetamine two days earlier and was a consistent user of the drug but denied doing drugs with Sylvia. He stated, "We don't do it together. We do it behind each other. She does it on her own and I do it on my own." Sylvia and Adrian's relationship ended in May 2014, but Adrian still helped Sylvia and was involved in Destiny's life.

Sylvia was the only witness to testify at the jurisdiction hearing. She denied being a current user of methamphetamine. She stated she had only used that drug twice, once when she was a juvenile, and once just before she gave birth to her daughter V.G. in November 2011. (Sylvia's parental rights over her daughter V.G., who was born with a positive toxicology for methamphetamine, were terminated on May 23, 2014.) Sylvia

² The court sustained Sylvia's timely objection to the use of the landlord's hearsay statements in the social study report and indicated those statements would not be used as the only basis to sustain the allegations in the dependency petition. (See § 355, subd. (c).)

³ The alcohol level in Sylvia's urine was .02 percent.

claimed her landlord had initiated the referral to the Department after she refused to have sex with him in exchange for money. Her home was in disarray with no furniture or appliances and boarded up broken windows because he had turned off the lights and electricity to try to get her to leave. Sylvia testified she had made arrangements for Destiny to stay at the paternal grandmother's home.

Sylvia denied telling the police officer who arrested her on June 6, 2014 that she had used methamphetamine or any other drug earlier that morning. She was not under the influence of drugs or alcohol when she was taken into custody; she was hysterical, as any mother would be, if her child was going to be taken from her. She explained she was arrested on a Friday, released on a Sunday, and called the Department the following Monday to submit to a drug test. Because of a mix-up with paperwork on Monday, she was not able to test until the next day, at which time she tested negative for drugs. She believed she has tested six times in total since Destiny was detained, each time with a negative result. She was surprised by the positive alcohol test and could not explain it. She said she had not consumed alcohol since she found out she was pregnant with Destiny. Sylvia admitted that, historically, alcohol has been more of an issue for her than methamphetamine. She started attending Alcoholics Anonymous and Narcotics Anonymous in June 2014. Her treatment counselor reported that Sylvia was working on addressing the "emotional triggers" that led her to consume alcohol and abuse drugs. However, Sylvia could not articulate at the hearing anything she had learned in her treatment.

The juvenile court sustained an amended allegation that Sylvia had an extensive history of alcohol and substance that rendered her periodically unable to provide regular care and supervision for Destiny, putting Destiny at substantial risk of harm. The court declared Destiny a dependent child of the court and found there were no reasonable means to protect her other than removing her from Sylvia's custody. Citing Sylvia's extensive history with drug abuse and failure to reunify with her other children, the Department urged the court to deny Sylvia reunification services. The court agreed it

was a close question but ultimately granted Sylvia reunification services and monitored visitation.⁴

DISCUSSION

1. *Governing Law and Standard of Review*

The purpose of section 300 “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2; see *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) Section 300, subdivision (b), allows a child to be adjudged a dependent of the juvenile 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 or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court’s protection. (*Ibid.*) A parent’s “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

⁴ As to Adrian, the court sustained the allegation of substance abuse, ordered Destiny removed from his custody and denied him reunification services pursuant to section 361.5, subdivision (b)(10) and (b)(11), based on Adrian’s failure to address the substance abuse that led to his failure to reunify with V.G.

In addition, the Legislature has declared, “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.” (§ 300.2.) Exercise of dependency court jurisdiction under section 300, subdivision (b), is proper when a child is ““of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety.”” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; see *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

We review the juvenile court’s jurisdiction findings and disposition orders for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard “[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

2. *Substantial Evidence Supports the Juvenile Court’s Jurisdiction Finding and Disposition Order*

a. *Jurisdiction*

Sylvia contends the court’s jurisdiction finding that she was a current abuser of alcohol and drugs is not supported by substantial evidence.⁵ She emphasizes that she

⁵ The Department urges this court to refrain from considering Sylvia’s challenge to the court’s findings of substance abuse because dependency jurisdiction over Destiny is proper based on Adrian’s substance abuse. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [jurisdiction finding involving one parent is good against both; ““the minor is a dependent if the actions of either parent bring [him or her] within one of the statutory definitions of a dependent””]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [same].) Although a new finding under section 300, subdivision (b), based on continued substance abuse is unlikely to prejudice Sylvia in future dependency proceedings in light of her past history with the dependency system (cf. *In re Drake M.*, *supra*, 211 Cal.App.4th at

repeatedly tested negative for illicit drugs and, apart from one occasion, tested negative for alcohol consumption as well. Moreover, she contends, there was no evidence Destiny was neglected or harmed in any way in her care.

Sylvia cites only the evidence favorable to her and ignores the damaging evidence cited by the juvenile court. In particular, although Sylvia repeatedly tested negative for drugs in the weeks following Destiny's detention, she initially refused to drug test when she was arrested on June 6, 2014, after admitting she had used methamphetamine in the early hours of that morning. She also acknowledged to her drug and alcohol treatment sponsor and to the court that she self-medicated with alcohol when she was "triggered by her emotions"; and, although she denied having consumed alcohol in more than a year, she tested positive for alcohol consumption in a random test on August 11, 2014. Finally, although Sylvia was in the process of addressing her issues with alcohol and drugs in Alcoholics Anonymous and Narcotics Anonymous programs, she had not yet developed sufficient insight into her problem, as reflected in her inability to identify what, if anything, she had learned in her programs. On this record there was substantial evidence that the very conduct that had led to the permanent removal of Sylvia's five older children was continuing and that Destiny, then less than one year old, was at substantial risk of harm. (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1220 [a finding of substance abuse by a parent of a child under six years old is prima facie evidence of that parent's inability to provide regular care resulting in a substantial risk of harm]; *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 767 [same].)

b. *Disposition*

Section 361, subdivision (c)(1), permits removal of a child from his or her parent's custody only if the juvenile court finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or

pp. 762-763; *In re D.P.* (2015) 237 Cal.App.4th 911, 916-917; *In re D.P.* (2014) 225 Cal.App.4th 898, 902), we nonetheless exercise our discretion to address (and reject) her argument that the finding is not supported by substantial evidence.

emotional well-being” of the child if the child were returned home and that “there are no reasonable means by which the [child]’s physical health can be protected without removing” the child from his or her parent’s custody. “The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

In contending there was insufficient evidence to support the juvenile court’s removal order, Sylvia again recites her clean drug tests and the lack of any evidence that Destiny had suffered any harm in her care. However, as explained, there was also substantial evidence—Sylvia’s own admission to the police officer that took her into custody and Sylvia’s own testimony and positive test for alcohol—that the drug use and alcohol abuse that had led to the removal of her other children was still occurring. Family maintenance services, provided in connection with prior referrals to the Department, had proved unsuccessful in the past; and Sylvia’s insight into her drug and alcohol problem, if any existed, was minimal at best. Sylvia’s extensive history with the juvenile dependency system and unresolved issues with substance and alcohol abuse constituted substantial evidence supporting the court’s removal order.

DISPOSITION

The jurisdiction finding and disposition order are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

BECKLOFF, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.