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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ROSE B., a Person Coming Under the  
Juvenile Court Law.

B263422

(Los Angeles County  
Super. Ct. No. CK39366)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RACHEL B.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Daniel Zeke Zeidler, Judge. Affirmed.

Aida Aslanian for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant  
County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and  
Respondent.

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## **INTRODUCTION**

Mother Rachel B. appeals the juvenile court's judgment pursuant to Welfare and Institutions Code section<sup>1</sup> 300, subdivision (b), premised on her unsanitary home and Rose's poor hygiene. We affirm jurisdiction because substantial evidence produced by the Department of Children and Family Services (DCFS) supports the court's finding that Rose was at risk of substantial physical harm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **1. Prior History of Neglect**

Mother is autistic and has a history of DCFS cases involving her three older children dating back to 1999. Beginning in 1999, DCFS received referrals about Mother neglecting her eldest son A. Some of the allegations dealt with Mother's home being filthy and Mother not properly feeding, cleaning, or supervising A. due to a mental disability. Although DCFS closed investigations of those allegations as inconclusive, DCFS substantiated allegations that Mother failed to provide proper medical care to A. when he fractured his arm, and juvenile court sustained jurisdiction over A. based in part on Mother's failure to obtain medical attention for A. At the end of that dependency matter, A. went to live with his father although the parents shared custody.

In 2008, DCFS substantiated allegations that Mother neglected her one-year-old daughter Ah. and six-month-old son K. The reporting party indicated that Mother left the children unsupervised and alone at Mother's home for an undetermined period of time. Mother did not have adequate food or clothing in the home, and the home appeared filthy with dirty diapers and feces on the floor. The party reported that Mother did not change the children's wet diapers. DCFS also substantiated allegations that Mother would not respond to the children's cries at night, despite their screams being heard by residents in adjacent apartments. In addition, during this same time period, DCFS substantiated allegations that Mother failed to feed A. during a three-day visit; A. also reported that he did not observe Mother feeding Ah. and K. during that weekend. In 2008, DCFS

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code.

initiated a voluntary case for the family as a result of the general neglect allegations. The children's father complied with the voluntary services and obtained full custody of Ah. and K. through the family law court.

## **2. Mother's Neglect of Rose**

Rose was born in September 2009 and the identity of her father is unknown. After initially agreeing to allow Rose to be adopted, Mother rescinded on the adoption agreement. The potential adoptive parents reported that Mother was an extreme hoarder and as a result, the home was filthy with old food left out, insects, and no place to sit or change the baby's diaper. Mother also appeared to lack familial, financial, or emotional support. DCFS substantiated the general neglect allegations, detained Rose in foster care, and provided Mother with Voluntary Family Maintenance services from October 2009 to October 2010.

In February 2014, DCFS received a referral alleging general neglect. The referral alleged that Mother was autistic, had trouble understanding basic social interactions, appeared very anxious, and would not answer a direct question. The referring party reported that Rose had poor hygiene, had a rash from wearing a dirty diaper for long periods of time, and wore inappropriate and dirty clothing. The caller also reported that Mother had poor parenting skills and would allow Rose to do whatever she wanted. DCFS closed that referral as inconclusive.

On September 9, 2014, DCFS received a referral alleging that since the beginning of the school year, Rose came to school smelling of urine, had dirty and long finger nails, and wore dirty clothes that were too big for her. The pre-school had tried to reach out to Mother but she was hostile and resistant to their efforts. Mother also became hostile when DCFS came to her home to investigate.

During the investigation, Mother admitted to the social worker that Rose smelled like urine at school. Mother explained that Rose wears a diaper at night, and sometimes Mother allows Rose to wear the dirty diaper to school or Mother fails to clean Rose after removing the diaper. Mother stated that she has Rose wear the diapers because Rose still wets the bed at night. The social worker pointed out that it was the afternoon but Rose

was still wearing a diaper, and that the diapers were too small and tight on Rose. Mother assured DCFS that she would remove the diaper in the morning, clean Rose with wipes, and obtain larger diapers for Rose. Mother also stated that Rose has dirty nails because she plays in the dirt at the maternal grandmother's garden. Mother indicated that Rose's clothes were large because she did not have money to buy a lot of clothing and Rose would grow into the large clothes. Mother agreed to clean Rose's hands and toes that night and to ensure that Rose's nails remained clean.

