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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re A.M., a Person Coming Under
the Juvenile Court Law.

C069379

SHASTA COUNTY HEALTH AND HUMAN
SERVICES AGENCY,

(Super. Ct. No.
11JV SQ 2892201)

Plaintiff and Respondent,

v.

RANDALL M.,

Defendant and Appellant.

Randall M., father of the minor, A.M., appeals from the jurisdictional/dispositional orders of the juvenile court. Father contends there is insufficient evidence to sustain several of the court's jurisdictional findings. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 21, 2011, the Shasta County Department of Health and Human Services (the Department) filed a Welfare and

Institutions Code section 300¹ petition alleging the mother had mental health problems that interfered with her ability to protect and care for the newborn minor, A.M., and father had substance abuse and anger problems that interfered with his ability to adequately protect and care for the child. The Department also alleged that the mother's three older children (father's stepchildren) were removed from her custody as a result of her failure to protect them from the ongoing physical abuse they suffered at the hands of father.

According to the petition, the mother's older children and father's older child, all reported that father was physically abusing the mother's older children. It was further alleged that father had a history of abusing the mother, including while she was pregnant with the minor, and there was a history of domestic violence between father and the mother of father's older child. Additionally, father was ordered previously to complete a 16-week anger management program and a 52-week parenting program and had been "only minimally compliant with this order."

The petition also included allegations that father had a criminal history of violent and drug-related offenses; marijuana had been found on the floor of the family home; and the mother had reported that father was "currently illegally abusing Oxycontin." Finally, the petition indicated that father agreed

¹ Undesignated statutory references are the Welfare and Institutions Code.

to a voluntary drug test the day before the petition was filed, but failed to complete the test.

At the detention hearing on June 22, 2011, both parents were present. The mother argued against detention. She said she had had no contact with father, had made provisions for the child, and was willing to co-parent with father only if he engaged in services.

Father also argued against detention. He agreed the minor should remain in the mother's custody and said he was willing to follow any safety plan put in place. Father also said he was willing to drug test and participate in "any services necessary." He also offered to "waive service" if the court wanted to issue a restraining order to prevent him from contacting the minor. The court declined to issue a restraining order.

The Department stated its belief that the mother did not see father as a danger to any of her children, including the minor. The Department believed the mother was participating in services only to keep it from taking from the mother's custody the minor and her older children.

The detention report, filed June 21, 2011, recommended the minor "be detained from her parents' care and custody pending further orders of the Court." According to the report, prior to the minor's birth, the mother had agreed she and the minor would live with the maternal great-grandmother for approximately one week and not have contact with father. After the minor was

born, however, father stayed the night in the mother's hospital room. The mother also indicated she wanted to co-parent the minor with father and she did not believe father was a danger to the minor because he only abused his stepchildren.

The mother told the social worker she had "mixed feelings" about father and had no control over him. She described her relationship with father as "'confusing,'" saying he was "nice one minute and angry the next." The mother reported that she intended to seek full legal custody of the minor, but failed to serve father with the paperwork. She admitted to the social worker that she stayed in contact with father and his family. The mother also reported that "she had heard from friends that [father had] been using prescription medication that [was] not prescribed to him such as Oxycontin. [The mother] described his behavior as 'up and down.'"

Father denied abusing any of the children, denied abusing the mother, and expressed confusion about the Department's involvement with his family. Father also complained to the social workers that because of the Department's involvement with the minor, he lost custody of his older child.

Father explained how much he had done to help the mother and her children improve their situation in life; he told the Department he was a "great father." Father said he had already taken five or six classes to address his anger and parenting issues, but said he could not afford to continue taking the classes. Father indicated he and the mother were still in

contact but said, "'I don't want to get her in trouble but she is just doing things because [the Department] is involved.'"

Father then signed a safety plan, agreeing to contact the minor only through the Department. He also agreed to submit to a drug test. The social workers explained the testing procedure, gave father directions to the probation department, and told him that if he failed to test, the Department would "consider him positive for all substances." At 4:01 p.m., the social worker received a voice mail message from father. Crying, father said he got lost on the way to the probation office and did not get the test done. When the social worker tried to call him back, father did not answer the phone, and he never returned the phone call.

