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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re C.S. et al., Persons Coming Under the Juvenile Court Law.	B297668
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. F.S., Defendant and Appellant.	Los Angeles County Super. Ct. No. 19CCJP00060

APPEAL from orders of the Superior Court of Los Angeles County, Martha A. Matthews, Judge. Affirmed.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

F.S. (father) appeals the juvenile court's disposition orders removing his two daughters, C.S. (born 2006) and S.S. (born 2011), from his and L.F.'s (mother)¹ custody. Father contends: (1) insufficient evidence supports the court's finding that the children faced a substantial risk of harm if they were to remain in their parents' custody; (2) insufficient evidence supports the court's finding that the Department of Children and Family Services (Department) made reasonable efforts to prevent the children's removal from their parents' custody; and (3) the court erred in requiring father to drug test. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Initial Investigation

The family first came to the Department's attention in November 2013 after a caller alleged the family was living in unsanitary conditions. According to the caller, the children had "very poor hygiene [and] dirty clothing," and the family's home was full of flies, cockroaches, dirty dishes, and dirty clothes. Between July 2014 and October 2017, the Department received four more referrals, most of which were based on the unsanitary conditions in which the family was living.

In October 2018, the Department received another referral based on the family's living conditions. The family was living in the garage of a house owned by a relative. Although the house was clean, the garage was "horrid." The family slept on two queen-sized mattresses on the floor. The garage had electricity

¹ Mother is not a party to the appeal.

and a portable stove, but it lacked a bathroom and kitchen. The refrigerator was stocked with food, some of which was spoiled, and there was spoiled food left out on the portable stove. The garage was poorly lit because it lacked interior lighting and all the windows were blocked, and it was “very dirty,” smelled “very strongly of urine,” and infested by cockroaches.

A Department social worker who inspected the family’s home advised mother she needed to clean the garage “thoroughly,” including scrubbing the floors, disposing of any spoiled food, and clearing out the items blocking the windows. If mother could not improve the condition of the garage, the social worker advised her to find “another location to provide the children with better living conditions.”

The referral also alleged that C.S. goes to school with dirty clothes, has a strong odor of urine on her body, and has had lice in her hair for “a very long time.” C.S.’s teachers were struggling to include C.S. in group assignments because the other students complained about her poor hygiene. On one occasion, when she was in the assistant principal’s office, C.S. opened her binder and cockroaches came out of it. C.S. had missed 15 out of 57 days of school, and she was always late to her first period class.

The school’s nurse reported that C.S. often complains about pain in her “private area” when she urinates. Although C.S. had been diagnosed with a urinary tract infection and was provided medication by her doctor, the school believed her parents were not following through with the prescribed treatment or taking her back to the doctor when the infection recurred. The school had referred C.S. to the Public Health Clinic, and it provided mother referrals to other family-assistance resources, but mother

never followed up on them. According to the nurse, “mother does not do much for the children[,] and she also appears unkempt.”

The social worker interviewed the family in late October 2018. C.S. and S.S. appeared well-groomed during the interview. The children told the social worker they bathe every night before bed and always have clean clothes to wear. Mother claimed the school was “exaggerating” the extent of the children’s lice infestation. According to mother, the children got head lice while sleeping at their cousins’ house, but mother had given the children medicine and removed the lice from their hair using a fine-toothed comb.

Mother reported that the family’s medical benefits had recently been “disrupted” because the Department of Public Social Services (DPSS) had erroneously changed the family’s place of residence from Los Angeles County to Orange County. Nevertheless, mother continued to take C.S. to the doctor whenever the child complained about pain while urinating. Mother claimed she follows the doctor’s prescribed treatment every time C.S. has a urinary tract infection.

Mother denied that she or father use drugs or abuse alcohol, but she agreed that she and father would submit to an on-demand drug test. Mother admitted suffering from depression and anxiety, but she claimed those conditions have not inhibited her ability to care for the children.

In early December 2018, the Department scheduled a medical and mental health evaluation for C.S. at a “HUB” clinic. Mother and C.S. showed up to the appointment an hour late, so the clinic was only able to perform a mental health evaluation of the child.

The clinical supervisor at the HUB clinic who evaluated C.S. was concerned about the family's well-being. C.S. showed up to the evaluation with poor hygiene and dirty clothes, even though the appointment was early in the morning. Mother told the supervisor that C.S. frequently "wets the bed," has constant ear infections, and misses a lot of school due to illness. Based on her evaluation of C.S., the supervisor believed the child did not shower or change her clothes after wetting her bed at night. The supervisor advised mother that C.S. should receive mental health services to address her bed-wetting. The social worker later referred C.S. to mental health services and instructed mother to follow up on scheduling an appointment for the child.

