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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re JOSEPH M. et al., Persons Coming
Under the Juvenile Court Law.

B257687
(Los Angeles County
Super. Ct. No. DK04650)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LISA M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Julie Blackshaw, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

Lisa M. (Mother) appeals from the juvenile court's dispositional order requiring her to attend individual counseling. No other issues are raised in this appeal. Mother contends that she is a non-offending parent who did not abuse her children, fail to protect them or engage in any other inappropriate behavior and the evidence did not support the requirement that she attend individual counseling. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 21, 2014, the Los Angeles Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition (hereafter Petition) on behalf of Joseph and Robin, who were at the time eight years old and seven years old, respectively. The Petition alleged that Joseph M., Sr. (Father)¹ physically abused Joseph on a prior occasion when Father kicked Joseph, that Father endangered the children by driving with them while under the influence of alcohol, Father had a history of substance abuse and was a current abuser of marijuana and alcohol, Father possessed illicit drugs in the home and kept them within reach of the children and exposed the children to illicit drug trafficking, and Father allowed the children to have contact with his girlfriend, Sandra, when she was under the influence of alcohol in the children's home. Mother was not named as an offending parent in the Petition.

Also on April 21, 2014, DCFS filed a Detention Report stating that it received a report on March 26, 2014, that Joseph disclosed a fear of visiting Father as Father was always angry and yelled at him when he visits, including cursing at Joseph and threatening to "kick [his] ass." In addition, Joseph stated that he would rather visit "heaven" than visit his father. According to the reporter, Joseph stated that at his last visit with Father on March 19, 2014, Father pushed and kicked Joseph. Joseph indicated that Father consumes alcohol on a regular basis and drives Joseph while under the influence of alcohol. Joseph also reported that he does not wear a seat belt when riding in

¹ Father is not a party to this appeal.

Father's car because there were a lot of people in the car. Joseph also told the reporter that Father "kicks him out of the home because the father has a female partner" and Joseph had seen Father and the female partner partially dressed sometimes on top of each other. Joseph stated that he and Robin visited Father on Wednesday nights and every other weekend.

The Detention Report indicated that on March 26, 2014, a DCFS social worker interviewed Joseph and Robin separately at school. Joseph stated that he lived with his Mother, uncles, sibling and grandmother and Father lived separately with his girlfriend and two other children. Joseph and Robin said they did not like visiting Father's house. Joseph explained that Father was mean to him and did not feed them when they got home from school, would only feed them at night, and wanted him to eat food he did not like. Robin told the social worker that Father made them eat food they did not like, sometimes yelled at them or said "mean" things.

Joseph and Robin stated that Father and Sandra drank a lot and always go to parties, bringing Joseph and Robin with them. Joseph knew that they got drunk because their "breath smells weird and they look dizzy" and Robin described them as acting "silly" and looking like they might fall. Joseph reported that when Father was drunk, he "yells and scares me." Both Joseph and Robin also reported that Father drives drunk—with Robin stating that when Father is drunk he drives "very fast" and with Joseph stating that Father would drive the car "weird," turn fast, run red lights, and cause a lot of other cars to honk at him. Both Joseph and Robin reported that they did not wear seat belts when riding in Father's car because there were not enough seat belts as Sandra's two children were also in the car and using the seat belts or restraints. Joseph and Robin both expressed fear that Father was going to crash and that Sandra is also in the car with Father but does not tell him anything. Joseph said he told Mother that father drives drunk and Mother cried. Joseph also told the social worker that at pick up the week earlier Mother did not allow Joseph and Robin to go with Father because "he was already drinking in the car."

According to the Detention Report, Joseph and Robin also told the DCFS social worker that Father sold drugs. Joseph stated that he saw little baggies with “zippies” and that a lot of people would come to Father’s house to pick up the baggies and exchange money. Joseph reported hearing Father tell Sandra to “[g]et the powder.” Robin told the social worker that Father had drugs in his home describing “little baggies with powder that looks like baby powder,” and that people came to Father’s home and Father “I guess he sells it to them because they give him money.” Robin indicated that Father kept the drugs in a cabinet on top of the sink that she could reach if she climbed on top of a chair.²

Both Robin and Joseph denied any abuse in Mother’s home and reported being fearful of Father.

