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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.O. et al., Persons Coming
Under the Juvenile Court Law.

B284095

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK87336)

Plaintiff and Respondent,

v.

ANDREA E.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Debra Losnick, Juvenile Court Referee. Affirmed.

Emery El Habiby, 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.

* * * * *

Andrea E. (mother) appeals from the jurisdiction and disposition orders entered April 26, 2017. Mother contends the juvenile court erred in asserting dependency jurisdiction over her three minor sons pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b) and (j),¹ and in issuing disposition and custody orders unsupported by the evidence.

We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2017, mother was 23 years old and had three young sons, eight-year-old J.O., five-year-old A.N. and three-year-old M.L. When mother was a minor, she was in foster care and had her first child, J.O., while a teenager.

Mother had sole legal and physical custody of J.O. She obtained sole custody of him at the conclusion of a prior case with the Los Angeles County Department of Children and Family Services (Department). J.O.'s father was deported to Mexico after being convicted for driving under the influence. Mother maintained a relationship with J.O.'s paternal grandmother, O.B. (paternal grandmother), and relied upon her regularly for child care. Mother did not know the whereabouts of A.N.'s father, who has never even seen A.N. M.L. lives primarily with his father, Andres L.²

On January 11, 2017, paternal grandmother called the Department expressing concern about mother and her inability to care for the boys. She reported that mother left J.O. with her

¹ All undesignated section references are to the Welfare and Institutions Code.

² None of the fathers is a party to this appeal.

over the holiday break and then never picked him up when the school year started again in January. Paternal grandmother was concerned that J.O. already had 15 absences and 16 tardies for the school year. She said mother often dropped off the children to go out with friends or her boyfriend. Paternal grandmother said she sometimes took care of A.N. as well, and he told her that mother leaves him with a babysitter all the time. She said she only had J.O. with her at that time and was unaware where the other two boys were, but M.L. was probably with his father.

The next day, paternal grandmother called the Department again to report that J.O. was crying “inconsolably” and did not want to leave with mother. The social worker could hear J.O. crying in the background. By the time the social worker arrived at paternal grandmother’s home, mother had left with J.O. Paternal grandmother said J.O. often cried when he had to leave with mother and she did not know why. Paternal grandmother denied ever seeing mother pick up the boys under the influence or acting drunk. She said she had no idea if mother used drugs. Paternal grandmother said one of her nephews told her that mother’s car sometimes smelled “funny,” maybe like marijuana.

On January 19, 2017, the social worker visited the home of Maria L. (maternal great-grandmother). She reported that mother lived there with her, along with J.O. and A.N. The youngest, M.L., lived with his father but visited regularly. She denied ever seeing mother abuse the boys. Mother disciplined the boys only by using time-outs and taking away television privileges. She said A.N. can be hyperactive and throws tantrums a lot. Maternal great-grandmother said she provides child care for mother when she can, but she works during the day and therefore is not always available. Maternal great-

grandmother said mother goes out in the evenings and stays out late often, but she denied ever seeing her come home drunk or acting inebriated around the boys. The boys are not left alone, because maternal great-grandmother is at home in the evenings and the boys are usually asleep when mother goes out.

J.O. told the social worker he is punished for bad behavior with time-outs. He said he has never seen any physical fighting or hitting between mother and her boyfriend Eddie, but they scream at each other a lot. J.O. said he did not know what alcohol and drugs were. He said he has missed school, including recently because mother's car was towed so she could not get him there (the school was not within walking distance). The social worker noted J.O. had no visible bruises or signs of abuse or neglect. J.O. said he feels safe with mother and likes living with her.

The social worker reported that A.N. was very active and energetic. He did not have any visible bruises or signs of abuse or neglect. A.N. reported however that his mother punished him by hitting him with a belt across his ribs, and hitting him with her hand on his legs and buttocks. A.N. said mother punished J.O. the same way, but only hit M.L. on the head with her hand. He said mother fights with Eddie and one time he was in the car with them, when mother and Eddie got into a fight. Eddie pushed his mother against the car window and pulled her hair and mother pushed back. A.N. said he does miss school sometimes and reported he missed school that day because mother's car had been towed. A.N. said he felt safe with mother and likes living with her.

M.L. was too young to make a meaningful statement. The social worker spoke to M.L.'s father, Andres, who said that

mother can be irresponsible, fails to communicate well (e.g., regarding pick up and drop off times), and has shown poor judgment in the past. Andres did not want to interfere with mother seeing M.L. regularly but has concerns about him ever residing with her. M.L. is often “filthy” when he comes back and mother’s explanations are not plausible. Andres is also concerned about mother’s living situation. She recently moved back in with maternal great-grandmother. She had lost the place she obtained through a special housing program because she rented out a room to someone she found on Craigslist.

