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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ABIGAIL H., A Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

EBONY S.

Defendant and Appellant.

B269600

(Los Angeles County
Super. Ct. No. CK96355)

Appeal from an order of the Superior Court of Los Angeles County,
D. Zeke Zeidler, Judge. Affirmed.

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

Office of the County Counsel, Mary C. Wickham, County Counsel,
R. Keith Davis, Acting Assistant County Counsel, and Brian Mahler, Senior Associate
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

In this dependency case, mother Ebony S. challenges the trial court's disposition order removing her four-month-old daughter, Abigail H., from her custody. Mother contends the court erred by issuing a removal order because, in her view, less restrictive alternatives to removal existed. We affirm the court's removal order because mother's long-standing pattern of violent and unpredictable behavior, together with a history of drug use, untreated mental illness, and periodic psychiatric hospitalization, placed Abigail at a substantial risk of physical and emotional harm, particularly in light of her young age. No less restrictive alternative existed at the time of removal which would adequately have protected Abigail from that risk of harm.

FACTS AND PROCEDURAL BACKGROUND

Abigail first came to the attention of the Department of Children and Family Services (department) on September 13, 2015. Mother's sister, Isis, contacted the Los Angeles County Sheriff's Department because she was concerned mother was not able to care properly for Abigail. Sheriff's deputies discovered Abigail at a motel with mother and Abigail's father, Jonathan H. (father),¹ both of whom appeared to be under the influence of an unknown substance. Mother and father denied using drugs, but the deputies described them both as "out of it." Officers also observed Abigail was not adequately dressed, and there was "barely any food" in the room. The deputies determined mother was too intoxicated to care for Abigail, and therefore took Abigail into protective custody. Abigail's subsequent medical examination revealed no marks or bruises.

Isis also reported to the Sheriff's Department that mother and father engaged in a domestic violence incident a few days earlier. At the motel, deputies noted mother had light bruising on her arm. After interviewing mother, father, and Isis concerning the incident, officers arrested father.

¹ Because father is not a party to this appeal, we do not discuss the facts relevant only to him.

A department social worker interviewed Isis and mother's mother, Brenda, and eventually placed Abigail with Brenda. Brenda, who cared for Abigail after her birth, indicated she would be willing to continue to care for Abigail. Brenda told the department social worker that mother had been diagnosed with both bipolar disorder and schizophrenia. Mother had been hospitalized due to these conditions in 2011, 2012 and again in 2014, but refused to take medication to treat her conditions and would not participate in treatment. Brenda said "she knew this day was going to come because [mother's] mental health issues have not been dealt with, and for that reason her daughter could not be allowed to keep the child," and she was hopeful that the department would assist mother in getting psychiatric help.

Both Brenda and Isis indicated mother frequently behaved irrationally and aggressively. Brenda stated, for example, "She destroys things when she is upset about nothing. . . . It is very difficult to say what she is going to do at any moment. People around here are scared of what she might do when she is mad about something." Isis stated that mother "sometimes acts normal and other times, she would appear to be hearing voices and acting bizarre." Brenda was particularly concerned about the events which precipitated the department's involvement with mother and Abigail. She stated that although she had been caring for Abigail since her birth, "one day [mother] had one of her psychiatric episodes and just grabbed the baby and left her home to stay with baby's father in a motel."

Mother's family also indicated that her relationships with men consistently involve domestic violence, and that mother is often an aggressor. In fact, Isis said she contacted law enforcement concerning Abigail's safety due, in part, to mother and father's "non-stop domestic violence." The department also learned that mother has two older children with a different father, and those children were removed from mother's custody due to her history of domestic violence with the children's father. In that prior dependency proceeding, the court sustained allegations that mother came to the father's home on more than one occasion and broke windows in his home and in his car. The court also sustained an allegation that mother was unable to care for the

children because she had been involuntarily hospitalized due to her psychiatric condition. When the prior court terminated jurisdiction over the two older children, it issued an order giving sole legal and physical custody of the children to their father.

On September 16, 2015, the department filed a dependency petition under Welfare and Institutions Code² section 300, subdivisions (a)³ and (b). As later amended, count b-1 of the petition alleged that Abigail was at a substantial risk of harm to her physical health and safety due to domestic violence between mother and father, which took place in front of Abigail, and that Abigail's siblings are prior dependents of the court due to mother's domestic violence with their father. Count b-2, also as subsequently amended, alleged that mother suffers from mental health issues which periodically render her unable to provide care for Abigail, and that Abigail's siblings are prior dependents of the court due to mother's mental health issues. At a hearing on September 16, 2015, the court found the department established a prima facie case of jurisdiction and ordered Abigail detained from mother. The court ordered the department to provide family reunification services and to refer mother for a psychiatric evaluation. The court also ordered monitored visitation for mother for a minimum of one hour, twice weekly, and gave the department discretion to liberalize visitation.

In its jurisdiction/disposition report filed November 10, 2015, the department reported mother had been medication compliant for one month, and that her monitored visits with Abigail had been going well. The department later reported, in a last minute information for the court, that on November 2, 2015, mother started attending an outpatient treatment program focusing on addiction, relapse prevention, parenting, and life skills. Mother was randomly tested for drugs on four occasions during the first month of her treatment; all results were negative.

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

³ The court later dismissed the count relating to subdivision (a).