In mid-December 2018, the social worker spoke to a representative from DPSS. The representative confirmed that DPSS had erroneously changed the family's place of residence and that the agency was in the process of moving the family's medical benefits back to Los Angeles.

In late December 2018, mother told the Department that the family had been evicted from the relative's garage and was living with mother's adult daughter. Mother had recently taken C.S. to the doctor because the child continued to feel pain while urinating, but they left before seeing a doctor because the wait was too long. Mother gave C.S. medication that the child had previously been prescribed, which mother believed helped relieve C.S.'s symptoms. Mother asked the Department to "open" a case so that the family could receive housing benefits and other "resources" to help mother find a job.

2. The Dependency Petition

On January 4, 2019, the Department filed a dependency petition under Welfare and Institutions Code² section 300 on the children's behalf. The Department did not seek to detain the children from their parents' custody when it filed the petition. As later sustained by the court, the petition alleged:

B-1: "[M]other ... and father ... have failed to follow up and ensure that [C.S.] received necessary medical care for the child's urinary tract infection despite the child's continued complaints. Such failure to ensure that the child received appropriate medical care places the child[] and the child's sibling[,] [S.S.,] at risk of serious physical harm."

B-2: "On 10/25/18 and on prior occasions, the children[s] ... home was found to be in a filthy and unsanitary condition. On prior occasions, the children were observed to have poor hygiene. The mother ... and father ... have failed to address the filthy and unsanitary home condition and the children's poor hygiene despite being provided with resources and referrals to alleviate the conditions. The mother and father's failure to address the unsanitary home condition and children's hygiene issues[] place the children at serious risk of physical harm."³

At the initial hearing on the children's petition, the court found the Department alleged a prima facie case under section 300. The court allowed the children to remain in their parents'

² All undesignated statutory references are to the Welfare and Institutions Code.

³ The court dismissed an allegation under section 300, subdivision (j), that the parents' failure to properly address C.S.'s urinary tract infections and lice infestation placed S.S. at risk of serious harm.

custody and ordered the Department to provide mother referrals for housing assistance and to help mother change the family's medical benefits registration to Los Angeles County.

3. The Family's Conduct After the Filing of the Dependency Petition

In mid-January 2019, C.S. attended the medical portion of her HUB evaluation. The doctor who evaluated C.S. noted the child was "obese" and needed to visit a dentist "ASAP." The doctor also noted that C.S. had head lice and that mother "continue[d] to brush [C.S.'s] hair daily using [a] fine tooth comb." Mother took C.S. to her general care doctor three other times in early 2019 to receive treatment for a sore throat, an ear ache, and a fever.

As of early February 2019, the family's situation had not improved. The office manager from C.S.'s school reported that C.S. continued to miss a lot of school. In a three-week period following winter break, C.S. had attended only seven days of class. According to the office manager, mother had provided doctor's notes purporting to excuse C.S.'s absences and her participation in school activities, but the notes appeared to have been altered. For example, C.S. gave school officials a note excusing her from participating in physical education that was written in the child's handwriting.

The school district's Homeless and Foster Liaison reported that she had been working with the family for three years, but that "this is the worst [the family] has ever been." According to the liaison, C.S. and S.S. "'don't go to school at all and have every illness possible.'" The school district was having difficulty creating an individualized education program for C.S. because her parents rarely took her to school.

C.S. also continued to have poor hygiene. The child would urinate on herself at school, and other students would “make faces” at her because of her foul body odor. C.S.’s poor hygiene prevented her from having any friends at school. The Homeless and Foster Liaison reported that father also had poor hygiene and was usually “‘extremely dirty.’”

The Homeless and Foster Liaison didn’t know whether mother was using drugs, but she reported that mother’s stories “do not make sense,” and that mother always provides different excuses for why she doesn’t take her children to the doctor or to school. The liaison had referred C.S. to therapy, but mother never followed through on the referrals. The liaison told the Department’s social worker, “‘I don’t know what else to do, we have provided the mother with clothing, shoes, gift cards, groceries, beds, mattresses ... and the mother’s situation is the worst it’s ever been.’”

The school’s nurse reported that she had recently made an appointment for C.S. to see a doctor at a medical clinic, but mother never took C.S. to the appointment. The nurse also provided mother several referrals for other “resources,” but mother never followed up on them.

