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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B260786
(Los Angeles County Super. Ct.
No. CK73533)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARY G., et al.,

Defendants and Appellants.

APPEAL from the orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant Mary G.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant Pierre P.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

Mary G. (mother) and Pierre P. (father) appeal from the court's jurisdictional order declaring their five minor children dependents under Welfare and Institutions Code section 300, subdivision (b).¹ Father also appeals from a disposition order requiring him to drug test or alternatively, surrender his medical marijuana card and seek medical treatment for his back pain. We conclude substantial evidence supports the jurisdictional finding that the children were at risk of harm based on the recurring, but ultimately unsuccessful nature of the parents' efforts to maintain a clean and safe home environment. We further conclude the court did not abuse its discretion when it ordered father to complete seven additional drug tests or surrender his medical marijuana card.

FACTS

Mother and father have six children: an eighteen-year-old daughter;² two sons, ages nine and eight; and three young daughters, who were five years, three years, and three months old when the Los Angeles County Department of Children and Family Services (Department) filed its petition. The youngest is now one year old.

Prior Referrals

The family has been referred to the Department seven times in the last nine years. The parents twice entered into voluntary family maintenance (VFM) agreements with the Department, and twice—including the current case—the dependency court has exercised jurisdiction over the family. The first referral began when the older son was born with an

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² The oldest daughter was not subject to the petition in this case because she is no longer a minor. We identify her because there was a prior case, where she was the subject of a dependency petition, and because she was interviewed by social workers in the context of the current case.

intestinal disease and mother had not completed the training to care for him at home. The Department was concerned that the home was dirty and inappropriate for the infant and his older sister, and the family received VFM services for over a year, from November 4, 2005, to January 19, 2007. Three referrals received between 2006 and 2008 regarding possible abuse and general neglect were deemed either unfounded or inconclusive. Two of the three referrals were based, at least in part, on concerns about insects in the home and the children's dirty appearance.

A referral received on July 1, 2008, resulted in sustained jurisdictional allegations that (1) father physically abused the eldest daughter; (2) she was at risk of harm based on numerous infected flea bites that had resulted in scarring on many parts of her body; (3) father had a history of substance abuse and was a current abuser of marijuana; and (4) all three children were at risk of harm because of a filthy and unsanitary home environment that did not have electricity or running water. The court removed the children from parental custody, but returned the children in March 2009 because mother and father were complying with the case plan.

A referral received on January 31, 2012, again raised concerns about general neglect based on unsanitary conditions in the family home. Cockroaches had been seen coming out of the older son's backpack at school. The Department opened a VFM case and provided extensive services, including funds to help the family move, child care to give mother time to clean, and requiring mother to take her prescribed medication and participate in individual therapy. The VFM case was closed in December 2012, because services had been provided for beyond the time limit.

Most Recent Referral and Department Investigation

The referral leading to the current case was received on September 23, 2014, based on concerns about the state of the family's home and cockroaches coming out of the five-year-old daughter's backpack at school. When the social worker went to the home to interview the family, she found piles of items up to three feet high in the rooms

and hallways, and small or medium-sized cockroaches everywhere. The bathroom was dirty and the toilet needed to be fixed. Mother denied she had a hoarding problem, but admitted she had trouble throwing things away. Mother had been diagnosed with posttraumatic stress disorder (PTSD), but stopped taking her medication when she was pregnant with her youngest daughter, who was born on June 30, 2014. Mother also stopped attending therapy because she did not have enough time. According to father, mother's hoarding behavior had improved since the last case. The oldest daughter lived separately, but visited frequently to help the family. She also reported the condition of the home was similar to when the family's last VFM case was closed. The parents promised to and did clean up the home before the social worker's second visit.

Mother, father, and the oldest daughter all pointed out that the cockroach problem was not limited to the family's apartment unit, as other units in the building had cockroaches too. Father explained the managers had not fumigated for six months. Father had called the housing health department and had purchased something to fumigate on his own.

The older son has asthma, and uses two medications to manage it. All four minors appeared clean, healthy, and appropriately dressed. None expressed any fear of their parents, and the school-aged siblings denied any abuse or domestic violence in the home. The two youngest siblings were unable to give meaningful statements, because they were too young.

The Department interviewed the principal at the children's school, and she explained that they were well fed and had good attendance. She did not see any indications of physical abuse, but the children would come to school filthy, and cockroaches had been observed crawling out of five-year-old daughter's backpack. She said there had been complaints two years earlier that the older brother had a moldy odor, but it had improved. She observed hoarding, cockroaches, and spiders when she visited the family home in 2012.

Father's History of Drug Use

Father was arrested for possession of a controlled substance in 2006, but participated in a program that resulted in deferred entry of judgment, rather than a conviction. In August 2008, the dependency court sustained allegations that father had a history of substance abuse and was a current abuser of marijuana, and ordered father to complete a substance abuse program. Father tested positive for marijuana during the 2012 VFM case, but understood it was permissible if he obtained a medical marijuana prescription, which he did. He explained he used marijuana to help him sleep because he worked the night shift. In the context of this case, father admitted he used medical marijuana for back problems and to help him fall asleep after working the graveyard shift. He would consume edibles, but did not care for the children while under the influence.

Jurisdiction and Disposition

The Department filed a non-detention petition on October 20, 2014. The court ordered the Department to consider entering into a voluntary contract with the family under section 301, but the Department recommended against a voluntary contract based on the prior VFM and court cases within the last five years for similar allegations. It instead recommended sustaining the petition and ordering family maintenance services while the children remained with their parents.

