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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

KATHERYN H.,

Defendant and Appellant.

D061855

(Super. Ct. No. NJ14560)

APPEAL from orders of the Superior Court of San Diego County, Blaine K.

Bowman, Judge. Affirmed.

Katheryn H. appeals jurisdictional and dispositional orders concerning her son, A.H. She contends the dependency petition regarding A.H. did not plead facts sufficient to establish juvenile court jurisdiction, and substantial evidence was not presented to support jurisdiction. She also asserts substantial evidence did not show A.H. was in

continuing substantial danger in her care and that there were not reasonable means to protect him short of removal. We affirm the orders.

#### FACTUAL AND PROCEDURAL BACKGROUND

On December 12, 2011, the San Diego County Health and Human Services Agency (the Agency) petitioned under Welfare and Institutions Code section 300, subdivision (b)<sup>1</sup> on behalf of eight-month-old A.H., alleging he was at substantial risk because of Katheryn's mental illness. The petition alleged Katheryn had periods of depression and suicide ideation, and the whereabouts of A.H.'s father were unknown.

The social worker reported that on December 8, Katheryn told a friend she wanted to kill herself. The friend took A.H. away, and Katheryn called to report he had been kidnapped. The friend explained to military police that he had taken A.H. because Katheryn had threatened to kill herself. Katheryn denied this, but said she had been depressed and had used bath salts the previous night to get high. She said her other son, Zane H., had died in 2007 of natural causes. The social worker said Katheryn has a history of abusing drugs and had threatened suicide as early as 2005. There had been two child protective referrals in Florida regarding Zane.

Katheryn said she sometimes felt depressed and thought about dying. She said she had never attempted to harm herself, but she had threatened suicide at age 15. She admitted overdosing on cocaine and alcohol six years earlier at age 16. In 2009 and 2010, she had abused heroin, OxyContin and marijuana, and she relapsed in 2011.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

Katheryn had been the subject of juvenile court proceedings as a teenager in 2005 because of substance abuse and neglect by her mother, who suffered from bipolar disorder and was physically abusive. These allegations were not substantiated. In 2004, Katheryn had been admitted to a psychiatric hospital after she ran into traffic. She had recently moved from Florida because she was concerned the social services agency there would remove A.H. She said she had thought she would receive family support from her mother in San Diego, but her mother forced her to leave her home. The social worker learned Zane was not deceased, but in the custody of his father.

Katheryn moved into a homeless women's shelter with services. She said her primary support came from her boyfriend's mother, Debra V., who lives in North Carolina. Katheryn hoped to move there and said Debra could help her enroll in rehabilitative services. She requested Debra's home be accessed for placement of A.H.

At the jurisdictional and dispositional hearing in March 2012, the social worker who was first assigned to the case testified Katheryn had not expressly said she wanted to kill herself, but at times had said she wanted to die. The current social worker testified he had requested an Interstate Compact on the Placement of Children (ICPC) evaluation of Debra's home. Since that time Katheryn had married Debra's son, making the potential placement with Debra a relative placement. The social worker had not yet received a report on the ICPC evaluation. He assessed the case to be of high risk because of Katheryn's mental health history and threats of suicide, her inability to care for Zane and her need for drug treatment. He had received information that Katheryn was participating in parenting classes, drug treatment and counseling in North Carolina.

After considering the testimony, other evidence and argument by counsel, the court found the allegations of the petition to be true. It declared A.H. a dependent child of the court, removed custody, ordered him placed in out-of-home care and placed with Debra upon a positive ICPC evaluation, and ordered Katheryn to comply with her case plan.

## DISCUSSION

### I

Katheryn asserts the court erred by adjudicating A.H. a dependent of the court. She argues the facts of the petition were insufficient to show she failed to supervise or protect him within the meaning of section 300, subdivision (b).

