

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

In re R.A. et al., Persons Coming Under the  
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

DAVID L.,

Defendant and Appellant.

G048111

(Super. Ct. Nos. DP023023 &  
DP023024)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Dennis J.  
Keough, Judge. Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

### **INTRODUCTION**

David L., the father of infant twins R.A. and L.A., appeals from the jurisdiction and disposition orders of the juvenile court. The court found that substantial evidence supported the exercise of jurisdiction over the babies, citing, among other things, their positive drug screens at birth. The court also found by clear and convincing evidence that giving custody of the twins to their parents at this point would be detrimental to the children. The court vested custody in the Orange County Social Services Agency (SSA) and placed the children in the home of the twins' maternal grandmother. The court ordered reunification services for both parents and liberal visitation.

David L. disputes both orders, contending neither is supported by sufficient evidence. He claims that, at the very least, the twins should have been placed with him, with a family maintenance plan.

The court had ample evidence upon which to base its jurisdiction over the children and its finding of detriment to them if their custody was vested in David. As of the date of the jurisdiction and disposition hearing, David was clearly not ready to assume full-time care of two five-month-old babies. We affirm both of the juvenile court's orders.

### **FACTS**

In September 2012, twins R.A. and L.A. were born to Paula A. two months prematurely. Paula's preliminary drug screening came back positive for methamphetamine and marijuana.<sup>1</sup> R.A. also tested positive at birth for

---

<sup>1</sup> Paula also exhibited scabbed bumps on her face and arms, which the social worker opined were commonly seen on methamphetamine users. Paula had various explanations for the presence of these bumps.

methamphetamine. These tests were later confirmed. L.A. subsequently tested positive for drugs in his system at birth. Both children, who each weighed less than four pounds, were placed in the neo-natal intensive care unit, where they stayed for approximately one month.

SSA became involved because of the positive drug tests, and a social worker interviewed Paula in the hospital. Paula had delayed seeking prenatal care until less than a month before the twins' birth, despite a history of gestational diabetes and prior caesarean deliveries.<sup>2</sup> She admitted using marijuana with David ““a couple of weeks”” before the twins' birth, but denied methamphetamine use. She attributed the positive drug test for methamphetamine to taking Sudafed and other cold and cough remedies, which she obtained from various pharmacies.

Paula had two older children, a teenage boy and a four-year-old girl. At the time of the twins' birth, David, Paula, and her two older children were all living with her parents in their two-bedroom house.<sup>3</sup> The home was in chaos. Paula and David were sleeping on couch cushions in the bed of a pickup truck in an unfinished garage, the teenage boy was driving Paula's mother “crazy,” she referred to Paula's four-year-old daughter as ““the girl,”” and no provisions for the twins' care, such as cribs or diapers, were in evidence. Paula's mother complained there was no room for newborn twins.

The social worker also interviewed David, Paula's live-in boyfriend and the twins' father.<sup>4</sup> At first, he denied any past or present drug use, but a check of court records showed a record of multiple arrests and convictions for drug possession and driving under the influence stretching back to 1999. David had been on probation, which had ended the day before the twins were born. He told the social worker that Paula got

---

<sup>2</sup> Paula told the social worker she became aware of her pregnancy in ““mid to late March.”” At the jurisdiction/disposition hearing, however, she testified that she learned she was pregnant in June.

<sup>3</sup> Paula's mother explained to the social worker who interviewed her that Paula, David, and the children had been evicted from their apartment in August and would otherwise have been homeless.

<sup>4</sup> Paula's two older children had different fathers. Paula was still married to, although separated from, the father of her four-year-old daughter.

Sudafed from her mother, who had it “due to her diabetes.” David denied he had been smoking marijuana with Paula, but he knew she was using and ““didn’t see a problem with it.”” He claimed to have a medical marijuana prescription, but was unable to produce it for the social worker.