The social worker noted that Mother lived in a cluttered and messy one-bedroom apartment and shared a queen bed with Rose. The maternal grandmother helped Mother pay her bills, rent, and utilities, and also assisted Mother with Rose. Mother supported herself and Rose with her disability pay. At that point in time, Mother and Rose were not Regional Center clients. The social worker observed that the kitchen was dirty and in disarray, and that there were several empty Starbucks cups on the table. The refrigerator was cramped with food, including a half-eaten brown banana. The clutter made it difficult to identify spoiled food. The freezer was full of ice and ice covered packages of meat. Mother agreed to clean out the refrigerator before the social worker returned to check on it.

One month later in October 2014, DCFS visited Mother and Rose at home and discovered that all of these issues remain unaddressed. The social worker noted that the refrigerator was too cluttered and full, and had the rotten banana and fruit flies inside it. Mother also failed to purchase larger diapers for Rose.

At that point in time, Rose's teachers stated that Rose had speech and potty training problems. The teacher voiced concerns about Mother's involvement in helping Rose with these issues, stated that Mother previously refused to potty train Rose, and related that "Mother doesn't usually follow through with things." The teacher reported that Mother had recently agreed to place Rose in speech therapy and those services would commence soon.

Two weeks later in late October 2014, DCFS visited Mother's home and found that Mother had made minor progress in cleaning the refrigerator and home. The social

worker offered voluntary services to Mother but she refused. As to the diaper issue, Mother told the social worker that she thought DCFS had forbidden Rose from wearing diapers. Mother also told the social worker that there was no issue with Rose's clothes being too large because the school had donated uniforms that fit.

In mid-November, DCFS visited Mother again at home and discovered old cooked food on the kitchen counter and assessed that the kitchen was in need of a general cleaning. The refrigerator and freezer were still stuffed to overcapacity, causing it to be difficult to manage the freshness of the food or identify spoiled food. The kitchen was so full of clutter that it was not comfortable for the family to sit, eat, or do homework. And, this clutter pervaded the home, which also needed sweeping and cleaning. Mother assured DCFS that she was making sure Rose did not smell of urine at school any longer. DCFS attempted to schedule a Child Family Team meeting with Mother, but Mother stated she would need to consult the maternal grandmother about it and the meeting did not occur.

On December 8, 2014, DCFS filed a section 300 petition for the protection of Rose, alleging that she was at risk of harm because Mother maintained a filthy and unsanitary home because she left food out on the counters overnight and had the refrigerator stuffed with food beyond its capacity. The petition also alleged that Mother did not properly tend to Rose's hygiene because Rose sometimes came to school smelling of urine and wearing diapers which were too small and clothes which were too big.

During the pendency of the section 300 petition, the court ordered Rose to remain with Mother, and ordered Family Maintenance Services to be provided to Mother. In January 2015, the court ordered the maternal grandmother's visits to be monitored based on the belief that the grandmother's advice to Mother (encouraging her not to accept help from DCFS) was jeopardizing Mother's custody of Rose. Mother and the maternal grandmother denied the allegations in the reports filed by DCFS.

Also in this timeframe, a Department of Mental Health psychologist stated that Mother has the ability to care for Rose, but needed assistance. The psychologist reported

that Rose was not autistic but had social delays caused by a lack of socialization, opportunities for which Mother had failed to provide. Rose had recently been accepted into a speech therapy program, and DCFS opined that court intervention was necessary to ensure that Mother continued with services as Mother had previously changed her mind about therapy for Rose even though the therapy was recommended by Rose's school and DCFS. Mother previously had not cooperated with DCFS in obtaining services for counseling and homemaking, and obtaining personal therapy.