The social worker met with mother several days later. Mother said the reason she did not pick up J.O. from paternal grandmother at the end of the holiday break was because she was in the hospital for five days with stomach problems. She said she also recently had her car towed and therefore transportation was difficult. Mother explained her child care plan consisted primarily of relying upon maternal great-grandmother and J.O.’s paternal grandmother. Sometimes she leaves them with a neighbor/friend named Zurabeth. However, Zurabeth recently had a Department case opened regarding her children, so mother said she probably can no longer rely on Zurabeth to help out.

Mother denied getting drunk or being under the influence of any substance around the children. She admitted she likes to go out with friends, but does not need to drink to have fun and will usually only have one drink. She explained that the prior Department case involving J.O. involved an isolated incident of getting drunk when she was a teenager and young mother still in foster care and living in transitional housing. She was not used to drinking and got drunk, and that triggered the case. She

denied any regular pattern of drinking. Mother agreed to take a drug test.

Mother said she does not hit her boys. For discipline, she takes away their electronic devices. She said she has never used corporal punishment with any of her boys. She admitted she threatened to hit A.N. with a hanger one time to try to get him to behave, but she never touched him with it. Mother said he has unusual tantrums and behavior problems. She initiated services with Children's Institute, but he had not yet been evaluated.

Mother explained that J.O. cries when he leaves paternal grandmother's house because paternal grandmother spoils him. He whines and cries and gets away with things there that mother does not let him get away with at home.

Mother said she recently broke up with her boyfriend Eddie. She denied any instances of domestic violence, including the incident A.N. reported in the car.

Over the next several weeks, the social worker visited with the family again. J.O. reported he had not been to school for several days. He denied mother ever left him home alone or without food. A.N. also said he had not been to school for a "long time." He said mother feeds them and does not leave them alone. A.N. mentioned that mother hit him with a hanger. The social worker noted no bruising or marks where A.N. pointed on his leg.

M.L. was at the home so the social worker spoke to him briefly. He said he likes being at mother's home because he can play with A.N. He said they ate spaghetti and meatballs that day. Given his young age, M.L. was not able to make any other meaningful statements.

On February 7, 2017, mother spoke with the social worker on the phone about drug testing. Mother said she was uneasy

about doing so, but was willing to take a test. A test was arranged for the following day. Mother reported she has a medical marijuana card but stopped smoking marijuana about three weeks earlier. She explained that her car smelled “funny” (according to paternal grandmother) because one of the windows does not close all the way and any time it rains, the inside gets wet and then smells musty.

The social worker spoke to the children’s doctor. The office staff reported that Andres usually brings in M.L. for immunizations and visits due to allergies. J.O. had not been brought in for a visit, and mother had not scheduled a visit for A.N. to address a condition he has known as phimosis (problem related to the foreskin). Mother had also not followed up on having A.N. evaluated at the Children’s Institute.

The next day, mother was reported as a “no show” at the clinic for her drug test. The social worker received a call from mother who explained she did not have enough gas to get to the test. Mother said she was not refusing to go and was willing to have the test rescheduled. Mother appeared for a test on February 10, 2017, and the results were pending as of the date of the detention report.

The social worker confirmed that mother had no criminal history. The social worker reported that the home mother shared with maternal great-grandmother was dirty and disorganized. The space was small and shared with two dogs and a cat. The home smelled strongly of pet urine and there appeared to be mouse droppings in the kitchen. Mother said the refrigerator had recently stopped working, so they were eating a lot of fast food for the time being.

The social worker spoke to J.O.'s and A.N.'s teachers who reported that absences and tardies were the only concern. None of the teachers reported any signs of abuse or neglect. The social worker noted it appeared that A.N.'s behavioral issues appear to be triggered when he is in the home with mother or otherwise in her care.

On February 15, 2017, the Department filed a petition pursuant to section 300, subdivisions (a), (b) and (j), alleging, among other things, that mother and her boyfriend engaged in domestic violence in the presence of A.N., that mother allowed the boyfriend to have regular contact with the boys and they were at risk of substantial harm, that mother abused A.N. by striking him with a belt and a hanger, and that mother had a history of alcohol abuse and is a current abuser of marijuana.

At the detention hearing, the juvenile court ordered all three children to remain in the custody of the parents. Both J.O. and A.N. were allowed to remain in mother's custody. As to M.L., the court ordered mother and father to share custody, one week on, one week off, Sunday to Sunday. Family preservation services were ordered.

