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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re DANIEL M.,
a Person Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.M.,

Defendant and Appellant.

B295454
(Los Angeles County
Super. Ct. No. 18CCJP06706A)

APPEAL from an order of the Superior Court for Los Angeles
County, Michael E. Whitaker, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, and Stephanie Jo Reagan, Principal Deputy County
Counsel, for Plaintiff and Respondent.

I.M. (father) appeals from the disposition order of the juvenile court, which removed his son, Daniel M., from his care and custody. He contends there was insufficient evidence to support the juvenile court's finding that Daniel would have been at risk if left in father's care. We conclude substantial evidence supports the court's finding, and therefore we affirm the disposition order.

BACKGROUND

A. Events Leading Up to the Filing of the Petition

Father and Daniel lived with father's parents (PGM and PGF) during the times at issue in this appeal. Daniel's mother, Jacqueline G. (mother), had left Daniel with father when he was around one year old because she was homeless and could not care for him. Daniel was four years old (almost five) during the events relevant to this appeal; he had a significant speech delay and met the criteria for intellectual disability, autism spectrum disorder, global development delay or unspecified neurodevelopmental disorder.

In late May 2018 (all dates are from the year 2018 unless otherwise indicated), while father was in jail (allegedly due to outstanding parking tickets), PGM filed a petition for guardianship of Daniel in the probate court. In her petition, PGM stated that she was in the process of obtaining a restraining order against father because he was physically and verbally abusive. PGM noted that father currently was in jail, and that Daniel's mother had not been involved with the child since he was very young.

On July 3, when PGM failed to appear for a court-scheduled appointment, someone from the probate court spoke to PGM by phone. PGM, who told the caller that she did not want father to overhear the conversation, said that she no longer needed the guardianship because father had been released from jail and was caring for his son. When PGM did not appear at court on the official hearing date, the probate court judge reviewed the file. Concerned for the child's safety in father's care, the judge ordered that a referral be made to the Los Angeles County Department of Children and Family Services (the Department) to investigate and assess the family. The referral was made on August 22.

A social worker from the Department (CSW) went to father's home a few days later. The wooden front door was open, but the screen door was locked. The CSW knocked several times, but there was no answer, so she left a contact letter and her business card. Later that day, the CSW phoned PGM. PGM answered, and gave the phone to father. Father told the CSW that he was home when she came to his house, but he did not come to the door because he had been having so many issues with people from the Department violating his rights. His voice started to get loud as he spoke about past referrals, past social workers, and how he had always been compliant but this time he felt he would not. He told the CSW that if the new allegations were serious, the Department should get a warrant if it wanted to come to his home. As the CSW tried to explain the allegations from the referral, father got defensive and loud. He kept interrupting, saying that he would not

allow anyone to violate his rights and he would not give the CSW consent to investigate.

Despite father's protestation, the CSW continued to investigate. She contacted Daniel's last known school, and spoke to the office manager. She was told that Daniel no longer was enrolled there, or in any other school in the Los Angeles Unified School District.¹ When asked if the school had any concerns for Daniel's well being, the office manager said there had been several concerns regarding father's behavior. The manager said there had been several meetings with father, and that he had been very aggressive. The CSW subsequently spoke with the principal at the school. The principal told the CSW that he had concerns about father's behavior; he said that father was extremely irrational, and that he made a lot of accusations.²

The CSW also spoke to mother.³ Mother told the CSW that she had not seen Daniel in more than half a year because father stopped

¹ When the CSW subsequently spoke with the principal of the school, he told her that Daniel was not required to be enrolled in school at that time due to his age.

² In December 2017, Daniel suffered a head injury at school when another child pushed him, causing him to hit his head. The school called father to tell him about the incident. The caller told father that the injury was not serious, and that Daniel had returned to class. Father claimed that when he picked Daniel up from school, Daniel had severe swelling and bruising on his forehead, so father asked for an explanation about what happened. During this encounter, he apparently acted very aggressively toward school personnel as well as the paramedics who arrived when father called 911.

³ Mother is not a party to this appeal.

letting her visit. She said that she had had domestic violence issues with father, and hoped eventually to petition in family court for custody of Daniel. When asked if she had any concerns about Daniel being in father's custody, mother stated that her concerns had to do with father's anger issues, but she knew that Daniel was around father's family, and they would not let him be harmed by father.

