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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ALEXIS B, A Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

STEPHANIE A.,

Defendant and Appellant.

B233632

(Los Angeles County
Super. Ct. No. CK85563)

APPEAL from an order of the Superior Court of Los Angeles County,
Terry T. Truong, Juvenile Court Referee. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Stephanie A. (mother) is the mother of Alexis B. (Alexis), born in July 2007.¹ While in the care of mother's boyfriend, Alexis was beaten to the extent that she required emergency care and was hospitalized for approximately two months. Although mother was arrested for child endangerment but later released, the Department of Children and Family Services (DCFS) filed a petition on Alexis's behalf alleging that mother knew or should have known about the abuse and failed to protect Alexis. The trial court sustained the petition against mother and denied her reunification services.

Mother appealed and contends that (1) the trial court erred in sustaining the count alleged against her because there was insufficient evidence to support the finding; and (2) the trial court's order denying her reunification services based on such finding is, therefore, erroneous and must be reversed. We disagree.

The record contains overwhelming evidence that the abuse occurred more than once prior to the incident which led to Alexis's hospitalization and that mother knew or should have known about such abuse. Additionally, the trial court's order denying reunification services to her was based on substantial evidence and was reasonable under the circumstances. Therefore, we will affirm the lower court's order.

¹ Mother completed a Parentage Questionnaire in which she stated that Edgar P. (Edgar) was Alexis's biological father but did not know his whereabouts. The trial court found that Edgar was her alleged father based on this questionnaire and mother's testimony regarding this issue. Edgar is not a party to this appeal.

FACTUAL AND PROCEDURAL BACKGROUND²

On November 26, 2010, the day after Thanksgiving, mother left Alexis in the care of Moises M. (Moises), mother's boyfriend of three months, while she went to work. That evening, Moises called mother indicating that Alexis had fallen off the bed, hit her head and was not breathing, after which he called 911 at mother's direction. Paramedics arrived at the scene and transported Alexis to St. Francis Hospital where she was treated in the emergency department because they feared she would not survive the drive to a pediatric trauma center. After physicians stabilized her condition, Alexis was transferred to Miller Children's Hospital. Alexis came to DCFS's attention when staff there alerted DCFS to her case. Based on the conflicting stories of both mother and Moises, described below, the police arrested them for suspected child endangerment and child abuse, respectively. Mother was later released, however. DCFS filed a Welfare and Institutions Code³ section 300 petition on December 1, 2010 on behalf of Alexis.

1. The Extent of Alexis's Injuries

Paramedics transported Alexis to St. Francis Hospital where she was treated by Dr. Edward H. Sims (Dr. Sims). Dr. Sims' progress notes indicated that Alexis presented with swelling and bruising around both eyes, "on her head, face [around her nose and mouth] especially the right angle of the lip and also her neck." There were many bruises on her chest, some of which were old and healing, and a large bruise on

² The factual and procedural background was taken from the record which consists of a three-volume Clerk's Transcript and a one-volume Reporter's Transcript.

³ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

her back. She had also sustained lots of little injuries to her extremities. She had intraabdominal and intrathoracic swelling and bleeding. A CT scan of her head showed a prior healing subdural hematoma as well as an acute subdural hematoma, which Dr. Sims stated “could be a rebleed into a chronic subdural.” Her lungs were opaque showing possible contusions throughout. Alexis was unable to breathe for herself and required intubation and maintenance on a ventilator. Her blood alcohol was elevated. Dr. Sims stated that her injuries, which were of varying ages, were inconsistent with the parents’ report that she was jumping on the bed and fell off and that he suspected child abuse.

After being stabilized, Alexis was transferred to Miller Children’s Hospital where she was placed under the care of Dr. Melissa Egge (Dr. Egge). In addition to noting the same or similar issues noted by Dr. Sims, Dr. Egge stated in her progress notes that Alexis was covered in multiple bruises which ranged in age, some were old and green and some were new and “blue/purple.” Alexis also had subretinal hemorrhages in both eyes, which, in her words was “most telling of possible nonaccidental trauma.” Due to the subdural hematoma and swelling in her brain, Alexis suffered a stroke of the entire left cerebrum and part of her right frontal lobe. She also suffered from a partial ligamentous tear and sprain of her neck. Dr. Egge reported, “The totality of findings in this child are diagnostic of severe inflicted injury. Mechanisms involved *multiple episodes* of blunt force trauma to her back and abdomen. Her head injuries may be the result of blunt force trauma or acceleration-deceleration forces.”

(Italics added.) In a later progress note, another doctor stated, “Possibility of death and if survives likely to be left with significant neurological injuries or deficits.”

