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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.G., a Person Coming  
Under the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARY C.,

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Defendant and Appellant.

B278233

(Los Angeles County  
Super. Ct. No. CK74505)

APPEAL from an order of the Superior Court of Los Angeles County, Emma Castro, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

After Mother relapsed on methamphetamine, the juvenile court found jurisdiction over Mother's daughter pursuant to Welfare and Institutions Code section 300<sup>1</sup> and removed the daughter from Mother's custody pursuant to section 361. The court permitted Mother to continue to live with her daughter in the maternal grandmother's home and have unmonitored and unlimited visitation with her daughter in the home. The only restriction on Mother's interaction with her child was that their contact outside the home was to be monitored. On appeal, Mother solely challenges the juvenile court's dispositional order removing the child from her custody, arguing that the court failed to consider reasonable alternatives to removal. We affirm because substantial evidence of Mother's 13-year methamphetamine addiction and recent relapse supports the court's dispositional order.

## FACTS AND PROCEDURAL BACKGROUND

### ***1. Mother Lost Custody to Three Older Children in 2011 Due to Her Substance Abuse***

The five-year-old daughter at the heart of this case is the youngest of Mother's four children. The other children are 20, 15, and 9 years old, respectively. All four children share the same father, who is not a party to this appeal. In 2008, the juvenile court sustained a dependency petition on behalf of the three older siblings based on Mother's inappropriate physical discipline, then-nine-year history of unresolved substance abuse, history of engaging in domestic violence with Father, and Father's substance abuse. The court ordered Mother to participate in

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<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code unless indicated otherwise.

individual counseling, parenting classes, domestic abuse counseling, and drug testing.

In 2009, the juvenile court sustained a section 387 petition on behalf of the three older children, finding that Mother had a then-ten-year history of substance abuse, was a current abuser of methamphetamine and amphetamine, and failed to regularly participate in court-ordered drug treatment. Mother was ordered to complete drug treatment and submit to drug testing.

In 2010, the court sustained another section 387 petition, finding Mother tested positive for methamphetamine and failed to participate in court-ordered programs. The children were removed from parental custody. Because the parents failed to comply with their case plans, in 2011, the court appointed the maternal grandmother as the three older children's legal guardian.

We also note that in this time frame, which precedes the present dependency case, Mother had criminal arrests in 2006 and 2010 for possession of a controlled substance. Father had multiple drug, gang, and firearms related convictions between 1998 and 2011. Father is a documented gang member.

## ***2. Referral in the Present Dependency Case***

In October 2011, the daughter involved in these proceedings was born. At the commencement of the present dependency case, Mother and the daughter resided in the maternal grandmother's home; their shared bedroom was a converted garage. The three older children also resided in the home with the maternal grandmother but did not share a bedroom with Mother. On May 20, 2016, Department of Children and Family Services (DCFS) received a referral alleging there had been a drive-by shooting at the maternal grandmother's home. The reporting party stated that the police found Father hiding in a bedroom with a loaded shotgun hidden under

Mother's mattress, and arrested him. Police later confirmed the report.

DCFS social worker and two police detectives went to the maternal grandmother's home to investigate the referral. Father, who had been in police custody following his arrest, had made bail and was present at the home during this visit.

Mother acknowledged that Father was a gang member and that there was a drive-by shooting, but stated she did not know Father kept a loaded gun in her bedroom. Mother agreed to obtain a restraining order against Father in response to DCFS's concerns that Mother was exposing her daughter to harm by permitting Father to be in the house. Mother admitted that although she was clean for almost five years, she had relapsed two months earlier in March 2016. She agreed to drug test and stated that she would test positive for methamphetamine. Mother tested positive for methamphetamine several days later on June 1, 2016.

On May 27, 2016, Mother obtained a temporary restraining order protecting herself and her children from Father. On May 31, 2016, Mother enrolled in the Mid Valley Outpatient Center drug treatment program. Mother thereafter tested negative for drugs and fully participated in the drug treatment program.

### ***3. Dependency Petition and Detention of Daughter***

On July 15, 2016, DCFS filed a petition pursuant to section 300, alleging that the daughter was at risk of harm due to Mother's drug use. The juvenile court detained the daughter from parental custody, placed her with the maternal grandmother, allowed Mother to reside in the maternal grandmother's home on the condition that she continue to test clean and participate in her programs, and ordered Mother's contact with the daughter outside of the home to be monitored.

The order allowing Mother to reside in the maternal grandmother's home was issued over DCFS's objection.

In September 2016, DCFS interviewed Mother again and she repeated that she had been addicted to methamphetamine for 13 years and relapsed in March 2016 after a period of sobriety. Mother also disclosed that the recent drive-by shooting was not the first and there had been another shooting a short distance from the maternal grandmother's home two or three years ago where Father was seriously injured.

#### **4. *The Jurisdictional and Dispositional Hearing***

The juvenile court held a combined jurisdictional and dispositional hearing on September 21, 2016. Counsel for DCFS entered its reports into evidence, and counsel for Mother entered two progress letters from Mid Valley Outpatient Center into evidence. One letter, dated September 15, 2016, indicated Mother participated in 12-step meetings, 39 group sessions, and 3 individual sessions, and submitted 14 negative drug tests. The other letter, dated March 19, 2013, reflected that Mother was in treatment at Mid Valley Outpatient from January 2012 to March 2013, and successfully completed that previous drug rehabilitation program.