The Department obtained an investigative search warrant and the CSW, accompanied by a Spanish-speaking social worker (Hugonett), went to father's house with law enforcement to serve it. When they arrived, father went into the house for about 10 minutes before returning to unlock the security gate. Once inside, the CSW and Hugonett separately interviewed father, his parents, and his sister (paternal aunt).⁴

Father was nervous while being interviewed by the CSW, but he did not appear to be under the influence of drugs or alcohol. He denied there were any drugs accessible to the child in the house, but admitted he used marijuana one to two times per week. However, he denied ever being under the influence while caring for Daniel; he said that PGM usually cared for Daniel when he was under the influence. He denied any domestic violence. He said there only were "family disagreements," without any physical altercations; he admitted that Daniel was present during the disagreements.

⁴ Hugonett also attempted to interview Daniel, but the child appeared to be shy and would not provide any statements.

While the CSW was interviewing father, Hugonett interviewed PGF, PGM, and paternal aunt. PGF told Hugonett that father worked sometimes (although not lately), but he was unsure what father did when he was working. When asked about allegations that father had an altercation with PGM, PGF said that father had gotten upset one time the previous year when PGM had given father some advice, and father pushed PGM. PGF said that he had not seen the altercation, and just heard them arguing.

Hugonett next interviewed PGM. PGM told her that father uses marijuana in his room, and that Daniel goes into and out of the room while father is smoking. She described an incident that occurred toward the end of 2017, when she had an argument with father about him smoking marijuana inside the house and in Daniel's presence. She said she told father that she did not like it and that he could not continue to smoke inside. Father got upset and pushed her into the dresser. Daniel was present during this incident. Law enforcement was called and came to the house, but they did not do anything. She said that she has asked father to move out, but he refuses to do so, and he continues to smoke inside the house.

Hugonett asked PGM why she withdrew her request for guardianship of Daniel and a restraining order against father. PGM said that when father was arrested, she was relieved. She started the process to obtain guardianship, but father was released from jail sooner than expected and started to confront her, asking if she tried to get guardianship and a restraining order, so she withdrew her request. She said that father angers easily, although he was not always like that.

She asserted that the change in his behavior happened when he started seeing mother. PGM told Hugonett that she wanted father to move out of the house, and said she was fearful of him.

Paternal aunt (who lives in the front house on the property; father lives with their parents in the back house) told Hugonett about the incident in which father pushed PGM. Paternal aunt said that she contacted the sheriff's department when the incident took place, but the deputies did not do anything. She said that PGM was in such severe pain the day after the incident that she took PGM to the hospital. She told Hugonett that father's aggressive behavior began about three or four years before.

Paternal aunt also told Hugonett that father still smokes marijuana in Daniel's presence; she said she had seen him smoking that morning (she knew it was marijuana because she could smell it) while Daniel played next to him. She also said that she saw a container with marijuana in it. She and PGM offered to accompany Hugonett to father's room to point out where father kept his marijuana.

Hugonett, paternal aunt, and PGM went into father's room while father was being interviewed by the CSW. Paternal aunt went into father's closet, where she found a glass container with a white crystal and flakey residue/substance inside.⁵ Paternal aunt also found a medicine container partially filled with marijuana in Daniel's shoe bin.

⁵ Hugonett asked the law enforcement officer who had accompanied them whether the substance might be methamphetamine. The officer said that methamphetamine is not usually stored in a glass container, and that it might be a container for salt.

Hugonett then looked in the shoe bin and found a lighter, a glass pipe, and other drug paraphernalia, and also found a full container of marijuana on the floor by the bin.

Hugonett and the CSW told father that marijuana was found in places that were accessible to Daniel. They advised him to get a lock box to store the drugs, and to place the lock box out of Daniel's reach. Father apologized and agreed to take care of it. The CSW also told father that the Department would like him to drug test the next day. Father agreed. The CSW stressed the importance of testing, telling father that if he missed the test it would be considered a dirty test.

Father did not drug test the next day. A few days later, father was advised that the Department would be filing a petition for court intervention.

The Department filed a petition on October 17, alleging counts under Welfare and Institutions Code⁶ section 300, subdivisions (a) and (b). Count a-1 was based upon father's alleged history of violent and aggressive behavior, including the altercation with PGM, in Daniel's presence. Count b-1 was based on father's alleged history of substance abuse and current use of marijuana, his being under the influence while caring for Daniel, and his keeping drugs and drug paraphernalia in places accessible to Daniel. Count b-2 was identical to count a-1.