Alexis remained in the hospital for nine weeks. She was discharged on January 28, 2011 to a skilled nursing facility for further care and treatment.

2. *Mother’s Inconsistent Statements*

DCFS interviewed mother while she was in custody and later in its offices on December 27, 2010. Mother was also interviewed by South Gate Police Department Officer Gonzalez and Detective Gomez, shortly after the incident requiring Alexis’s hospitalization occurred. Many of her statements are inconsistent.

Mother reported to DCFS that Moises did not live with her because he was a marine and lived on the base; however, Moises stayed with her on the weekends. Mother stated that she believed she could trust Moises, that he babysat for her on occasion (usually no more than 30 to 40 minutes at a time) and that he bathed the child. She initially reported that she had no concerns and that she did not think Moises was abusing Alexis. With respect to the significant injuries Alexis suffered, mother stated she didn’t believe that Moises would hurt Alexis, she trusted him and *she had no idea how the injuries were sustained.*

Mother reported that Moises had accidentally dislocated the child’s elbow a few weeks prior when he grabbed her to stop her from running into the street. She stated she did *not* witness the event but Moises had explained what happened and she believed him. In a subsequent interview, mother contradicted her earlier statements. She stated instead that Alexis was running towards the street after hearing the ice cream truck and

Moises grabbed her to stop her. She stated she was walking from the house to the car and *witnessed* the incident. She took Alexis to the doctor for an examination but never received the results and Alexis's arm healed on its own.

When questioned about the bruises all over Alexis's body, mother's responses were also inconsistent. She explained that the bruises were from her being picked up or from her falling down because she is clumsy. But then stated to DCFS that she had not seen any bruises or marks on Alexis when she showered her during the two days before the main incident occurred. Mother stated that she had no knowledge of any abuse by Moises and that all of Alexis's past injuries were explained. However, mother admitted that Moises played too roughly with her daughter. She also stated she was not aware of bruises in different stages of healing but that Alexis had flea bites. When maternal grandfather asked about the multitude of small round bruises all over Alexis's torso, mother explained that Alexis had chicken pox. Maternal grandfather said the marks looked nothing like chicken pox.

In a separate statement, mother told Officer Gonzalez that she noticed a large bruise on Alexis's back two to three days prior to the incident while she was showering the child. She stated that when asked how the bruise got there, Alexis said she fell against the edge of a table while playing with older children at Moises's mother's home. Mother stated she also noticed bruises located on the left and right sides of Alexis's torso, which appeared to have been caused by someone squeezing Alexis. She stated she wasn't sure how these bruises were obtained but they could have been the result of

her picking up Alexis as Alexis “bruises very easily and . . . is very clumsy and injures herself a lot.”

Her statements to Detective Gomez conflicted further. Mother reported that she had previously seen the bruises on Alexis’s back, arms and sides – some of which she noticed about a month prior to the November 26th incident, that the bruises were incurred when Moises squeezed Alexis’s arms and grabbed Alexis too hard while “playing,” that she told him not to be too rough with Alexis but that she could have done more to protect Alexis. She stated that she did not seek professional help because she did not feel the bruises were anything to be concerned about. She explained that Moises “is a great role model and he is a very responsible person around her daughter” then reassured Detective Gomez that despite the injuries Alexis has suffered, Moises “never physically abused her daughter” and she “never suspected [Moises] would ever harm her daughter in any way.” Additionally, when maternal grandfather asked mother why she lets Moises play so rough with Alexis, she responded, “That’s the way he plays with her.”

Maternal grandfather reported to DCFS that he told mother not to trust Moises because she knew so little about him. Around two to four weeks prior to the November 26th incident, while in the care of Moises, Alexis hit her head and lost consciousness. Mother explained to maternal grandfather that Alexis had fallen off the bed or bumped her head after tripping and falling. She said that Moises took Alexis outside for fresh air and she regained consciousness. Maternal grandfather also stated, prior to the November 26th incident Moises told him he liked to make Alexis unhappy so then he

could cheer her up; being alarmed by this remark, maternal grandfather told mother not to leave Alexis with Moises.

3. *Moises's Inconsistent Statements*

The report submitted by Detective Gomez included statements made by Moises as well. DCFS also interviewed Moises while he was incarcerated on December 16, 2010. Regarding the incident which led to Alexis's hospitalization, Moises initially stated that Alexis was jumping on the bed when she slipped and fell onto the floor head first. Immediately after falling, Alexis "clinched both her fist[s] and her eyes started rolling back." He then admitted that he was playing with Alexis and intended to toss her onto the bed, but threw her "a little too hard" and she hit the wall. He claimed he initially lied because he was afraid that mother would break up with him if she knew the truth. When asked if the collision was severe, he replied, "yes." He also stated that he "was just joking" with Alexis when he threw her and did not intend to hurt her.