Mother testified at the hearing that she considered herself a recovering drug addict and her drug of choice was methamphetamine. She stated that she relapsed in March 2016 after four and a half years of sobriety. Mother testified that during the relapse, she used methamphetamine twice per day and kept the drug in her bedroom in the top, shoulder-height, dresser drawer inside a sock. She stated that the child did not have access to the drugs. Mother denied being under the influence while caring for her daughter, indicating that the paternal grandmother cared for her daughter while she was on drugs.

DCFS argued that Mother's substance abuse posed a risk of harm to the child and asked the court to sustain the section 300 petition. DCFS noted that although Mother was taking steps to address her drug use, she had previously relapsed and this was a serious and ongoing problem. Counsel for the child joined in DCFS's jurisdictional argument, but requested the child be placed in Mother's custody on the condition that Mother reside with the maternal grandmother. Mother's counsel argued that there were measures short of removal that could ensure the child's safety in Mother's custody, such as ordering Mother to continue her drug rehabilitation program, family preservation services, and drug testing.

The court sustained the section 300 petition based on Mother's history of drug use and recent relapse rendering her incapable of providing the child with regular care and supervision. The court also found true allegations regarding Father's drug use and Mother's creation of a detrimental and endangering home environment based on the existence of a loaded shotgun within reach of the child. In its dispositional order, the court removed the child from parental custody. The court stated:

“Now as to the disposition, Mother, you've been using drugs for a long time. You've had your kids removed from you. We have six volumes of juvenile court dependency documents tracing your long history of drug use and currently a relapse just several months ago. The court is not convinced that a 55-day program three years ago was sufficient at that time to address your drug 'program' [sic] and I'm not going to be convinced that a 55-day program currently is going to be sufficient to address a more than ten-year history of drug use.

...

“The court does not intend to make a home of parent order today. I allowed you to live in the home -- with your mother over [DCFS]’s objection because you’re in a program, and you’re testing negative and you’re participating and making progress. I’m not changing that order, but you’re going to have to provide the proof to the court that you have finished at least a six-month outpatient residential program given the history of the case before I will consider returning [daughter] to your custody.”

In response to the juvenile court’s statement, Mother’s counsel clarified that Mother had actually completed a 13-month drug treatment program in 2013 and remained sober for four and a half years following the program. The court acknowledged this corrected information, and stated that its findings still remained.

The juvenile court ordered Mother to complete a parenting program, drug rehabilitation program, counseling with random and on-demand weekly drug testing, a 12-step program with a sign-in court card, Narcotics Anonymous weekly meetings with a sponsor, and therapy. The court gave custody of the daughter to the maternal grandmother and permitted Mother to continue to live with the child and have unmonitored visitation with her at home. The court ordered all visitation outside the home monitored by a DCFS-approved monitor.

### **DISCUSSION**

Mother solely appeals the court’s dispositional order removing the child from her custody. “On appeal from a dispositional order removing a child from her parent, we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence.” (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) Under our substantial evidence standard of review, “we have no power to pass on the credibility

of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies. Rather, we ‘accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]’ [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another point in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Once the juvenile court determines that the child is described under section 300, it may issue an order at the dispositional hearing removing the child from parental custody pursuant to section 361. The court may only remove the child if there “is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).)

“The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citations.] 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 J.S.* (2014) 228 Cal.App.4th 1483, 1492; see *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.) “In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court’s supervision.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)



Here, it is undisputed that Mother had a 13-year-long substance abuse problem and relapsed while caring for her four-year-old daughter. When young children, like the child here, are at issue, “the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 825; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) This is because children of such tender years are more vulnerable and need constant care, attention, and guidance. Mother is clearly susceptible to relapse and has an extensive history of drug abuse, which caused her to lose custody of her three older children.

Substantial evidence supported the court’s removal of the child from Mother’s custody. Given Mother’s admitted history and recent relapse, by allowing Mother to live with the child (but not have custody) while participating in drug rehabilitation programs and testing clean, the court carefully balanced the child’s safety and Mother’s interest in reuniting with her daughter. Mother can continue to act as a parent to the child while living with her and maintain their parent-child bond. Simultaneously, the maternal grandmother can protect the child from possible abuse, neglect, or endangerment by Mother inside the home. In requiring Mother to have monitored interactions with the child outside of the home, the court sought to guarantee the child’s safety whether or not the maternal grandmother was in a position to do so.

Mother argued that the child should have been released to her without limitation because she completed four months of Mid Valley Outpatient Center’s drug treatment program and was testing clean. Four months of treatment is insufficient to overcome long-term drug addiction like Mother’s 13-year-long

methamphetamine problem. (See *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [three months of sobriety insufficient to show changed circumstances].) Mother's own conduct in the previous dependency case, her loss of custody to her three older children, and the recent drug relapse evidence that the treatment program does not guarantee sobriety and that more than four months of compliance is necessary to ensure the child's safety. Mother's poor judgment in exposing her daughter to Father and the gang violence associated with him also supported the court's finding that removal was appropriate.

To the extent Mother argues that the disposition was not supported by substantial evidence because the "court's given reason for denying placement with Mother was its perception of the duration of her current treatment program through Mid Valley," we disagree. The court acknowledged its misunderstanding of the length of the program and stated that its findings remained given the evidence before it.

#### **DISPOSITION**

We affirm the court's dispositional order.

RUBIN, Acting P.J.

WE CONCUR:

FLIER, J.

GRIMES, J.