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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B269989
(Los Angeles County
Super. Ct. No. DK 13324)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B. et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Respondent D.B.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Respondent D.F.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

In this dependency matter, D.B. (mother), the mother of C.B., an infant child (the child), appeals, claiming that the juvenile court abused its discretion at disposition when it denied her visitation with the child. The child's biological father, D.F. (father), also appeals, arguing that the juvenile court's finding of jurisdiction based on his substance abuse was not supported by substantial evidence, and that the court erred when it did not assess his request for custody of the child pursuant to Welfare and Institutions Code section 361.2.¹

We hold that, in this instance, the juvenile court properly exercised its discretion when it denied visitation to mother. With regard to father, there was no error.

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

BACKGROUND

I. The Petition

On September 6, 2015, mother gave birth to the child at home. Later that same day, paramedics brought mother and the child to Hollywood Presbyterian Medical Center (the hospital).

On September 7, 2015, hospital staff noted that mother's behavior was "odd"—mother was "verbally aggressive" toward the hospital's staff and her doctor, and made "threatening statements"; in addition, mother alleged that Walt Disney needed to pay her restitution for using her life story in movies and that a "David Rothschild," an ostensible person purportedly "in charge of the entertainment industry," planned to kill her and sacrifice her: "I am to be a human sacrifice. They are going to put a pole up into me and I will bleed out over [Rothschild's] wedding feast.' "

On September 8, 2015, Department of Children and Family Services (DCFS) received a referral alleging that mother had had previously tested positive for methamphetamine, marijuana, and ecstasy. DCFS learned that, although mother tested negative for drugs when she was admitted to the hospital on September 6, she had previously tested positive for amphetamines, marijuana, and ecstasy on May 19, 2015, while receiving prenatal care. Both the hospital's social worker and mother's doctor expressed concern to DCFS regarding, inter alia, mother's lack of prenatal care, her prenatal substance abuse, her delivering

the child at home, and her bizarre behavior which alternated from defensiveness to anger to politeness.

On September 8-9, 2015, DCFS interviewed mother, father, and the child's maternal grandmother. Among other things, mother told DCFS that she smoked marijuana occasionally during her pregnancy with the child "because I was stressed with the emails and texts of the threats that they are going to kill me and chop up my body.'" In addition, mother reported domestic violence throughout her relationship with father, whom she described as a smoker of "meth," a "KKK member" and a "Free Mason" who was "trying to be in with the Illuminati and will be the rabbi for the new Jerusalem."

Father told DCFS that he doubted whether the child was his because mother had sex with four other men while she was with him. However, father also stated that if a paternity test determines that he is the child's biological father, he will take "full responsibility." Father also stated that mother could not come and stay with him following her discharge from the hospital, because she almost had him evicted from his previous housing; father further stated his belief that "paranormal activities" were occurring within mother. Overall, DCFS's social worker found father's comments to be "odd and random."

The maternal grandmother, who lives in Florida, advised DCFS that mother had suffered a "break from reality" approximately five years before and that, as a result,

she now cares for two of mother's other children.² The maternal grandmother further reported to DCFS that mother "always" used marijuana and drank alcohol but did not have a history of "heavier drug use," and that mother is "unstable, transient and has continuously talked the same delusions with Disney and Rothschild for the past five years."

On September 9, 2015, DCFS suspended mother's supervised visits "due to mother refusing to let go of the child after her discharge on September 8, 2015, and law enforcement . . . having to [be] contacted for mother's removal at the hospital."

On September 11, 2015, DCFS filed a section 300 petition on behalf of the child, alleging the child was at risk as a result of mother and father's domestic violence, mother's drug use, mother's mental and emotional problems including delusions, paranoia and bizarre behavior, and father's history of illicit drug use.

II. Jurisdiction and Disposition

At the initial detention hearing on September 11, 2015, the juvenile court ordered paternity testing. In addition, the court issued an order detaining the child but allowing supervised visitation for both mother and father. The court

² The father of these two other children reported to DCFS that while he does not believe mother to be a drug addict, " 'she is crazy.' " Another child of mother's was living with his father in Orange County, California. The father of this child described mother as " 'hostile and aggressive.' "

further ordered DCFS to arrange psychological evaluations for mother and father and directed mother not to breastfeed the child until she had submitted four clean consecutive drug tests.

