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**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re SAVANNAH C., a Person Coming
Under the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

AMANDA G.,

Defendant and Appellant.

F065398

(Super. Ct. No. JD128389-00)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Jon E. Stuebbe,
Judge.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and
Appellant.

Theresa A. Goldner, County Counsel, and Kelley D. Scott, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Poochigian, J., and Franson, J.

INTRODUCTION

Amanda G. (mother) appeals from the juvenile court's orders and findings at the jurisdiction and disposition hearings that it has jurisdiction over her daughter, Savannah C., born in March 2012. Mother contends there was insufficient evidence at the jurisdiction hearing to sustain allegations in the petition filed pursuant to Welfare and Institutions Code section 300, subdivision (j).¹ We disagree and affirm the juvenile court's orders.

FACTS AND PROCEEDINGS

On March 26, 2012, a juvenile dependency petition was filed pursuant to section 300 with two counts on behalf of Savannah C.² The first count was made pursuant to section 300, subdivision (b), alleging a failure to protect because Savannah was at substantial risk to suffer physical harm or illness due to mother's inability to provide regular care because she suffers from mental illness and substance abuse. Mother's mental illness began when she was a teenager and remained untreated. It was alleged that although a psychiatrist had recommended a course of treatment, mother failed to seek treatment.

The second count was made pursuant to section 300, subdivision (j), stating that Savannah was at risk because her sibling, S.S., who was 14 months old when Savannah was born, had been the subject of a dependency action in 2011 resulting in a finding of jurisdiction in June 2011 and a disposition in August 2011. S.S. had been abused or neglected within the meaning of section 300, subdivision (b) because mother could not provide S.S. with regular care due to substance abuse. Mother was to undergo a

¹ Unless otherwise designated, all statutory references are to the Welfare and Institutions Code.

² The petition and early reports from social workers referred to Savannah as Baby Girl G.

psychological evaluation. Mother was granted reunification services for S.S., but had not completed important components of her plan by the time Savannah was born. Among the components not completed were counseling and submitting to regular drug and alcohol testing.

On May 7, 2011, S.S., who was then three months old, was taken from mother's custody while mother was under the influence of alcohol and methamphetamine. Mother had previously lost custody of five other children born between 2001 and 2009 in another state. Mother admitted using methamphetamine and smoking marijuana and had abused alcohol for 13 years. On June 16, 2011, the juvenile court sustained allegations as to S.S. filed pursuant to section 300, subdivision (b). Mother was granted six months of reunification services as to S.S. on August 17, 2011. Mother was ordered to participate in services for anger management, parenting, substance abuse, and mental health counseling, including psychotropic medication management. Mother was to submit to drug and alcohol testing on a monthly basis. Review hearings for S.S. were continued in February and March of 2012.

After Savannah was born, mother reported to social workers that she no longer drank or used illegal drugs. Mother had attended 21 of 30 Narcotics Anonymous meetings, but asserted there was a discrepancy and she had lost her attendance card. Mother believed she only needed to attend four additional anger management classes. Mother discussed her history with depression, but could not remember the names of medications she had been prescribed. Mother explained that she was attending individual counseling.

Between November 1, 2011, and April 10, 2012, mother was scheduled for 15 drug tests. Mother had six negative tests and eight failures to drug test. Failure to take a

drug test was presumed to be a positive test.³ Mother had six negative drug tests in April 2012 and a presumptively positive test for failure to test on April 19, 2012. Between May 8, 2012, and June 19, 2012, mother had seven negative drug tests. Social workers recommended to mother that she enter a new substance abuse program. Just prior to the jurisdiction hearing on June 29, 2012, however, mother had not yet enrolled into a new substance abuse program and told her social worker she did not agree to do so.

Mother was evaluated by a psychologist on April 19, 2012, and a physician on June 25, 2012. Mother was diagnosed with major depression, anxiety, a mood disorder not otherwise specified, alcohol abuse disorder, substance abuse disorder, and borderline intellectual functioning. The physician found mother to be stable and did not prescribe her any medication. By June 2012, mother had completed many of the services ordered under her reunification plan with S.S., including parenting classes, anger management classes, and assessments for mental health and substance abuse.