In February 2015, shortly before the jurisdiction and disposition hearing, Mother began cooperating in receiving services such as family preservation and mental health services. Mother became proactive in contacting the Regional Center regarding services for her own needs. Mother signed up for a low income energy bill program and was to receive a new refrigerator. As a result, Mother cleaned out her cabinets and refrigerator for the home inspection associated with that program. Rose also began receiving weekly counseling in mid-February 2015. Rose's urinary accidents also became rare at school in the preceding months.

### **3. Juvenile Court Jurisdictional Findings**

The jurisdiction and dispositional hearings were held on March 30, 2015. DCFS relied on its reports and Mother submitted on her reported statements within the jurisdiction report. Rose's counsel asked the court to sustain the allegations in the section 300 petition. Mother asked for the petition to be dismissed because DCFS failed to show any evidence that Rose was at risk of harm in her home. Mother asserted that the matters alleged did not show any physical endangerment to Rose and were not a basis for jurisdiction under section 300, subdivision (b). Mother also stated that the housekeeping issues had already been addressed, and Rose's potty training was in the process of being resolved in a joint effort by Mother and Rose's school.

The juvenile court sustained jurisdiction under both section 300, subdivision (b) counts, which stated:

“b-1

“On prior occasions in 2014, the child, Rose [B.]’s home was found to be in a filthy, unsanitary condition. Such condition included, old cooked food found on the counter. The refrigerator was found to have an overcapacity of food and contained insects. The home was fill of clutter and had no place to sit. Such a filthy and unsanitary home environment established for the child by [Mother] endangers the child’s physical health and safety and creates a detrimental home environment for the child and places the child at risk of physical harm and damage.

“b-2

“On prior occasions in 2014, . . . [Mother] has failed to provide the child with appropriate care and supervision in that [Mother] sent the child to school smelling of urine, in a diaper that was [too] small for the child. [Mother] did not provide proper hygiene for the child. Such neglect of the child on the part of [Mother] endangers the child’s physical health and safety and creates a detrimental home environment for the child and places the child at risk of physical harm and damage.”

The court reasoned that “[w]ithout ongoing progress on [Mother]’s part and ongoing services, the court does believe that the Department has shown a current risk of future harm based upon the past actions and past instability.” The court found by clear and convincing evidence that substantial danger existed to Rose’s physical and/or mental health. The court ordered Rose to remain in Mother’s home under the supervision of DCFS, and ordered Rose to continue to receive services. The court ordered Mother to complete parenting education and individual counseling.

## **DISCUSSION**

Mother argues that the court erred in finding jurisdiction over Rose pursuant to section 300, subdivision (b), premised on her unsanitary home and Rose’s poor hygiene. A jurisdictional finding under section 300, subdivision (b) requires “three elements: (1) neglectful conduct by the parent in one of the specified forms [in subdivision (b), such as a parent’s failure to adequately supervise or protect a minor]; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) We review the juvenile court’s jurisdictional findings for substantial evidence. (*Los Angeles County Dept. of*

*Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.)

“Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value.” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences “ ‘must be “a product of logic and reason” and “must rest on the evidence” [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].’ ” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, italics omitted.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) “[I]ssues of fact and credibility are questions for the trier of fact.” (*Ibid.*)

Here, there was substantial evidence that Mother failed to maintain Rose’s hygiene by not making sufficient efforts to potty train her, not changing her dirty diapers, and not cleaning Rose after Rose soiled a diaper. Rose smelled like urine at pre-school and incurred diaper rashes as a result of Mother’s neglect. Rose also had dirty feet and fingers because Mother failed to sufficiently bathe Rose. In addition, Mother failed to maintain a clean and healthy environment for Rose. Insects inhabited Mother’s overfilled refrigerator and clutter covered the surfaces of her home. There was nowhere for Rose to do her homework or for this family to comfortably live in the apartment. Thus, DCFS established neglect by Mother.

