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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.D. et al., Persons Coming Under
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.J. et al.,

Defendants and Appellants.

E078788

(Super. Ct. No. SWJ2100325)

OPINION

APPEAL from the Superior Court of Riverside County. Michael J. Rushton,
Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant, R.J.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and
Appellant, M.D.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Prabhath Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

I.

INTRODUCTION

M.D. (Father) and R.J. (Mother) appeal the juvenile court’s jurisdictional findings as to their minor children, Iza.D. and Izi.D. Father also appeals the juvenile court’s family maintenance case plan ordered for him. We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

In May 23, 2021, the Riverside County Department of Social Services (the Department) received a referral alleging general neglect of Iza.D., then three years old, due to the parents’ domestic violence. On May 21 and 22, law enforcement responded to reports of domestic violence at the parents’ home. Mother called the police on May 21 and reported that “she was pregnant and [Father] was physical with her,” but she locked herself in her vehicle and asked for medical attention. When officers arrived, however, she and Father were uncooperative and said they had only a verbal fight. But when she went to the hospital later that night, Mother said she wanted to press charges against Father.

Mother called the police the following day, stating that that Father had “put his hands on [her] again,” “shoved her,” and was forcibly trying to stop her “from leaving the room.” The officers smelled alcohol on Father’s breath and he was arrested. Mother

wanted to press charges, but she declined an emergency protective order (EPO). The Department learned there had been five prior domestic violence incidents where Mother wanted to prosecute Father or get an EPO against him, but she never followed through.

On May 25, 2021, the Department learned there had been about 10 calls to law enforcement reporting domestic violence between the parents at their home. About a month before, Mother called law enforcement to ask for information on how to get a restraining order against Father. She said Father had been arrested for domestic violence against her in San Diego County, but she did not obtain a restraining order. According to Mother, she noticed “a pattern in [Father’s] behavior when he gets loud, angry, and drinks.”

About a week later, however, Mother told the Department there had only been one incident of domestic violence between her and Father. She said they were attending couples counseling and she did not want to press charges.

Around the same time, Father told the Department that law enforcement had come to the house because his father-in-law has dementia and would call the police. Father denied ever physically abusing Mother, but acknowledged he was arrested on May 22 for domestic violence and had an upcoming court date. He claimed that the incident occurred when he and Mother were arguing and he tried to stop her from leaving. According to Father, Isa.D. was in the house but was asleep in his bed. He explained that he and Mother are in counseling and that he had agreed to stop drinking. He also

reported that he and Mother previously smoked marijuana, but had stopped since she became pregnant.

On June 18, 2021, Mother again told the Department that she and Father had never engaged in domestic violence. About a week later, Mother reported she had not attended therapy in about a month and was not interested in voluntary family maintenance (VFM) services.

The Department filed a petition on Iza.D.'s behalf under Welfare and Institutions Code section 300.¹ The Department offered the parents services, but they declined.

On July 16, 2021, the juvenile court found the Department made a prima facie showing that Iza.D. came within section 300, subdivision (b). The court ordered the family be assessed for VFM services and that the parents refrain from using all intoxicants, including alcohol and marijuana.

A social worker spoke with the family about a week later. Isa.D. reported that he felt safe at home with his parents. Mother said there had only been one domestic violence incident and that she had called the police in the past "due to heightened emotions." Mother said Father had been sober for six months and was regularly attending Alcoholics Anonymous meetings, but he tested positive for marijuana on July 29, 2021. Father attributed the positive test to his father using marijuana around him.

The Department referred the parents to counseling, parenting education classes, and alcohol and drug testing. The parents said they were willing to cooperate with the

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

Department and agreed to complete the services provided. The Department recommended to the court that, although there was sufficient evidence to sustain the petition's allegations, it was appropriate to continue VFM services. Because the parents were willing to complete their agreed-upon case plans, the Department recommended that the juvenile court dismiss the petition without prejudice. The court did so on August 6, 2021.

Two days later, the parents began participating in VFM services, but they enrolled only in individual therapy for a brief period. Mother gave birth to Izz.D in August 2021. On August 24, 2021, because the parents had yet to enroll in the other services they agreed to complete, the Department told the parents they had one week to enroll and asked them to drug test, but they did not do so. The parents also did not respond to the Department's follow-up attempts.

