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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MARK T., a Person Coming Under
the Juvenile Court Law.

B269684
(Los Angeles County
Super. Ct. No. DK14144)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARISSA R.,

Defendant and Appellant.

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

Miri K. Wakuta, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, Erica Edelman-Benadon, Deputy County Counsel, for Plaintiff and Respondent.

Marissa R. (mother) appeals from the jurisdictional finding and disposition order declaring her son, Mark T., Jr., a dependent of the court under Welfare and Institutions Code section 300, subdivision (b).¹ Mother contends substantial evidence does not support the court's jurisdictional finding that she is a current substance abuser and Mark is at risk of suffering serious harm as a result. We hold substantial evidence supports the jurisdictional finding. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mother used methamphetamine and marijuana every day for eight to 10 years before entering a six-month drug treatment program in 2007. She began dating Mark T., Sr., (father) in 2009. She relapsed and started using methamphetamine with father, because she was being "controlled" by him. She did not use methamphetamine daily, or while she was pregnant in 2011. Mother and father also engaged in domestic violence.

Mark was born on October, 29, 2011. Mother dated other men, but renewed her relationship with father. Mother struggled with sobriety and continued to use marijuana occasionally. Mother told hospital staff that after a three-year relationship, mother and father broke up in August of 2015. Father currently has no contact with Mark or mother, and his whereabouts are unknown.

In September 2015, mother and Mark resided with maternal grandmother in a one bedroom, second floor apartment. Mother was experiencing painful abdominal cramping on September 27, 2015. Mother went downstairs and smoked marijuana while Mark and maternal grandmother were asleep in the apartment. Her neighbor offered her methamphetamine to relieve the pain, which she took, but it did not help. Mother went back upstairs to lie down before grandmother left for work at 4:30 or 5:00 a.m. Mother started hemorrhaging. At 6:00 or 7:00 a.m., mother called a friend to come watch Mark. Grandmother came home around 2:00 p.m.

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

Mark's aunt called the paramedics and mother was transported to the hospital by ambulance. Hospital staff determined mother suffered a miscarriage. Mother had not known she was pregnant. She reported her history of substance abuse, and she tested positive for methamphetamine, marijuana, and amphetamine. Mother was discharged.

On September, 29, 2015, social workers received an immediate referral alleging general neglect of Mark by mother. Social workers visited mother's home to investigate the referral. Grandmother and Mark were home, but mother was not. Mark was appropriately dressed and well groomed. There were no apparent signs of abuse or neglect.

Maternal aunts Sonia and Adrianna arrived as the social workers were leaving the home on September 29, 2015. The aunts stated that they took care of Mark and ensured his needs were met. Sonia said that the family had been trying to get mother into a program, but she would only enroll in a program where she could take Mark. Although Sonia never saw mother use drugs, she believed mother was using drugs based on her past history and physical appearance.

On September 30, 2015, social workers made a scheduled visit to the home to further investigate. The home was clean, there was adequate food, and Mark had clean toys and clothing. Utilities were functional and no imminent safety hazards appeared in the home. Mark was engaged, active, and friendly. He appeared to be developing appropriately for his age and was comfortable in the care of mother and grandmother. Mark did not appear to be malnourished. Mother told the social workers that Mark had been seen by a doctor, but had not yet received his immunizations because she was waiting for school to start. Mark was not potty trained. He was supervised by mother and grandmother, and never left at home alone. Mother was unemployed and received Cash Aid, food stamps, and Medi-Cal.

The social workers contacted Mark's doctor to obtain medical information. The doctor informed them that Mark's last visit was January 27, 2014, and that there were no known medical concerns other than suspected attention deficit hyperactivity disorder

(ADHD) and eczema. Mark was missing three immunizations and due for his four-year check-up.

Mother tested positive for marijuana on September 30, 2015. Mother said she used marijuana to help with her anxiety. On October 28, 2015, social workers conducted another home visit. Mother denied current drug use aside from occasional marijuana use.

A detention report dated November 5, 2015, included the social workers' assessment that the family was at moderate risk for future abuse due to mother's substance abuse. It appeared mother had relapsed and required supervision and intervention by the Department of Children and Family Services (DCFS) to ensure Mark's safety. DCFS recommended Mark remain with mother, while mother participated in a substance abuse rehabilitation program, individual counseling, and parenting education program.

