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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re B.D. et al., Persons Coming Under the
Juvenile Court Law.

B270008

(Los Angeles County
Super. Ct. No. DK13533)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

TIMOTHY A. et al,

Defendants and Appellants.

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

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant Timothy A.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant Paula D.

Mary C. Wickman, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Timothy A. (father) and Paula D. (mother) appeal a judgment declaring their five-year-old son B.D. and two-year-old son H.D. dependent children as defined by Welfare and Institutions Code section 300, subdivision (b).¹ Father and mother also challenge a disposition order removing the children from their physical custody. Parents contend the evidence was insufficient to find they were drug abusers or that their use of drugs created a substantial risk of harm to their children. We conclude the evidence of physical and medical neglect of the children, coupled with parents' significant drug history and current use of marijuana, constituted sufficient evidence to support both the jurisdictional findings and disposition order. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Because resolution of this appeal turns upon the existence of substantial evidence supporting the dependency court's findings, we state the facts in the light most favorable to the court's rulings. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.)

In August 2015, the Los Angeles Department of Children and Family Services (the Department) received a referral alleging mother and father used drugs in the home and prioritized their drug use over caring for the children. The caller reported the condition of the home was not fit for children; the home did not have working gas, nor warm water for bathing, the bathroom sinks and toilets were out of order, it was filthy, and the backyard was filled with hazardous materials. The parents failed to regularly feed the children. The caller also reported the five-year-old child was developmentally delayed.

The family had prior contacts with the Department that included an unfounded charge of general neglect in 2015, a substantiated charge of general neglect against mother in 2013, and an inconclusive charge of general neglect in 2012. The 2013 charge resulted from H.D. testing positive for marijuana at birth. The family's prior social

¹ Statutory references are to the Welfare and Institutions Code unless otherwise designated.

worker reported that parents “ ‘provide[] minimal sufficient care.’ ” She stated both parents were recovering drug addicts and that methamphetamine was their “drug of choice.” She also confirmed that five-year-old B.D.’s speech was delayed and that mother had been provided services to enroll B.D. in speech therapy.

The Department sent a social worker to the family’s home to investigate the reported neglect. The home’s condition was largely consistent with the report. The outside of the home was cluttered with random belongings and one of the front windows was broken out. The floors were covered with dog food and dog feces in several spots. The social worker observed the home had an unclean odor. There were lighters strewn all over the floor and the living room furniture was covered with clothing, boxes and other items. The kitchen had “hundreds of flies” and the sink was full of dirty dishes that appeared to have been there for several days. The stove did not work, yet it was covered with soiled pans. The refrigerator had only a few items, “none of which were actual food to prepare meals.” The backyard was filled with items, including several cars, large containers and dog toys, “to a point where the grass could not be seen.” The social worker observed the backyard was “an unsafe place” for children to play.

The social worker interviewed both parents and attempted to speak with five-year-old B.D. Mother admitted the children were not up-to-date on their immunizations or medical and dental visits. The children had not seen a doctor in more than a year and a half. She claimed the family’s medical support was cut and she had not reported to the MediCal office to have the benefits reinstated. She also said she failed to keep the speech therapy appointments for B.D. due to the family’s loss of medical benefits. Mother was currently unemployed. Mother admitted using marijuana and methamphetamine in the past, but denied that she currently used drugs and claimed that she completed drug rehabilitation four years earlier. She also said she attended an Alcoholics Anonymous meeting “ ‘last week.’ ”

Father admitted using methamphetamine in the past. He recently served 15 months in the county jail for possession of the drug—a period of incarceration that included H.D.’s birth and a significant part of the child’s infancy. Father also admitted that he currently used marijuana. He maintained he used the drug to manage chronic back pain and that he had a prescription. When questioned about criminal history, father stated he had an arrest for marijuana possession in 1997, and convictions for possession of methamphetamine for sale in 2005 and 2013.² Father was currently unemployed. He worked odd jobs at times, but spent most of his time at home with the children. When questioned about concerns regarding medical neglect of the children, father said he did not know about the children’s medical care and that “mother was on top of this.” When pressed by the social worker, father admitted he was aware the children were not current on their medical and dental visits, and that B.D. had not been attending speech therapy.

The social worker attempted to interview B.D., but the child did not respond and “did not seem to speak.” The children were in underwear and diapers during the visit. The social worker observed multiple bug bites on their arms and legs. The children were also very dirty and appeared not to have bathed for some time. Both parents denied using corporal punishment to discipline the children.

The social worker told parents the children could not remain in the home in its current condition. At father’s suggestion, the social worker completed a safety plan under which father agreed to send mother and the children to a hotel to avoid detention and to allow him enough time to clean the home. Mother and father also agreed to submit to drug tests.