Prior to the jurisdiction hearing, mother's counsel filed a brief stating mother intended to submit the matter on the section 300, subdivision (j) allegations, but argue that the section 300, subdivision (b) allegations were not true based on any current risk. Mother's counsel limited his argument that there was no current risk to the section 300, subdivision (b) allegations. A form waiving the mother's rights to a contested jurisdiction hearing on the section 300, subdivision (j) allegations was attached to her counsel's brief.⁴

³ Mother had another failure to test on March 19, 2012, but the department's counsel conceded during the disposition hearing that mother had a valid excuse for not testing on that date.

⁴ The waiver form has two pages. The signature page to the form executed by mother is missing from the clerk's transcript. Page one of the form indicates mother was submitting the matter on the basis of the petition and the social worker's reports but reserving argument on the "b-1" allegations. Mother's initials are set forth in the boxes indicating she was waiving her rights to a contested hearing, to testify on her own behalf,

The social worker's report recommended the court find mother knowingly, intelligently, freely, and voluntarily waived her rights and that the allegations of the section 300, subdivision (j) count were true and that Savannah is a person described by section 300, subdivision (j) of the Welfare and Institutions Code.

The jurisdiction hearing for Savannah was conducted on June 29, 2012. Most of the hearing was devoted to a review of the petition involving S.S. With regard to Savannah, mother's counsel limited his argument to his belief that the section 300, subdivision (b) allegations were not sustainable because there was no evidence of current risk. Mother's counsel pointed out that the department's case plan for mother was working and the department had provided good services. Regarding the section 300, subdivision (b) allegations, mother's counsel argued that the psychiatrist, who had recently examined mother, concluded she was stable and no medications were prescribed for her.

Mother's counsel requested mother be placed on family maintenance services, noting that mother's risk of neglect in S.S.'s case was due to mother's substance abuse. Counsel requested if the juvenile court required further drug testing of mother, that she not be ordered to further counseling unless she had an unexcused missed or positive drug test.

The juvenile court noted that Savannah was "a person described by [s]ection 300, and I'm going to find only (j). I think I can concur with the discussion that indicates, that it has to be a current risk. [¶] ... so it will be a 300 (j) of the W & I Code." The juvenile

her privilege against self-incrimination and to call her own witnesses, and submitting the matter on the petition and social worker's reports. Mother also initialed boxes indicating that by waiving her rights, it was likely the juvenile court would find the allegations to be true.

court found that Savannah was a person described by section 300, subdivision (j). The court did not find the section 300, subdivision (b) allegations to be true.

The social worker's report for the disposition hearing noted that although mother had completed most of her reunification services for S.S., she had seven presumptively positive drug tests and had been advised by the department that she needed to enter into a new substance abuse treatment program. The department recommended family reunification services be provided to mother and Savannah's presumptive father, Michael C. The department further recommended that mother continue to submit to random, unannounced drug tests.

At the disposition hearing on July 25, 2012, mother's counsel argued that mother had finished most of her services and should be placed on family maintenance for Savannah. The department's counsel argued that mother had seven failures to drug test and the department had serious concerns about the mother's ability to reunify.

The court accepted the department's recommendations, ordering mother to continue to test for drugs and alcohol. The court did not order further substance abuse counseling unless mother failed to test or tested positive. The court adjudged Savannah to be a dependent child, finding clear and convincing evidence of a substantial danger to her physical health, safety, physical or emotional well-being.⁵ The court found mother had made moderate progress toward alleviating or mitigating the causes for Savannah's out-of-home placement. The court ordered reunification services for mother.

⁵ The juvenile court found the allegations of both subdivisions (b) and (j) of section 300 to be true. At the jurisdiction hearing, the court only found the section 300, subdivision (j) allegations to be true. It appears the court misspoke when it found the section 300, subdivision (b) allegations to be true during the disposition hearing.

DISCUSSION

Mother contends that because there was no current risk of detriment pursuant to section 300, subdivision (b), there was necessarily no current risk to Savannah under the section 300, subdivision (j) allegations. Mother also contends there was insufficient evidence to support the juvenile court's order removing Savannah from mother's custody.

