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COURT OF APPEALS, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

SAMANTHA R.,

Defendant and Appellant.

D060866

(Super. Ct. No. NJ14412)

APPEAL from a judgment of the Superior Court of San Diego County, Blaine K. Bowman, Judge. Affirmed.

Samantha R. appeals following the jurisdictional and dispositional hearing in the dependency case of her daughter, P.R. Samantha contends the jurisdictional findings are unsupported by substantial evidence and the juvenile court erred by ordering P.R. removed from parental custody. We affirm.

PROCEDURAL BACKGROUND

In September 2011 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for newborn P.R. (Welf. & Inst. Code,¹ § 300, subd. (b).) Count 1 alleged there was a substantial risk P.R. would suffer serious physical harm or illness as a result of the failure or inability of Samantha and P.R.'s father Kenneth R. (together, the parents) to supervise or protect P.R. adequately. Count 2 alleged there was a substantial risk P.R. would suffer serious physical harm or illness as a result of the parents' inability to provide regular care due to their mental illnesses.

Both counts alleged the following. P.R.'s older brother, G.R., was in court-ordered out-of-home placement and the parents' visitation with him was supervised. The parents had a history of domestic violence and had not completed court-ordered domestic violence programs. Samantha had not submitted to court-ordered random, on-demand drug testing. She had diagnoses of dysthymic disorder and dependent personality disorder with borderline personality traits and antisocial personality disorder. Kenneth had diagnoses of post traumatic stress disorder, dysthymic disorder and multiple traumatic brain injuries. Additionally, count 2 alleged Samantha's psychological evaluator had opined that Samantha required long-term therapy; and on or about August 2, 2011, Kenneth's therapist had opined that Kenneth " 'needed at least [six] months more of full participation in intensive services.' "

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

P.R. was detained in the hospital. After approximately two weeks, she was moved to a foster home. In November 2011 the court sustained the petition and ordered P.R. removed from the parents' custody and placed in foster care.

THE EVIDENCE

Samantha reported that Kenneth broke her jaw in January 2010 and had thrown things at her. G.R. was born in June. In August Kenneth threw G.R.'s stroller and car seat at Samantha and tossed G.R. at her. In November the parents engaged in a violent altercation, at least part of which occurred in G.R.'s presence. Kenneth punched two holes in the wall. Samantha slapped Kenneth in the face multiple times and grabbed a knife to slash the tires of his vehicle. During a struggle over the knife, Samantha bit Kenneth on the forearms. Samantha's arms were scratched and she received bruises during the struggle. She pushed Kenneth while she was holding G.R. Samantha said Kenneth put her in a headlock, and he said the same of her.

Based on the domestic violence, the parents' psychological diagnoses (specified above) and the fact that Samantha took multiple medications,² the court took jurisdiction over G.R. and ordered him placed with a relative, where he remained throughout P.R.'s case. Samantha was provided reunification services in G.R.'s case. She began a parenting course, but attended only six classes. Her visitation with G.R. was supervised.

Although Samantha had tested positive for various medications when G.R. was born, she denied having a substance abuse problem. She refused to participate in

² Samantha had severe kidney problems and underwent multiple surgeries during her pregnancy with G.R. She "was prescribed heavy medications" but asked for more.

substance abuse treatment or testing. While she was pregnant with P.R., Samantha smoked a pack of cigarettes each day even though she understood it would harm P.R. In August 2011, a few weeks before P.R.'s birth, psychiatrists recommended that Samantha undergo a "medical detox." She did not do so.

Immediately after her birth, P.R. was transferred to the neonatal intensive care unit due to respiratory distress and drug withdrawal. Samantha and P.R. tested positive for the same prescription pain medications. P.R. was given morphine and Phenobarbital to ease her withdrawal symptoms. Samantha discussed her own pain at length but showed little empathy for P.R.

While P.R. was in the hospital, Samantha did not visit her regularly. Samantha was verbally and physically aggressive with the nurses. Once P.R. was moved to the foster home, Samantha did not ask about P.R.'s medication, weight, sleeping schedule or activities. At the foster mother's invitation, Samantha attended one of P.R.'s doctor's appointments, but contradicted the information the foster mother gave the pediatrician.

Samantha believed a misunderstanding led to P.R.'s and G.R.'s removal. According to Samantha's May 2011 psychological evaluation, she was "likely to be focused on getting her own needs met before thinking of her child." The evaluator did "not believe [Samantha was] a danger to [G.R.] in terms of hurting him physically but she ha[d] limited controls over her emotional states (i.e. anger) before acting out." The evaluator believed Samantha's poor judgment compromised her ability to parent G.R. safely. Samantha required long-term therapy. She had her first psychotherapy

appointment in this case³ on October 11, but did not show up for her second appointment and never went back. At the hearing, the social worker testified that the parent's mental illness rendered them incapable of providing regular care for P.R.