With respect to the injury to Alexis's elbow a few weeks prior, Moises explained to DCFS that he, mother and Alexis were at the mall. Mother was either in the car or walking to the car. He stated that he opened the door but Alexis began walking towards the back of the car and he grabbed her by the arm to pull her back. This is inconsistent with both of mother's prior explanations. Maternal grandfather also reported that Moises explained Alexis's dislocated elbow was due to his grabbing her to stop her from running into the street after the ice cream truck.

When asked about the bruises all over Alexis's body, Moises explained to Detective Gomez that he noticed a large bruise on Alexis's back day before the

November 26th incident occurred and claimed he did not know where the bruise came from but that Alexis “runs into things” because of her “equilibrium problem.” He stated Alexis was bruised on her chest as well when she was playing hide and seek with a blanket over her head and fell against a wooden *bed* frame. These statements are inconsistent with those he provided to DCFS. He told DCFS that he noticed three little light-green bruises on her back when he gave her a hug two nights before the incident. He said Alexis told him she fell down at her house. He also stated that while playing hide and seek, Alexis tripped and hit her stomach on the wooden frame of a *chair*. He stated her stomach was red as a result. When asked by a police officer about what appeared to be a bite mark on Alexis, Moises told the officer that Alexis had ring worm. He also reported that Alexis had a number of bumps from hitting things. He admitted to previously bruising the child’s sides when picking her up and tossing her in the air but that he no longer plays “rough with her” because mother told him to stop. Moises stated that he notified mother every time Alexis was injured in his care so that mother wouldn’t think he was abusing her.

4. *The Proceedings*

The trial court found that DCFS had made a prima facie case for Alexis’s detention because “substantial danger exists to the physical or emotional health of minor(s) and there is no reasonable means to protect the minors without removal.” The trial court ordered reunification services for mother that included parenting and individual counseling, transportation assistance and monitored visitation. But it ordered that Moises was not to be allowed any visitation.

At the adjudication hearing on May 31, 2011, the trial court sustained the petition, including a finding against mother pursuant to section 300, subdivision (e),⁴ supported by a preponderance of the evidence. The court also found, by clear and convincing evidence, that mother was a parent described under section 361.5, subdivision (b)(5),⁵ and ordered that family reunification services no longer be provided to her. The court stated that mother failed to show “by a preponderance of the evidence, based on competent testimony, that services would likely prevent the reabuse or that it would be detrimental to Alexis to not order services.” The trial court noted further, “[T]here were enough red flags in this case that [mother] should have realized that [Moises] was a danger to her child . . . [mother] ignored the warning signs and allowed her child to be severely injured by [Moises].” Mother timely appealed.

CONTENTIONS

In her appeal,⁶ mother contends that (1) the trial court erred in sustaining the count alleged against her under section 300, subdivision (e), because there was

⁴ Section 300, subdivision (e), provides, in relevant part, that a child will fall within the jurisdiction of the court if he or she, “is under the age of five years and has suffered severe physical abuse . . . by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.” The parties do not dispute the first two requirements. Mother only disputes that she knew or should have known that Moises was abusing Alexis.

⁵ Section 361.5, subdivision (b), provides that, “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, . . . [¶] (5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.”

⁶ Moises is not a party to this appeal.

insufficient evidence to support the finding⁷; and (2) the trial court's order denying her reunification services based on such finding is, therefore, erroneous and must be reversed.

DISCUSSION

1. *Substantial Evidence Supports the Trial Court's Finding that Mother Knew or Should Have Known that Moises was Abusing Alexis*

Mother contends that the record does not contain evidence sufficient to support the trial court's finding that she knew or should have known that Moises was abusing Alexis. Thus, she continues, the trial court erred in finding that she was a parent described in section 361.5, subdivision (b)(5). (See fn. 5, *ante*.) We disagree.

“When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment.” (*Scott v. Pacific Gas*

⁷ Mother does not dispute that the trial court had jurisdiction over Alexis under its other findings because an appellate court can affirm a trial court's jurisdictional finding if the evidence supports any one of the statutory bases for such jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) However, mother contends that this court should address the merits of her argument because the section 300, subdivision (e), finding *directly resulted* in the trial court's decision to deny her reunification services under section 361.5, subdivision (b), which is the order she'd like reversed. Mother is incorrect, however, because any finding of jurisdiction is based on the lower preponderance of the evidence standard, while under section 361.5, subdivision (b)(5), the trial court was required to make a *subsequent* finding by clear and convincing evidence that section 300, subdivision (e), applies before it could deny reunification services. Therefore, we will review the trial court's second finding pursuant to section 361.5, subdivision (b)(5) (incorporating section 300, subdivision (e)), rather than its initial jurisdictional finding pursuant to section 300, subdivision (e), alone. In any event, as we discuss *post*, the record contains evidence sufficient to support both of the trial court's findings.