#### A. *Legal Authority*

In a dependency case, the basic pleading device is a petition. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1035.) A dependency petition must contain "[a] concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted." (§ 332, subd. (f).) "[Notice] of the allegations upon which the deprivation of custody is predicated is fundamental to due process. [Citations.] Accordingly, a parent must be given notice of the *specific factual allegations* against him or her with sufficient particularity to permit him or her to properly meet the charge." (*In re Fred J.* (1979) 89 Cal.App.3d 168, 175.) If a parent believes the allegations of the petition do not state a

cause of action sufficient under the law, the parent may challenge the pleading by filing a motion similar to a demurrer. (*Id.* at p. 176.)

The reviewing court construes the pleaded facts in favor of the petition to determine whether the social services agency pleaded sufficient grounds to bring the child within the provisions of section 300. (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 108.)

#### B. *Application*

Katheryn's counsel made a motion akin to a demurrer that the facts as alleged did not state a cause of action under section 300. In denying the motion, the court stated the allegations, if true, showed a current or future substantial risk of harm by alleging A.H. is eight months old and Katheryn has a mental illness, admits to periods of depression, and just days earlier had said she would rather die than live a life like the one she was leading. These factual allegations gave sufficient notice of the allegations to Katheryn, and, if found true, showed a substantial risk to A.H. Katheryn's argument the petition did not state a cause of action is without merit.

## II

Katheryn argues the evidence did not support the court's jurisdictional findings.

#### A. *Legal Authority*

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) " "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or

uncontradicted, which will support the conclusion reached by the trier of fact."

[Citation.]' " (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The purpose of dependency law is to "provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused . . . [or] neglected . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.)

A petition is brought on behalf of the child, not to punish the parents. (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.) A juvenile court is not required to wait until a child is actually hurt before assuming jurisdiction. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another point in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

#### B. *Application*

Substantial evidence supports the court's finding of jurisdiction. The petition alleged Katheryn was not able to provide regular care for A.H. because of her mental illness. She admitted experiencing periods of depression and suicide ideation and had said she would rather die than live the life she was living. On December 8, 2011, she told her friend she wanted to kill or hurt herself, and she told military police she had ingested

bath salts to get high. She had a history of having thoughts of suicide dating back to 2005 and had abused drugs, including cocaine, marijuana and heroin. She admitted relapsing in 2011.

In sustaining the petition, the court noted:

"[Katheryn is] 22 years. When she was 15 years old, she had threatened suicide, and, also, there was a referral that she had run into traffic, not only just verbalizing the threat, but running into traffic, and then saying she didn't want to live at that point. She was depressed. She continues to be depressed.

"She was also hospitalized, I guess, what, six years ago when she was 16, in Florida . . . . In that instance, she overdosed on cocaine, and there had been instances of substance abuse."

Substantial evidence supports the court's conclusion Katheryn had serious issues that placed A.H. at substantial risk of harm and needed to be addressed. The jurisdictional findings are well supported.

### III

Katheryn contends substantial evidence did not support the court's removal of A.H. from her custody. She argues the Agency did not show there was a continuing substantial danger to him in her care or that there were no reasonable means to protect him short of removal.

#### A. *Legal Authority*

Section 361, subdivision (c)(1), provides a child may not be removed from a parent's custody, unless the court finds by clear and convincing evidence:

"There is or would be 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 minor's parent's . . . physical custody."

The court is also required to make a finding as to whether reasonable efforts were made to prevent or eliminate the need to remove the child from the home. (§ 361, subd. (c)(1); *In re Miguel C.* (2011) 198 Cal.App.4th 965, 970-971.) At disposition the juvenile court considers all relevant evidence that refers to the allegations of the petition, and it considers the conditions as they existed at the time of the hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The court is required to consider the parent's past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900.) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

#### B. *Application*

Substantial evidence supports the order removing A.H. from Katheryn's custody. As stated above, Katheryn has a long history of mental illness, including suicide ideation. A.H. was not yet one year old at the time of disposition and required the court's protection. Katheryn was offered services at the beginning of the case, including a substance abuse recovery program, which included drug testing and 12-step meetings. She enrolled in a child development class and had access to mental health services. The evidence shows Katheryn was offered reasonable services to prevent the need to remove A.H. from her custody. She was required to participate in these services in order to work

toward becoming a safe parent. The court's decision to remove A.H. is supported by substantial evidence.

DISPOSITION

The orders are affirmed.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.