

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re MARICELA H., a Person Coming
Under the Juvenile Court Law.

B238635
(Los Angeles County Super. Ct.
No. CK90742)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA A.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Marguerite Downing, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

Maria A. (mother) appeals from the judgment of January 4, 2012, declaring her daughter, Maricela, a dependent of the court after finding Maricela was at risk of suffering serious physical harm “as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” under the first jurisdictional prong of Welfare and Institutions Code section 300, subdivision (b).¹ Mother contends substantial evidence does not support jurisdiction because there is no evidence mother was neglectful. We hold the parental conduct to which this jurisdictional provision refers does not require parental neglect and conclude substantial evidence supports the finding. Accordingly, we affirm the judgment.

STATEMENT OF FACTS AND PROCEDURE

Maricela was born in 1995 to mother and C.H. (father).² She lived with mother and her siblings. Mother had a 12-year relationship with father, during which father abused alcohol and hit mother.

Mother had no control over Maricela, who would come and go as she pleased, without telling mother her plans. Mother did not know what Maricela was doing. Maricela associated with “the wrong people,” as she put it, used drugs,³ drank, and fought. She stopped going to school. In 2010, when 15 years old, Maricela gave birth to a child. Her relationship with the baby’s father involved methamphetamine abuse and domestic violence. Mother provided the baby with a home.

Mother tried to control Maricela by talking to her. She enrolled Maricela in an independent study program and kept her at home. However, Maricela frequently ran

¹ Hereinafter, all statutory references will be to the Welfare and Institutions Code.

² The dependency court found that C.H. was Maricela’s presumed father. His whereabouts were unknown, and he did not appear in the proceeding.

³ She abused methamphetamines, ecstasy, marijuana, and cocaine.

away for days at a time and continued engaging in risky, self-destructive behavior. She chased after older men, had unprotected sex, and used drugs and alcohol. Against her better judgment, mother gave permission to Maricela to go out with a girl, and Maricela did not return for two days.

When Maricela left home on September 16, 2011, mother filed a police report and called the Department of Children and Family Services (Department) because Maricela threatened to take the baby from mother's care. The Department detained the baby and offered Maricela a voluntary placement and services plan. Maricela was placed in a group home in Pasadena, was enrolled in school, and agreed to participate in counseling and a substance abuse program.

Maricela stated she wanted to change and follow her program, but she continued abusing drugs, fighting, disregarding rules, and running away. On November 8, 2011, she ran away from the group home to the alleys of Los Angeles after she had assaulted two peers and a teacher.

Maricela was detained on November 9, 2011, and a section 300 petition was filed. Mother denied she was unable to provide parental care and supervision. She did not believe that father getting drunk and hitting her was abuse.

Maricela's behavior improved in the group home. She complied with the rules of her school and the group home, was sober, and did not get into fights.

On January 4, 2012, Maricela was declared a dependent of the court based on sustained allegations under section 300, subdivision (b) that she was at risk of suffering serious physical harm or illness as a result of mother's failure or inability to supervise or protect her adequately. The dependency court found, "this is a case in which it's clear that [mother] is unable to provide care for this child, not just based on her chronic run away behavior, but because for whatever reason she is unable to control, motivate and get her daughter to do things she needed to do, which I consider to be appropriate parental

care.” Custody was taken from mother, reunification services were ordered,⁴ and unmonitored visits were granted.

DISCUSSION

Mother contends substantial evidence does not support the finding Maricela was a child described by section 300, subdivision (b). We disagree with the contention.

“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. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Section 300.2 provides in pertinent part: “[T]he purpose of the [juvenile court law] relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child.” (See *In re Ethan C.* (2012) 54 Cal.4th 610, 623-624; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228 [“The overarching goal of dependency proceedings is to safeguard the welfare of California’s children.”].)

⁴ Mother was ordered to participate in a parenting program and conjoint counseling.

Section 300 provides in pertinent part: “Any 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 the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, 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”

The record contains substantial evidence of the first prong for jurisdiction under section 300, subdivision (b): 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.” Maricela engaged in dangerous behaviors that threatened her life, health, and welfare. Mother knew Maricela was running away but failed to recognize Maricela’s other problems. When mother learned Maricela engaged in dangerous behaviors, her responses were ineffectual. The foregoing is substantial evidence that Maricela was at substantial risk of harm as a result of mother’s inability to adequately supervise or protect her.

Mother contends jurisdiction does not lie because there is no evidence she did anything wrong—she was not negligent or abusive. We disagree with the premise of the argument. Parental fault is not required to establish dependency jurisdiction to protect a child who is at substantial risk of serious harm as a result of a parent’s failure or inability to supervise or protect.