SSA obtained a warrant for protective custody of all four children on September 14, 2012. A team decision meeting took place on September 17, a meeting neither Paula nor David attended, despite receiving notice. SSA filed a juvenile dependency petition as to all four children based on failure to protect the next day.<sup>5</sup>

A detention hearing took place on September 19. Both Paula and David attended. The court required observed drug testing for them up to three times per week. As of October 11, however, neither Paula nor David had tested. They were also not visiting the twins in the hospital as much as they had been allowed, because “they have many other things to do during their day.”

On November 1, 2012, the twins were placed with Paula’s mother, who reported at first that neither parent was visiting for the amount of time the court had allowed. Paula and David ostensibly found separate residences elsewhere.<sup>6</sup> David asserted that he went to live with his father, and Paula testified she was living with a friend, the friend’s two children, and her mother.

Testimony in the jurisdiction and disposition hearing commenced on January 15, 2013, and concluded a month later. Paula and David testified, as did one of the social workers involved in the case.

Because of his history of drug abuse, David’s case plan (established in October 2012) involved regular drug testing. Although it is not entirely clear from the

---

<sup>5</sup> The two older children were eventually released to their fathers, and they are not part of this appeal.

<sup>6</sup> As of December 13, neither parent had provided an address to SSA. SSA did not receive an address for David until just before trial commenced in January 2013. At the same time, Paula’s mother reported to a social worker that Paula and David were living together at a friend’s house near David’s father.

record, it appears that he had not presented himself for testing by the time of the hearing. When the court inquired as to his plans for taking care of his children, David spoke vaguely about getting work at some point, moving the twins into his father's house, and getting a place where he could support Paula and all four children. He was emphatic, however, about wishing to marry Paula as soon as she was divorced.

The court did not find either David or Paula to be credible witnesses, in light of the contradictions between their testimony and the documents admitted into evidence. The court characterized David's testimony as "self-serving," "vague," "amorphous," and tailored to his perception of what the court wanted to hear. Although David testified he would do anything to get his children back, he had not taken the elementary step of being tested for drugs. The court also did not find David's plan for the babies' residence to be credible.

The court declared the twins dependents of the court, vested custody with SSA, and adopted the recommended case plans for David and Paula. They were to have a minimum of 10 hours per week visitation. The six-month review hearing was set for August 6, 2013.

## **DISCUSSION**

### **I. Jurisdiction**

A child comes within the jurisdiction of the juvenile court when he or she "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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately . . . protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness,

developmental disability, or substance abuse.” (Welf. & Inst. Code, § 300, subd. (b).)<sup>7</sup> Jurisdiction is determined by preponderance of the evidence, and we review the court’s decision for substantial evidence. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 103-104.)

David acknowledges that it is not necessary for both parents to neglect a child’s health or safety in order to establish jurisdiction over the child. It is sufficient that one parent meet the criteria established by section 300. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) In his brief, however, David concentrates on evidence of his own behavior as insufficient to sustain jurisdiction and ignores Paula’s actions. (See *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16 [father’s focus on own conduct ignores jurisdiction based on mother’s conduct].) Specifically despite the positive results of the drug screenings of her and both twins at their birth, Paula continued to deny that she took drugs before they were born. She was still claiming at the hearing that she had not used methamphetamine. (This time she suggested that she had had an adverse reaction to the anesthetic used during the delivery.) She also failed to take the drug tests required by her case plan, asserting that no female observers were ever present, a claim the trial court found not credible. She was working “nonofficially” and staying in a friend’s apartment at an address she could not remember – another claim the court found suspicious. Finally, the court found that if a conflict arose between the welfare of the twins and Paula’s preferences, David was likely to side with Paula.

The court had ample evidence to conclude that the infants were at serious risk of harm or neglect from Paula and that David was unlikely to go against Paula’s wishes, even if they endangered the twins. This conclusion sufficiently establishes the basis of jurisdiction under section 300, subdivision (b).

---

<sup>7</sup>

All further statutory references are to the Welfare and Institutions Code.