² A check of the Criminal Law Enforcement Telecommunications System indicated a criminal history for father dating back to 2002 with over 10 arrests and two convictions related to possession of a controlled substance. The results for mother were inconclusive, as the system indicated there were “ ‘Too many hits’ ” to obtain a criminal history.

The social worker met father at the home five days later. She cleared the home, observing that father had “worked very hard” to clean it. The home was stocked with food for the children, including milk, bread and cereal. The children were not fully clothed and still appeared dirty. Mother remained in the bathroom during the entire visit, slipping forms under the door rather than meeting the social worker face-to-face. Father stated he “did not know” what his plan was for the children going forward. He agreed with the social worker that the concerns about their medical neglect needed to be addressed as soon as possible. The parents submitted to drug tests the next day. Both tests were positive for marijuana and negative for other substances.

Two weeks later, the social worker consulted with the Department’s warrant desk and obtained a removal order. However, because there were no placements available for two children, the social worker delayed the detention until the brothers could be placed together. Roughly two weeks after that an acceptable placement became available.

The social worker served the removal order on mother and detained the children. Mother was very upset, she yelled and cursed at the social worker, and spoke in profanity to the children, telling them not to “ ‘do anything these [expletive] people tell you.’ ”

A public health nurse assessed the children following their detention. Both children were very dirty. The nurse observed B.D. was “full of small little scabs and bruises,” he had a small cut on his forehead, scabs next to his eyes and lips, and red bruise marks on his belly, legs and back. Eighteen-month-old H.D. “looked weak, and his ribs showed.” He had a few bruises on his arm and knee, and tiny scabs and bite marks on his leg and foot. He did not have a diaper rash.

The social worker noted father displayed a desire to “make things right and ha[d] complied with most of the [social worker’s] requests.” Mother seemed to care less and made inappropriate comments to the children. The report concluded, “Although[] both parents had ample time to address medical insurance reinstatement and to take the children into the doctor’s office . . . , they failed to take the necessary steps to correct the many concerns of the [D]epartment. In the 4 weeks . . . [the social worker] was involved with the family, [she] made multiple attempts to preserve children’s placement with

parents and made multiple contact[s] and attempts to encourage parents to see these concerns and make the needed changes[.] [The] changes were not made[,] further jeopardizing the safety of the children, therefore removal from both parents was the only option.”

The Department filed a dependency petition, alleging B.D. and H.D. were at substantial risk of suffering serious physical harm due to parents’ drug use, as evidenced by the home’s poor condition, the parents’ failure to provide regular medical care for the children, and the fact that the children were dirty and had marks all over their bodies. The court determined the Department made a prima facie case for dependency, and ordered the children to remain detained in the Department’s custody, pending a full hearing on jurisdiction and disposition.

In advance of the hearing, a Multidisciplinary Assessment Team (MAT) evaluated the children. The MAT assessor interviewed father, the foster parents, B.D.’s teacher, the children’s social worker and a dependency investigator. The assessor was unable to interview mother because she did not return the assessor’s calls and did not show for a scheduled interview.

With respect to B.D., the MAT found he had been “severely neglected since birth,” which “may have contributed to his current significant developmental delays.” The MAT noted that in “parents’ care, [B.D.] never received any sort of formal education or consistent development stimulation.” B.D.’s school teacher reported that he “displays aggressive behaviors and poor boundaries.” Due to B.D.’s speech delays, the MAT observed “he is not able to express himself with phrases or sentences and therefore goes misunderstood” at school. The MAT determined the neglect that may have contributed to B.D.’s delays likely stemmed from the parents’ drug use.

The MAT made similar observations and findings with respect to H.D. Apart from H.D.’s low weight and troubling physical condition when detained, the MAT noted he “lacks the template for activities or daily living and he is significantly delayed in his development.” The MAT found H.D. “never received any sort of formal or consistent

developmental stimulation” in the parents’ care and this may have been due to the parents’ drug use.

The Department interviewed parents again prior to the jurisdiction and disposition hearing. Father stated he did not understand why the children had been detained as, in his view, “he and the mother have done nothing wrong for the children.” He confirmed his substance abuse history, including his use of methamphetamines two years ago, and his current use of marijuana. Father also expressed frustration about visiting the children for only three hours a week and stated he would like to have more time with them.

Mother likewise confirmed she had a history of drug use that included methamphetamine five and a half years ago. She admitted she currently used marijuana, without a prescription, though she maintained she used the drug to manage her migraines. She also stated she did “not understand why the children were taken away.”

Both parents reported they had not enrolled in any programs, nor had they submitted to a drug test since the children’s detention, because they were “told that the Court has not order[ed] any yet.” The Department confirmed parents had been given referrals for parenting programs.

