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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re N.R., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

AMBER R. et al.,

Defendants and Appellants.

B268705

(Los Angeles County
Super. Ct. No. DK11702)

APPEAL from a judgment of the Superior Court of Los Angeles County, Emma Castro, Juvenile Court Referee. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant Amber R.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

Amber R. (Mother) appeals from the juvenile court's jurisdiction finding and disposition order declaring her daughter, N.R., a dependent of the court pursuant to Welfare and Institutions Code¹ section 300, subdivision (b), and ordering the removal of N.R. from Mother's care and custody. Mother argues that the evidence was insufficient to support the juvenile court's findings that N.R. was at a substantial risk of serious harm based on Mother's neglectful conduct, and that removal of N.R. from Mother's custody was the only reasonable means to protect the child from the risk of harm. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Section 300 Petition

Mother and Q.R. (Father) are the parents of three-year-old N.R., a girl born in August 2013. The current matter came to the attention of the Department of Children and Family Services (DCFS) in May 2015 based on a referral alleging that Mother had been arrested for loitering with the intent to commit prostitution. It was reported that, on May 9, 2015, Mother had attempted to solicit an undercover police officer to pay her money in exchange for sexual favors. When Mother was detained, she refused to comply and tried to run from the police, but was caught and arrested. At the time of her arrest, Mother was 17 years old. Mother and N.R. had been residing with the maternal grandmother since the child's birth, and Father's whereabouts were unknown.

On June 2, 2015, the case social worker spoke with the maternal grandmother to arrange a team decision making meeting regarding services for Mother and N.R. The maternal grandmother told the social worker that the meeting would have to be delayed because the grandmother needed to attend a graduation in Las Vegas. The social worker later discovered, however, that the true reason for the delay was that Mother and N.R. were no longer in Los Angeles. In a follow-up call with the social worker, the maternal grandmother could not recall when Mother and N.R. had left her home, but she reported that they had taken a bus to Las Vegas to visit the maternal grandfather.

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

On June 4, 2015, while Mother and N.R. were in Las Vegas, Mother was again arrested for loitering with the intent to commit prosecution. Mother told the arresting officers that she was trying to make \$400 for her daughter's upcoming birthday, and that she had been working as a prostitute for the past two months. She refused, however, to provide law enforcement with any information regarding N.R.'s whereabouts, except to say that "she is somewhere safe." Mother later called the maternal grandmother and gave her the telephone number of the person who had N.R. After the maternal grandmother provided that number to the maternal grandfather in Las Vegas, a man named Gary Price dropped off N.R. at the maternal grandfather's home. Mother's family did not know Gary Price and had never heard Mother mention his name.

On June 8, 2015, the maternal grandmother brought N.R. to the DCFS's offices in Los Angeles. At that time, N.R. was detained from Mother and placed with the maternal great grandmother. On June 11, 2015, the DCFS filed a dependency petition on behalf of N.R. pursuant to section 300, subdivision (b). The petition alleged that Mother had left N.R. with an unrelated adult who was unknown to Mother's family and unwilling to care for the child, and that Mother's failure to make an appropriate plan for N.R.'s care and supervision placed the child at risk of serious physical harm.

On June 11, 2015, the juvenile court held a detention hearing for N.R.. Mother did not appear at the hearing because she remained in custody in Las Vegas. The court found that there was prima facie evidence that N.R. was a person described by section 300, and ordered that the child be detained from Mother and placed with the maternal great grandmother pending further hearing. On June 18, 2015, following Mother's release from custody, the juvenile court held an arraignment hearing. Mother appeared at the hearing and was appointed counsel. Father did not appear and his whereabouts remained unknown. Mother's counsel advised the court that Mother was again residing with the maternal grandmother and requested that N.R. be released to Mother because the circumstances giving rise to the petition were an "isolated one-time incident . . . not indicative of any safety threat." The court denied the request and ordered that N.R. remain placed with the maternal great grandmother. Mother was granted family

reunification services, including monitored visitation with N.R.. The matter was set for a hearing.

II. Jurisdiction/Disposition Report

On August 3, 2015, the DCFS filed its jurisdiction/disposition report. In an interview with the case social worker, Mother denied that she had placed N.R. at risk by leaving the child with Gary Price, and claimed that Price was a close friend whom she trusted with her own life. Mother also stated, “[W]ho is anybody to really tell me who I feel my child is safe with.” When asked to describe then two-year-old N.R., Mother answered that the child was “bad like me” and “has an attitude like me.” She further remarked that N.R. “can be sweet, but if you have something that she wants, you better give it to her.” The social worker observed that N.R. was friendly and outgoing, and the child appeared to be developmentally on target.