At the December 8, 2014 adjudication hearing, the attorneys for the minors and both parents argued the Department had not met the standard for finding jurisdiction, and asked the court to dismiss the entire case. The court struck a petition allegation related to mother's mental illness, but sustained the allegations relating to the unsanitary condition of the home and father's substance abuse.

Father's attorney objected to a dispositional order requiring additional drug testing for father, pointing out that father had already tested negative three times, and his

employer had fired him because he had to drug test. The court then gave father the option of either completing seven additional drug tests or turning in his medical marijuana card and seeking medical treatment for his back pain. Parents timely appealed.

DISCUSSION

Jurisdictional Findings

Parents contend there was insufficient evidence to support the dependency court's finding that the children were described by section 300, subdivision (b). We disagree.

We apply the substantial evidence standard of review when examining the sufficiency of the evidence supporting the court's jurisdictional findings. "[W]e draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (*Heather A.*)). The pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Subdivision (b) of section 300 supports dependency court jurisdiction if a child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child. "[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here [including subdivision (b)] require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions '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, italics added.) 'The court need not wait until a child is seriously abused

or injured to assume jurisdiction and take the steps necessary to protect the child.’ (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Past neglect can provide a basis for jurisdiction under section 300, subdivision (b), if there is some reason to believe the conditions may continue in the future. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025.) While we may draw inferences based on the evidence, we cannot rely on speculation and conjecture alone to find substantial evidence of risk of harm to the minors. (*In re Savannah M.* (2005) 131 Cal.App.4th, 1387, 1393-1394.)

Parents argue that because the condition of the home had improved, with less clutter and no cockroaches, there was no evidence of any current risk of harm to the children. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) The Department’s December 4, 2014 report does note the home was no longer cluttered to the point where it posed a hazard to the children’s health and safety, and that cockroaches were no longer visible in the apartment. The fact that parents had been able to reduce the amount of clutter in the home and resolve the cockroach problem does not minimize the ongoing risk posed by their persistent inability to maintain a home free of the health and safety risks inherent in a crowded apartment prone to cockroach infestations. It is not mere speculation to infer that without court intervention, the family will likely once again succumb to excessive clutter and insects that puts the young children at risk, even though parents have been cooperative and well-intentioned in working with the Department in the past, and appear to be doing so again.

In her reply brief, mother distinguishes this case from *In re Jeannette S.* (1972) 94 Cal.App.3d 52 [jurisdiction warranted where minor went to school with clothes smelling of urine, sometimes without breakfast, and sometimes returned to an empty and filthy home] and *In re Robert P.* (1976) 61 Cal.App.3d 310 [removal warranted where home had a lack of adequate food in the refrigerator, moldy and spoiled food sitting out, and broken down sleeping conditions], arguing the problems with her family’s living conditions were not as serious as the ones in those two cases. However, mother’s argument ignores the extended history of repeated problems with hoarding and insects in

the home and the family's inability to manage the situation without outside intervention. In evaluating the current risk to the children, the court reasonably considered the family's history of repeated descent into chaotic and unsanitary conditions absent intervention by the Department. The recurring instances of filthy and unsafe conditions in the home, considered in light of the Department's repeated intervention and assistance to the family, providing both financial resources and services, constitutes substantial evidence that even with the brief improvement in the amount of clutter and elimination of the cockroach problem, the children remained at risk of harm absent court supervision.

Father challenges the sufficiency of evidence supporting the court's jurisdictional findings based on his medical marijuana use, but because we affirm the court's other jurisdictional finding, we need not address father's sufficiency of the evidence challenge. "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Drug Testing

Father contends the dependency court erred when it ordered father to undergo seven additional drug tests or surrender his medical marijuana card. The record does not establish an abuse of discretion.

"The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion." [Citation.] (*In re A.E.* (2008) 168 Cal.App.4th 1, 4.) A court abuses its discretion when it makes a

determination that is “arbitrary, capricious, or patently absurd.” (*In re Mark V.* (1986) 177 Cal.App.3d 754, 759.)

The court has authority to direct any reasonable orders to the parents of minors over whom the court has found jurisdiction. (§ 362, subd. (d).) “The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (*Ibid.*)

Father argues the absence of evidence linking his use of medical marijuana with any risk of harm to the children shows the court’s order requiring him to drug test or surrender his medical marijuana card constituted an abuse of discretion. In the context of this case, where the main concern regarding the children’s safety revolved around the condition of the home, not every judge would agree that it was necessary to verify that father was no longer using marijuana. But applying the abuse of discretion standard of review, we cannot say that it exceeds the bounds of reason for a court to conclude that in order to ensure the children’s safety, it was important to ensure through drug testing that father had followed through on his promise to discontinue his marijuana use. Father had a nine-year history of legal problems relating to controlled substances, and the previous dependency case in 2008 included a requirement for him to take substance abuse classes. In this case, he represented to the Department that he was willing to forgo marijuana use in order to keep his children at home and have the case closed. It is not absurd to infer that if father remained drug-free, he would be better able to assist in maintaining a clean and safe environment for his children.

DISPOSITION

The court's orders are affirmed.

KRIEGLER, J.

I concur:

KIRSCHNER, J.*

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

MOSK, J., Concurring

I concur.

I would have upheld the sufficiency of the evidence to support the juvenile court's jurisdiction based on the father's drug use. This clearly would support the order requiring father to undergo drug testing. Whether drug testing can be ordered absent that jurisdictional finding is an issue that may be unclear. (Compare *In re Drake M.* (2012) 211 Cal.App.4th 754, 770 with *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1007; see also *In re Nolan W.* (2009) 45 Cal.4th 1217, 1219.)

MOSK, Acting P. J.