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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.N.,

Defendant and Appellant.

E064454

(Super.Ct.No. J256399)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin,
Judge. Affirmed.

Pamela Rae Tripp, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,
for Plaintiff and Respondent.

Following the termination of her parental rights to her daughter, S.R., defendant and appellant R.N. (mother) appeals, contending the evidence does not establish that she suffered from substance abuse such that removal was the only means of protecting her child. We affirm.

I. PROCEDURAL BACKGROUND AND FACTS

On June 26, 2014, the San Bernardino County Children and Family Services (CFS) received a referral alleging that mother and father engaged in domestic violence and substance abuse and that S.R. had access to methamphetamines. During its investigation, CFS learned that the paternal grandmother had legal guardianship of the parents' six other children due to the parents' drug use, domestic violence, and instability. A paternal aunt had been caring for S.R. and attempted to obtain emergency guardianship of the child; however, her request was denied. On August 18, 2014, a social worker met with mother, who appeared to be under the influence of a controlled substance, as she was slurring her words and using the wrong child's name. Mother refused referrals for substance abuse treatment, claiming she could "quit at any time" and that she could abstain from substance use in order to test negative for drugs. Family members reported that father had attempted to take S.R. from the paternal grandmother's house while he was under the influence.

Due to the parents' escalating behavior, CFS obtained a warrant to detain S.R. On September 15, 2014, CFS filed a Welfare and Institutions Code¹ section 300, subdivision (b) petition alleging parents' substance abuse and transient lifestyle, along with father's criminal history, impacted their ability to provide for the wellbeing of S.R. On September 16, the court ordered S.R. removed from mother and placed in the temporary custody of CFS, and mother was ordered to drug test.

In the jurisdiction/disposition report filed on October 2, 2014, CFS recommended that reunification services be provided to the parents, while S.R. be placed in out-of-home care. Mother denied she had a drug history and refused to drug test, stating that everything in the prior detention report was a lie. She indicated that the paternal aunt tasked with taking care of S.R. had a deceased husband who was a drug dealer. On September 3, 2014, mother sought police assistance in removing S.R. from the paternal grandmother's home. According to the incident report, mother appeared to be under the influence of methamphetamine and admitted to the deputy that she had used methamphetamine two days prior. On September 30, 2014, S.R.'s father told the social worker that he and mother had used marijuana and methamphetamine in the past. While he would not state the time that he and mother had last used drugs, he admitted personally using them "one or two weeks ago." Father had been arrested on August 13, 2014 for possession of a smoking device and again on September 10, 2014, for being

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

under the influence of a controlled substance. Mother had three different addresses in three different months. The social worker opined that mother did not appear to be motivated to regain custody of her child; rather, she wanted the maternal grandmother to care for her.

At the October 7, 2014 jurisdiction/disposition hearing, the matter was set contested and referred to mediation. The mediation was held on November 13, 2014. Regarding jurisdiction, mother submitted on the section 300, subdivision (b)(1) allegation that she “has a history of substance abuse that severely impacts her ability to provide for the wellbeing of the child . . . which places the child at significant and substantial risk of harm and/or neglect.” (Capitalization omitted.) However, she contested the allegation of transient lifestyle. Mother was not open to family reunification services.

At the November 13, 2014 contested jurisdiction/disposition hearing, CFS offered to dismiss the transient lifestyle allegation, but mother was not in agreement with family reunification services, wanted S.R. returned to her care, and wanted the matter dismissed. Mother admitted having a history of drug abuse but claimed she had stopped using drugs three or four years ago. She believed that the dependency petition was filed because the paternal aunt had been denied guardianship of S.R. in another court action. She denied being under the influence of any substance when meeting with the social worker and claimed that she was probably slurring her words because she was mad or nervous. Mother refused the social worker’s offer of services. According to mother, she had been caring for S.R. since she was born, and she was in no danger while in mother’s care. Mother attributed the father as the reason for her inability to care for her children and

stated that she had left him in June 2014. Following argument, the juvenile court sustained the allegations in the petition and ordered reunification services for both parents.

In the six-month status report filed on May 11, 2015, CFS recommended termination of parents' reunification services and that a section 366.26 hearing be set to establish a permanent plan of adoption for S.R. Both parents "have not engaged in substance abuse programs, Court ordered testing and visitation orders." Mother refused to visit S.R. until the child is placed in the care of the maternal family; however, the maternal family had not cooperated with the placement request. In March 2015, mother was arrested on substance abuse charges and was further cited and released. At the time of the report, the parents' whereabouts were unknown.

At the May 13, 2015, review hearing, the court ordered mother to drug test. She refused, and the court stated that it was "deeming that a positive test." Given mother's refusal to cooperate, the court retracted its order setting the matter for a contested section 366.21, subdivision (e), hearing on May 22, and decided to hear the matter that same day. Following the noon recess, the trial court recalled the matter; however, mother was no longer present. Mother's counsel objected to CFS's recommendation to terminate services and set a permanency planning hearing, and requested the court strike the reference to her arrest in March 2015. The court denied the request to strike, terminated reunification services, and set a section 366.26 hearing for September 10, 2015.

On May 28, 2015, mother filed a notice of intent to file a writ petition; however, in a letter dated June 18, 2015, her counsel advised this court that there were no legal or

factual issues upon which to file such petition and, thus, would not be filing a writ. On June 24, 2015, the writ petition was dismissed.

In the section 366.26 selection and implementation report filed on September 4, 2015, CFS recommended termination of parental rights and adoption as the permanent plan. Since placement of the child, mother had not visited her. Since September 11, 2014, S.R. had been living with her paternal aunt, who facilitated visitation with S.R.'s half siblings and wanted to adopt her.