On November 5, 2015, DCFS filed a section 300 petition on Mark's behalf. Count b-1 of the petition alleged: "The child, Mark [T.'s] mother, Marissa R[.], has a history of substance abuse and is a current user of methamphetamine and marijuana which renders the mother incapable of providing regular care and supervision of the child. On or about [September 27, 2015], the mother was under the influence of methamphetamine and marijuana while the child was in the mother's care and supervision. On [September 30, 2015], the mother had a positive toxicology screen for marijuana. The child is of such young age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the child. Such substance abuse by the mother endangers the child's physical health and safety, and places the child at risk of serious physical harm and damage."

At the November 5, 2015 detention hearing, the juvenile court found that DCFS had made reasonable efforts to prevent removal and that there were services available to prevent Mark's detention. The court ordered Mark to remain released to mother on the condition that mother drug test weekly on demand with no dirty or missed tests. The court also ordered DCFS to make unannounced home visits to monitor Mark's safety.

On November 16, 2015, DCFS met with mother. Mother stated she had smoked marijuana two days prior to the meeting. Mother tested positive for marijuana on November 25, 2015, and November 30, 2015, with diminishing results. On December 18, 2015, mother tested negative for marijuana. On December 22, 2015, Mother enrolled into a six-month outpatient substance abuse treatment program.

In the jurisdiction and disposition report dated January 11, 2016, DCFS noted the family would benefit from DCFS and court involvement due to the following concerns: “1) Mother’s extensive history of drug use[; ¶] 2) Mother’s pattern of relapse[; ¶] 3) Mother’s decision to self-medicate by using marijuana to cope with her anxiety[; ¶] 4) DCFS history which included allegations of drug use by the mother (methamphetamine and marijuana) [; ¶] and 5) [Mark] possibly requiring intervention services to address his overall development.” The report also noted that there was a substantial danger to Mark’s physical health or Mark was suffering severe emotional damage, and there were no means by which Mark’s physical or emotional health could be protected without DCFS and Court intervention.

On January, 11, 2016, the juvenile court sustained the petition and found Mark to be a dependent child under section 300, subdivision (b). The court placed Mark in mother’s home under the supervision of DCFS. The court noted that “[mother’s] drug use history seems to be related to some kind of anxiety, panic attacks, some kind of psychological condition that should be and can be dealt with [through] other medications that are not illegal that would not leave mother in a position where she’s incapable of providing regular care and supervision.” The court also ordered that mother participate in individual parental counseling, alcohol and drug counseling, and submit to random alcohol and drug tests.

Mother filed timely notice of appeal from the January 11, 2016 jurisdiction and disposition order.

DISCUSSION

Governing Law and Standard of Review

Under section 300, subdivision (b)(1), a child may be found a dependent child 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 [(*Christopher R.*)]”) (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384.)

“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; accord, [*Christopher R., supra*, 225 Cal.App.4th at p. 1216.]”) (*In re Kadence P., supra*, 241 Cal.App.4th at p. 1384)

“We review the juvenile court’s jurisdiction findings and disposition order 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 [*Drake M.*].)” (*In re Kadence P., supra*, 241 Cal.App.4th at p. 1384.)

Jurisdictional Finding

Mother contends there is no substantial evidence to support the court’s findings that she is a current substance abuser or that Mark is at risk of suffering serious physical harm. Her contentions lack merit.

“In short, there are three elements for jurisdiction under section 300, subdivision (b), namely, (1) neglectful conduct or substance abuse by a parent in one of the specified forms, (2) causation, and (3) serious physical harm to the child, or a substantial risk of such harm. (See *In re John M.* (2013) 212 Cal.App.4th 1117, 1124; *In re B.T.* (2011) 193 Cal.App.4th 685, 692.) In [the] current case, the focus is on whether there is maternal substance abuse, and whether such substance abuse has caused harm or poses a substantial risk of causing harm to her child.” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724-725.)