Samantha declined to go to a domestic violence shelter and remained with Kenneth. A military⁴ protective order was lifted at the parents' request. Although there were no reported incidents of domestic violence after November 2010, the social worker, who had undergone training on domestic violence, believed the parents' violence presented a risk for P.R. The social worker based her opinion on the parents' violence in G.R.'s presence, their mental health issues and the fact that they remained together and Samantha was not addressing the issues. Samantha was enrolled in a 52-week domestic violence program, but had attended only eight sessions. She was not doing well in the program and had not been honest with the instructor. Additionally, Kenneth's mental health issues presented a protective issue for P.R. As of August 2, 2011, Kenneth's therapist believed Kenneth needed "at least six more months of full participation in intensive services;" in October the therapist said Kenneth still had a long way to go.

At two visits shortly before the hearing, Samantha demonstrated a low level of patience and a high level of frustration. On October 8, 2011, 15-month-old G.R. excitedly waived his arms and accidentally hit Samantha. Samantha picked him up, put him in a chair and, raising her voice, told him he was "going to be in time-out." On

³ Before P.R.'s birth, Samantha attended six sessions with another therapist. That therapist was removed from the case and was under review.

⁴ Kenneth was in the military.

October 15 Samantha removed her shirt at the visitation center, exposing her breasts; removed P.R.'s clothes, leaving her clad only in a diaper; lay on a couch; and placed P.R. on her chest. The visitation monitor said P.R. was cold and told Samantha to put P.R.'s clothes back on. Samantha refused, explaining she was following a doctor's suggestion for skin-to-skin contact. The third time the monitor told Samantha to dress P.R., Samantha did so, but continued to argue, and toward the end of the visit, the monitor noticed that Samantha had unzipped P.R.'s pajamas. The monitor also told Samantha to get dressed, but Samantha remained in a seminude state for the rest of the visit, although she did cover herself with a blanket. When the visit ended, Samantha approached the monitor in a confrontational manner and yelled at her. As the monitor backed away, Samantha followed her and continued to argue. When the monitor told Samantha not to be confrontational, Samantha said, "I can't help it. I'm withdrawing from my medicine, okay?" P.R. was within earshot of the initial part of this confrontation.

THE JURISDICTIONAL FINDINGS

The purpose of section 300 "is to provide maximum safety and protection for children 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." (§ 300.2.) Section 300, subdivision (b), allows a dependency when "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 . . . mental illness"

Section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdictional hearing. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) 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.) The child need not have been actually harmed for the court to assume jurisdiction. (See *In re James R.* (2009) 176 Cal.App.4th 129, 135.)

In the juvenile court, the Agency had the burden of proof by a preponderance of the evidence. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; § 355, subd. (a).) Samantha now has the burden of showing the jurisdictional findings are unsupported by substantial evidence. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another ground by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) We view the record in the light most favorable to the juvenile court's order. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.)

In light of the overwhelming evidence supporting the jurisdictional findings, Samantha's challenge to those findings borders on frivolous. There is no doubt the evidence, set forth in detail above, constitutes substantial evidence to support the true findings on both counts of the petition. P.R. was a two-month-old baby undergoing drug withdrawal. Samantha was not allowed unsupervised contact even with G.R., who was 16 months older than P.R. Samantha showed no empathy for either child, and had attended only six sessions of a parenting course. She had not addressed her serious mental health issues and remained in denial of her substance abuse. She was angry, aggressive and confrontational and had barely begun domestic violence treatment. She

continued to live with Kenneth, although they had a history of violence that included knife use and the tossing of G.R. "[V]iolence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

THE DISPOSITIONAL ORDER

At the dispositional hearing, the juvenile court was required to return P.R. to Samantha unless the Agency proved, by clear and convincing evidence, "[t]here is or would be a substantial danger to [P.R.'s] physical health, safety, protection, or physical or emotional well-being" and there were no reasonable alternative means of protecting her physical health. (§ 361, subd. (c)(1).) "There must be clear and convincing evidence that removal is the only way to protect the child." (*In re A.S.* (2011) 202 Cal.App.4th 237, 247, quoting *In re N.M.* (2011) 197 Cal.App.4th 159, 170.) "The . . . minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child." (*In re Diamond H., supra*, 82 Cal.App.4th at p. 1136.) The court may consider the parents' past conduct and current situation and gauge whether they have progressed sufficiently to eliminate any risk. (*In re S.O., supra*, 103 Cal.App.4th at p. 461; cf. *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1221.) On appeal, Samantha has the burden of showing there is no substantial evidence justifying removal. (*In re Diamond H., supra*, at p. 1135; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.) She has not met this burden.

For a multitude of reasons, the evidence overwhelmingly supports the dispositional order. The parents had a history of violence but continued to live together. Samantha was in an early stage of domestic violence treatment. She lacked patience, was easily frustrated and was verbally and physically aggressive. She demonstrated minimal concern for P.R., and was not allowed unsupervised contact with G.R., who was older and less helpless than two-month-old P.R. Samantha had attended only six sessions of a parenting course, and had scarcely begun to address her serious mental health and substance abuse issues. Under these circumstances, it is clear there was no reasonable alternative to removal. Substantial evidence supports the removal order.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

AARON, J.

IRION, J.