On January 20, 2016, the dependency court held a combined jurisdiction and disposition hearing. The court received the Department’s reports into evidence without objection. The parties did not offer other evidence. The children’s counsel joined with the Department in arguing the court should sustain the petition for jurisdiction. Parents opposed, arguing there was no “nexus” between the parental drug use and apparent neglect of the children. Parents also stressed that they had complied with the Department’s demand to clean the home before the children’s detention.

The court sustained the jurisdictional allegations and declared B.D. and H.D. dependents. The court found the state of the home as described in the detention report was “not normal,” especially the presence of feces and flies where the children played. The court was most troubled by the evidence of medical neglect. The court noted that the parents had been given a referral for speech therapy, but failed to obtain treatment for B.D. The court also emphasized that parents had failed to take the children to a doctor at

critical stages in their development. With respect to the nexus between the evidence of neglect and parents' admitted drug use, the court explained, "if this was a case where it was just the fact that we knew that parents were using medical marijuana and the kids were well taken care of, well fed, no marks or bruises, happy, developmentally on track, everything is going great, that would be the case where I would never assert jurisdiction just because someone was using marijuana, particularly with a prescription. [¶] This is not that case." While acknowledging parents' evident love for their children, the court observed, "Something is preventing you from providing proper care for these children, and I can only conclude that it is the drug use."

With respect to disposition, parents argued the children could be safely maintained in their custody with family preservation services and unannounced visits. The children's counsel joined with the Department's request to place the children in a suitable foster home, emphasizing the children's "young age and special needs" and the absence of any "proof that the parents have made any strides in their case plan." The court agreed that "until parents had made progress in their case plans," returning the children to parents' custody would pose a substantial risk to their physical and emotional well-being, and no reasonable means existed to protect them without removal. The court ordered family reunification services, drug counseling and testing for parents, and minimum visitation of six hours per week.

DISCUSSION

1. *The Jurisdictional Findings Are Supported by Substantial Evidence*

Parents contend the evidence was insufficient to sustain the drug abuse count under the standard announced by this court in *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*). While they concede there was evidence of neglect, parents maintain there was no evidence linking their failure to care for their two very young children to past or current drug use. Parents also argue there was no evidence that their drug use posed a substantial risk of harm to the children at the time of the hearing. We disagree.

“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.” (§ 300.2.) Thus, section 300, subdivision (b), creates juvenile court jurisdiction where it is shown that a “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 . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse.” (§ 300, subd. (b)(1).)

The exercise of dependency jurisdiction under section 300, subdivision (b) is especially appropriate when children are “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) In such cases, when a child is six years old or younger, “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.” (*Drake M., supra*, 211 Cal.App.4th at p. 767; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219.)

“In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

We begin with parents' contention that the evidence was insufficient to find they were current drug abusers under *Drake M.*. In *Drake M.*, this court reaffirmed that "the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found" (*Drake M., supra*, 211 Cal.App.4th at p. 764), and held that "a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to . . . establish that the parent or guardian at issue has a current substance abuse problem as defined in the [American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000 (DSM-IV-TR))]" (*id.* at p. 766). The DSM-IV-TR described the condition as a " 'maladaptive pattern of substance use leading to clinically significant impairment or distress,' as manifested by 'recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home,' including 'neglect of children or household,' or 'recurrent substance-related legal problems,' including 'arrests for substance-related disorderly conduct.' " (*Ibid.*, quoting DSM-IV-TR, at p. 199.) The *Drake M.* court concluded the evidence was insufficient to establish that the father's use of prescribed medical marijuana to treat his chronic knee pain constituted "substance abuse" under this definition. In so concluding, the court relied on undisputed evidence showing that the father had been employed for many years, had no criminal history, and did not operate a motor vehicle or care for the child within a minimum of four hours after ingesting marijuana. (*Id.* at pp. 767-768.)

Unlike *Drake M.*, substantial evidence in this case supports the dependency court's finding that parents are substance abusers. Both parents have significant drug abuse histories that include their admitted use of methamphetamine after B.D.'s birth, and father's criminal incarceration for possession of the drug at the time of H.D.'s birth and during a significant part of his infancy. Mother also has a substantiated charge for neglect based on H.D. testing positive for marijuana at birth. This history of drug abuse is especially relevant in view of the MAT's findings that both children suffer from significant developmental delays that may have been caused or exacerbated by parental neglect during their early years. Further, while parents submitted to a single drug test that returned negative results for methamphetamines, the same test showed that both

parents continue to use marijuana. In contrast to the facts in *Drake M.*, the evidence here showed that parents were currently unemployed, that the home was in a dangerous and troubling state of disrepair, and that the children had not received proper medical care for more than a year, despite prior intervention and referrals by child welfare services. Coupled with parents' proven drug use, this was sufficient evidence to sustain the jurisdictional allegations.