The Detention Report also indicated that the social worker met maternal grandmother (MGM) who was dropping off Joseph and Robin’s overnight bag at school for their scheduled visit with Father and MGM told the social worker that Father was parked at the school waiting for the children. The social worker spoke to Father who agreed to cooperate and have the children go home with Mother due to investigation. Father agreed to be interviewed later that day.

The social worker then spoke to Mother who was also at the school. Mother told the social worker that she separated from Father about four years ago, there was previously domestic violence between them with the children present, that father was arrested on two occasions, Mother had a restraining order against Father that was no longer valid, Mother had completed a domestic violence program two years ago, and there was no current domestic violence and Mother had minimal contact with Father as MGM handled the exchange of the children.

Mother reported that Father started having visits with Joseph and Robin about a year ago and the children told her that they did not want to visit Father. Mother was

² Joseph also reported seeing Father on top of Sandra in the living room and they would make the children go outside for about 30 minutes, sometimes at night and sometimes during the day. Joseph said he did not know what they did but heard Father tell Sandra, “Babe rub my balls.”

aware the children did not want to visit Father, but said they had to go because of a court order. Mother stated that the children had not told her that Father sold drugs or used drugs in the home, but that the children had told her that Father drives intoxicated with them and last week she did not allow Father to take the children because he looked intoxicated. Mother knew that Father had a history of marijuana use and driving while intoxicated when they were dating and had sold drugs when he was a minor. Mother was concerned that Father did not feed the children food they want so sometimes they did not eat. Mother stated that the children had not told her that Father sold drugs or used drugs in the home, but that the children had told her that Father drives intoxicated with them and last week she did not allow Father to take the children because he looked intoxicated.

Mother stated that Joseph and Robin had begun counseling and had missed a lot of school because they were sick but were now attending regularly. Mother reported that she lives with MGM but because of renovations were temporarily living with maternal grandfather³ (MGF). Mother had two other children from different fathers.

The Detention Report also indicated that the social worker interviewed MGM who reported that Joseph and Robin would always cry when they had to go to Father's home. MGM stated that the children told her that Father drove while intoxicated. MGM had observed Father under the influence, smelling of marijuana. MGM stated that Father was not drunk but might have been drinking prior to picking up the children. MGM reported that she told Mother after the children had left with Father. Mother responded that MGM should not have allowed the children to leave with Father. MGM knew that Father was aggressive and had been violent to Mother in the past.

Later on March 26, 2014, the social worker interviewed Father at his home. Father denied dealing drugs and, although he admitted smoking marijuana, denied having done so in the presence of his children. Father also denied caring for his children while under the influence, being drunk in the presence of his children or being belligerent or falling. Rather, he admitted to drinking a couple beers at family parties where other

³ Although the Detention Report initially refers to Mother's temporary home as a paternal grandfather's home, later it refers to the home as belonging to MGF.

family members are watching the children and claimed that he waits a few hours and eats after drinking before driving his children. Father denied speeding or running red lights when he drove. He denied that he yelled at the children, stating that he had a loud voice when disciplining his children. Father also denied hitting or kicking the children. Father stated that Robin and Joseph were picky eaters and only wanted food from fast food restaurants but that he told them they had to eat what they were served. Father denied domestic violence with Sandra and admitted past domestic violence with Mother. Father denied inappropriate behavior with Sandra in front of the children. Father agreed to drug and alcohol testing. In terms of drug testing, both Mother and Father missed their initial testing dates due to work. Father tested positive for Cannabinoids only on March 31, 2014. Mother was a “no show” on April 8, 2014.

