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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.P., a Person Coming Under the Juvenile Court Law. B294967

(Los Angeles County Super. Ct. No. 18CCJP01865A)

LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES.

Plaintiff and Respondent,

v.

JACQUES P.,

Defendant and Appellant.

Counsel, for Plaintiff and Respondent.

APPEAL from an order of the Superior Court of Los
Angeles County. Nichelle L. Blackwell, Commissioner. Affirmed.
Law Offices of Vincent W. Davis & Associates, Vincent W.
Davis and Stephanie M. Davis for Defendant and Appellant.
Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Kimberly Roura, Deputy County

In this juvenile dependency case, Jacques P. (Father) challenges the juvenile court's December 4, 2018 disposition order removing his five-year-old son, J.P., from Father's custody pursuant to Welfare and Institutions Code section 361, subdivision (c). Father argues substantial evidence does not support the juvenile court's order. We disagree and affirm.

BACKGROUND

1. The Family

On February 6, 2018, the Los Angeles County Department of Children and Family Services (Department) received a referral alleging physical abuse by Rosa (Mother) toward her child, thenfive year old J.P. The referral alleged that on February 4, 2018, while J.P. was visiting Mother, she had grabbed his shirt from behind, choking the child and leaving red marks on his neck. The caller reported Mother had a history of physically abusing J.P., and Father suspected Mother had untreated mental health issues.

Under a family law order in effect at the time, the parents had joint custody of J.P. The child's physical residence was with Father, and Mother had visitation every other weekend from Friday afternoon to Sunday evening and after school for two and a half hours once or twice a week.

2. The March 20, 2018 Detention Report a. J.P.

During an interview with the social worker, J.P. said, "'mommy choked me'" when he was at her home over the

¹ Undesignated statutory references are to the Welfare and Institutions Code.

weekend. J.P. explained that when he refused to change his shirt his mother became angry, pulled his shirt by the neck, and twisted it sideways. Mother then said, "'let me change your shirt or else I'll choke you again.'" J.P. also reported that his mother had kicked him on his bottom one time over the weekend. On another occasion Mother had pulled his hair and once she put her "'claws'" in his face and shoved him onto the bed. J.P. said he felt "'scared'" of his mother because "'she might do it again.'" J.P. volunteered that his father's home felt like "heaven" because his dad never hurts him. His mother, on the other hand, "'hurts him'" and yells at him, and her "home felt like 'hell.'"

The social worker observed that J.P. did not appear to be in any emotional distress when he described how his mother had hurt him. He did not cry or display any symptoms of anxiety, irritation or anger in relating instances of physical punishment by his mother.

J.P.'s therapist, Annie Miller, a licensed marriage and family therapist, reported that J.P. had an anxious attachment to Father, which was manifested by J.P. not wanting his father to leave the room during therapy. Miller diagnosed the child with Child Affected by Parental Relationship Distress. When J.P. told the therapist that his mother had choked him and kicked him on the bottom, Miller asked him why he had waited to tell her about these incidents. J.P. responded that he "forgot." In another session two weeks later, J.P. did not want his father to leave the room. Two minutes before the end of the session J.P. blurted out, "Mom strangled me," and looked at Father as Miller inquired further. Noting that "a child [J.P.]'s age should not be familiar with the word 'strangle,' "Miller observed that J.P.'s disclosures

about his mother "'felt rehearsed,' " and he never appeared distressed when he made them.

b. Father

Father told the social worker that he and Mother had lived together for a year during their two-year relationship. After J.P. was born, Father did most of the parenting because Mother was depressed and mentally unstable. According to Father, Mother refused to bathe the baby or change his diapers, and she was easily irritated by behavior typical of a one and a half year old, to which she responded by screaming at the child.

Father told the social worker that in 2013 Mother ran away with J.P. to a domestic violence shelter and made false accusations of domestic violence against Father. A family law judge ordered her out of the shelter and granted Father full physical custody of J.P. with visitation to Mother one day during the week and every other weekend.

On February 4, 2018, when he picked J.P. up from his weekend visit with Mother, Father overheard J.P. tell his half sister over the phone that Mother had pulled his shirt from behind causing J.P. to choke. Father reported that J.P. then began to complain of neck pain, and Father noticed a mark on the right side of his neck. Father took J.P. to the doctor to document the incident and to the police to file a report. He told the social worker he did not intend to allow J.P. to have his next scheduled visit with his mother and he planned to seek to stop visitation altogether while he pursued a restraining order against Mother.