In its report, the DCFS noted that Mother had been attending monitored visits with N.R. one to two times per week. Father’s whereabouts remained unknown, and the maternal grandmother reported that Father had not been involved with N.R. since the child’s birth. Mother told the social worker that she wanted N.R. to live with her, and that she did not feel she needed anything from the DCFS. Although Mother indicated that she was willing to participate in family preservation services, she was not interested in any programs to address her history of prostitution. The DCFS recommended that N.R. be declared a dependent of the court and removed from Mother’s custody, and that Mother be provided with family reunification services.

III. Jurisdiction Hearing

On August 13, 2015, the juvenile court held a jurisdiction hearing for N.R. Father made his first appearance at that hearing and was appointed counsel. The DCFS offered into evidence its detention and jurisdiction/disposition reports, and called Mother to testify. Mother admitted that she was arrested for prostitution in Las Vegas in June 2015. It was her second arrest for prostitution and she was in custody on that charge for about a week. Following her arrest, she refused to tell law enforcement where N.R. was located

because she was afraid that they would take the child away from her. Mother testified that she left N.R. with a close friend, Gary Price, because of her arrest. According to Mother, Price was a 20-year-old man who worked in a warehouse, and he was a single parent of two toddler-aged girls. Mother believed that Price was “amazing around kids” because he did not smoke or “turn to the wrong video station” around his daughters. Mother also testified that she did not have any concerns about leaving N.R. with Price, and noted that Price had returned the child in “good health” with “no harm done” and a “smile on her face.”

Following Mother’s testimony and the argument of counsel, the juvenile court sustained the petition under section 300, subdivision (b) as follows: “On or about 6/3/15 the child [N.R.’s] mother, Amber [R.] was incarcerated. The child was left in the care of an unrelated adult Gary Price, who is unknown to [the] mother’s family and who is unwilling to care for the child. The mother refused to provide law enforcement with information on the whereabouts of the child. The mother’s failure to make an appropriate plan for the child’s care and supervision endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage and danger.”

Turning to the disposition, the juvenile court decided to continue the disposition hearing to a later date because the DCFS had not had an opportunity to interview Father, who was a non-custodial, non-offending parent making his first appearance in the case. The court ordered the DCFS to interview Father to assess his ability to safely meet the needs of N.R. if the child were placed in his custody. Based on Mother’s statement that Father had not seen N.R. for about a year, the court also ordered the DCFS to interview Mother about Father’s contact with the child. The court granted Father monitored visitation with N.R. subject to the DCFS’s discretion to liberalize, and ordered the DCFS to provide Father with unmonitored visits unless specific safety issues were identified. The matter was continued for a contested disposition hearing.

IV. Disposition Hearing

On October 1, 2015, the DCFS filed a last minute information report regarding Father's relationship with N.R. and his ability to care for the child. In a follow-up interview with the case social worker, Mother reported that Father had not seen N.R. for over a year or provided any support for the child. In his interview with the social worker, Father claimed to live in a two-bedroom home with his mother and sibling. The social worker observed that the home was dirty, disheveled, and in need of various repairs. Father reported that N.R. never resided with him; however, he also stated that there were times when N.R. would be dropped off at his home and would stay "for months." Father told the social worker that he was fine with N.R.'s placement with her maternal great grandmother. He also said that he was sleeping on the couch in his grandmother's home and needed to get a place of his own. Following these interviews, the DCFS continued to recommend that N.R. be suitably placed outside her parents' custody.

On October 1, 2015, the juvenile court held the disposition hearing. The court took judicial notice of the prior sustained petition and admitted into evidence the various reports filed by the DCFS and a printout of Mother's upcoming counseling appointments. Counsel for the DCFS and counsel for N.R. joined in requesting that N.R. be removed from parental custody and that both parents be granted family reunification services. Father's counsel asked that N.R. be placed with Father as a non-offending, non-custodial parent, and Mother's counsel asked that N.R. be returned to Mother's custody. The matter was continued to a later date for the court's ruling on the disposition.