On September 10, 2021, a social worker spoke with the parents. Father said his case plan was "overwhelming" because he was caring for the children and trying to go back to work. He said he tried to register for his domestic violence and parenting classes, but did not have any scheduled yet. The Department again asked them to drug test, but they did not do so.

On September 21, 2021, the social worker again told the parents they needed to drug test, but they did not respond. Father canceled two appointments with the social worker in the following days and said that he and Mother would no longer participate in any services. He and Mother stopped communicating with the Department.

On October 8, 2021, the Department filed a petition under section 300, subdivision (b)(1), on Isa.D. and Izz.D.'s behalf because of the parents' failure to participate in VFM services as agreed. The Department alleged the children were not safe in parents' care due to their ongoing domestic violence, substance abuse of alcohol and/or marijuana, and Mother's inability to protect the children.

A few days later, Mother told the social worker that she and Father would resume VFM services. The social worker explained which services they needed to complete.

On October 14, 2021, the Department asked the parents to drug test. Father failed to drug test and Mother tested positive for marijuana. A few days later, the parents spoke with the social worker. They were meeting the children's needs and denied any further domestic violence. The Department remained concerned that the parents' substance abuse contributed to their domestic issues.

At a hearing on October 25, 2021, the juvenile court did not detain the children on the condition the parents not use controlled substances and submit to on-demand and random drug testing. The court, however, found the Department had made a prima facie showing that the children came within section 300, subdivision (b).

The parents agreed to a case plan that included individual counseling, parenting education, substance abuse services and domestic violence. The parents signed the plan and agreed to its terms.

On December 29, 2021, Mother tested positive for marijuana, but Father tested negative. They denied any further domestic violence, but also stated they did not want to

complete any services, which they thought were unnecessary. At a contested jurisdiction/disposition hearing, the juvenile court did not find the parents' denials of domestic violence credible, and found that they had a "pattern" and "a long history of engaging in domestic violence."

The juvenile court held a contested jurisdiction/disposition hearing in February 2022. After receiving testimony and argument from the parties, the juvenile court found the children came within section 300, subdivision (b)(1), and found true the petition's allegations b-1, b-2, and b-4. The juvenile court adjudged the children dependents of the court and ordered family maintenance services for the parents. The parents timely appealed.

III.

DISCUSSION

A. Jurisdictional Findings

The parents argue insufficient evidence supports juvenile court's three jurisdictional findings. We disagree.

Section 300, subdivision (b), provides that a child is within the juvenile court's jurisdiction if 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 the child's 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 substance abuse. The Department had the burden to show the following three elements by a

preponderance of the evidence: “(1) neglectful conduct, failure, or inability by the parent; (2) causation; and (3) serious physical harm or illness or a substantial risk of serious physical harm or illness.” (*In re L.W.* (2019) 32 Cal.App.5th 840, 848.)

We review a juvenile court’s jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*In re I.J.*)). In making that determination, we draw all reasonable inferences from the evidence to support the juvenile court’s findings and review the record in the light most favorable to the court’s findings. (*Ibid.*) We do not reweigh the evidence or exercise independent judgment but merely determine if the evidence is sufficient to support the juvenile court’s findings. (*Ibid.*) We must uphold a juvenile court’s jurisdictional findings if any substantial evidence, contradicted or not, supports it. (*Ibid.*) The parents have the burden of showing substantial evidence does not support a jurisdictional findings. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

The first challenged jurisdictional finding, b-1, states in full: “The parents place the children at risk of suffering serious physical and emotional harm in that they have failed to participate in pre-placement preventative services, including but not limited to domestic violence, individual counseling, parenting [*sic*] and substance abuse testing. Further, to this date the parents have failed to fully cooperate with the Department.” The second, b-2, states that “[t]he parents have a history of engaging in acts of domestic violence.” And the third, b-4, states that Father “has history of abusing controlled substances, including but not limited to alcohol and marijuana.” We address the b-2 and b-4 allegations first because they inform our analysis of the b-1 allegation.

Substantial evidence supports the juvenile court’s b-2 jurisdictional finding. Law enforcement has responded to repeated reports of domestic violence at the parents’ home. There are at least ten incidents of reported domestic violence between the parents in 2021 alone. After the May 21, 2021 incident, Mother went to the hospital because of the injuries Father inflicted on her while she was pregnant with Iz.D. While there, she said she wanted to press charges. The next day, Mother called the police because Father was abusing her again. Father was arrested, which was his second arrest for domestic violence. As Mother put it, there is a “pattern in [Father’s] behavior when he gets loud, angry, and drinks,” and often ends up abusing Mother. On more than one occasion, Mother has sought information on how to get a restraining order against father because of his abuse.