The family court denied Father's requested temporary restraining order against Mother, but set a new visitation schedule and ordered that Mother's visits with J.P. take place in public places to avoid further accusations of abuse. Although

Father was supposed to drop J.P. off with his mother and leave peacefully, he would instead tell the manager of the location of the visit about Mother's "situation" and warn the manager not to allow Mother to take the child off the premises. This took place in front of J.P.

c. Mother

Mother reported that Father had made numerous false accusations that she physically abused J.P. Two of those accusations resulted in referrals to the Department, which were deemed to be unfounded. One referral concerned Father's allegation that Mother put her fingernails in J.P.'s face and forcefully pushed him into a pillow on the bed when he would not go to sleep. The investigating social worker stated that "it appears reports are being made against mother because there is a custody issue between the parents." During the investigation the social worker learned that Father and his fiancée wanted to relocate and take J.P. with them but could not do so because Mother shared joint custody. When J.P. was first interviewed in Father's home, he confirmed the general allegation in the referral, but the social worker noted that "it seemed like [J.P.] was told what to say." When J.P. was interviewed again, this time in the mother's home, J.P. said "his father tells him to say things about his mother." The social worker noted that both Father and his fiancée spoke negatively of Mother, while she did not speak negatively of them.

Mother told the social worker that J.P. had started having behavioral issues on recent visits with her, including mocking her and running away when told not to do something. However, she denied ever choking J.P. or attempting to do so. Mother explained that on February 4, 2018, J.P. was in the backseat of her car as they drove to a restaurant. She was forced to brake suddenly, and J.P. got a mark on his neck from the seatbelt.

Mother reported Father began abusing her emotionally, financially, and mentally when she was pregnant. Eventually she fled to a domestic violence shelter. Claiming Mother was a "flight risk," Father obtained physical custody of J.P. Father then gave J.P. a GPS tracking watch to wear when he visited Mother. When this came to the attention of the family court, the judge ordered that Father stop tracking Mother and that J.P. not wear the watch on visits with Mother.

d. J.P.'s appointed counsel in the family law case

By February 2018 Alexandra Mells had been representing J.P. as appointed counsel in this "very high conflict" family law case for two to three years. Mells reported "some concerns regarding the father," noting that the family law judge has commented that Father is extremely aggressive and there is no evidence to prove Father's accusations against Mother.

e. Conclusions and Recommendations

The Department's investigation revealed that J.P. was being coached by his father to falsely report physical abuse by Mother. Many of J.P.'s statements—"'I don't want overnight visits . . . I don't like Paloma [Mother's adult daughter] . . . I want to live with father and be happy.' 'I'm not Mexica[n], I am Armenian . . . strangled'"—were not typical of a five year old child. Accordingly, the social worker concluded that Father was alienating J.P. from Mother by preventing him from having a positive and secure attachment relationship with her; J.P. was now refusing to have contact with Mother and had started exhibiting an anxious attachment to Father.

3. The Detention Hearing

The Department filed a section 300 petition on March 22, 2018, alleging serious emotional damage to J.P. by both parents under subdivision (c)(1). The petition specifically alleged that the ongoing custody dispute over the child "has resulted in the father making numerous accusations that the mother is physically abusing and neglecting the child."

On the second day of the detention hearing on March 26, 2018, the court ordered J.P. detained from Father and released to Mother. The court declared it detrimental to the child to be "emotionally embroiled" in the parents' custody battle. Based on the detention report, the court found that "the bulk of the reasons for this emotional embroilment is Father's conduct." The court stated, "[I] was able to observe with my own eyes the level of emotional embroilment with the child where it was difficult to have the child comply with the court's order to be released to the mother." The court added that Father had brought a dog to court, which created "a very difficult moment." Although Father claimed it was a therapy dog, it was not a therapy dog, but in fact belonged to Father's fiancée.

The court ordered J.P. to continue individual counseling outside the parents' presence, Mother and Father to participate in conjoint parental counseling, Mother and J.P. to participate in parent-child interaction therapy, and Father to participate in individual therapy. The court further ordered monitored visits for Father in a therapeutic setting.

Emphasizing that J.P. needed "the opportunity to emotionally and psychologically bond with both parents without any influence or coaching from one parent against the other," the court ordered "both parents . . . not to make any disparaging

remarks to [J.P.] with one another, and not to engage in any form of coaching or coaxing or getting him to side with one side or the other."

