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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ERIC P. et al, Persons Coming Under
the Juvenile Court Law.

B243099

(Los Angeles County
Super. Ct. No. CK93414)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

Brenda C.,

Defendant and Appellant.

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

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Brenda C. (mother or Brenda) appeals a jurisdictional and dispositional order of the juvenile court regarding her children, Eric P.¹ and Bernardo P. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

1. *The Children's Family*

Mother and her partner Luis P. (father) are the parents of Eric and Bernardo, who were three years old and 20 months old, respectively, when this action began. Father and mother lived together for about one and one-half years but were not married. Under a 2009 family law judgment mother had sole physical custody of Eric. Father is not a party to this appeal.

2. *The May 4, 2012, Incident*

On May 4, 2012, mother and father had a verbal and physical altercation. According to mother, she became angry at father after she found messages father exchanged with another women on his Twitter account. When mother confronted father about the matter, the two of them insulted each other. In response to Brenda comparing the ashes of father's mother to dog ashes, father pulled Brenda's hair. Mother then scratched father's face.

Mother gave conflicting accounts about whether father hit her during the altercation. In interviews she gave to employees of respondent Los Angeles County Department of Children and Family Services (Department), she said this was the "first time" father "hit" her. At a hearing before the juvenile court, mother categorically testified that father "never" hit her. She later testified, however, that this "was the first time that he [father] had hit me."

¹ Eric's name is spelled "Erick" on some documents in the record, including his birth certificate.

² We present the facts in a light most favorable to the juvenile court's determinations. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

In his statements to Department representatives, father denied pulling mother's hair. According to father, he simply held his hand out to defend himself when mother scratched his face. Both mother and father contend that the root of the altercation was mother's "jealousy." They also both deny any history of domestic violence between them. Mother and father contend the children were asleep in a different room when the altercation occurred.

After the altercation, mother called the police. Police officers arrived at her home and interviewed mother and father separately. Mother was then arrested for domestic violence in violation of Penal Code section 273.5, subdivision (a).

3. *Department's Investigation*

The matter was referred to the Department to investigate potential emotional or physical abuse or harm to Eric and Bernardo. In addition to interviewing father and mother, Department social workers talked to Sonia M., mother's mother (maternal grandmother), mother's friend Kenia M., and others.

According to maternal grandmother, mother stated that father had physically and verbally abused her. On four occasions maternal grandmother saw bruises on mother's cheeks or the area between her eyebrows. Maternal grandmother also stated father had threatened to call immigration authorities regarding mother's immigration status.

Kenia stated that father physically and verbally abused mother. She once witnessed father telling mother, "Stupid bitch, if you don't do what I tell you, you know that I can call the Immigration." Kenia also witnessed an altercation which took place about a year before the May 4, 2012, incident. Father and mother were fighting on the street while mother was carrying one of the children, when "father pulled [mother] into [their] car and [another] car almost hit her."

4. *Juvenile Dependency Petition*

On May 9, 2012, the Department filed a juvenile dependency petition requesting the juvenile court to assert jurisdiction over Eric and Bernardo pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).³ The petition was based on the May 4, 2012, incident and the history of domestic violence by father against mother. On the same day the petition was filed, the juvenile court found that there was a prima facie case for detaining the children and ordered that the children be detained by the Department. Eric and Bernardo were placed in foster care.

5. *Family Reunification Services*

The juvenile court also ordered the Department to provide referrals to mother and father for family reunification services. Mother took parenting and domestic violence classes, and attended individual counseling and marital counseling with father. Father also took parenting and domestic violence classes.

6. *July 20, 2012, Hearing and Order*

On July 20, 2012, the court held a jurisdictional and dispositional hearing. Mother and maternal grandmother testified. Maternal grandmother confirmed that she had seen bruises on mother, and that mother had told her father had hit her on more than one occasion with a closed fist. Mother testified that maternal grandmother's testimony regarding domestic violence was untrue. The court also admitted into evidence the Department's written reports, which included information about their interviews with father, mother, maternal grandmother and Kenia.

After the hearing, the juvenile court issued an order sustaining the juvenile dependency petition, declaring Eric and Bernardo dependents of the court, and removing physical custody of the children from mother. The court also ordered the Department to provide mother and father with family reunification services.

Mother filed a timely notice of appeal of the July 20, 2012, order.

³ Except as expressly stated herein, statutory references are to the Welfare and Institutions Code.