Having considered the report and the arguments of counsel, the juvenile court ordered the minor detained.

At the jurisdictional/dispositional hearing on September 16, 2011, father denied the jurisdictional allegations made against him. Specifically, father argued he did not physically abuse any of the children. He also claimed that he did not physically abuse the mother, was not abusing Oxycontin, and did not leave any marijuana in the family home. Father also explained that the probation department refused to test him on the date alleged, and denied any criminal history of violent or drug-related offenses.

The court found true by a preponderance of the evidence the allegations in the petition, adopted the findings and

recommendations prepared by the Department, and took jurisdiction over the minor. The court proceeded to disposition, found by clear and convincing proof that the minor could not be returned safely to her parents' care, and ordered reunification services. As part of his service plan, father was ordered to participate in individual anger management counseling, random drug testing, parenting education, a mental health assessment, and a drug and alcohol addiction assessment.

DISCUSSION

Father concedes the juvenile court correctly assumed jurisdiction over the minor; he nevertheless contends there was insufficient evidence to support the juvenile court's specific jurisdictional finding that father "has substance abuse problems that interfere with his ability to provide regular and adequate care" for the minor. We disagree.

"A juvenile court may determine a child is subject to the court's jurisdiction if it finds by a preponderance of the evidence that '[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 a parent's failure or inability to adequately supervise or protect the child, a parent's failure to provide the child with adequate food, clothing, shelter, or medical treatment, or a parents' inability to care for the child due to the parent's mental illness, developmental disability, or substance abuse." (*In re David M.* (2005) 134 Cal.App.4th 822, 829 (*David M.*), quoting § 300, subd. (b).)

When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence—that is, evidence that is reasonable, credible and of solid value—to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the judgment and that issues of fact and credibility are questions for the trier of fact. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451; *In re Jason L., supra*, 222 Cal.App.3d at p. 1214.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The allegations challenged by father here read in relevant part:

"b-2 [Father] has substance abuse . . . problems that interfere with his ability to provide regular and adequate care of the children. [¶] . . . [¶]

"G. The mother reports that . . . father is currently illegally abusing Oxycontin.

"H. On or about 03/25/2011 marijuana was observed to be on the floor of the parents' home.

"I. On or about 06/20/2011 . . . father agreed to drug test but failed to do so."

Father concedes the allegations are "factually accurate," but argues the Department "made no showing that these alleged facts caused a risk of physical harm for [the minor]." We disagree. Whether the mother's claim that father is abusing Oxycontin is true or not, the remaining allegations support the court's jurisdictional finding.

Father does not dispute that he agreed to submit to a drug test then failed to do so. Father was advised that if he failed to complete the drug test, the Department would consider him "positive for all substances." This allegation thus supports the finding that father is using illegal drugs.

Father also does not dispute the allegation that marijuana was found on the floor of the family home. Instead, he argues the Department failed to prove the drugs were his, or that he even knew they were there.

Marijuana was found on the floor of the family home. The minor was approximately three months old at the time of the jurisdictional/dispositional hearing, and presumably would be crawling soon. The drugs were left in a place where the child could easily reach them and ingest them. This absolutely puts the child at risk. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 825 [the court could find a substantial risk of serious physical

harm in the fact that the minor's parent created the danger the minor would ingest hazardous drugs].)²

Father's positive drug test, combined with allegations of ongoing drug use, and the presence of hazardous drugs left in the child's reach, result in sufficient evidence to support the juvenile court's finding that father's drug use put the infant child at substantial risk of serious harm. Accordingly, we find no error.

DISPOSITION

The findings and orders of the juvenile court are affirmed.

BUTZ, J.

We concur:

NICHOLSON, Acting P. J.

DUARTE, J.

² Father also argues there is no evidence to support the allegation that he has a record of violence and drug use. In fact, the record on appeal reveals father had numerous run-ins with law enforcement including arrests for disturbing the peace, resisting a peace officer, vandalism, possession of marijuana while driving, and child cruelty. None of these, however, resulted in convictions. We do not rely on them here.