- 4. The Jurisdiction/Disposition Report and Last Minute Information Reports
- J.P. was interviewed in his mother's home on April 16, 2018. Although he did not display any symptoms of anxiety and generally appeared calm and comfortable in Mother's home, J.P. stated that he hated Mother and was not happy living with her. He wanted to live with his father. J.P. said his mother always screamed at him and was a liar. He called Mother the "queen of lies," and said he did not trust her. While Mother was being interviewed in the kitchen, J.P. screamed from the living room that Mother "'is lying, do not believe her, she is a liar, liar.'"
- J.P. told his therapist he did not love his mother, whom he described as "'evil.'" He stated that "he likes to make his mom mad," and he continued to be angry with her.

Mother stated that she wanted J.P. to have a healthy relationship with both of his parents and was looking forward to parent-child interaction therapy with J.P. to improve their relationship. Although Mother said she was willing to have coparenting sessions with Father, he had refused to go.

Father denied the allegations in the petition and gave his version of events, insisting that he had simply taken appropriate steps to protect his child based on the abuse J.P. reported at the hands of Mother. Father told the investigator Mother did not have any parenting skills, she had anger issues, serious mental health problems, and severe depression. He declared Mother "is a queen of lies."

The Department found no evidence to support a claim of child abuse while the child was in Mother's care and recommended that J.P. remain in Mother's home while all parties continued to participate in services.

Thereafter, on May 25, 2018, the Department received a new referral based on Father's report that J.P. had a small unexplained bruise on his knee. In an interview regarding the referral, J.P. explained that he hit his leg on the bedside table when he was jumping on the bed and fell. J.P. told the social worker his "dad isn't a bad guy," and said he liked that Mother and Father both took care of him and loved him. Under his breath he added, "'except someone lies.'" Then he said, "'I'm just confused, my dad said my mom choked me but my mom said she hit the brake,'" adding, "'both happened.'" The social worker asked J.P. how he was choked, and he responded, "'My dad lied one time, just one time.'"

5. The Adjudication Hearing

The adjudication hearing took place over two days in June 2018. Father pleaded no contest to an amended section 300 petition, and the juvenile court sustained the petition as amended:

"c-1 [¶] The child [J.P.]'s father, Jacques [P.] involved the child in an ongoing custody dispute over the child which has resulted in the father making numerous accusations that the mother is physically abusing and neglecting the child resulting in DCFS and law enforcement involvement. The child exhibits emotional distress and suffers from Child Affected by Parental Relationship Distress. The ongoing custody dispute between the child's parents places the child at substantial risk of suffering serious emotional damage."

The juvenile court ordered that J.P. remain released to Mother, and granted Father monitored visits to take place in the Department office. The court further appointed Dr. Nancy Kaser-Boyd to evaluate Mother, Father, and J.P. pursuant to Evidence Code section 730.

6. The Evidence Code Section 730 Evaluation

In conducting her evaluation, Dr. Kaser-Boyd reviewed documents provided by the Department, interviewed Mother and Father individually, conducted psychological testing on both of them, and observed visits between J.P. and each of his parents. J.P. refused to be interviewed, "stating that he felt 'scared.'"

Dr. Kaser-Boyd expressed concerns that the accusations against Mother had been going on for years, and there was "at least some evidence" that Father had sought to alienate J.P. from his mother. The evaluator stated that "Father has very strong negative feelings about Mother," and "it seem[ed] hard to believe that his opinions about Mother would not be communicated, even indirectly, to [J.P.]" Dr. Kaser-Boyd "found it particularly compelling" that Father and J.P. used similar language in calling Mother the "queen of lies" in interviews with social workers. The evaluator noted that Father provided an environment in which J.P. was treated as a prince, which Mother did not have the means to match. Because such a difference in households would influence most children of J.P.'s age, it was particularly important for Father to be fair-minded about Mother.

Finding Mother more willing to co-parent than Father, Dr. Kaser-Boyd recommended that the co-parenting coach "work with Father on his disdainful views of Mother." The evaluator supported expanded visitation for Father provided he was admonished not to communicate, even indirectly, negative views

of Mother. But "[i]f expanded contact with Father leads to a repetition of allegations, or of [J.P.]'s acting out against his mother, then I think Father's contact should be restricted again." Finally, Dr. Kaser-Boyd recommended that Father be given first preference to care for J.P. if Mother needed to arrange childcare.