A. Evidence of mother's continuing mental instability

Over the course of the next several weeks, mother engaged in increasingly bizarre conduct. Shortly after the initial detention hearing, mother began sending “‘crazy text messages’” to the maternal grandmother, telling the maternal grandmother to “GO TO HELL,” referring to herself as “THE HOLY MOTHER,” making references to “[B]arbie heads” and “plastic arms and legs” “com[ing] off,” and stating that “YOU DO NOT WASTE MY DIVINE TIME and ‘live to tell’.”³

During a telephone conversation with DCFS on September 21, 2015, mother said the juvenile court was “owned by David Rothschild who has been after her, that the film, [T]he Da Vinci Code, was about her life, and that Pope Francis was on the airwaves yesterday talking about her and her son.” During a telephone interview on October 9, 2015, mother denied having any psychological problems, but

³ In May 2015, mother had texted the maternal grandmother, stating that the maternal grandmother would be “PUBLICLY EXECUTED for BLASPHMEY AND SLANDER TOWARD THE GODDESS [i.e., mother]” and for “conspiring to support the child pedophile Disney ring,” and that the maternal grandmother would “DIE NUDE IN FRONT OF [her] white trash whore friends.”

alleged, inter alia, that there were surveillance cameras watching her 24 hours each day which recorded everything she did, and that the story of Harry Potter was based on the life of one of her older sons.

On October 15, 2015, DCFS filed an ex parte application requesting that the juvenile court immediately suspend mother's visitation "due to her unstable mental capacity and the risk that she presents to [the child] during visits." DCFS recommended that mother's visits not resume until mother was actively participating in mental health services and her provider affirms that she was stable and not a risk. DCFS reported to the court that mother had made numerous "delusional and erratic comments" that caused it to be highly concerned for the child's safety in her presence, even in a monitored situation. DCFS expressed concern that mother was unable to follow visitation guidelines and was not mentally stable. The agency said if mother was holding the one-month-old child during a visit and became irrational and "refused to comply with [DCFS's] directives and attempted to flee, [the child] could be easily injured."

At the hearing on October 15, 2015, which mother did not attend, the juvenile court acceded to DCFS's recommendation and suspended mother's visits pending further order of the court.

On November 6, 2015, father filed a request for a restraining order protecting him from mother, in which he stated that mother continued to appear at his apartment

“often under the influence screaming and banging on the door and causing a scene” He also stated that mother had assaulted him in the court parking lot earlier that same day and that she was constantly calling the police against him and kept “threatening to kill [him] and dismember him.” The court signed a temporary restraining order requiring mother to stay 100 yards away from father.⁴

B. Evidence of father’s drug use

In an interview with DCFS in October 2015, father denied any current use of illegal drugs, but admitted he had used illegal drugs in the past, beginning as early as age 11 when he smoked crack cocaine. While he also denied any addiction to drugs, he stated that he had experimented with “‘everything,’” including “‘marijuana, heroin, cocaine, amphetamine, ecstasy and acid.’” Father further acknowledged that, while living in Texas, he lost custody of his twin daughters and indicated that he lost custody due to his failure to complete a substance abuse program.

In addition, to father’s own admissions, mother alleged that he was a drug user. In the hospital following the child’s birth, mother told DCFS’s social worker that father “‘participates in meth’ ” and that she has “seen him smoke meth.” In addition, she blamed her previous positive test for

⁴ Also on November 6, 2015, counsel for mother informed the juvenile court that he believed that mother could not assist him in her defense and requested a hearing to address appointment of a guardian ad litem for mother.

methamphetamine on her drinking some Kool-Aid which father told her contained water from his “bong” or water pipe. And, on October 20, 2015, mother filed a “Public Inquiry Complaint” in which she accused father, inter alia, of being a “known methamphetamine addict.”

(Capitalization omitted.) The maternal grandmother also averred that father had a history of drug abuse, stating that he not only used methamphetamine, but that he posted a video on YouTube which referenced methamphetamine.

On November 6, 2015, DCFS reported it had been unable to establish father’s current use of illegal drugs due to his refusal to submit to drug testing.

C. Father’s paternity and the child’s development

On October 29, 2015, after reviewing the results of a paternity test, the juvenile court found that father is the child’s biological father.

In late October 2015, DCFS reported to the juvenile court that the child was suffering from neonatal withdrawals which occurred in newborns exposed to opiate drugs in utero. DCFS indicated that the fact the child was shown to be experiencing withdrawals at a well-baby exam on October 8, 2015, indicated mother used substances throughout her pregnancy.

In early November 2015, DCFS reported to the juvenile court that the child scored below the cutoff for gross motor skills. Specifically, the child was unable to move his head to the side or hold his head up for longer than a few seconds or when he was on his stomach. DCFS further reported that

the child was at risk for “developmental delay” and had to be “monitored continuously.”

D. The juvenile court’s jurisdictional and dispositional findings

On January 19, 2016, the juvenile court held a contested hearing on jurisdiction and disposition. Neither mother nor father attended the hearing.