“When construing a statute, we look first to its words, “because they generally provide the most reliable indicator of legislative intent.” [Citation.] We give the words their usual and ordinary meaning [citation], while construing them in light of the statute as a whole and the statute’s purpose [citation].’ (*Pineda v. Williams-Sonoma Stores, Inc.*

(2011) 51 Cal.4th 524, 529-530.) “If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.”

[Citation.] “Only when the statute’s language is ambiguous or susceptible of more than one reasonable interpretation, may the court turn to extrinsic aids to assist in interpretation.” [Citation.]’ (*Id.* at p. 530.)” (*In re Ethan C.*, *supra*, 54 Cal.4th at p. 627.)

As the language of the first prong of section 300, subdivision (b) is unambiguous, its plain meaning governs. The provision’s only requirement concerning parental conduct is that the parent failed or was unable to adequately supervise or protect the child. The application of the provision is not limited to cases where the parent’s failure or inability is the product of parental negligence or misconduct. (See *In re Ethan C.*, *supra*, 54 Cal.4th at pp. 617-618, 629 [the term “neglect” in § 300, subd. (f) was unambiguous and was not limited to criminal negligence].)

Giving the words their plain meaning is consistent with the statute’s purpose, which is to provide maximum protection for children who are at risk of harm. (§ 300.2; *In re Ethan C.*, *supra*, 54 Cal.4th at pp. 623-624; *In re Nolan W.*, *supra*, 45 Cal.4th at p. 1228.) Dependency jurisdiction is not about fault. (E.g., *In re Vonda M.* (1987) 190 Cal.App.3d 753, 757 [“the imposition of juvenile dependency jurisdiction must depend on the welfare of the child, not the fault or lack of fault of the parents”].) It is about the dependency court stepping in to protect children who are in need of protection from specified risks of harm. (*In re Nolan W.*, *supra*, at p. 1233 [the “juvenile court intervenes to protect a child, not to punish the parent”]; see also *In re Malinda S.* (1990) 51 Cal.3d 368, 384-385 [“Dependency proceedings are civil in nature, designed not to prosecute a parent, but to protect the child. . . .”].)

Construing the language in light of section 300 as a whole supports the construction giving the words their plain meaning. “When language is included in one portion of a statute, its omission from a different portion addressing a similar subject suggests that the omission was purposeful.” (*In re Ethan C.*, *supra*, 54 Cal.4th at p. 638.) Some provisions of section 300 plainly require parental negligence or misconduct but others do not. Parental misconduct is required, for example, in section 300, subdivisions

(a) (“nonaccidental[]” infliction of harm), (f) (another child’s death was caused by parental “abuse or neglect”), and two of the prongs of jurisdiction under section 300, subdivision (b) (“willful or negligent failure” to protect the child from the conduct of the child’s custodian or to provide the child with adequate necessities). On the other hand, one prong of subdivision (c) (child is suffering or at risk of suffering emotional harm where the parent is not “capable of providing appropriate care”) does not require parental fault. (See *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329 [jurisdiction under § 300, subd. (c) may be found when the child’s emotional damage is “‘due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment. . . .’ [Citation.]”].) As the first jurisdictional prong of section 300, subdivision (b) by its terms does not include a requirement of parental fault, but other provisions of section 300 do, it is reasonable to infer the Legislature did not intend to include a fault requirement. (See *In re Ethan C.*, *supra*, 54 Cal.4th at p. 638.)

To the extent the Court of Appeal in *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1260-1261 (*Precious D.*) held federal due process demands that a requirement of parental unfitness or neglectful conduct must be engrafted on the plain language of the statute, depriving the court of power to protect children unless the parent who failed or was unable to supervise or protect the child was also unfit or neglectful, we respectfully disagree, as the court relied on cases concerning terminating parental rights.⁵ (See *ibid.*, citing *In re A.S.* (2009) 180 Cal.App.4th 351 [termination of parental rights]; *In re Meranda P.* (1997) 56 Cal.App.4th 1143 [termination of parental rights]; *In re Dakota H.* (2005) 132 Cal.App.4th 212 [termination of parental rights].) Termination of parental rights is “‘a drastic remedy which should be resorted to only in extreme cases of neglect or abandonment.’ [Citations.]” (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 489) “[P]arental unfitness and detriment [are] required before the court may even consider ending the relationship between natural parent and child.” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256.) In contrast to the extreme and final measure of terminating