The psychologist from C.S.’s school reported that mother and father had attended two meetings for a special education assessment for C.S. During the first meeting, mother and father left after only 10 minutes, telling the psychologist they had “other things to do.” During the second meeting, mother and father started fighting and left after only a few minutes. Mother and father did not show up for the third meeting. According to the psychologist, mother and father were “disheveled” and one of them had a “strong smell of urine.” The psychologist doubted

whether mother and father were capable of caring for C.S. and recommended that both parents drug test.

The Department also interviewed the family and some of its relatives. Father admitted that the family was still living in the garage, even though mother had reported they no longer lived there. Father also knew that C.S. frequently urinated and defecated in her clothes. When father told C.S. she needed to use a toilet whenever she felt the urge to go to the bathroom, C.S. responded that she “cannot feel when she soils herself.” Father explained he would send C.S. to school in soiled clothing out of “laziness,” because it was “easier to send her to school than to ask her to bathe.”

Another relative, who wished to remain anonymous, told the Department that the children bathe about once every three weeks. Mother and father did not provide the children toilet paper, which the relative believed is why the children always smelled like urine and feces and why C.S. contracted so many urinary tract infections. The relative also believed mother and father use methamphetamine and that mother has been hospitalized due to withdrawals from the drug.

4. The Department Detains the Children

In late February 2019, the Department detained C.S. and S.S. from their parents’ custody. The court ordered the Department to provide mother and father referrals for mental health services and drug testing. When the Department informed the court that the parents had failed to attend any drug tests in the past, the court responded, “If the parents continue to no show, then that kind of implies that maybe that’s what’s going on here.”

In early April 2019, the Department filed a report detailing the family's status. The children's caregiver reported that S.S. was adjusting quickly to her foster-care placement, but C.S. was struggling. C.S. continued to "soil[] her underwear at least twice a day."

Mother and father had yet to drug test or enroll in any programs or services. Mother often misbehaved during visits with the children. According to the children's caregiver, mother would not listen to the caregiver's instructions or otherwise follow "visitation guidelines." Mother would whisper to C.S. during the visits, and on one occasion while she was on the phone in front of the children, mother referred to the caregiver as a " 'fucken ugly old lady.' " During another visit, C.S. started crying. When S.S. didn't cry, mother asked her "[w]hy aren't you crying like your sister, don't you miss me?" Mother also acted aggressively during HUB appointments and would use profanity in front of the children when referring to the Department's social workers.

5. The Jurisdiction and Disposition Hearing

The court held a jurisdiction and disposition hearing on April 9, 2019. Mother and father pled no contest to the allegations in the dependency petition. The court sustained the b-1 and b-2 allegations and dismissed the j-1 allegation.

For disposition, mother and father requested the court return C.S. and S.S. to their custody. Mother presented evidence that she had recently attended an "intake assessment" through the Department of Mental Health, with her first appointment scheduled for late June 2019. Father provided proof that he and mother had recently moved into a motel.

The court declared C.S. and S.S. dependents of the court and ordered them removed from their parents' custody. In

making its removal finding, the court observed that although both C.S.'s school and the Department had made significant efforts to help the family achieve cleaner living conditions, improve C.S.'s health, and ensure C.S. regularly attended school, mother and father "were really hard to reach and hard to get them to follow up. So the same thing keeps happening." The court continued: "I can't just keep ordering more of the same, because it hasn't helped. So I wish I could let [the children] go home. But I can't just say, 'well go home, and there will be services provided.' Because that already was happening, and it hasn't made things better."

The court awarded mother and father family reunification services and monitored visits with the children. The court ordered mother to participate in mental health counseling and to follow her psychologist's recommendations. The court also ordered, over father's objection, both parents to submit to 10 random or on-demand drug tests, and, if they missed any tests or tested positive for any illicit substances, to participate in a full drug-treatment program.

Father appeals.

DISCUSSION

1. The Removal Orders

Father contends the court erred when it removed C.S. and S.S. from his and mother's custody because the children no longer faced a substantial risk of harm after mother and father found more suitable, but temporary, housing in a motel. Father also contends the Department failed to make reasonable efforts to prevent the children's removal from his and mother's custody. As

we explain, the court properly removed the children from their parents' custody.

1.1. Applicable Law and Standard of Review

The juvenile court may remove a child from her parents' physical custody if there is "clear and convincing evidence" of "a substantial danger to the [child's] physical health, safety, protection, or physical or emotional well-being ... if the [child] were returned home," and no reasonable means exist through which the child's health and safety can be protected without removing the child from her parents' physical custody. (§ 361, subd. (c)(1).) "Removal on any ground not involving parental rejection, abandonment, or institutionalization requires a finding that there are no reasonable means of protecting the child without depriving the parent of custody." (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1013, fn. 3.)

