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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re J.B., a Person Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. D.T., Defendant and Appellant.	F073091 (Super. Ct. No. 517392) **OPINION**

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Caitlin Christian, under appointment by the Court of Appeal, for Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel, for Plaintiff and Respondent.

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INTRODUCTION

Appellant D.T. (Mother) appeals from the juvenile court's December 15, 2015, orders establishing dependency jurisdiction over her son J.B. (born October 2015).

Mother contends the evidence is insufficient to support the juvenile court's jurisdictional findings under Welfare and Institutions Code[1] section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling), and its dispositional order removing J.B. from Mother's custody and ordering him suitably placed pursuant to section 361, subdivision (c).

The thrust of Mother's sufficiency of the evidence challenge to the jurisdictional findings and removal order is that respondent Stanislaus County Community Services Agency (the Agency) failed to prove that Mother's past problems with drug use and domestic violence with D.H. (Father)[2]—problems which undisputedly led to the removal of J.B.'s siblings from Mother's custody and ultimately to the termination of her parental rights in May 2015—placed J.B. at substantial risk of harm at the time of the combined jurisdiction/disposition hearing in December 2015. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Child Welfare History

In April 2012, when Mother was 14 years old, the Agency received a referral that Mother's daughter, M.H. (born February 2012), was "not safe in the house." According to the allegations of the reporting party, which were ultimately substantiated by the Agency, Father and Mother "smoke[d] weed" and yelled and pushed at each other while M.H. cried and no one tended to her needs. Father, who had an issue with anger, was also known to hit his own mother. When the police were called to Mother's home, she was living with her mother, who was pregnant at the time, and had two other young children at home. Mother's mother was also a drug user and spent most of her time with her boyfriend, leaving the children to fend for themselves.

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[1] Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

[2] Father is not a party to this appeal.

The Agency additionally substantiated a February 2012 referral alleging "Mother ha[d] a history of assault and battery at age 11 and drug use." Mother tested positive for marijuana both before and after her pregnancy with M.H. Mother denied domestic violence with father, and Mother had a mental health history. Father had a problem with anger management and became upset when Mother was having a vaginal exam. After he started punching the walls and kicked a rolling stool at a doctor, Father had to be escorted out of the hospital.

The Agency further substantiated a May 2012 referral, alleging that Father, who lived with Mother, choked Mother while she was holding M.H. During the attack, the baby fell to the ground.

In August 2012, dependency jurisdiction was established over M.H. under section 300, subdivision (b).

Mother was receiving reunification services in January 2013, when she gave birth to H.H., her second child with Father.

In March 2013, dependency jurisdiction was established over H.H. under section 300, subdivisions (b) and (j).

Mother's parental rights to M.H. and H.H. were terminated in May 2015.

Detention and Section 300 Petition

In early October 2015, the Agency received a referral alleging that Mother had recently given birth to J.B. At delivery, both Mother and J.B. tested negative for drugs. When the emergency response social worker went to speak with Mother after J.B.'s birth, Mother denied using drugs, saying she had given up smoking marijuana when her first child was removed from her care. Mother reported her reunification services for M.H. and H.H. were discontinued in January 2015, and her parental rights were terminated. Mother also said the children had been removed because of domestic violence, but she added "they were never able to prove it."

Mother further reported that she had completed parenting classes, anger management, and drug treatment. According to Mother, she always engaged in services but exceeded the time limits, and, for that reason, M.H. had been, and H.H. was in the process of being, adopted out. Mother also stated she had learning disabilities and would have completed her case plan had she been given more time.

Around the time of J.B.'s birth, Mother "adamantly" denied that Father was J.B.'s father. She declined to name the father, saying only he was an "old boyfriend" who would not be involved in J.B.'s life. Mother reported that her mother, with whom she lived, was her support system, and that she had all the necessary baby layette items.

J.B. was placed in protective custody and the Agency filed a dependency petition on his behalf. After the detention hearing, during which Mother admitted that Father was J.B.'s father and J.B. was ordered detained, the Agency filed a first amended petition on October 16, 2015, alleging that J.B. came within the provision of section 300, subdivision (g), in addition to the provisions of section 300, subdivisions (b) and (j).