⁵ No petition for review was filed in *Precious D.*

parental rights, a finding a child comes within the jurisdiction of the dependency court is the initial finding in a dependency case. “The juvenile court takes a first, and preliminary, step in its protective duties by adjudging a minor to be a dependent of the court.” (*In re Ethan C.*, *supra*, 54 Cal.4th at p. 624.) “A dependency adjudication is a preliminary step that allows the juvenile court, within specified limits, to assert supervision over the endangered child’s care. But it is merely a first step, and the system includes many subsequent safeguards to ensure that parental rights and authority will be restricted only to the extent necessary for the child’s safety and welfare.” (*Id.* at p. 617.) “Even after a dependency finding has been made, the statutory scheme is designed to allow retention of parental rights to the greatest degree consistent with the child’s safety and welfare, and to return full custody and control to the parents or guardians if, and as soon as, the circumstances warrant.” (*Id.* at p. 625.) Due process is not violated by a jurisdictional finding that “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,” without limiting such jurisdiction to cases of parental fault. (See § 300, subd. (b).)

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

I concur:

TURNER, P. J.

ARMSTRONG, J.
B238635 – *In re Maricela H.; DCFS v. Maria A.*

I respectfully dissent.

I believe that reversal is required even under the majority's interpretation of section 300, subdivision (b).

That statute provides that a child may be made a dependent child only when he or she has been harmed, or is at risk of harm, "as a result" of the parent's failure or inability to supervise or protect. Maricela ran away, took drugs, and did other dangerous things. She was at risk of harm, but nothing in the evidence offered by DCFS, which bore the burden of proof, identifies anything that Mother did, or failed to do, which caused or contributed to Maricela's problems, or anything Mother could have done differently to prevent those problems. There is no evidence that the risk to Maricela was "as a result" of any failure or inability of Mother's.

These are the relevant facts: As of the time DCFS became involved with this family, Maricela used drugs and alcohol, did not go to school, and sometimes disappeared for days at a time without telling Mother where she was going. This conduct had been going on for about a year. Maricela said that she and her mother had once had a good relationship, but no longer did, because Mother wanted to tell her what to do.

Mother tried to get Maricela help through her school, but the school could not provide services. Mother took Maricela out of school and put her into independent study to keep her away from her friends. Mother contacted law enforcement when Maricela ran away, and called DCFS when Maricela threatened to take her son.¹ Thus, Mother made intelligent efforts to help her daughter. What more could she -- or any parent -- do?

The scenario is all too familiar: an out of control teenager, a paucity of resources available to a parent trying to help. When DCFS offered services, Mother agreed, which is in my view another example of Mother acting (not failing to act) to protect Maricela.

¹ The majority points out that Mother made a mistake -- she allowed Maricela to go off with a friend. I would add that, given that she is a parent, she, like all parents, probably made more than one mistake.

Maricela's risky behavior continued -- indeed, escalated -- while she was in placement, under the care of professionals who are experts at the supervision and protection of children, whom no one could accuse of failure or inability to supervise or protect. It was *that* behavior which caused DCFS to file the section 300 petition -- which did not allege that Mother's inability to supervise, or failure to supervise, caused Maricela's risky behavior, but instead alleged that Mother's inability to provide supervision was "due to the child's chronic runaway behavior." The allegation leaves the statutory "as result of" requirement clean out of the equation.

Maricela's own explanation for her behavior was that she herself had made bad choices, and that she herself bore responsibility for her actions. In November, when she was asked whether issues at home caused her to act out by using drugs and running away, Maricela said: "No. It wasn't what was going on at home. My mom is a good mom. . . . I was hanging out with the wrong people. I was drinking and leaving my house. I was leaving my son with my mom and running away. . . . My mom is supportive and she is good. I want to return to my mom's house. I was in jail one night, because I hit a teacher. I'm on probation now. I don't want to go back to jail. I'm doing my programs and going to school. . . . I'm sober and clean for two weeks now. I learned from my experiences."

Maricela was willing to face her problems and her responsibility for them. She did not blame her mother, and I cannot see that an official declaration that her misbehavior is her mother's fault will be productive for Maricela.

I note, too, that Mother took care of Maricela's baby son, before DCFS became involved, and after, with DCFS's blessing. Indeed, about the same time that DCFS filed this petition, it was helping Mother obtain letters of guardianship for Maricela's son. DCFS had no concerns about Mother's other children, three daughters younger than Maricela. Yet, the sustained findings in this petition could cause no end of mischief for her future with those children.

When the juvenile court sustained the petition, it found that "it's clear that with services, Maricela can do better." That might be true, but section 300, subdivision (b) does not speak to children who can do better with services. The juvenile court was no doubt well-intentioned, but good intentions cannot substitute for compliance with the statute.

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ARMSTRONG, J.