

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

J.K,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E057360

(Super.Ct.No. J245695)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Gregory S. Tavill,
Judge. Petition denied.

Dennis Moore for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel and Dawn M. Messer, Deputy County Counsel,
for Real Party in Interest.

Petitioner J.K. (father) is the father of nine-year-old H.M. Father challenges the juvenile court's jurisdictional findings and decision to set a hearing under Welfare and Institutions Code, section 366.26, to determine a permanent plan for H.M.¹ The court took these actions after father allowed H.M.'s mother² to care for H.M. in anticipation of father being returned to custody for violating parole. The courts had previously placed H.M. in father's sole custody with orders that H.M. only have supervised visits with her mother. Father argues the jurisdictional findings are not supported by substantial evidence. As discussed below, we affirm the juvenile court's rulings.

FACTS AND PROCEDURE

In March 2011, the courts awarded custody of H.M. to father and allowed mother to have supervised visitation only. At that time, three of H.M.'s half-siblings were dependents of the juvenile court and were in foster care with relatives. Mother neglected her children, including H.M., because of longstanding and serious substance abuse issues. In May 2012, the court terminated services to mother on behalf of H.M.'s siblings because mother failed to participate and make progress in her treatment plan.

On June 18, 2012, mother completed a 90-day inpatient substance abuse program in San Francisco. At that time father asked her to stay with him in Lake Havasu City, Arizona, to help take care of H.M. Father knew there was a warrant out for his arrest for parole violations and that he would be returning to custody at some point. Mother was

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

² H.M.'s mother is not a party to these writ proceedings.

pregnant. Mother declined the opportunity to live in a transitional sober living home so she could take care of H.M. Mother took care of H.M. at father's home beginning about June 20, 2012. Once she arrived at father's home, mother suspected father was using drugs. Mother stayed either about three weeks or until July 30, 2012, when she returned with H.M. to the Chemehuevi reservation. Mother moved "across the lake" because she was not comfortable with the living situation and father's drug use. Mother initially attended a weekly substance abuse program at the reservation, but as of the jurisdiction hearing she had not attended in about 30 days.

Father testified at the jurisdiction hearing that he asked mother to come live with him because she had just finished a substance abuse program and was sober. At the time of the jurisdiction hearing, Father expected to be released from custody in 18 months. Father stated that he would be willing to sign a "notarization form" allowing certain of H.M.'s relatives to seek medical treatment for H.M. and to make other decisions on her behalf. However, he was not willing to do so for H.M.'s current caretaker, a maternal aunt, because he did not know her. Father testified that he was aware that, when he received custody of H.M. in March 2011, any visits between H.M. and her mother would need to be supervised. He knew that he was violating that order when he asked mother to take care of H.M., but believed he was doing "the whole family thing" because mother was "clean and sober." Father stated that he would leave H.M. completely in her mother's care for two days at a time while he was working, and that when he returned home he would find them bonding, and that H.M. was happy, clean and well-fed. "I was happy to come home to that news. It was nice."

Father was arrested on an outstanding warrant and incarcerated on July 27, 2012.

The social worker for mother's other children on the reservation became aware that mother was living on the reservation with H.M., and that mother had given birth to a baby boy.

On August 27, 2012, San Bernardino County Children and Family Services (CFS) filed a dependency petition under section 300 as to H.M. and her baby brother.³ Regarding father, CFS alleged under section 300, subdivision (b), that "On or about July 1, 2012, [father] left the child, [H.M.], in the care and custody of her mother, . . . , although he knew, or reasonably should have known, that the mother suffers from chronic substance abuse [sic] that prevents her from providing supervision and care of the child, [H.M.]." Under section 300, subdivision (g), CFS alleged that "The father, . . . , is incarcerated in Arizona and is unable to make arrangements for the care of his child, [H.M.]."

At the detention hearing held on August 28, 2012, the juvenile court found a prima facie case to detain H.M., removed her from parental custody, and placed her with a maternal aunt.

The contested jurisdictional hearing was held on October 25, 2012. The juvenile court heard testimony from H.M.'s mother, from father (via telephone from custody), and from the social worker. After reviewing the evidence and hearing argument from counsel, the court found all allegations in the section 300 petition to be true and took

³ H.M.'s baby brother is not related to father, and so is not a subject of these writ proceedings.

jurisdiction over H.M. The court denied reunification services to both parents and set the section 366.26 hearing for February 21, 2013.

This writ petition followed.

DISCUSSION

Father claims the court's order sustaining dependency jurisdiction under section 300, subdivisions (b) and (g), was not supported by substantial evidence.

A. Standard of Review

“In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact. [Citation.]” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) “[T]he record must be viewed in the light most favorable to the juvenile court's order. [Citation.]” (*In re Bernadette C.* (1982) 127 Cal.App.3d 618, 627.)

B. Substantial Risk of Harm – Section 300, Subdivision (b)

Section 300, subdivision (b), authorizes dependency jurisdiction when the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness due to the parent's inability to supervise or protect or by the willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter or medical

treatment. Here, the juvenile court sustained allegations under section 300, subdivision (b), based in part on father leaving H.M. in the care of her mother, a chronic substance abuser whom the courts had determined should have only supervised contact with H.M. Father argues both that: 1) his actions were a single lapse of judgment that would not likely recur, e.g., it was only conjecture that he would ever be incarcerated again and leave H.M. with her mother; and, 2) H.M. was not at risk of actual harm when she was in the care of her mother.

These arguments do not prevail. First, father left H.M. in mother's care even before he was incarcerated, when he would leave the home for two days at a time for work. Even once he is freed in the future, these past actions provide a basis to anticipate father would continue to place H.M. in danger by allowing her mother to care for her. Second, father intended for H.M. to remain in her mother's care for the entire time he was to be incarcerated, rather than just for a short time. Third, the crux of this allegation is that father placed H.M. at substantial risk of harm both by intentionally violating specific court orders made to protect H.M., and by showing poor judgment in caring for H.M. Father placed H.M. in the care of mother, whom the juvenile courts had specifically determined was not a safe caretaker for H.M. because of her unaddressed substance abuse. Although mother appeared to have benefitted temporarily from the 90-day substance abuse program, she could not even show that she continued to abstain from using drugs, and in fact had ceased attending the weekly substance abuse program provided at the reservation. For these reasons, we conclude that substantial evidence

supports the juvenile courts finding that father placed H.M. at substantial risk of harm when he placed her in mother’s care.

C. No Provision for Support – Section 300, Subdivision (g)

We need not address this claim of error by father because the juvenile court’s jurisdiction may rest on a single ground. (§ 300 [“Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court”]; see generally *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 [“reviewing court may affirm [dependency jurisdiction] if the evidence supports the decision on any one of several grounds”].)

DISPOSITION

The petition is denied. The juvenile court’s orders are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.