The Department filed a "NON DETAIN REPORT" for the initial hearing. The Department stated that it had concerns about the child's well being, and that the potential for risk was high, so that involvement

⁶ Further undesignated statutory references are to the Welfare and Institutions Code.

by the court and the Department was necessary. However, it concluded that, with supportive services provided by the Department to ensure that all safety and basic needs were being addressed appropriately by father, the child could remain in father's care and custody.

At the initial hearing, held on October 18, minor's counsel agreed with the Department that it was safe to release Daniel to father's care. The juvenile court found a prima facie case that Daniel was a person described by section 300, and ordered that he be released to father. The court ordered referrals to father for various services, as well as drug and alcohol testing.

B. Post-Petition Investigation

On October 23, the dependency investigator (DI) spoke to PGM. PGM told the DI that father had changed since the dependency case opened. She said that he had stopped smoking marijuana, and she told the DI that she no longer had any concerns about his behaviors.

The DI interviewed mother the following day. Mother told the DI that father was always smoking marijuana when they were together, and that he could not stop at just one or two tokes; he had to smoke the entire joint. Mother also said that father was very aggressive and possessive. She said that he verbally and physically abused her when they lived together, often in Daniel's presence. She left him in January or February 2015. She asked father to take care of Daniel in October 2015 because she was homeless and could not care for him. When the DI informed mother about the court process and timeframe, mother said that she did not want to give up her parental rights and would comply

with the case plan and court orders, and that she wanted to have custody of Daniel. When a supervising CSW met with mother two weeks later for a child family team (CFT) meeting, mother told her that she was worried that if Daniel were released to her, father would start stalking and harassing her and the people she lived with.

On the same day the DI interviewed mother, the DI also tried to make face-to-face contact with father, but he was unavailable, so she left a contact letter with PGM to give to father. The next day, the CSW called father to speak to him about scheduling a CFT meeting for October 30. Father seemed frustrated and asked the CSW if a CFT was necessary. The CSW said the CFT was important, and father said he would try to make it.

On October 29, father called the DI; he was upset about the DI making an unannounced visit to his home. He expressed frustration with the Department, and said the Department was violating his human rights. He said that his attorney told him not to talk to the social workers, and that he did not have to participate with the Department. He kept ranting about the Department violating his rights, and his voice got louder and louder, preventing the DI from responding. The DI tried to schedule an in-person interview, but father would not allow her to speak. Father got very defensive, and finally told the DI that he would contact her at a later time when he was available.

That same day, social worker Hugonett went to father's house unannounced. Father came outside. After Hugonett explained that she needed to speak with him and Daniel and assess the house for safety

twice a month for the first 90 days of the case, father allowed her to go inside. Father invited Hugonett to see his and Daniel's room. Hugonett noticed that the room was tidier than when she last saw it, and it appeared that father had gotten a new mattress. Hugonett asked if father had gotten a lock box for his marijuana, and father said he did not have marijuana anymore because he quit smoking it.

Father started complaining to Hugonett that all the agencies he had dealt with were not helping him as a single father. Hugonett tried to refocus father, and asked if he was going to come to the CFT the next day. Father said he would try. Hugonett told him it was important. She explained that if he was uncooperative, the Department might remove Daniel from his care. Father said he felt that Hugonett was threatening him.

During the course of Hugonett's interview with father, father often got off-topic and talked about issues that sounded paranoid and suspicious. When Hugonett told him that drug testing was important, and would clear up any doubts about him using substances, father told Hugonett that the Department was violating his rights by asking him to drug test. He got more and more aggressive as he spoke, until Hugonett "backed out" of the bedroom and went to the front room where PGM and paternal aunt were. A short while later, father asked Hugonett to take a photograph of his room to show the improvements, but Hugonett declined, saying she felt uncomfortable going back into the room with him.

On December 30, the CSW called father to remind him about the CFT scheduled for 1:00 that afternoon. Father said that he thought the

CFT was at 2:00, but that in any event, he would not make it because both he and Daniel were sick. He said that he wanted to reschedule it. The CSW asked father to drug test that day, but father refused, even after the CSW told him the drug test was ordered by the juvenile court. Father said that he needed to talk to a lawyer with regard to court orders. When the CSW told him that she was going to submit the drug test, and if he did not test, the test would be considered dirty, father told the CSW that she was threatening him. He said there were no concerns about Daniel, and he did not understand why he needed to do all the things the Department was asking him to do, because his lawyer advised him at the detention hearing that he was not required to comply with court orders or requests from the Department.