Jurisdiction/Disposition Report

On December 4, 2015, the Agency submitted a jurisdiction/disposition report establishing the background facts set forth above and summarizing the problems requiring intervention and possible causes as follows:

> "[Mother] is a young mother of two children removed from her care for drug abuse and domestic violence. She failed to reunify with these two children, and has recently given birth to another child by the same partner with whom she had a violent relationship. [Mother] has seemed unable to make use of the information provided to her in past Family Reunification episodes."

In the concluding "Assessment/Evaluation" section of the jurisdiction/disposition report, the agency identified the "central question" to be whether Mother "can benefit from more services as she matures and demonstrate change in her past behaviors, or is she unable to apply the learning she obtains in services to real-life situations." The

Agency acknowledged the question was "the subject of some debate within the Agency" and there was "evidence supporting both assessments." The Agency then summarized that evidence as follows:

> "[Mother] has very recently failed to reunify with [M.H.] and [H.H.], largely in part to [Mother's] inability to apply learning to the real-life situations she was inevitably confronted with. For example, it was recalled that [Mother] would return to her classroom immediately after an anger management counseling session, only to have an angry and disruptive outburst at the teacher. During her social history interview, she framed her behavior problems by saying that her teachers 'make comments and piss me off.' While teachers and other people might say truly hurtful things, [Mother's] understanding of these situations does not seem to be informed by anything she might have learned in anger management. Her petulant refusal to identify [J.B.'s] father, followed by her admission that it was, in fact, [Father], further speaks to her lack of progress or change. All of this supports the conclusion that [Mother] is unable to learn from services, no matter how long they are offered, and no matter her age.
>
> "There are, however, some signs that [Mother] might benefit from services, and the opportunity to mature into the role of parent. She has been observed to demonstrate some solid parenting and responsibility during visitation. In fact, when [Mother] includes her mother and grandmother in the visits, [Mother] has been observed to be the most responsible adult in the room to the children. [Mother] also demonstrates responsibility in getting herself to all appointments, and to all services she has been referred to during [J.B.'s] case. [Mother] seems to have improved and matured in these areas, and she seems to benefit from contact with services providers. While it is unclear if [Mother] can fully achieve minimal parenting skills within the time limits of services, the chance for her to do so should be offered to her."

Jurisdiction/Disposition Hearing

No witnesses were called to testify at the contested jurisdiction/disposition hearing held on December 15, 2015. The juvenile court accepted Mother's offer of proof that, as reflected in photographs taken of her home in October 2015, Mother had the necessary layette items, that Mother had contacted a service provider named "Pathways" to find housing, and that, although no restraining order had yet been filed, she had made efforts

to file a restraining order against Father, whose current whereabouts were unknown by the Agency. The court also considered the jurisdiction/disposition report and the reports previously filed by the Agency in the matter. After listening to the arguments of counsel, the juvenile court sustained the allegations of the first amended dependency petition, ordered J.B. removed from Mother's custody and care, and granted Mother reunification services.

DISCUSSION

Mother challenges the sufficiency of the evidence supporting the juvenile court's jurisdictional findings and dispositional order removing J.B. from her care on the ground there was insufficient evidence showing that, at the time of the jurisdiction/disposition hearing, "juvenile court intervention was necessary to protect *this* child from a *present* risk of harm." We conclude substantial evidence supports the juvenile court's assumption of jurisdiction over J.B. and the dispositional order removing him from Mother's care.

I. Standard of Review

"In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

II. Sufficient Evidence Supports the Juvenile Court's Finding of Jurisdiction

An appellate court can affirm the juvenile court's finding of jurisdiction over a minor if any one of the statutory bases for jurisdiction enumerated in the section 300 petition is supported by substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We will address here the statutory basis in section 300, subdivision (b).