A "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 T.V.* (2013) 217 Cal.App.4th 126, 135–136.) When deciding whether to remove a child, "the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*)) " 'A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.' " (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 83.)

Although the statute requires a finding by "clear and convincing evidence," this burden of proof applies to the trial court and is not a standard for appellate review. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.) " '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.’” (*Id.* at pp. 880–881.) Our task, therefore, is to determine whether there is substantial evidence in the record, contradicted or uncontradicted, which supports the court’s removal order. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.)

1.2. Substantial evidence supports the court’s removal orders.

Father contends insufficient evidence supports the court’s orders removing C.S. and S.S. from his and mother’s custody because, at the time of the disposition hearing, the risks of harm posed by “the unsanitary condition of the family’s living quarters, the children’s poor hygiene, and the parents’ failure to adequately address C.S.’s urinary tract infections” no longer existed. We disagree.

After opening an investigation into the family, the Department and officials from C.S.’s school provided the family numerous referrals aimed at improving the family’s living conditions, the children’s attendance at school, and C.S.’s health. The family’s condition only worsened, however, as the Department’s investigation progressed. C.S. continued to regularly miss school and her physical condition had not

improved. Indeed, shortly before the children were removed from their parents' custody in February 2019, the Homeless and Foster Liaison, who had worked with the family for several years, described the family's condition as the worst it had ever been.

Throughout the Department's investigation, mother made little effort to improve the family's living conditions and address C.S.'s health problems. Mother failed to follow up on many of the Department's and school's referrals, and she often neglected, or delayed, seeking medical attention when C.S. experienced pain while urinating. Mother also repeatedly denied the children had issues with poor hygiene, and when she did acknowledge such issues existed, she often deflected responsibility, blaming the children's cousins, officials at C.S.'s school, or other family members. (See *Cole C.*, *supra*, 174 Cal.App.4th at p. 918 [father's refusal to acknowledge responsibility for his conduct leading to his child being declared a dependent of the court supported court's removal finding].)

As for father, he did not engage with the Department or C.S.'s school. Father failed to appear for any on-demand drug tests, and both he and mother refused to cooperate with the school's psychologist when she tried to establish a special education program for C.S. And, although father acknowledged C.S. had poor hygiene and frequently soiled herself, he admitted he was too "laz[y]" to do anything about it and explained it was easier to take C.S. to school with soiled clothing than have her shower and wear clean clothes.

By the time of the disposition hearing, neither mother nor father had made any significant progress toward addressing the issues that led to the Department's intervention. Although mother had enrolled in mental health services, she was not

scheduled to start attending sessions until more than two months after the disposition hearing. Father had yet to enroll in any services or submit to any drug tests. That mother and father had temporarily moved into a motel does not establish the children no longer faced a risk of harm in their parents' custody. As father acknowledges, his and mother's residence at the motel was only "temporary." Mother and father have yet to show they can provide the children long-term suitable housing.

In sum, substantial evidence supports the court's orders removing C.S. and S.S. from mother's and father's custody.

1.3. The Department made reasonable efforts to prevent the children's removal.

Father next contends the Department did not make reasonable efforts to prevent the children's removal. Before a child may be removed from her parents' custody, the Department must submit a report that includes, among other things, "A discussion of the reasonable efforts made to prevent or eliminate removal[.]" (Cal. Rules of Court, rule 5.690(a)(1)(B)(i); *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809 (*Ashly F.*)). The juvenile court must also "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the [child] from his or her home The court shall state the facts on which the decision to remove the [child] is based." (§ 361, subd. (e); *Ashly F.*, at p. 810.) These requirements ensure that the "reasonable efforts" threshold under section 361 does not amount to "merely a hollow formula designed to achieve the result the [Department] seeks." (*Ashly F.*, at p. 810.)

Father relies on *Ashly F.* to support his contention that the Department failed to make reasonable efforts to prevent C.S.'s and S.S.'s removal. Father's reliance on *Ashly F.* is misplaced.

There, the mother used inappropriate forms of physical discipline on her children. (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 806.) The father was not aware of the mother's conduct. (*Ibid.*) Leading up to the disposition hearing, the Department failed to include in its reports any “ ‘discussion of the reasonable efforts [it] made to prevent or eliminate’ ” the children's removal from their parent's custody, and the record did not otherwise contain any evidence revealing what steps the Department took to avoid removal. (*Id.* at p. 809.) In addition, the mother had expressed remorse for inappropriately disciplining her children, she voluntarily enrolled in a parenting class to address those issues, and she moved out of the family's home while the Department's investigation was pending. (*Id.* at pp. 806–807.)