At the section 366.26 hearing held on September 10, 2015, mother objected to termination of her parental rights and indicated her preference that S.R. be adopted by the maternal grandmother. Noting that mother had previously objected to S.R.'s relative placement, the court terminated all parental rights and found adoption to be the appropriate permanent plan.

II. DISCUSSION

Mother challenges the jurisdiction order contending the evidence was insufficient to “support the court’s finding that mother’s history . . . of substance abuse was causing her to neglect or harm [S.R.]” In response, CFS asserts four separate reasons why mother is precluded from challenging the jurisdictional findings. First, CFS claims that mother’s delay in challenging such order, coupled with her counsel’s dismissal on the prior writ petition on the grounds there were no legal or factual issues to support such petition, deems her challenge to the jurisdictional findings forfeited. Second, CFS contends that mother submitted on the substance abuse allegation at the time of the jurisdiction/disposition hearing. Third, CFS notes that jurisdiction over S.R. was also

based on mother's transient lifestyle and father's conduct, neither of which is challenged on appeal, and thus, the appeal is moot. And finally, CFS argues that the evidence was sufficient to support a finding of mother's substance abuse.

While CFS's forfeiture argument is compelling, we will address the merits of mother's contention because the issue is straightforward.

A. Standard of Review.

Section 300 and its subdivisions describe those minor children over whom the juvenile court may exercise its dependency jurisdiction. The juvenile court's jurisdictional finding that a child falls within one of these statutory descriptions must be supported by a preponderance of the evidence. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.)

“We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “In so doing, we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court's order. [Citation.] ‘Substantial evidence’ means evidence that is reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case. [Citation.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.)

B. Analysis.

Because the juvenile court in this case assumed dependency jurisdiction over S.R. under subdivision (b) of section 300 based upon several separate allegations, two pertaining to mother and three pertaining to father, the juvenile court's ruling must be

affirmed if there was sufficient evidence to support a finding of jurisdiction under any of those allegations. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.)

The juvenile court found true the allegations that mother's history of substance abuse, along with her transient lifestyle, impacts her ability to provide for the well-being of S.R., placing her at a significant and substantial risk of harm and/or neglect. The record shows that mother and her counsel were present on November 13, 2014, for the contested jurisdiction/disposition hearing. At that hearing, mother's counsel told the court that mother "was submitting as to [the] allegation" that she has a past history of substance abuse. Further evidence supporting the jurisdictional findings is found in the social worker's reports. The hearsay evidence contained in those reports is admissible and constitutes competent evidence upon which to base a jurisdictional finding. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1652; *In re Malinda S.* (1990) 51 Cal.3d 368, 382 [now superseded by statute].) According to the reports, both a social worker and a police officer opined that mother appeared to be under the influence of methamphetamine when they spoke with her on separate days. Mother told the police officer that she had used methamphetamine two days prior to talking to him. While mother disputed the claim that she was using drugs and asserted that she had not used drugs in three to four years, the juvenile court was free to disbelieve her, especially since she refused each request to drug test, which the court could properly consider the "equivalent of a positive test result." (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217.) Regarding her transient lifestyle, mother admitted living in three separate places in 2014 and would leave S.R. with the

paternal aunt or grandparents for periods of time, prompting the aunt to request emergency guardianship of the child in the summer of 2014.

Mother's continuing substance abuse problem, her transient lifestyle, and her refusal to cooperate with CFS support the jurisdictional findings. The Legislature has recognized that, in general, substance abuse has a negative effect on the home environment and the safety of children living in that environment. (§ 300.2 ["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."].) When a parent's substance abuse problem amounts to a lifestyle problem, the home environment usually is permeated with the negative effects of drug abuse. A parent's drug-centered lifestyle may be found to expose a child to substantial risks, i.e., the risk of seriously compromising the child's physical and emotional well-being and the risk that the child will ingest drugs. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 825-826.) Using drugs while responsible for a child's welfare and leaving drugs within a child's reach simply are not "parental acts." (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 382.)

Moreover, the evidence supports the juvenile court's finding that there was a substantial risk S.R. would suffer serious physical harm or neglect by virtue of mother's substance abuse and its impact on her ability to supervise and care for her daughter. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) In urging us to reverse, mother relies upon *In re David M.*, *supra*, 134 Cal.App.4th at p. 830, *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1001, 1004, and *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022 and points out that a parent's unresolved drug issues "must be tied to actual harm or

substantial risk that the child is at risk of substantial harm.” Regardless of whether mother’s assertion is true, it is undisputed that she relinquished care of her older six children due to her substance abuse, did not have permanent living arrangements, and would leave S.R. with the paternal aunt or grandparents for periods of time. To the extent mother is arguing that S.R. did not actually suffer any serious harm or neglect and therefore was not at risk, we reject such contention. The statutory scheme is designed to avert harm to a child. Thus, a child need not have suffered harm to support an assumption of jurisdiction. Rather, the presence of a risk of harm is sufficient. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled in part on other grounds as stated in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748-749.)

Notwithstanding the above, mother failed to dispute the jurisdictional findings, specifically pertaining to father under subdivision (b) of section 300, which the juvenile court found true. The jurisdictional findings against father were sufficient to bind mother as well. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) The minor is a dependent if the actions of *either* parent bring him or her within one of the statutory definitions. (*Ibid.*) “This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. [Citation.]” (*Ibid.*)

We conclude that substantial evidence supports the jurisdictional findings pursuant to section 300, subdivision (b).

III. DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MILLER

J.

CODRINGTON

J.