As relevant here, section 300 provides:

> "A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] … [¶]
>
> "(b) The child has suffered, or 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 or guardian to adequately supervise or protect the child ... or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." (§ 300, subd. (b).)

In this case, the relevant inquiry under section 300, subdivision (b) is whether the circumstances at the time of the jurisdictional/dispositional hearing subject the minor to the defined risk of harm. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Although "previous acts of neglect, standing alone, do not establish a substantial risk of harm" (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565), the court may properly consider conduct that predates the jurisdictional hearing in assessing the risk of harm to the child (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388; *In re Rocco M., supra,* at p. 824), as a parent's past behavior with his or her children is a good predictor of future parenting potential (*In re Jasmon O.* (1994) 8 Cal.4th 398, 424).

Contrary to Mother's assertion, the evidence established some reason beyond mere speculation to believe that acts of domestic violence between Mother and Father were likely to recur and that there was a continuing risk of harm to J.B. at the time of the December 2015 jurisdiction/disposition hearing. Mother asserts the lack of a current risk was indicated by the absence of evidence that she has been involved in any new incidents of domestic violence involving Father since the incidents precipitating the 2012 dependency of J.B.'s siblings.

Mother's argument minimizes the evidence she failed to reunify with J.B.'s siblings because, despite receiving over two years of reunification services addressing issues including anger management and domestic violence, these services were

discontinued the same year as the current dependency proceeding due primarily to Mother's failure to make progress and demonstrate she was able to apply what she had learned to real-life situations. Despite mother's claim she could have completed services if provided more time, a number of Agency staff members and service providers held the opposite opinion, and the Agency provided specific examples of behavior and statements by Mother supporting that opinion in the jurisdiction/disposition report, which Mother did not refute.

Mother's reported lack of progress, particularly in gaining insight into domestic violence and the importance of learning to protect her children from it, was further substantiated by evidence that, around the time her reunification services for M.H. and H.H. were terminated in January 2015, she resumed an intimate relationship with their father (i.e., the same partner with whom she had exposed M.H. as an infant to acts of domestic violence) and became pregnant with J.B. Shortly after J.B.'s birth in October 2015, just five months after termination of Mother's parental rights over his two siblings, Mother insisted the Agency had never proved there had been any domestic violence between her and Father and refused to identify the father of J.B. while falsely insisting it was not Father. This evidence of Mother's persistent denial of past domestic violence involving Father and her willingness to engage in deceptive conduct to conceal his identity as J.B.'s father, shortly after J.B.'s birth and a mere two months before the December 2015 jurisdiction/disposition hearing, belie Mother's assertions on appeal that there was no evidence of a *current* risk of harm at the time of the hearing.

Moreover, none of the other circumstances cited by Mother demonstrates the asserted absence of a current risk of harm due to domestic violence between her and Father. Although the juvenile court accepted Mother's offer of proof that she attempted to get a restraining order against Father, the fact remains that she had not yet obtained a restraining order against him at the time of the jurisdiction/disposition hearing. And the circumstance that Father's whereabouts were unknown to the Agency at the time of the

hearing did not necessarily prove that Mother was no longer in a relationship with him or in contact with him, as she suggests on appeal.

In short, we find ample evidence in the record that jurisdiction was necessary to protect J.B. from a substantial risk of harm and we are unpersuaded by Mother's arguments to the contrary.

III. Sufficient Evidence Supports the Juvenile Court's Dispositional Order

Again citing the alleged absence of evidence that either her past drug use or involvement in domestic violence currently posed a risk of harm to J.B., Mother claims there was insufficient evidence to support the juvenile court's dispositional finding that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of J.B. were he to be placed in her custody. (§ 361, subd. (c)(1).) For the reasons already discussed, we reject Mother's claim and conclude that the substantial evidence supporting the juvenile court's assumption of jurisdiction over J.B. under section 300 also provides sufficient support for the court's dispositional order removing J.B. from Mother's custody.

DISPOSITION

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

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HILL, P.J.

WE CONCUR:

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GOMES, J.

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SMITH, J.