On November 5, 2015, the juvenile court held the hearing on its disposition order. Father appeared at the hearing, but Mother did not attend. With respect to Mother, the court found, by clear and convincing evidence, that there was a substantial danger to N.R. if the child were returned to Mother's care, and that removal from Mother's custody was the only reasonable means of protecting N.R. from harm. In describing Mother's actions, the court noted that "it was beyond irresponsible to travel out of state as a minor with a baby, not tell your parents, get arrested for a crime, [and] leave a child with a person who is a stranger to your parents who they've never even heard of." The court also stated that

Mother “is in need of services to assist her in learning how to be a responsible parent for a young toddler.” With respect to Father, the court found, by clear and convincing evidence, that placement of N.R. with Father would be detrimental to the child’s safety and well-being. The court noted that Father had not had any contact with N.R. for the past year or provided any financial support to the child. In addition, the home where Father claimed to be residing was in a poor and unsanitary condition, and Father did not present any evidence regarding where N.R. would sleep or how he would care for the child if she were released to him.

The juvenile court declared N.R. a dependent of the court pursuant to section 300, subdivision (b), and ordered that she remain placed with her maternal great grandmother under the supervision of the DCFS. Both Mother and Father were granted monitored visitation with N.R. subject to the DCFS’s discretion to liberalize the visits, and were ordered to participate in family reunification services, including parenting classes and individual counseling. Following the hearing, Mother and Father each filed a timely notice of appeal from the juvenile court’s jurisdictional finding and disposition order. Father’s appeal has been dismissed as abandoned. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 838.) Mother’s appeal remains.

DISCUSSION

I. Jurisdictional Finding

On appeal, Mother challenges the sufficiency of evidence supporting the juvenile court’s jurisdictional finding under section 300, subdivision (b). Mother specifically contends that the evidence was insufficient to support a finding that she engaged in any neglectful conduct toward N.R. that placed the child at substantial risk of serious harm.

A. Applicable Law

We review a juvenile court’s jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Substantial evidence is “evidence that is reasonable, credible, and of solid value.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) Under this standard of review, we examine the whole record in a light most favorable to

the findings and conclusions of the juvenile court and defer to the juvenile court on issues of credibility of the evidence and witnesses. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.) We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court's order, resolving all conflicts in support of its determination and drawing all reasonable inferences to uphold its ruling. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1124.) If there is substantial evidence to support the juvenile court's order, we must uphold the order even if other evidence supports a contrary conclusion. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168.)

Section 300, subdivision (b) provides, in pertinent part, that a child comes within the jurisdiction of the juvenile 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 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.” (§ 300, subd. (b).) “The three elements for a section 300, subdivision (b) finding are: ‘(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.] The third 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. . . . [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395-1396.) “Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child [citation]. The court may consider past events in deciding whether a child currently needs the court's protection. [Citation.] A parent's “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ [Citations.]” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384.)

B. The Jurisdictional Finding Was Supported by Substantial Evidence

In this case, the juvenile court found that jurisdiction over N.R. was proper under section 300, subdivision (b) because Mother engaged in neglectful conduct that placed N.R. at a substantial risk of serious physical harm. In particular, the court found that Mother had failed to make an appropriate plan for N.R.'s care and supervision when she left the child with an unrelated man who was unknown to Mother's family, and then refused to disclose the child's whereabouts to the police while she was incarcerated. Based on the totality of the record, we conclude that the juvenile court's exercise of jurisdiction over N.R. was supported by substantial evidence.

The evidence presented at the jurisdiction hearing established that Mother was 17 years old when she began engaging in prostitution. In May 2015, Mother was arrested in Los Angeles for loitering with the intent to commit prostitution. She was released to the custody of her mother, N.R.'s maternal grandmother, and the DCFS began trying to work with the family to develop a plan to keep both Mother and N.R. safe. Shortly after her release, however, Mother left for Las Vegas, taking then 21-month-old N.R. with her. While Mother was in Las Vegas, she was again arrested for loitering with the intent to commit prostitution. Mother refused to provide law enforcement with any information regarding N.R.'s whereabouts, except to say that the child was somewhere safe. Because Mother would not cooperate with the police, her family initially had no idea where N.R. was or who was caring for the child. Mother later called the maternal grandmother in Los Angeles, and gave her the telephone number of the man who had N.R. The maternal grandfather, who was in Las Vegas, then received a call from a man named Gary Price, who reported that the child was with him. Although Mother claimed that she had known Price for three years, neither the maternal grandmother nor the maternal grandfather had ever met Price or heard Mother mention his name.