& Electric Co. (1995) 11 Cal.4th 454, 465.) In reviewing the evidence on appeal, all conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences indulged in to uphold the judgment, if possible. When a judgment is attacked as being unsupported, our power begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. And when two or more inferences can be reasonably deduced from the facts, we are without power to substitute our deductions for those of the trial court. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571; *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.)

There is substantial evidence in the record supporting the trial court's finding, by clear and convincing evidence, that mother knew or should have known that Moises was abusing Alexis. Despite Alexis's significant injuries, when DCFS contacted mother, she expressed no concerns about Moises's care of Alexis and did not think the child was being abused. She also denied to the police even after Alexis was hospitalized that Moises caused such abuse.

Further, mother dismissed the numerous bruises of varying ages all over Alexis's body as being (1) acquired when the child was picked up because she "bruises easily," (2) sustained when the child accidentally fell down because she is clumsy, (3) caused by flea bites, or (4) caused by the child's having chicken pox. Mother's statements regarding her knowledge of Alexis's bruises were inconsistent as well. In one such statement, she said that she had not previously observed any marks or bruises on the child prior to the November 26th incident. She later admitted to knowing about the

bruises under Alexis's arms and back and telling Moises not to "play rough" with the child. The photographic evidence in the record (39 pages of photographs) clearly shows severe and extensive bruising and marks all over Alexis's body. The progress notes of Alexis's physicians describes the bruising as being in various stages of healing, some old and some new, making mother's statements regarding her lack of knowledge of these marks highly suspicious.

Mother was also aware that Moises had previously dislocated Alexis's elbow and appeared to have tried to cover up for him by telling varying stories as to how the injury occurred. In some statements, mother witnessed the incident while in others she did not. In some stories Alexis was running after the ice cream truck while in others she was running into the street. Moises claimed it occurred at the mall when Alexis ran around the back of the car.

The evidence that Alexis sustained injuries on different occasions, that Moises informed mother every time he inflicted injuries on the child and that mother's stories of how Alexis obtained such injuries are inconsistent, overwhelmingly supports the trial court's finding that mother knew or reasonably should have known but denied that Alexis was being abused by Moises yet failed to protect her.

3. *The Trial Court's Finding Supports Its Order Denying Reunification Services to Mother*

Mother also contends that the trial court's order denying her reunification services is erroneous and must be reversed. This contention fails as well.

Under section 361.5, subdivision (c), “the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) [the provisions that the trial court found applied to mother] unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent.” In other words, after a finding is made under section 361.5, subdivision (b)(5), by clear and convincing evidence, the general rule favoring reunification services no longer applies and the burden is on the parent seeking reunification services to produce evidence that such services would be successful, or that the failure to attempt reunification would be detrimental to the child. (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 162.) An order denying reunification services to a parent is reviewed for substantial evidence. (*Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 560.)

Mother completely failed to meet her burden. At the hearing, mother incorrectly argued that DCFS “has not shown that family reunification services would be lost on mother.” As noted above, the burden was on mother not DCFS. Furthermore, mother did not testify at the hearing by invoking her Fifth Amendment rights. Thus the only evidence she submitted included a letter from her therapist, Delores Hill, a certificate of completion of a 15-week parenting class, and a letter from her visitation monitor, Nancy Zeravene.

Although the documents submitted show that mother participated in her parenting classes and visited Alexis at the hospital, they do not support mother’s

argument that continuing reunification services would be successful in preventing the reabuse of Alexis. Furthermore, mother's behavior failed to demonstrate that she would be capable of preventing reabuse. For example, mother remains in denial about Moises's abuse of Alexis. She used fake identification and a false name to visit him while he was in jail and maintained contact with his family even after his arrest. Also, mother denied any knowledge of the abuse prior to the events on November 26, 2010, denied that Moises caused Alexis's injuries and refused to cooperate with the criminal investigation. Mother's behavior shows she still favors the abuser over her own child even after the child nearly died at his hands.

Additionally, not only did mother fail to argue at the hearing that the failure to attempt reunification would be detrimental to Alexis, but also the evidence presented does not support this assertion. Despite mother's claims on appeal that Alexis cries when their visits end, mother failed to produce any evidence showing that they share a close and positive bond.

Based on the record, the trial court reasonably found that mother failed to meet the required burden of proof and thus its order denying her reunification services was supported by substantial evidence.

DISPOSITION

The order is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.