The cases cited in David's opening brief to support his argument regarding jurisdiction, *In re B.T.* (2011) 193 Cal.App.4th 685, *In re James R.* (2011) 176 Cal.App.4th 129, and *In re David M.* (2005) 134 Cal.App.4th 822, differ in one important element from the present case. In those cases, the activities of the parents had not harmed the children and did not threaten them with harm. In this case, however, the children were harmed. They were born with drugs in their systems. David had a history of drug-related criminal convictions, and he had evidently not been tested by the time of the hearing. Paula was denying drug use altogether, positive drug tests notwithstanding, and she also had not complied with the drug testing mandated by her case plan. The court correctly perceived a substantial risk that infant twins would suffer serious physical harm from a parent's failure to adequately protect them. (§ 300, subd. (b).)

## **II. Disposition**

““After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision.” [Citation.] “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent's past conduct as well as present circumstances.” [Citation.] [¶] ““Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child.” [Citations.] ‘Whether the conditions in the home present a risk of harm to the child is a factual issue.’ [Citation.] The court's dispositional finding is also subject to a sufficiency of the evidence standard

of review. [Citation.]” (*In re Lana S, supra*, 207 Cal.App.4th at p. 105; see also § 361, subd. (c)(1).)

“““The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.’ [Citations.]” [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ [Citation.] ‘We have no power to judge the effect or value of the evidence, to weigh the evidence [or] to consider the credibility of witnesses . . . .’ [Citation.]” (*In re Mark L.* (2001) 94 Cal App.4th 573, 580-581.)

The juvenile court had sufficient evidence upon which to base its disposition of the twins: custody with SSA, visitation and family reunification services for David and Paula. The court found that the allegation regarding Paula’s smoking marijuana while pregnant was true, as was David’s inability to “see a problem” with her doing so. His failure to comply with the drug-testing portion of his case plan also weighed against him.

In addition, David’s nonchalant attitude before and after the twins’ birth toward their care and protection strongly suggested a less-than-wholehearted commitment to their welfare. He found nothing amiss about Paula, pregnant with twins, sleeping in the back of a pickup truck in a garage and “didn’t see a problem” with her smoking marijuana while pregnant. While it is true that the twins put in an appearance well before they were expected, they were also in the hospital for at least a month afterwards. During that time, David made no provision for their eventual homecoming. Their placement with Paula’s mother was delayed after they left the hospital – they had to

go to emergency fostering – because her house was not cleaned up enough to receive them. The burden of preparing a suitable home for the twins appears to have fallen largely – if not exclusively – on Paula’s mother. At the hearing, David suggested that the twins could move in with him at his father’s house. He did not pursue this possibility with SSA prior to the hearing, however, and there was no evidence from David’s father – a cancer survivor – that he agreed with this arrangement.<sup>8</sup>

Once again, the cases cited in David’s brief on this subject are inapposite. Once again, there was no evidence in the cited cases of harm to the children involved and thus no grounds to conclude they would be in danger unless they were removed. (See *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171, superseded by statute; *In re Steven W.* (1990) 217 Cal.App.3d 10, 16 [removal based on speculation that mother might engage in future abusive relationship]; *In re W.O.* (1979) 88 Cal.App.3d 906, 910-911 [removal based on “remote possibility” that children would be endangered].)

In this case, the juvenile court had sufficient evidence before it to conclude that David was not prepared to be responsible for the care of two infants, born with drugs in their systems and in need of special care because of their prematurity. The court correctly conferred custody of the twins on SSA and ordered reunification services for David. If David is truly committed to his children, he can demonstrate this commitment by satisfactorily completing his case plan.

---

<sup>8</sup> SSA considered placement with David’s father in mid-September, while it was looking for a home for the twins after they left the hospital. Paula and David insisted that SSA not contact him before they did and later berated SSA for talking to him without their permission. (There was no record of any contact between SSA and David’s father at that time.) Then in October, David’s counsel e-mailed SSA about a possible placement at David’s father’s house, but there the matter rested.

At the hearing, the court wondered aloud why David would agree to a living arrangement before the twin’s birth in which Paula had to sleep in the back of a truck in a garage if his father’s house was available.

**DISPOSITION**

The orders regarding jurisdiction and disposition are affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

RYLAARSDAM, J.