With regard to jurisdiction, the juvenile court sustained an amended version of the section 300 petition, striking the domestic abuse allegations. The sustained petition indicated the child was at risk of serious physical harm as the result of these factors: mother’s history of substance abuse and “recent” use of amphetamine, marijuana and ecstasy, as well as her abuse of alcohol, including during her pregnancy; mother's mental and emotional problems including delusions, paranoia and bizarre behaviors; and father’s history of illegal drug use including methamphetamine.

The juvenile court declared the child a dependent of the court. It found that continuance in mother’s home was contrary to the child’s welfare, and there was no reasonable means by which the child could be protected without removing the child from mother and detaining the child from father, who was not a presumed father but only a biological father. When mother’s attorney requested monitored visits for mother, the juvenile court indicated it wanted to have a psychological evaluation (Evid. Code, § 730) done first. When mother’s attorney expressed concern that mother

might not follow the court's order to participate in the evaluation, the court indicated that it had suspended monitored visits previously for a "good reason" and until it saw evidence of a change, it would not order a resumption of those visits. The juvenile court further explained that if mother submitted to the evaluation and began treatment, it would promptly reconsider the prohibition on monitored visits.

Mother and father timely appeal.

DISCUSSION

I. Substantial evidence supported the juvenile court's decision to condition the resumption of mother's monitored visits on evidence of mother's stability

A. Guiding principles

"Visitation rights arise from the very 'fact of parenthood' and the constitutionally-protected right 'to marry, establish a home and bring up children.'" [Citation.] When the state removes children from their parents, it is obliged to make reasonable efforts to reunify the family. [¶] An obvious prerequisite to family reunification is regular visits between the noncustodial parent or parents and the dependent children" (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) Accordingly, visitation "shall be as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).)

However, "[n]o visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(B).) "[A] parent's

liberty interest in the care, custody and companionship of children cannot be maintained at the expense of their well-being. [Citation.] While visitation is a key element of reunification, *the court must focus on the best interests of the children* ‘and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering, harm specified in section 300.’”

(*In re Julie M.*, *supra*, 69 Cal.App.4th at p. 50, italics added.)

B. Standard of review

“It is ordinarily improper to deny visitation absent a showing of detriment.” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) We review a finding of detriment under the substantial evidence standard. (*Id.* at p. 581, fn. 5.) Under the substantial evidence standard, our review “begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support” the judge or jury’s factual determinations. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873–874, italic omitted; *Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1489.) “‘Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence *this court is without power to substitute its own inferences or deductions for those of the trier of fact . . .*’” (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24, italics added.) “The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence

which is reasonable in nature, credible, and of solid value.”
(*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

*C. Substantial evidence supports the court’s
dispositional order with regard to mother’s visitation*

Here, by denying monitored visitation to mother until a psychological evaluation had been completed, the juvenile court showed that it was focused on both the best interests of the child and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering harm from mother’s mental instability.

Mother’s contention that there were “absolutely no risks” to the child if monitored visitation had been restored is without foundation and, as a result, without merit. The juvenile court was presented with undisputed evidence that mother had difficulty following directions in a monitored situation—on September 9, 2015, law enforcement officers had to be called because mother refused to let go of the child after her discharge from the hospital. Despite the undeniable risk of harm to the child that arose from this situation, the juvenile court initially reversed DCFS’s decision to suspend mother’s monitored visits with the child. However, mother’s conduct in the wake of that decision provided no reassurance to the court that the child would be safe with mother even in a monitored setting. In fact, her conduct only became more worrisome and troubling. In addition, to her delusional and threatening comments to the maternal grandmother and her threatening and abusive conduct toward father, mother—by her words and actions—

indicated that she would not cooperate with anyone. Mother refused to comply with court orders (e.g., drug testing), refused to cooperate with DCFS's social workers or its dependency investigator, refused to cooperate with her counsel, and refused to even attend important court proceedings. According to mother, neither DCFS nor the court had any authority over her.

Faced with such evidence, the juvenile court acted reasonably and with appropriate prudence. "The state, having substantial interests in preventing the consequences caused by a perceived danger is not helpless to act until that danger has matured into certainty. Reasonable apprehension stands as an accepted basis for the exercise of state power." (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003.)

II. Substantial evidence supported jurisdiction over father based on his history of substance abuse

Father challenges the sole jurisdictional finding that applies to him—that is, the juvenile court's finding that his "history of illicit drug use . . . renders . . . father incapable of providing regular care and supervision of the child. . . . [F]ather's substance abuse endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, and danger."

A. Guiding principles

"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 I.J.* (2013) 56 Cal.4th 766, 773.)