In its jurisdiction/disposition report filed with the juvenile court, the Department expressed its concerns about father's lack of cooperation, including his failure to drug test both times he was asked to test. It also was concerned about father's inability to control his frustration and his willingness to expose Daniel to both verbal and physical fighting. The Department recommended that Daniel be detained and that father and mother be provided family reunification services.

C. *Jurisdiction/Disposition Hearing*

Although he received notice, father did not appear at the jurisdiction/disposition hearing. After argument by counsel, the juvenile court made the jurisdictional findings and sustained all counts of the petition.

Turning to the disposition, the Department asked that the child be detained with reunification services, and minor's counsel joined in the Department's recommendation. Father's counsel argued that nothing had changed since the detention hearing. Although he conceded that father had not been cooperative with the Department, he contended there was no indication that Daniel was at risk. The juvenile court disagreed, made the necessary findings, and declared Daniel a dependent child of the court; it ordered Daniel removed from father's care and custody. As to mother, whom the court found to be non-offending, the court found that placing Daniel with mother would be detrimental to his safety, protection, or physical or emotional well being, and therefore ordered that Daniel be suitably placed. The court ordered family reunification services for mother and father, and ordered father to complete a full drug and alcohol program with random or on-demand drug and alcohol testing, an anger management and other programs.

Father timely filed a notice of appeal from the disposition order.

DISCUSSION

Father argues on appeal that the Department failed to produce substantial evidence that Daniel would be at risk if he remained in father's care and custody. He contends that since nothing had changed between the detention hearing (when it was determined that Daniel would be safe with father) and the jurisdiction/disposition hearing (when it was determined that Daniel would be at risk with father), the

juvenile court erred in removing Daniel from his care and custody. We disagree.

“[A] dependent child may not be taken from the physical custody of the parent[] with whom the child resides at the time the petition was initiated unless the juvenile court finds by clear and convincing evidence ‘[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.’ [Citation.] ‘The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.]’ [Citation.] “‘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.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.]’ [Citation.] We review a dispositional order removing a child from parental custody for substantial evidence. [Citation.]” (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.)

As the appealing party, father “has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.” (*In re D.B.* (2018) 26 Cal.App.5th 320, 328-329.) Father fails to meet that burden here. Instead, he minimizes the conduct that caused the Department, and the juvenile court, to express concern for Daniel’s safety.

For example, the appellant’s opening brief acknowledges that father engaged in domestic violence, but asserts it is not substantial evidence of potential harm because the last incident happened a year before the disposition hearing. But this ignores the fact that when the CSW asked father about the incident, he told the CSW that there had been no physical altercation, just a disagreement. Yet PGM described a physical altercation, and paternal aunt said that PGM was in so much pain from the incident that she had to be taken to the hospital. The appellant’s opening brief also ignores evidence that both mother and PGM—the victims of father’s domestic violence over the years—expressed significant fear of father.

The appellant’s opening brief also ignores other evidence that supports the juvenile court’s finding that leaving Daniel in father’s care posed a substantial risk of harm to Daniel’s “physical health, safety, protection, or physical or emotional well-being.” That evidence includes statements by the office manager and principal at Daniel’s former school describing father’s overly-aggressive behavior, as well as the various social workers’ descriptions of father’s aggressive and paranoid reactions to the social workers’ attempts to explain things to him, which caused one of the social workers to “back out” of father’s room into the safety of the front room (which was occupied by others) and to refuse father’s request to return to his room to take photographs.

Perhaps the most important evidence of risk to Daniel, however, was the evidence of father’s reluctance—and, at times, refusal—to cooperate with the Department. Father refused to drug test, and said that the Department was violating his rights by asking him to drug

test. He said that he did not have to comply with court orders or requests from the Department to participate in programs. He said the Department was violating his human rights by making unannounced visits to his home. In short, his conduct made it apparent that a program of informal supervision, which the appellant's opening brief suggests would have been the more appropriate dispositional order, would not provide the necessary security for Daniel.

Finally, to the extent father contends that nothing had changed between the detention hearing and the disposition hearing to support the changed custody decision, he is incorrect. Not only did the investigation during that time period reveal the extent of father's history of domestic violence with mother, but the Department's contacts with father demonstrated increasing levels of aggression by him and refusals by him to cooperate with the Department. Thus, the juvenile court had a more complete picture of the circumstances to determine whether Daniel would be at risk if he remained in father's care and custody.

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DISPOSITION

The disposition order is affirmed.

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WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.