The jurisdiction and disposition report, dated March 29, 2017, reported additional developments. J.O. admitted that mother does hit A.N., but only with her hand and "softly." He said she mostly just makes him go to bed or takes away a toy if he is bad. J.O. said A.N. lies a lot and J.O. had never seen mother hit anyone with a belt. J.O. continued to deny any understanding of what alcohol or drugs were. He reported that mother had stopped seeing her boyfriend Eddie.

A.N. was observed with some small bruises on his shins. He could not elaborate on previous discipline issues, saying only

that mother had hit him with a hanger and said no one ever sees because they are in a room with the door closed. A.N. said he cries when mother hits him with a hanger.

Mother said none of her boys gets special treatment. They are all treated equally. She mentioned however that J.O. never disrespects her, but A.N. always throws tantrums and cries. He wants her to buy things she cannot afford when they are in the store. When he makes a scene in public, sometimes she will grab him by the ear to get his attention and make him come with her, but otherwise mother said she does not do anything abusive as discipline. She again denied ever hitting them with hangers or belts and denied they ever have had any injuries. Mother also again denied that the domestic violence incident in the car described by A.N. ever occurred. She said the only incident that might be described as domestic violence in front of the boys involved M.L.'s father Andres, not Eddie. She said when she and Andres broke up, he came over when her new boyfriend was there. When Andres saw the other guy in the house, he started yelling at mother and pushed her. The other man intervened and that was the end of it, but it took place when all of the boys were present in the home. Mother said Andres otherwise never hit her or abused her when they were together.

Mother reported she would probably continue to smoke marijuana because it helped with her stomach problems. She said the prescription medications she had previously been given make her feel worse than smoking marijuana and she never smokes around the boys. She only smokes at night after they are in bed. Mother said she keeps any marijuana she buys in her closet where the boys cannot get to it and they have never even seen it. She said she would never drive if an emergency arose at

night, because she could rely on a taxi or an Uber driver to get her to the hospital. She reiterated that she does not drink regularly but likes to go out occasionally with her friends. She never comes home drunk or has a hangover because she never drinks enough for that to happen. Mother said she has never kept alcohol in the house. Mother's on demand drug test came back negative.

Mother admitted she thinks drug counseling is "a waste of time" because she does not abuse it. "I'm not going to do it."

Andres told the social worker he has never seen mother abuse the boys or hit them with anything, only an occasional spanking. He said that mother had once told him that she used to get into altercations with A.N.'s father but he was no longer around. Andres also said sometimes A.N. is at their home and that he has a tendency to throw tantrums, but they are usually able to get him to calm down by telling him to sit and read or draw. Andres said he believes A.N. is a good boy and did not feel he tells lies.

During the visit with Andres in his home, M.L. told the social worker that he did not want "to go to mommy's house because I want to stay here."

The Department stated it believed mother had gained little insight from the provision of services, including from the prior case with the Department, and she had also stated her unwillingness to participate in services. The Department reported that mother does not appear to have an alcohol abuse problem, but does use marijuana for medicinal purposes and insists her use does not impact her ability to properly parent the boys. J.O.'s paternal grandmother and M.L.'s paternal family expressed multiple concerns about mother's instability and

pattern of irresponsible behavior. The Department recommended that additional services be provided to mother to help her demonstrate the ability to properly parent all three boys and help her learn how to better meet their basic needs.

At the jurisdiction and disposition hearing, the court sustained the petition as to the allegation at paragraph a-4 that mother had engaged in an act of domestic violence with her boyfriend in front of A.N., and had allowed regular contact by the boyfriend with the boys, placing all three at substantial risk of future harm. The court sustained the allegation at paragraph b-1 that mother physically abused A.N. by striking the child with a belt, a hanger and also with her hand, placing all three children at risk of harm. The allegation at paragraph b-5 was also sustained that mother had a history of alcohol abuse and is a current abuser of marijuana, rendering mother incapable of caring for her three sons, who are of a young age and require constant supervision. The court sustained the allegation at paragraph j-1 on the same grounds as paragraph b-1. The remaining allegations were dismissed.

Mother's counsel requested that parenting classes and counseling be handled through family preservation services. Counsel further argued that if drug testing was ordered, it should be minimal given there was no evidence of current abuse of any substance. The court and counsel discussed whether licensed therapists would be available for individual counseling under family preservation services. Counsel for the minors stated no objection to the use of family preservation services so long as qualified therapists were available that could assist mother.