7. The Last Minute Information Report Dated November 30, 2018

In November, Father asked to present J.P. with a new puppy during his monitored visit on J.P.'s birthday. The social worker told him not to bring the puppy to the visit because of the emotional harm it would cause J.P. to be given a puppy which he would then not be able to take home with him to his mother's house. Father had already told J.P. about the puppy, so when J.P. asked about it during the visit, Father showed him the puppy on a video call with J.P.'s older sister. When the visit ended, J.P.'s older sister was waiting outside the front door of the building with the puppy out of its crate.

8. The December 4, 2018 Disposition Hearing

Father testified at the disposition hearing on December 4, 2018. He stated he was capable of co-parenting and following the court's orders, as he had demonstrated during the family law proceedings. However, after stating that he believed J.P. had been taken away from his family and wanted to return home with Father, Father had difficulty acknowledging that J.P. could have two homes.

Father also disputed the truth of the allegations in the section 300 petition and the juvenile court's jurisdictional findings against him. He admitted that since the juvenile court sustained the petition, he had neither participated in any type of individual counseling nor taken part in any parenting program.

Father agreed that *if* he had harmed his son in any way, he would need therapy, but he could not understand how his perception or belief about Mother's parenting abilities was "related to [him] somehow emotionally damaging [his] son." Father further denied that he currently disapproved of Mother's parenting style, or had directly or indirectly said anything negative about Mother to the child.

Finally, the court asked Father to state one positive thing about Mother's parenting style. Father answered, "Well, I see that her relationship with my son, I see some—there's some type of a healing going on and that's a good, positive sign for me."

The juvenile court found that Father had said "the things that [were] necessary . . . in order to regain custody," but based on the "plethora of evidence" in support of the sustained allegations, the court "lack[ed] a belief in the trustworthiness of [Father's] statements." That evidence included Father's encouragement of J.P.'s rude behavior toward Mother and having J.P. wear a GPS tracking watch when he visited Mother. "That right there," the court said, "completely eviscerates the father's statement [that] he was okay with sharing custody, because he was not okay with sharing custody." Labeling as "outrageous" Father's conduct of demanding that the manager of an establishment where a visit was to take place ensure that Mother not take the child off the premises, the court found such behavior to be "another indication that the father did not testify truthfully" that he was amenable to shared custody.

The juvenile court declared that Father's accusations of child abuse by Mother "were absolutely not true." The court further found that Father had coached or even brainwashed J.P. by making derogatory comments about Mother directly to J.P. or

in his presence. J.P. then adopted and repeated such comments as when he said, "'My brain tells me not to trust my mother. She's not a good mother,'" and called Mother the "queen of lies," which also happened to be what Father called Mother. The direct result of Father's conduct, the juvenile court found, was that J.P.'s affection toward his mother had been significantly diminished.

Based on Father's testimony and demeanor, the court stated that Father seemed to think his home was the only home where J.P. belonged, and he did not recognize that the child could have a separate home with each parent. "So I'm not convinced today by [Father's] testimony that he would be willing to properly share custody with the mother and that he would not alienate the child from the mother." The court added that if Father did not engage in services and could not demonstrate he had gained insight from those services, "I think that we will be back here again and this child will suffer again emotionally as a result of the father's behavior."

Finally, citing Father's statement that Mother's parenting style seemed to be promoting healing, the juvenile court declared, "that's because the child has been detained from the father and is in the mother's custody. . . . [¶] And what it shows this court is that the child is doing well in the care of the mother where the father has monitored visits."

Based on these findings, the juvenile court found by clear and convincing evidence that remaining in the care, custody and control of Father would present a substantial risk of detriment to J.P.'s safety, protection and well-being, and there were no reasonable means to protect him other than removal from Father's custody.

The court ordered J.P. removed from Father and placed in the home of Mother. The court also ordered monitored visits for Father, co-parenting counseling for both parents together, individual counseling for J.P., and individual counseling for Father to address case issues.