The department contends mother has forfeited any challenge to the sufficiency of evidence to support the petition by admitting the allegations set forth pursuant to section 300, subdivision (j), and alternatively, that there was substantial evidence to support the juvenile court's finding that Savannah was at risk pursuant to section 300, subdivision (j). We agree with the department that there is substantial evidence to support the juvenile court's jurisdiction and disposition findings.

Forfeiture

Because mother submitted the matter based on the section 300, subdivision (j) allegations in the petition and the social worker's reports, the department argues mother was admitting the truth of the allegations and the factual basis for the allegations. The department argues mother reserved her challenge only to the section 300, subdivision (b) allegations and that her counsel conceded during his arguments at the jurisdiction hearing that any risk to Savannah was from mother's substance abuse problems. On the other hand, mother did argue for family maintenance services and sought an order that she not attend further drug treatment programs unless she had a positive drug test or failed to drug test. Mother did not accept all of the department's recommendations.

Where a parent submits the matter on the social agency's recommended findings and orders, the parent waives the right to challenge the sufficiency of the juvenile court's orders on appeal. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 587-590.) Where the parent submits the matter on the social worker's report, the parent preserves the right to

challenge the sufficiency of the evidence and record on appeal. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565-566; *In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1236-1238.)

The question of waiver, or forfeiture, is close in the instant action because mother essentially admitted the section 300, subdivision (j) allegations. Mother did not, however, completely submit the matter on the department's recommended findings and orders. Mother generally submitted the matter on the social worker's reports and argued for changes in some of the department's recommendations. On this record, we find that mother has not forfeited the question of whether there was substantial evidence to support the petition on appeal.

Substantial Evidence

At the jurisdiction hearing, mother submitted the matter on the section 300, subdivision (j) allegations and the social workers' reports. Mother's counsel focused his argument on mother's contention that the section 300, subdivision (b) allegations were not based on any current risk. Mother's argument on appeal in effect states that there was no current risk for either of the allegations. Although the juvenile court stated there was no current risk, it is clear the court was referring only to the section 300, subdivision (b) allegations, not to the subdivision (j) allegations. We decline mother's invitation to interpret the juvenile court's finding as a finding that there was no current risk to either of the allegations.

Mother ignores the very different factual aspects between the two allegations. The section 300, subdivision (b) allegations concerned mother's history of mental health problems. The section 300, subdivision (j) allegations, in contrast, focused on mother's past and current drug and alcohol abuse. The two allegations were aimed at two entirely different factual problems related to Savannah's risk of detriment under mother's care.

Challenges to a juvenile court's jurisdictional findings are reviewed for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) Substantial evidence is

evidence that is “reasonable, credible and of solid value” such that a reasonable trier of fact could make such findings. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.) “We review the record to determine whether there is any substantial evidence, contradicted or not, which supports the court’s conclusions.” (*In re Kristin H., supra*, at p. 1649.) “All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.” (*Ibid.*) Issues of fact and credibility are questions for the trial court and it is not our function to redetermine them. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 194-195 [overruled on another ground in *In re I.J.* (2013) 56 Cal.4th 766].)

There was no doubt, and indeed mother’s counsel conceded, that mother’s substance abuse problem caused the detention of S.S. Mother had several failures to submit to drug tests, which were presumed to be positive. Several of mother’s failures to submit to drug testing occurred in the time frame of Savannah’s birth. At least two of these occurred after Savannah was born. Given her long history of substance abuse and mother’s presumptively positive tests just before and after Savannah’s birth, there was substantial evidence to support the juvenile court’s finding that the section 300, subdivision (j) allegations were true. We reject mother’s argument that there was no current risk of detriment and/or the juvenile court failed to find a current risk of detriment on the section 300, subdivision (j) allegations.

On a challenge to the juvenile court’s findings resulting in the removal of a child at the disposition hearing, we apply the substantial evidence test. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) In doing so, we bear in mind the higher standard of proof yet view the record in the light most favorable to the challenged order, drawing all reasonable inferences in support of that order. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 462-463.) Further, appellant bears the burden of showing there is no evidence of a sufficiently substantial nature to support the removal order. (*In re L.Y.L.* (2002) 101

Cal.App.4th 942, 947.) In light of the evidence, as summarized above, we conclude substantial evidence supports the juvenile court's removal order.

DISPOSITION

The juvenile court's orders are affirmed.