However, we have the discretion to reach the merits of a challenge to a jurisdictional finding when the finding in question “(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction.’ ” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

Here, although there is no challenge to the juvenile court assuming jurisdiction over mother, we will consider the merits of father’s challenge. We do so for two reasons: the low threshold to reach the merits of a jurisdictional challenge—“*could* be prejudicial . . . or . . . ‘*could* have other consequences for [the appellant].’ ” (*In re Drake M., supra*, 211 Cal.App.4th at pp. 762–763, italics added); and an abundance of caution in matters involving the relationship between children and their parents.

B. Standard of review

DCFS “has the burden of proving by a preponderance of the evidence that the children are dependents of the court

under section 300.” (*In re I.J., supra*, 56 Cal.4th at p. 773.) We review the juvenile court's jurisdictional findings for substantial evidence. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210,1216.) As discussed above, “[u]nder 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.’” (*Ibid.*)

C. Substantial evidence supports the juvenile court’s jurisdictional finding with regard to father

A section 300, subdivision (b) finding “ ‘consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.] The third element ‘effectively requires a showing that *at the time of the jurisdiction 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.]’ [Citation.]

“Section 300, subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial risk of serious physical harm or illness.*” ’ ” (*In re David M.* (2005) 134 Cal.App.4th 822, 829, first italics added.)

Section 300, subdivision (b), however, “does not require that a child actually be abused or neglected before the

juvenile court can assume jurisdiction. The subdivisions at issue here require only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose of these provisions ‘is to provide 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.*’ [Citation.] ‘*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 I.J.*, *supra*, 56 Cal.4th at p. 773, second italics added.)

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.’ [Citation.] 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] physical health and safety.’” (*In re Christopher R.*, *supra*, (2014) 225 Cal.App.4th at p. 1216.)

Here, substantial evidence supports the juvenile court’s finding that at the time of the jurisdictional hearing the child was at substantial risk of harm due to father’s history of substance abuse. First, there was father’s admission that he had experimented with “‘everything,’” including

“‘marijuana, heroin, cocaine, amphetamine, ecstasy and acid.’” Second, father admitted that his drug use began as early as when he was 11 years old and smoked crack cocaine. Third, father admitted to using cocaine as recently as 2014. Fourth, father indicated that while living in Texas, he lost custody of his twin daughters due to his failure to complete a substance abuse program. Finally, despite the juvenile court’s order that he submit to weekly on-demand drug testing, father refused to submit to scheduled drug tests and at one point missed five consecutive scheduled tests. The juvenile court could have “properly considered” each missed test as “the equivalent of a positive test result.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.)

In addition to father’s own admissions, there were statements by others that support a reasonable inference that father’s history of substance abuse presented a substantial risk of serious physical harm to the child in the future. For example, mother, whose relationship with father had begun less than a year before the child’s birth, stated that father “participates in meth” and that she had seen him smoke methamphetamine; further, she referred to him as a “known methamphetamine addict.” The maternal grandmother also asserted father used methamphetamine, and that he put a video on YouTube which referenced methamphetamine.

Moreover, at the time of the jurisdiction hearing the child was of “tender years”—just four months old. Where a case involves “‘children of such tender years that the

absence of adequate supervision and care poses an inherent risk to their physical health and safety[,]’ ” “the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of harm.” (*In re Drake M., supra*, 211 Cal.App.4th at p. 767.)

III. Father was not entitled to custody because he has the status of only a biological father

Father contends that his request for custody of the child at the disposition hearing should have been assessed under section 361.2, as he was deemed the child’s noncustodial parent, and the juvenile court’s failure to do so was an error requiring reversal. Father’s argument is without merit, because the juvenile court did not find that he was the child’s presumed father; the court found father to be the child’s biological father only and this finding was conceded by father’s counsel.

Under the dependency statutes, presumed fathers have far greater rights than biological fathers. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448–449; *In re J.L.* (2008) 159 Cal.App.4th 1010, 1018.) As established by our Supreme Court, “*only* a presumed father is entitled to assume immediate custody” and “*a biological father is not entitled to custody under section 361.2 . . . if he does not attain presumed father status . . .*” (*In re Zacharia D.*, at p. 454, italics added; see *In re Jerry P.* (2002) 95 Cal.App.4th 793, 801 [explaining the hierarchy of fatherhood].)

Because it is undisputed that father was not determined to be the child's presumed father, the juvenile court was not required to assess father's request under section 361.2.⁵ Consequently, there was no error.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.

⁵ Although father, as a biological parent only, was not entitled to reunification services, the juvenile court nonetheless exercised its discretion and ordered such services for the father, implicitly finding that such services "will benefit the child." (See § 361.5, subd. (a).)