CONTENTIONS

Mother argues there was no substantial evidence to support the juvenile court's jurisdictional and dispositional findings.

DISCUSSION

1. *Standard of Review*

We review the juvenile court's jurisdictional and dispositional findings under the substantial evidence test. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) In determining whether there is substantial evidence, "we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.)

2. *Jurisdictional Findings*

The juvenile court asserted jurisdiction over Eric and Bernardo pursuant to section 300, subdivisions (a) and (b). Because we conclude there was substantial evidence to support the juvenile court's jurisdiction under subdivision (b), we do not reach the issue of whether there was substantial evidence to support the court's jurisdiction under subdivision (a). (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.)

Section 300, subdivision (b) provides a child comes within the jurisdiction of the juvenile court if the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness" as a result of a parent's failure or inability to adequately supervise or protect the child. The Department alleges that there was a substantial risk Eric and Bernardo would suffer from serious physical harm. By sustaining the petition, the juvenile court impliedly found this allegation true.

Domestic violence in the same household where children are living constitutes a failure to protect the children because it places the children at risk of physical harm. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194; *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576.) Children can, for example, wander into the room where it is occurring “and be accidentally hit by a thrown object, by a fist, arm, foot or leg” (*In re Heather A.*, at p. 194; accord *In re E.B.*, at p. 576.)

Here, if we view the evidence in a light most favorable to the juvenile court’s order, father had a history of physically abusing mother, coupled with emotional abuse and threats to report her to immigration authorities in order to maintain control over her. Mother, too, had been arrested for physically assaulting father, and had serious problems controlling her jealousy. On at least one occasion, the verbal and physical confrontation between mother and father became so engrossing, mother was almost hit by a car while she had one of the children in her arms.

This history of a violent relationship between mother and father was an ongoing concern at the time of the July 20, 2012, hearing. “ ‘[P]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of these relationships. . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.’ ” (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 576.) Although mother and father had begun to take domestic violence courses, there was no evidence that they had mastered their domestic violence problems by the time of the hearing, which was less than two months after the last violent altercation between them. We therefore hold there was substantial evidence to support the juvenile court’s finding that Eric and Bernardo were children who fell within the court’s jurisdiction pursuant to section 300, subdivision (b).

3. *Dispositional Findings*

The juvenile court may remove a dependent child of the court from the physical custody of his or her parents if it finds, by clear and convincing evidence, that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child were returned home, and there are no reasonable means by which the child's physical health can be protected without removing the child from the parents' custody. (§ 361, subd. (c)(1).) The juvenile court made such findings with respect to Eric and Bernardo in this case.

Section 361, subdivision (c)(1) further provides: "The court shall *consider*, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also *consider*, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." (Italics added.)

In the present case, after the May 4, 2012, altercation, mother lived with maternal grandmother for two weeks, and then rented a room with the financial assistance of father. Mother argues that the juvenile court failed to consider placing the children with mother while ordering father to remain out of the home. We reject this argument.

At the July 20, 2012, hearing, the juvenile court solicited arguments regarding disposition. Mother's counsel argued that the children should not be "detained" from mother, that mother has not lived with father since the children were detained, and that mother was "willing to abide by any of the court's orders." Father's counsel asked that the children "be placed in home of parents today." The children's counsel argued that Eric and Bernardo should be not be placed in the home of the parents, but agreed that they "can be safely maintained in mother's home, provided that there are unannounced visits [by the Department] [and] that mother further complies with the case plan." The Department's lawyer argued that the children should be removed from the physical custody of both mother and father because they had not resolved their domestic violence problems and because mother was "still very tied to father."

After counsel for the various interested parties made their arguments, the court decided to remove Eric and Bernardo from the physical custody of mother and father. There is no reason to believe, as mother contends, the court did not “consider” returning the children to mother’s custody. Moreover, if we view the evidence in a light most favorable to the court’s order, mother was herself an “offending” parent because she committed domestic violence against father. Thus there was no “nonoffending parent” the court could have placed the children with pursuant to section 361, subdivision (c).

Mother also argues there was insufficient evidence for the juvenile court to determine that the children could not be safely returned to mother’s custody. As explained *ante*, however, at the time of the hearing there was an ongoing danger to the safety of the children from domestic violence. There was therefore substantial evidence to support the juvenile court’s dispositional findings.

DISPOSITION

The order dated July 20, 2012, is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.