According to the Detention Report, on March 27, 2014, Sandra called the social worker to report that she and her children had moved out of Father’s home because Mother was causing trouble. When interviewed individually, Sandra and one of Sandra’s children similarly denied Robin and Joseph’s allegations about Sandra and Father’s behavior. Sandra also reported that she believed Mother was coaching Robin and Joseph to make false allegations because Father had told Mother he would take her to court for full custody because Mother was not taking the children to school. Sandra reported that Mother’s home was filthy, had broken windows, and stray dogs going in and out and that Mother was lying about her home being renovated.

In a follow up interview with Father, Father reported that he was unaware Mother was not taking Robin and Joseph to school until the school notified him two weeks earlier. The children were then referred to counseling and Mother and Father were asked to complete a parenting program.⁴ Father stated that Mother’s home is inappropriate for

⁴ According to the Detention Report, documents show that Mother refused to sign the contract by the School Attendance Review Team. An attendance printout provided by Father showed that as of March 12, 2014, Robin had 25 absences and 17 tardies for the school year (with 10 excused absences) and Joseph had 24 absences and 25 tardies (with two excused absences).

children and she was using a relative's address because her home was filthy and unsanitary.

The social worker made an unannounced visit to Mother's home with MGM on April 16, 2014, and was refused entry by MGM who stated that the house was a mess due to renovations. The social worker noted clutter outside the home and the smell of urine coming from outside the home.

On April 17, 2014, Mother reported that she and the children would reside permanently -- rather than temporarily -- with MGM. Mother denied that MGM's home was unsanitary, but admitted there were one to five broken windows due to the children accidentally breaking them with balls.

According to the Detention Report, there was a prior referral on the family in 2010, alleging daily domestic violence by Father against Mother and children which Mother and Father denied although they admitted to a domestic violence incident in 2007. Allegations of general neglect were found to be substantiated as the home was filthy and had broken windows. Mother repaired and de-cluttered the home and enrolled in parenting education and the referral was closed.

Father had two arrests for misdemeanor infliction of corporal injury on a spouse, one in 2007 and the other in 2009. Mother had a conviction for driving without a license in 2011.

In an Addendum Report dated April 21, 2014, DCFS recommended the children remain in the care of Mother and be detained from Father with monitored visits for Father. DCFS also recommended for both Mother and Father to participate in individual/family counseling and parenting classes as well as for Father to participate in anger management counseling and substance abuse rehabilitation program and submit to random drug testing.

In a June 11, 2014 Jurisdiction/Disposition Report, DCFS reported that Mother failed to protect the children when she allowed Father to drive the children despite the children disclosing that he did not properly restrain the children in the vehicle and drove at excessive speeds and under the influence. Mother reported that the children would

become nervous on Tuesday nights because they knew Father would pick them up on Wednesday and Mother would keep them home because they were not feeling well and she felt sorry for them because they were nervous. The Jurisdiction/Disposition Report noted that the children had an excessive amount of absences and stated that Mother was responsible for taking the children to school and “failed to take the appropriate measures to protect her children and failed to properly address the children’s fears.” Mother reportedly recognized “that it was a mistake to allow the children to miss school excessively” and “that her fear of [Father] prevented her from making the right decisions regarding her children.” Mother was quoted as saying “I don’t know why after all this time I’m still afraid of [Father].”

The Jurisdiction/Disposition Report recommended that the Petition be sustained and that Mother be ordered to “participate in a parenting program, individual counseling to address case issues and her fear of [Father] and participate in the family preservation program if available to her.”⁵

On June 24, 2014, Father filed a waiver of rights and plead no contest and at the June 25, 2014 adjudication hearing,⁶ the juvenile court, pursuant to an agreement with Father, sustained a modified section 300 petition with a single allegation that “Father has a substance abuse history that affects his parenting. Father’s erratic driving places the children at substantial risk of physical harm.”

The juvenile court then proceeded to disposition and noted that Father had signed the case plan. Mother, however, had not signed the case plan and DCFS’s counsel stated that Mother did not agree to some of the terms. Mother’s counsel asked the juvenile court not to order individual counseling, arguing that the reason DCFS recommended individual counseling was for Mother to address her fear of Father but that they had been separated for over five years and it was not in Mother’s or children’s best interest to ask

⁵ DCFS also recommended services for Father and children.