Jurisdiction is proper when a parent has a history of substance abuse and the evidence supports an inference that the parent’s substance abuse places a child of tender years at risk based on the parent’s inability to provide regular care. (*Christopher R., supra*, 225 Cal.App.4th at p. 1210 [distinguishing *Drake M., supra*, 211 Cal.App.4th at p. 766 (*Drake M.*)] and affirming jurisdiction over parents with a history of drug abuse, where children were under six years old and court disbelieved parents’ statements they

were no longer using drugs].) We join *Christopher R.* in choosing not to follow *Drake M.* to the extent *Drake M.* held that a finding of substance abuse must be based on a medical professional's diagnosis or evidence that meets the definition of substance abuse found in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR). (*Christopher R.*, *supra*, at pp. 1217-1218, referring to *Drake M.*, *supra*, at p. 766.) As explained in *Christopher R.*, the *Drake M.* definition "is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court, and we are unwilling to accept [mother's] argument that only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM-IV-TR categories can be found to be a current substance abuser." (*Christopher R.*, *supra*, at p. 1218.)

Substantial evidence supports the trial court's finding that mother is a substance abuser. Mother had a history of substance abuse that spanned eight to 10 years. She admitted to using marijuana and methamphetamine every day during that time span up until 2007. Mother entered into a relationship with Mark's father in 2009 and used methamphetamine under his influence. She also told medical staff that she was in a relationship with Mark's father until as recently as August 2015. She used marijuana on a regular basis without a prescription. Her family members were encouraging her to seek treatment for her substance abuse, but she was not willing to be separated from Mark. In September 2015, mother left the apartment while Mark was in her care, without telling the other adult present, in order to use marijuana and methamphetamine. Although mother knew that continued use could subject the family to a dependency case and supervision by the Department and court, she tested positive for marijuana on three occasions and used marijuana two days before a meeting with DCFS. Mother's inability to stop using marijuana and methamphetamine, in light of her history of substance abuse and in the face of negative consequences, supports the court's finding that she is a current substance abuser.

We also disagree with mother's contention that the Department failed to establish a nexus between her current drug use and harm or risk of harm to Mark. Mother's

marijuana and methamphetamine use has led to a situation where there are valid safety concerns for Mark as a result of her inability to adequately supervise or protect him. Mark's aunts told social workers that they take care of Mark and his needs. Mark has not been to the doctor in almost two years, since shortly after his second birthday, even though he is suspected to have ADHD and missed three immunizations. As a result, he missed his third-year check-up and was due for his fourth-year check-up. Mother had no plan or appointment to take him to see a doctor. Most recently, unbeknownst to anyone, mother left Mark unsupervised so that she could go smoke marijuana and use methamphetamine. The reasonable inference that Mark was at risk of harm from the evidence of mother's neglect supports the court's orders.

Although mother does not deny her regular, on-going use of marijuana, she cites several cases for the proposition that a parent's use of marijuana alone does not justify the court's exercise of jurisdiction over her child. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 768–769; see *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [“[i]t is undisputed that a parent's use of marijuana ‘without more,’ does not bring a minor within the jurisdiction of the dependency court”].) In *Drake M.*, the dependency court found jurisdiction over a child whose father smoked legal marijuana legally, pursuant to a prescription for medical purposes. (*Drake M.*, *supra*, at pp. 760-761.) The appellate court addressed the issue of whether habitually smoking legal marijuana constituted conduct that rendered a father incapable of providing regular care and supervision to a child. The court found that such conduct could fall within the purview of section 300, subdivision (b), if a child has suffered or was at substantial risk for suffering serious physical harm or illness as a result of: (1) a parent's inability to provide regular care due to substance abuse or (2) the parent's failure to adequately supervise or protect the child. (*Drake M.*, *supra*, at p. 763.) The court held that DCFS had failed to prove the father was a substance abuser because he had a legal, medical recommendation to use marijuana for recurring knee pain and could adequately care for the child. (*Id.* at p. 767.) Thus, the court overturned the dependency court's finding.

Mother's situation is distinguishable from *Drake M.* Mother's usage of methamphetamine and marijuana was not casual, nor was there a lack of risk of harm to her son. Mother uses marijuana without medical authorization and suggests no lawful justification for periodic abuse of methamphetamine. Substantial evidence supports the dependency courts finding that mother's persistent and illegal use of marijuana and methamphetamine caused the Mark to suffer, or be at a substantial risk of suffering, serious physical harm or injury. (§ 300, subd. (b).)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

RAPHAEL, J.*

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