In determining whether jurisdiction is appropriate, “[t]he question to be asked in such a case is whether, in the absence of the state’s intervention, there is a substantial risk that the child” will be harmed. (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 806.) The recurring cycle of domestic violence between Mother and Father, though it may have paused during the dependency proceedings, provided substantial evidence to support the juvenile court’s b-2 finding that the parents have a history of engaging in domestic violence. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 134; see also *In re Cole L.* (2021) 70 Cal.App.5th 591, 602 [“The court may consider past events in deciding whether a child presently needs the court’s protection.”].) Even if the children were unaware of the domestic violence and were never physically harmed by it, as parents assert, the repeated

domestic violence put the children at substantial risk of harm in the future. (See *id.* at pp. 134-135; see also *In re I.J., supra*, 56 Cal.4th at p. 773 [upholding jurisdictional findings as to father’s three sons based on his sexual abuse of daughter even though sons were unaware of abuse before dependency proceedings].) ““The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.”” (*In re I.J., supra*, at p. 773.) Substantial evidence thus supports the juvenile court’s b-2 jurisdictional finding.

Substantial evidence also supports the juvenile court’s b-4 jurisdictional finding that Father has a history of substance abuse,² including alcohol and marijuana. According to Mother, there is a “pattern” where Father becomes abusive when he drinks alcohol. When law enforcement responded to the family home on May 22, 2021, and arrested Father, the officers smelled alcohol on his breath. Father told the Department that he had “agreed to stop drinking” after this incident, and acknowledged he had been a heavy drinker in the past (but claimed he had been sober for three years). Father also has two DUIs and missed drug tests during the dependency proceedings. From this evidence, the juvenile court reasonably found that Father has a history of abusing alcohol, which placed the children at a substantial risk of harm and, in turn, supported its b-4 jurisdictional finding. (See *In re E.B.* (2010) 184 Cal.App.4th 568, 575 [evidence was

² Father argues the b-4 jurisdictional finding is erroneous because alcohol and marijuana are not “controlled substances” and there is no evidence he used any other substance. We construe the finding’s use of the term “controlled substances” to mean intoxicants, which includes alcohol and marijuana.

sufficient to support jurisdictional finding in part because mother had prior DUI and missed substance abuse tests], disapproved on other grounds by *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1010, fn. 7.)

There is also substantial evidence that Father has a history of abusing marijuana. Father admitted that he used marijuana in the past, although he claimed he had not done so since Mother became pregnant with Izi.D. However, Father tested positive for marijuana during the dependency proceedings in July 2021 and October 2021, and failed to drug test or missed scheduled drug tests after agreeing to do so, and refused to participate in any drug abuse programs. This evidence supports the juvenile court's finding that Father has a history of abusing marijuana.

Given Father's history of abusing alcohol and marijuana, his failed or missed drug tests, and his refusal to enroll in drug abuse services, substantial evidence supports the juvenile court's finding that the b-4 allegation is true. (See *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384 [affirming jurisdiction finding of drug abuse where the mother hid her use of methamphetamine and marijuana, avoided drug tests, and diluted samples]; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218 [affirming jurisdiction finding based on substance abuse where the mother initially denied cocaine use, missed a drug test, and failed to enroll in a substance abuse program].)

The parents challenge the juvenile court's b-1 jurisdictional finding on the ground that their failure to voluntarily participate in services did not place the children at a risk of harm and thus does not provide a basis for jurisdiction. As Mother puts it, the parents'

failure to complete services was “not evidence that domestic violence was likely to recur.” Father similarly argues that neither his failure to participate in the services voluntarily nor his not cooperating the Department is a “neglectful act” that jeopardized the children’s well-being. He also argues there was no evidence he needed to participate in parenting education classes, given that the children were happy, healthy, and taken care of at all times.

Both parents overlook why the services were offered in the first place. The Department offered the services after filing an initial petition, which was prompted by the two May 2021 domestic violence incidents, to remedy the parents’ issues that led to the Department’s involvement and the juvenile court’s jurisdiction. In July 2021, Father agreed to participate in counseling because he acknowledged (at least initially) that it could help him and Mother better understand one another and become better parents, including to their then-unborn son, Izi.D. He acknowledged that he and Mother “need to learn how to deal with each[other]” better. Around the same time, Mother stated she wanted to participate in couple’s counseling. When the parents later signed an agreed-upon case plan, they acknowledged that the “preventative services” were intended to allow the children to safely remain in their care.