The court conducted an adjudication hearing on December 7, 2015. Mother waived her right to contest the factual basis of the petition. With respect to the disposition, however, mother requested that Abigail be placed in her custody. Mother argued that father, who was in jail, no longer posed a risk to either mother or Abigail. Further, she asserted that she was capable of taking custody of Abigail, inasmuch as she recently enrolled in a treatment program and tested negatively for drugs during the first month of treatment. Mother also pointed out that she had been participating in weekly counseling and was taking her psychotropic medication on a regular basis. Both the department and minor's counsel recommended that Abigail be removed from mother's custody.

Regarding jurisdiction, the court sustained counts b-1 and b-2 of the petition, as amended, and found Abigail to be a dependent child within the meaning of section 300, subdivision (b). With respect to disposition, the court found by clear and convincing evidence that a substantial danger to Abigail's physical and/or emotional health existed and no reasonable means to protect Abigail existed, short of removal from mother's custody. The court ordered mother to participate in a 12-step program and weekly, random drug testing. It also required mother to attend domestic violence and substance abuse counseling, and take all prescribed psychotropic medications. The court left in place its order requiring mother's visitation with Abigail to be monitored.

Mother timely appeals.

DISCUSSION

Mother's sole contention on appeal is that there were reasonable means, short of removal, to protect Abigail from harm. We disagree.

Before a juvenile court may order a child removed from her parents' custody, it must find 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 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); *In re T.V.* (2013) 217 Cal.App.4th

126, 135.) The declared purpose of the dependency laws is “to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.)

“ ‘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. [Citation.] 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. [Citation.]’ [Citations.] The juvenile court’s findings must be based on clear and convincing evidence. [Citations.] We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings. [Citations.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

As mother notes, courts have consistently held that removal “ ‘is a last resort, to be considered only when the child would be in danger if allowed to reside with the parent.’ (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.)” (*In re Dakota J.* (2015) 242 Cal.App.4th 619, 629.) Here, as discussed above, the department established that mother had a long history of violent, aggressive and unpredictable behavior which placed Abigail in danger in the past and was likely to place her in danger in the future. Indeed, the fact that mother chose to take Abigail to the motel with her when she went to meet father there (rather than leaving her in Brenda’s care) and then became so intoxicated that she could no longer care for Abigail, is exactly the kind of danger that justifies removal of an infant from a parent. (See, e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754, 767 [where a child is less than six years old, a “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”]; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Mother does not argue otherwise.

Instead, mother asserts the court should have released Abigail to her custody, conditioned on unannounced home visits by a social worker and in-home services. Mother also suggests the court should have ordered her to reside with her mother, Brenda, at least temporarily, rather than remove Abigail from her custody. Mother contends these restrictions would have been sufficient to protect Abigail from harm, particularly in light of the progress she made during the month before the disposition hearing. Specifically, mother notes that she tested negative for drugs on four occasions in November 2015. She also states, accurately, that she was complying with her case plan, taking her prescribed medication, participating in weekly therapy, attending classes as part of her treatment program, and enrolled in a domestic violence class.

While mother's efforts are to be commended, and encouraged, they were nascent at the time of the disposition hearing. Our colleagues in Division Eight of this district recently affirmed a removal order under circumstances similar to those presented in this case. (See *In re J.C.* (2014) 233 Cal.App.4th 1.) There, father had a history of drug abuse but urged the trial court to place his three-month-old son in his custody because he had been sober for seven months and was consistently participating in a drug treatment program. (*Id.* at p. 6.) Affirming the court's removal order, the court of appeal observed that a short period of sobriety did not eliminate the risk that father might relapse, particularly in light of evidence of prior treatment and relapse. (*Ibid.*) Further, the court found it significant that father had two older children who had been removed from his care in a prior dependency proceeding, also due to his continuing drug use. (*Ibid.*) In addition, the court noted, father had a history of domestic violence with the child's mother. (*Ibid.*) The court of appeal concluded that, taken together, these facts supported the trial court's conclusion that the infant would be at risk of harm if returned to father's custody. (*Ibid.*)

We reach the same conclusion here. The court was justified in refusing to place Abigail in mother's custody, despite mother's initial progress, because mother's rehabilitation and treatment efforts had been underway for only one month at the time of the adjudication. Further, in light of undisputed evidence concerning mother's historic

failure to engage in treatment and refusal take prescribed antipsychotic medication, it was not speculative to believe mother might resist current treatment efforts. As the facts of Abigail's detention indicate, even a short period of psychosis has the potential to place an infant at a serious risk of harm.

Certainly, the existence of mental illness is not, in and of itself, a sufficient basis to support a removal order; the department must produce evidence of a specific, defined risk of harm. (See, e.g., *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318 [social services agency had the "burden of showing specifically how the minors have been or will be harmed and harm may not be presumed from the mere fact of mental illness of a parent"]; *In re James R.* (2009) 176 Cal.App.4th 129, 136 [same].) The department presented such evidence here, relating to mother's well-established pattern of erratic, aggressive and violent behavior. Specifically, in the prior dependency proceeding, mother's two older children were removed from her custody based upon sustained allegations concerning domestic violence, including allegations that mother went to the children's father's house and broke windows in both his home and his car. And mother's family attested that her relationships with men consistently involve domestic violence in which she is the aggressor, and that her relationship with father continued the pattern. It was entirely reasonable for the court to conclude, based upon this substantial evidence, that Abigail would be at a serious risk of imminent harm if she were placed in mother's custody or if mother were allowed unmonitored visitation with Abigail.

In short, substantial evidence supports the court's conclusion that nothing short of removal would adequately protect Abigail from a substantial risk of harm.

DISPOSITION

The court's disposition order is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.