Mother argues that she made an appropriate plan for N.R.'s care and supervision by leaving the child with Price because he was a close personal friend and a parent with young children of his own. She also asserts that the DCFS failed to present any evidence to contradict her testimony that N.R. was safe in Price's care. However, the juvenile

court reasonably could find that Mother engaged in neglectful conduct that placed N.R. at a substantial risk of harm when she left the toddler with a man whom her family had never met, and then went out for the evening to work as a prostitute without telling anyone in her family where N.R. was, who was caring for the child, and how to contact that person if necessary. The juvenile court also reasonably could find that Mother acted in a willfully inappropriate manner that further placed N.R. at a substantial risk of harm when she refused to provide law enforcement with any information regarding the child's whereabouts following her arrest. Rather than simply disclosing N.R.'s location to the police so that they could make sure the child was safe, Mother refused to cooperate with the authorities and waited until she could contact the maternal grandmother in Los Angeles to provide her with Price's telephone number in Las Vegas. Contrary to Mother's claim on appeal, the fact that N.R. was later returned unharmed to her maternal grandfather does not demonstrate that Mother acted responsibly as a parent or made an appropriate plan for the child's care. Instead, the totality of the evidence supported a finding that Mother engaged in a series of reckless acts that endangered N.R.'s health and safety and placed the child at a substantial risk of serious physical harm.

Mother also asserts that the evidence was insufficient to support a finding that her prior conduct toward N.R. posed a current risk of harm to the child at the time of the jurisdiction hearing. The record reflects, however, that Mother maintained throughout the dependency proceedings that she had done nothing wrong when she left N.R. in the care of a man whom her family did not know and then refused to disclose the child's location to the police while in custody. Indeed, when Mother was interviewed by the DCFS for the jurisdiction hearing, she stated: "I feel who is anybody to really tell me who I feel my child is safe with." Mother also testified at the hearing that she believed she acted appropriately in leaving N.R. with Price because there was "no harm done" to the child and Price later returned N.R. to her family. Mother's statements reflect that, at the time of the jurisdiction hearing, she still lacked any insight into how her conduct placed her young child at a substantial risk of serious harm. On this record, the juvenile

court's finding that N.R. came within the jurisdiction of the court under section 300, subdivision (b) was supported by substantial evidence.

II. Disposition Order

Mother also challenges the juvenile court's disposition order removing N.R. from her custody and placing the child with her maternal great grandmother under the supervision of the DCFS. Mother claims that the evidence was insufficient to support a finding that N.R. would be in substantial danger if returned to Mother's care and that removal of the child was the only reasonable means to protect her from harm.

A. Applicable Law

Section 361, subdivision (c) permits the removal of a child from the physical custody of a parent with whom the child was residing when the dependency petition was filed 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 emotional well-being" of the child if he or she were returned home, and "there are no reasonable means by which the [child]'s physical health can be protected without removing" the child from the parent's custody. (§ 361, subd. (c)(1).) "A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The [juvenile] court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M.*, *supra*, 197 Cal.App.4th at pp. 169-170.) An appellate court reviews a disposition order removing a child from parental custody for substantial evidence. (*In re D.G.* (2012) 208 Cal.App.4th 1562, 1574.)

B. The Disposition Order Was Supported by Substantial Evidence

Based on the record in this case, the evidence was sufficient to support a finding that Mother's conduct posed a substantial risk of harm to N.R. and that removal of the

child from Mother's custody was the only reasonable means to protect her from that harm. The record reflects that N.R. was only 21 months old when these dependency proceedings commenced. In less than a one-month period, Mother, who was then 17 years old, had been arrested twice for loitering with the intent to commit prostitution. At her second arrest, Mother told the police that she had been engaging in prostitution for the past two months. When interviewed by the DCFS, however, Mother denied that she had been involved in any illegal activity. She also indicated that she was not interested in participating in any programs to address her prior acts of prostitution. Although Mother wanted N.R. returned to her custody, she did not believe that she needed any services from the DCFS to assist her in providing N.R. with appropriate parental care.

During the dependency proceedings, Mother also continued to minimize the seriousness of her conduct and the danger that it posed to her young child. She did not believe that she had placed N.R. at any risk of harm when she left the child with Price without notifying anyone in her family, or when she refused to provide the police with any information regarding N.R.'s whereabouts following her arrest. When asked at the jurisdiction hearing why she would not tell the police where N.R. was located, Mother answered: "Because I know how it goes. The system is jacked up sometimes." She then testified that she was "afraid they were going to take my daughter the way they did." Mother's fear that N.R. might be removed from her custody thus prevented her from taking appropriate parental action and cooperating with law enforcement to ensure that her child was safe. Based on the totality of the evidence, the juvenile court reasonably could find that Mother's conduct posed a substantial risk of harm to N.R. and that such risk could only be obviated by removing the child from Mother's custody. The juvenile court's disposition order was therefore supported by substantial evidence.

DISPOSITION

The juvenile court's jurisdictional finding and disposition order are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.