In determining whether jurisdiction is appropriate, “[t]he question to be asked in such a case is whether, in the absence of the state’s intervention, there is a substantial risk that the child” will be harmed. (*In re Carlos T.*, *supra*, 174 Cal.App.4th at p. 806.) As outlined above, the juvenile court reasonably found that the parents’ domestic violence

and Father's substance abuse issues placed the children at a substantial risk of harm. The services they were offered were designed to avert harm to the children by ensuring that the parents learned the skills necessary to safely care for their children.

Drawing all inferences in favor of the juvenile court, the court could reasonably find that the parents continued to place the children at a risk of harm by failing to engage in services, because the parents' underlying issues that put the children in harm's way remained unaddressed and unresolved. "A parent's participation in services, whether before jurisdiction and disposition or after, is always voluntary," but "[t]hat's not to say there are no consequences for failing to cooperate in the investigation or participate in services. One consequence is that those failures 'can be used later as evidence in . . . a hearing on a [section 300] petition.'" (*In re E.E.* (2020) 49 Cal.App.5th 195, 209; see also Evid. Code, § 1228.1, subd. (b).) The juvenile court thus properly considered the parents' undisputed failure to participate in services and to cooperate with the Department in sustaining the b-1 jurisdictional finding, which provides the substantial evidence necessary for us to uphold it. We therefore affirm the juvenile court's b-1, b-2, and b-4 jurisdictional findings.

B. Father's Case Plan

Father contends the juvenile court erroneously ordered him to participate in a case plan that included drug testing, domestic violence classes, individual counseling, and parenting classes. We disagree.

A juvenile court has the power to make “any reasonable orders” to the parent of a dependent child, including participation in programs “designed to eliminate those conditions that led to the court’s finding” of jurisdiction. (§ 362, subd. (d).) “The juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) An abuse of discretion occurs when the juvenile court’s order exceeds the bounds of reason. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

We find no abuse of discretion here. The juvenile court had ample reason to order Father to submit to drug testing. Father has a history of substance abuse,³ including alcohol and marijuana. Father has two DUIs. According to Mother, there is a “pattern” where Father becomes abusive when he drinks alcohol. When law enforcement responded to the family home on May 22, 2021, and arrested Father, the officers smelled alcohol on his breath. Father told the Department that he had “agreed to stop drinking” after this incident, and acknowledged he had been a heavy drinker in the past (but claimed he had been sober for three years).

³ Father argues the b-4 jurisdictional finding is erroneous because alcohol and marijuana are not “controlled substances” and there is no evidence he used any other substance. We construe the finding’s use of the term “controlled substances” to mean intoxicants, which includes alcohol and marijuana.

There is also evidence that Father has a history of abusing marijuana. Father admitted that he used marijuana in the past, although he claimed he had not done so since Mother became pregnant with Izi.D. However, Father tested positive for marijuana during the dependency proceedings in July 2021 and October 2021. He also failed to drug test or missed scheduled drug tests after agreeing to do so, and refused to participate in any drug abuse programs. In light of this evidence that indicated Father has substance abuse problems, the juvenile court reasonably found that drug testing was appropriate for him.

As outlined above, the parents have a history of repeated domestic violence, including ten reports to law enforcement about perceived violence in their home in 2021 alone. Father has twice been arrested for domestic violence against Mother. Mother has called law enforcement because of Father's abuse several times and has voiced a desire to press charges or get a restraining order against him, yet she has not followed through. Given the parents' numerous domestic violence incidents, the juvenile court reasonably ordered Father to complete domestic violence classes.

The juvenile court also reasonably ordered Father to participate in counseling and parenting classes. In July 2021, Father agreed to participate in counseling because he acknowledged (at least initially) that it could help him and Mother better understand one another and become better parents, including to their then-unborn son, Izi.D. He acknowledged that he and Mother "need to learn how to deal with each [other]." Around the same time, Mother stated she wanted to participate in couple's counseling.

Thus, the juvenile court rationally found that Father would benefit from counseling and parenting classes. As a result, we conclude the trial court did not abuse its discretion in ordering Father's case plan.

IV.

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.