Contrary to parents' implicit suggestion, the Department is not required to produce direct evidence of a "nexus" between parental drug use and neglect to establish a basis for dependency jurisdiction under section 300, subdivision (b). Rather, as this court affirmed in *Drake M.*, substantial evidence may consist of inferences, as long as such inferences are the product of logic and reason resting on the evidence. (*Drake M., supra*, 211 Cal.App.4th at p. 763.) "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.'" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1394; *Drake M.*, at p. 763.) The dependency court justifiably found that the state of the home was "not normal," and that the MAT's assessment of the family, particularly the findings concerning the children's developmental delays, was especially worrying. As the dependency court aptly observed, "[t]hese are the types of things that happen when parents are using substances," and "abusing them" to the point they "may not have perspective" on what is best for their children. Notwithstanding any other potential explanations for the neglect, it was reasonable for the dependency court to infer, in light of the whole record, that parents were drug abusers and that their drug abuse posed a substantial risk to the children's welfare under the standard articulated in *Drake M.* (*Drake M.*, at p. 766; see also *In re Natalie A.* (2015) 243 Cal.App.4th 178, 185 [parent's neglect of children or the household is "one of the most salient manifestations of parental substance abuse" under *Drake M.*].)

The dependency court also reasonably concluded parents' drug abuse posed a substantial risk of danger to the children at the time of the jurisdictional hearing. It is commendable that parents complied with the Department's demand to immediately remove the children from the home and clean it before they returned. But this was only a necessary first step; it did not remove all the conditions that reasonably warranted dependency jurisdiction at the time of the hearing. On the contrary, the evidence showed that during the three-week period between the Department's initial intervention and ultimate detention of the children, parents had still failed to take the necessary steps to address the Department's principal concern about medical neglect of the children, despite having ample time to have their medical benefits reinstated and to take the children to see a doctor. Moreover, though the parents maintained regular visits with the children after detention, they took no initiative to address the Department's and MAT's reasonable concerns about their drug use and failure to provide adequate care for the children, despite receiving referrals from the Department for parenting classes and drug testing. All told, we conclude there was ample evidence to support the dependency court's jurisdictional findings at the time of the hearing.

2. *Substantial Evidence Supports the Disposition Order*

Parents also contend the evidence was insufficient to remove B.D. and H.D. from their physical custody. We conclude the disposition order was supported by substantial evidence.

Before a dependent child may be taken from the physical custody of a parent, section 361, subdivision (c)(1) requires the dependency court to find "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 [parent's] physical custody."

Notwithstanding section 361's heightened proof requirement, "on appeal, the substantial evidence test applies to determine the existence of the clear and convincing standard of proof, the same as in other cases." (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038.) "The 'clear and convincing' standard . . . is for the edification and guidance of the trial court and not a standard for appellate review. . . . [O]n appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.'" (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881.)

Parents maintain there were reasonable safeguards the dependency court could have imposed to avoid removing the children from parents' custody. They argue the Department's concerns about the cleanliness of the home had been resolved prior to detention and any continuing concerns could have been addressed by unannounced visits to ensure the home remained safe for the children. As for the Department's concerns about medical neglect, parents maintain their failure to take the children to a doctor stemmed from their loss of medical benefits and lack of adequate transportation. They argue the Department could have addressed each of these concerns, without removing the children, by assisting parents' efforts to have their medical benefits reinstated and providing them with bus tokens. And, with respect to their admitted drug use, parents contend these safety concerns had already been addressed by the court's orders requiring them to attend drug treatment classes and weekly drug testing.

The dependency court determined there were no reasonable means to ensure the children's safety in parents' custody until parents had made substantive progress in their case plan. This was a reasonable determination based on the evidence. Two weeks prior to the disposition hearing, the Department interviewed both parents concerning their progress in addressing the issues that initially required intervention. Both parents were dismissive of the Department's concerns regarding their drug use, and both stated they did not understand why the children had been detained in the first place. Parents'

indifference to maintaining a safe living environment for the children, coupled with their apparent lack of insight about the importance of ensuring the children received basic medical care, was consistent with the MAT assessment's finding that parental neglect had likely contributed to significant developmental delays in both children. And, this indifference was further evidenced by parents' failure to reinstate their medical benefits, despite receiving instruction and financial assistance from their social worker during the three-week period prior to the children's detention. In view of the parents' persistent pattern of neglect, the dependency court reasonably determined that no measures could ensure the children's safety in parents' custody until parents made sufficient progress in their case plan to demonstrate they understood, and were working to address, the risk of harm posed by their drug use and consequent neglect of the children.

DISPOSITION

The dependency judgment and disposition order are affirmed.

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STRATTON, J.*

We concur:

EDMON, P. J.

ALDRICH, J.

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