The court of appeal reversed the juvenile court's order removing the children from their parents' custody. (*Ashly F.*, *supra*, 225 Cal.App.4th at pp. 810–811.) The court concluded the Department failed to consider “unannounced visits ..., public health nursing services, in-home counseling services[,] and removing Mother from the home” as alternatives to removing the children from their parents' custody. (*Id.* at p. 810.) The Department's and the juvenile court's failure to consider alternatives to removal was prejudicial because there was ample evidence that there were “reasonable means” to protect the children without removing them from their parents' custody. (*Id.* at p. 810.) Specifically, the reviewing court focused on the steps the parents took after the Department intervened to ensure their children were safe, such as mother expressing remorse for her conduct, mother removing herself from the home, and both parents voluntarily participating in parenting classes to address the issues that led to the Department's intervention. (*Ibid.*)

In contrast to *Ashly F.*, the Department in this case made significant efforts to prevent C.S.'s and S.S.'s removal from their parents' custody. The Department began investigating the family in October 2018. The Department did not initially file a dependency petition or seek to remove C.S. and S.S. from mother's and father's custody. Rather, the Department, along with C.S.'s school, tried to work with mother and father to avoid court intervention and improve the family's living conditions and C.S.'s health. The Department provided mother with referrals to medical and mental health services for C.S., advised her how to provide the children with suitable living conditions, scheduled medical appointments for C.S., scheduled drug tests for mother and father, and outlined the steps mother needed to take to avoid court intervention and, ultimately, the children's removal from her and father's custody. As we explained above, mother and father failed to meaningfully engage in the services provided by the Department and C.S.'s school.

2. The court did not abuse its discretion in ordering father to submit to drug testing.

Finally, father challenges the court-ordered case plan, arguing the court abused its discretion when it ordered him to submit to drug testing. Father contends the anonymous relative's allegation that father used methamphetamine is insufficient to support the court's drug testing order. As we explain, the court properly ordered father to drug test.

A juvenile court has broad discretion to fashion disposition orders that will best serve and protect the child's interests. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311 (*Briana V.*)) To that end, the court is authorized to make "all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of

the child.” (§ 362; *Briana V.*, at p. 311.) The problems the court seeks to address do not need to be described in the dependency petition. (*Briana V.*, at p. 311.) In determining what type of services would best serve the child’s interests, the court “may consider the evidence as a whole.” (*Ibid.*) A court’s decision to require a parent to participate in court-ordered services “‘cannot be reversed absent a clear abuse of discretion.’” (*Ibid.*)

Although the court did not sustain any drug-related allegations, there is sufficient evidence to support an order requiring father to drug test. One of the family’s relatives reported that father and mother have a history of using methamphetamine. Although that relative did not explain how he or she knew father used methamphetamine, the allegation is corroborated by the observations of officials who interacted with the family. Specifically, the school’s psychologist suspected that father and mother were using drugs based on her interactions with them.

Father relies on *In re Sergio C.* (1999) 70 Cal.App.4th 957 (*Sergio C.*) to argue the court erred in requiring him to drug test. In *Sergio C.*, the father was ordered to drug test “based solely on the unsworn and uncorroborated allegation of an admitted drug addict who has abandoned her children [i.e., the children’s mother].” (*Id.* at p. 960.) In addition, the father adamantly denied any drug use or sales and otherwise fully cooperated with the juvenile court’s orders. (*Ibid.*) The reviewing court reversed the drug testing order, concluding it was unsupported by any credible evidence that the father had used or sold drugs in the past. (*Ibid.*)

This case is distinguishable from *Sergio C.* for several reasons. First, the relative who alleged father used drugs was not a party to the proceedings, and there is no evidence that the

relative was “an admitted drug addict,” like the mother in *Sergio C.* Second, as we explained above, the allegation that father used methamphetamine was corroborated by other evidence. And finally, unlike the father in *Sergio C.*, father in this case never unequivocally denied drug use, nor did he comply with all the court’s orders or the Department’s efforts to aid the family. Rather, father failed to enroll in any programs or services leading up to the disposition hearing and failed to show up for any drug tests. Indeed, father continued to fail to drug test even after the court informed him that his continued absences could imply that he was using drugs. (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384 [refusing to drug test, without adequate justification, may be evidence of drug use].) All this evidence supports the court’s concerns that father’s parenting deficiencies may stem from drug use. (See *Briana V.*, *supra*, 236 Cal.App.4th at p. 311 [juvenile court has broad discretion to craft disposition orders designed to promote the children’s well-being].)

DISPOSITION

The court's April 9, 2019 disposition orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.