⁶ The Detention and Jurisdiction/Reports were entered into evidence at the hearing.

Mother “to go back and deal with that when they are not in an ongoing relationship,” noting that the exchange of children had been happening “without any issues and without really a need for the parties to communicate.” Mother’s counsel stated that Mother was willing to participate in a parenting class and noted that DCFS did not file any allegations against Mother based on failure to protect and she had not interfered with visitations until the children made disclosures. Mother’s counsel argued that telling Mother she needed to “co-parent with someone who was the perpetrator of domestic violence long ago” after an extended break was not in the children’s best interest and “kind of puts their mother back to square one.” Finally, Mother’s counsel noted that the children’s best interests had been addressed in the family law order.

The juvenile court stated that the parents “do need to learn to co-parent” regardless of history and thought that “each parent could use some guidance in that.” The court noted that Robin and Joseph were “pretty troubled” and that, “in order to understand their issues and appropriately respond and support them, I think that individual counseling would be helpful in this case.” The court then ordered individual counseling for Mother.

Mother timely appealed.

DISCUSSION

Mother’s sole contention on appeal is that the juvenile court lacked sufficient evidence to support its order requiring her to attend individual counseling. We disagree and affirm.

Under Welfare and Institutions Code section 362, subdivision (a), when a child is adjudicated a dependent of the juvenile court, “the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” Subdivision (c) provides that when a parent retains custody of a dependent child, “the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.” Subdivision (d) in turn provides that the juvenile court “may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the

court deems necessary and proper to carry out this section” Subdivision (d) further provides that “[t]hat order may include a direction to participate in a counseling or education program” and that “[t]he program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” Finally, subdivision (e) provides that if a child is adjudged a dependent child, the juvenile court “may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter to ensure the child’s regular school attendance”

In reviewing a juvenile court’s disposition orders “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.) “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.)

“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.) Moreover, the problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. (See *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1008; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [“A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established”].)

We find no abuse of discretion in requiring Mother to participate in individual counseling. Although Mother argues that she and Father had been separated over five years and had been exchanging the children without any issues, the record shows that

Joseph and Robin missed a significant amount of school because Mother would allow them to stay home on days they were to visit Father. Robin and Joseph expressed fear of Father exacerbated by his substance abuse. Mother was aware that Father had a history of driving while intoxicated and she had been told by Robin and Joseph that Father drove them while intoxicated. Mother, herself a victim of domestic violence by Father, expressed continued fear of Father and acknowledged “that her fear of [Father] prevented her from making the right decisions regarding her children.”

Thus this case is distinguishable from *In re Jasmine C.* (2003) 106 Cal.App.4th 177 and *In re Basilio T.* (1992) 4 Cal.App.4th 155 relied upon by Mother. In *In re Jasmine*, three siblings were declared dependents based on a single incidence of violence by father during which mother appropriately intervened, cooled tempers, restrained father, and directed the police to be called, but both the mother and father were ordered to attend parenting education classes. (106 Cal.App.4th at p. 178.) Division Eight of this Court reversed, noting that there was no evidence supporting the conclusion that mother needed a parenting class or could not be an effective single parent without a class. (*Id.* at pp. 181-182.) In *In re Basilio T.*, two siblings were declared dependants based on domestic violence between mother and father. (4 Cal.App.4th at p. 160.) The juvenile court ordered substance abuse components to the reunification plan based on mother’s unusual behavior and obsession with a money-making invention but the Court of Appeal noted that mother’s counsel showed that there was in fact an invention with money-making potential and her behavior itself did not support “a conclusion that she had a substance abuse problem.” (*Id.* at pp. 172-173.) In contrast, here there was evidence including Mother’s own statements admitting that she was not making the “right decisions” for her children because of her continued fear of Father. In this context, it was not an abuse of discretion for the juvenile court to order Mother to attend individual counseling in addition to the parenting class.

DISPOSITION

The juvenile court's disposition order is affirmed.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.