Attacking the third element of the section 300, subdivision (b) jurisdictional finding, Mother contends that “DCFS failed to carry its burden of proof that Rose was at risk of an identified substantial physical harm to cause jurisdiction to be taken over her.” This element “effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” (*In re Savannah M., supra*, 131 Cal.App.4th at p. 1396.) Mother argues that “DCFS failed to present a demonstrated specific risk to Rose in the past, present, or future.”

Mother likens her case to *In re David M.* (2005) 134 Cal.App.4th 822, 825, where the appellate court held that the record did not support jurisdictional findings under section 300, subdivision (b). In that case, a two year old and an infant were removed from their parents' custody. The mother had used marijuana on at least one occasion during her pregnancy with the infant and failed to obtain prenatal care early in the pregnancy. Nonetheless, the infant tested negative for drugs at birth. (*Id.* at pp. 825-826.) The mother had been diagnosed as delusional three years prior to the dependency proceeding due to her history of marijuana use. (*Id.* at p. 826.) The father had been diagnosed with social and anxiety disorder and depression. (*Id.* at p. 827.) The appellate court noted that despite this, the two-year-old was "healthy, well cared for, and loved, and that mother and father were raising him in a clean, tidy home" and that the mother tested negative for drugs approximately 18 times between the detention hearing and the jurisdiction hearing. (*Id.* at p. 830.) There was also no evidence that the two year old was exposed to drugs or drug paraphernalia. (*Id.* at p. 831.) The court concluded: "The record on appeal lacks any evidence of a specific, defined risk of harm to either [the two year old] or [the infant] resulting from mother's or father's mental illness, or mother's substance abuse. Certainly, it is possible to identify many possible harms that could come to pass. But without more evidence than was presented in this case, such harms are merely speculative. [Citation.]" (*Id.* at p. 830, italics omitted.)

Unlike *In re David M.*, identifiable harms exist in this case. Mother's mental impairments are current and severe and have resulted in her long history of neglecting her children. Mother has had three of her older children removed from her care and placed in the care of their respective fathers due to Mother's failure to properly address her children's needs. Mother has a history of keeping an unsanitary home and failing to maintain her children's hygiene. Mother only addressed these problems in the present case after DCFS made multiple visits to the home and brought the section 300 petition on behalf of Rose. It took months for Mother to clean her kitchen, and that cleaning appears to have been prompted by a low income energy bill program to receive a new refrigerator rather than by DCFS. Mother's apparent inability to address these serious problems on

her own, as well as her extensive history of failing to address her general neglect of her children, provide substantial evidence that Mother would revert back to her former behavior without DCFS and court involvement. Services appear necessary to ensure that Mother is trained on how to parent and maintain her home.

Although Mother eventually cleaned her home and has addressed the diaper issue, there is nothing in this record at this juncture that demonstrates her ability to reliably maintain a healthy environment for Rose without support and oversight. Substantial evidence in the form of Mother's history and Mother's present conduct supports the court's determination that jurisdiction was necessary to ensure Rose's safety in a home without mounds of clothes, clutter, spoiled food, and insects, and ensure Rose's hygiene is properly addressed.

To the extent that Mother argues that DCFS's decision not to remove Rose from her custody supports her contention that there was no risk to Rose, we disagree. Removal of a child is not necessary to show a risk of harm to the child for establishing jurisdiction. The dependency scheme was designed to maintain the child in the home of the parent as long as the child can be safe there. Under section 361, subdivision (c)(1) children may not be removed from their parent's home "unless the juvenile court finds clear and convincing evidence" of a "substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." Here, DCFS identified reasonable means, i.e. services through the Regional center and other programs as well as visits from DCFS, to maintain Rose's safety in Mother's home. Thus, that Rose was never detained from Mother does not support Mother's argument that the court erred in finding jurisdiction over Rose.

For the foregoing reasons, we conclude that substantial evidence supported the court's judgment finding jurisdiction.

**DISPOSITION**

The juvenile court's judgment is affirmed.

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JONES, J.\*

We concur:

ALDRICH, Acting P. J.

LAVIN, J.

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