DISCUSSION

I. Legal Principles

When the juvenile court finds a child to be within its jurisdiction, the court then conducts a dispositional hearing at which the court must decide where the child will live while under the court's supervision. (In re A.S. (2011) 202 Cal.App.4th 237, 247.) A juvenile court may remove a child from a parent's physical custody if it finds by clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home," and there are no reasonable means to protect the child without removal from the parent's physical custody. (§ 361, subd. (c)(1); In re Michael S. (2016) 3 Cal. App. 5th 977, 983.) The juvenile court's jurisdictional findings are evidence that the child cannot safely remain in the home (In re A.F. (2016) 3 Cal.App.5th 283, 292), and "'[a] removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent'" (In re Miguel C. (2011) 198 Cal.App.4th 965, 969). "' "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." '" (In re A.S., supra, 202 Cal.App.4th at p. 247.) In making its determination, the juvenile

court may consider the parent's past conduct as well as the present circumstances. (*Ibid.*)

We review the juvenile court's removal order for substantial evidence. (In re A.F., supra, 3 Cal.App.5th at p. 292.) Under this standard of review, "' "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 *I.J.* (2013) 56 Cal.4th 766, 773.) Our review "begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact." (In re David H. (2008) 165 Cal.App.4th 1626, 1633.)

"We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "[I]nconsistencies and conflicts in the evidence go to credibility of witnesses and weight of the evidence, which are matters for the trial court." (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1149.) The ultimate test on appeal is whether it was reasonable for the trier of fact to make the ruling in

question in light of the whole record. (*In re J.L.* (2014) 226 Cal.App.4th 1429, 1433.) "'[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value.'" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633; *In re I.C.* (2018) 4 Cal.5th 869, 892.)

Finally, "'"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.'"' (*In re Z.G.* (2016) 5 Cal.App.5th 705, 720, quoting *In re J.I.* (2003) 108 Cal.App.4th 903, 911 [the clear and convincing standard is to be applied by the juvenile court; it is not the standard for appellate review].)

II. Substantial Evidence Supports the Disposition Order Removing J.P. from Father's Custody

We need look no further than the juvenile court's detailed factual findings at disposition to find substantial evidence to support the court's disposition order in this case. We also note that Father's waiver of rights, which resulted in the juvenile court's jurisdictional finding as to Father, is evidence that Father's actions placed J.P. at substantial risk of serious

emotional harm making removal from Father necessary. (*In re A.F.*, supra, 3 Cal.App.5th at p. 292; *In re T.V.* (2013) 217 Cal.App.4th 126, 135.)

After hearing Father's testimony and observing his demeanor on the stand, the juvenile court found Father to be untrustworthy, citing the evidence in the record that directly contradicted Father's avowed commitment to shared custody with Mother. Indeed, Father's own testimony revealed that he did not believe he had done anything wrong and he did not understand the harm his conduct toward Mother had caused to J.P. Because he did not accept responsibility for the damage he had caused and did not recognize the need for services (including his own individual counseling), the court determined that he would not co-parent appropriately with Mother. The juvenile court's conclusions also found overwhelming support in the record, which showed a persistent pattern of conduct by Father which subjected Mother to false allegations of child abuse, sabotaged the child's affection for his mother, and undermined the court's and the Department's efforts to reverse the damage and help J.P. to develop a happy and positive relationship with Mother.

Despite the abundant evidence buttressing the juvenile court's findings, Father argues that "the evidence supported a finding the child should remain in the custody of both parents," and the Department failed to present "clear and convincing evidence, as required," justifying J.P.'s removal from Father. In support of this contention, Father claims that in her 730 evaluation Dr. Kaser-Boyd concluded "there was no current risk to J.P. if he remained in [Father's] physical custody." In so arguing, Father not only misstates the standard of review on

appeal, but also conjures a conclusion that is nowhere to be found in Dr. Kaser-Boyd's evaluation.²

Moreover, even assuming Father's interpretation of the evidence were reasonable, so too was that of the juvenile court. We do not reweigh the evidence or substitute our own interpretation of the evidence for that adopted by the juvenile court. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) We also do not second-guess the juvenile court's credibility determinations. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) Here, after listening to Father's testimony and observing his demeanor on the stand, the juvenile court found Father's credibility lacking, and concluded that he would not be willing to properly share custody with Mother and would continue his efforts to alienate the child from his mother. Accordingly, we find no error in the juvenile court's disposition order removing J.P. from Father.

² The closest Dr. Kaser-Boyd came to Father's characterization of the evaluation's conclusions was the following recommendation: "2. I do not believe that Father presents a danger to J.P. if his contact is expanded. . . . If expanded contact with Father leads to a repetition of allegations, or of J.P.'s acting out against his mother, then I think Father's contact should be restricted again."

DISPOSITION

The December 4, 2018 disposition order is affirmed. NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.