The court ordered mother to take a parenting class and attend counseling to address case issues, including child safety

and anger management, to be handled through family preservation services, to the extent they could do so with appropriate therapists. The court also ordered mother to take five random drug tests to ensure she is not relying on marijuana or alcohol. If any test came back positive, then mother would have to complete a full drug rehabilitation class. The court reiterated its concern that mother seemed overwhelmed.

The court ordered J.O. and A.N. to remain in the home of mother, and M.L. was to remain with father five days a week, visiting mother the other two days. M.L.'s father was found to be nonoffending.

At the conclusion of the hearing, mother stated an objection on the record to all of the allegations sustained against her, as well as the custody order regarding M.L.

This appeal followed.

DISCUSSION

1. The Jurisdiction Order

Mother contends the court erred in asserting dependency jurisdiction. She argues that, as a matter of law, the court erred in sustaining the allegation under section 300, subdivision (a) because there was no evidence A.N. was injured, nor was there any nexus between the alleged one-time incident of domestic violence and any risk of future harm. Further, mother contends there was insufficient evidence supporting any of the allegations sustained under section 300, subdivisions (a), (b) and (j).

We review jurisdictional orders for substantial evidence in a light most favorable to the juvenile court's findings. (*In re K.S.* (2016) 244 Cal.App.4th 327, 337; accord, *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "The trial court's judgment is presumed correct." (*In re K.S.*, at p. 337.)

Under section 300, subdivision (b), jurisdiction may be asserted where the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child.” “The Department has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300.” (*In re I.J.* (2013) 56 Cal.4th 766, 773; see also § 355, subd. (a).) The record contains substantial evidence the Department met this standard with respect to the allegations of abuse under section 300, subdivision (b).

Mother has admitted to pulling A.N., who was just five years old, by the ear when she is frustrated with him and unable to address his behavior by more appropriate methods. A.N. has reported that mother has hit him with a belt across his ribs and struck him with a hanger on his legs and buttocks while in a room with the door closed. The facts described above establish that mother is overwhelmed by her current situation and struggling to properly parent three young boys. She has had physical altercations with her male companions and has resorted to using inappropriate physical discipline on her then five-year-old son. The likelihood for escalation is strong without intervention and assistance provided to mother. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 437-438 [jurisdiction properly asserted where evidence showed risk of future abuse and potential for instances of corporal punishment to escalate in severity].)

We are not persuaded mother’s conduct amounts to reasonable parental discipline. (*In re D.M.* (2015) 242 Cal.App.4th 634, 641 [statutory scheme allows for reasonable

parental discipline, including corporal punishment on buttocks where no injury results[.] Mother attempts to minimize her behavior and argues that none of the children ever suffered any injuries. However, as our Supreme Court has explained, “ ‘[t]he court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) The Legislature’s stated purpose for the statutory scheme “ ‘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, *italics added.*)” (*Ibid.*) The record amply supports the juvenile court’s exercise of jurisdiction under section 300, subdivision (b).

We need not address the other bases upon which the court sustained the petition. “ ‘When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

2. The Disposition Order

Mother contends the court abused its discretion in ordering her to complete individual counseling and parenting classes, and to undergo random drug testing.

It is well established that “ ‘[t]he juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion. [Citation.]’ ” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311; see also § 362, subd. (d) [“The juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section”].)

Here, the court fashioned a reasonable disposition order tailored to the facts. Mother was ordered to take a parenting class and to undergo individual counseling to address the case issues, including child safety and anger management. The court acceded to mother’s request that services be provided, as possible, through family preservation services. Mother was not required to take a drug rehabilitation class, but merely to take five random tests to verify her claims she was not abusing any substance.

Mother did not state any objection to the disposition plan. Given mother’s failure to object and the reasonableness of the disposition ordered, we have no basis for finding an abuse of discretion.

3. The Custody Order

Mother argues the court erred in ordering custody of M.L. to be five days a week with father and only two days with her. We disagree.

“When making a custody determination in any dependency case, the court’s focus and primary consideration must always be the best interests of the child.” (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) Here, Andres, M.L.’s father, has been the

primary caregiver of M.L. for most of his life. The record demonstrates mother has been having difficulty being the primary caregiver for two children, and was not in a position to undertake primary responsibility for M.L., the youngest child. M.L. expressed a desire to remain in the home of his father and has been doing well in his care. Andres has expressed no desire to impede mother's ability to see and visit with M.L. at any time. Mother has not affirmatively shown any error by the court in its April 26 custody order.

DISPOSITION

The juvenile court's orders entered April 26, 2017 are affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

ROGAN, J.*

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.