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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R. A., a Person Coming
Under the Juvenile Court Law.

B291794
(Los Angeles County
Super. Ct. No.
17CCJP02529)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

MARGARET M.,

Defendant and Appellant.

APPEAL from a finding and order of the Superior Court of
Los Angeles County. Natalie P. Stone, Judge. Affirmed.

Nicole Williams, under appointment by the California Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Aileen Wong, Senior Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

In this juvenile dependency case, the juvenile court declined to place a now 14-year-old girl with her biological mother based on a finding that such placement would be “detrimental to [the child’s] safety, protection, or physical or emotional well-being.” Mother challenges this finding on appeal. Because substantial evidence supports this finding, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Margaret M. (mother) and Christopher A. (father) have two children, one of whom is their daughter, R.A. R.A. was born in April 2005. Mother left the family when R.A. was around four years old.

In 2009, the Los Angeles County Department of Children and Family Services (Department) filed a petition seeking to exert dependency jurisdiction over R.A. and her brother, in part because mother had abandoned the family and thereby “failed to provide the children with the necessities of life.” In May 2010, the juvenile court sustained the petition, removed the children from mother, placed them with father, and terminated its jurisdiction.

Father then moved to Georgia and got married. R.A.’s stepmother would punch R.A. in the stomach, would lock R.A. in

her bedroom for hours, would sometimes refuse to feed her, and in these respects was physically and emotionally abusive to R.A. Father would also give R.A. “5 or 6 licks . . . with a belt.” During this time period, one of father’s friends sexually assaulted R.A., then age 10 or 11, on several occasions. The friend touched R.A. on her vagina and “raped” her by trying to put his penis inside her vagina. R.A. told her stepmother, who reported the matter to law enforcement and the friend was arrested.

After father and his wife subsequently split, father began to sexually assault R.A. He kissed and licked her “all over,” including on her vagina; put his finger inside her vagina; and partially inserted his penis inside her vagina. Father also made R.A. perform oral sex on him, masturbate him until he ejaculated, and sometimes ejaculated on R.A. and photographed it. Father made R.A. watch pornography with him. Despite father’s order not to tell the police about their sexual activities, R.A. reported the sexual abuse to school authorities, who reported the matter to law enforcement and father was arrested. Father eventually pled guilty to two counts of child molestation and was sentenced to imprisonment for five years.

Unable to care for R.A., father sent R.A. to paternal grandmother in Los Angeles. Paternal grandmother was homeless and living from motel to motel, was suffering from bipolar disorder for which she was not taking medication or attending therapy, and was regularly using marijuana. She was also in a relationship with another homeless man who used drugs, was “crazy,” and sometimes assaulted her with his hands or with hot soup. R.A. was present when the man hit paternal grandmother on December 12, 2017. While in paternal

grandmother's custody, R.A. was not attending school for many months.

Throughout all of this time, R.A. had no contact with mother.

II. Procedural Background

On December 15, 2017, the Department filed a petition asking the juvenile court to exert dependency jurisdiction over R.A. on the grounds that (1) father's prior "sexual[] abuse" of R.A. placed her at substantial risk of serious physical harm and created a substantial risk of sexual abuse (rendering dependency jurisdiction appropriate under Welfare and Institution Code section 300, subdivisions (b)(1) and (d)),¹ and (2) father "failed to make an appropriate plan for the child's ongoing care and supervision" by placing her with a person, namely paternal grandmother, who has "mental and emotional problems," who is a "current abuser of marijuana," and who associates with a man who engages in "violent altercation[s]," all of which placed R.A. at substantial risk of serious physical harm (rendering dependency jurisdiction appropriate under section 300, subdivision (b)(1)).²

The juvenile court detained R.A. from paternal grandmother's custody pending resolution of the dependency

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The Department also asked the juvenile court to exert jurisdiction over R.A. due to (1) the sexual abuse inflicted upon R.A. by father's friend (pursuant to section 300, subdivisions (b)(1) and (d)), and (2) the physical abuse inflicted upon R.A. by her stepmother (pursuant to section 300, subdivision (b)(1)). The juvenile court did not sustain jurisdiction on these grounds, so they will not be discussed any further.

petition. When interviewed, R.A. told social workers that the sexual, physical and emotional abuse she had suffered “sometimes” made it “difficult[]” to “stay[] positive” because “sometimes the negative thoughts ‘get a hold’ of her” and make her “angry” at the “events that have occurred”; she said that “when this happens, she will sing a song so she can finally cry.” R.A. also expressed that she did not want to live with, visit, or speak to any of her family members. She had previously told paternal grandmother that she would kill herself if she were forced to live with her stepmother.

In February 2018, mother contacted the Department. She reported that she was living in Oregon, was married, and had a four-year-old son who was “severely autistic and requires 24/7 care.” Mother expressed a desire to take custody of R.A. Mother could not afford to travel to California, but the Department arranged for mother and R.A. to have monitored phone calls. R.A. initially said she “would like to give . . . mother a chance,” and eventually said she wanted to live with mother.

In July 2018, the juvenile court held a jurisdictional and dispositional hearing. The court exerted jurisdiction over R.A. due to father’s sexual abuse and his placement of R.A. with the paternal grandmother. As to father, the court removed R.A. from his custody and declined to order any reunification services in light of his incarceration. As to mother, the court ordered reunification services. The court denied mother’s request, made pursuant to section 361.2, subdivision (a), to place R.A. with her because placing her with mother “would be detrimental to [R.A.’s] safety, protection, or physical or emotional well-being, and special needs.” In making this finding, the court noted that R.A. had been removed from mother’s custody in the prior dependency

case, mother's absence for most of R.A.'s life, the lack of any face-to-face visits between mother and R.A., and the absence of any information about the suitability of the placement with mother in Oregon. The court ordered R.A. placed in the Department's care, but ordered an examination of mother's home pursuant to the Interstate Compact on the Placement of Children (ICPC).

Mother filed this timely appeal.³

DISCUSSION

Mother argues that the trial court erred in denying her request to place R.A. with her pursuant to section 361.2. Where, as here, the juvenile court removes a child from the custody of one parent, section 361.2 requires the court to place the child with the other, noncustodial parent if (1) that parent so requests, and (2) "placement with th[e noncustodial] parent" would not be "detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).) Because section 361.2 both "evinces [a] legislative preference for placement with the noncustodial parent when safe for the child" (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262 (*Patrick S.*)) and implements "[the] constitutionally protected interest" that "[a] nonoffending parent has . . . in assuming physical custody" of her child (*In re A.A.* (2012) 203 Cal.App.4th 597, 605), the Department bears the burden of proving, by clear and convincing evidence, that placement with the noncustodial parent will be detrimental (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1401-1402 (*C.M.*)). We review

³ The juvenile court has since held two review hearings and authorized a visit to Oregon for R.A. to see mother. As such, mother's challenge to the juvenile court's orders may soon be moot because it appears that mother and R.A. are working toward placement as the juvenile court hoped for.

a juvenile court’s finding that placing a child with the noncustodial parent will be detrimental under section 361.2 for substantial evidence, and do so by asking whether the record viewed in the light most favorable to the finding is sufficient for a reasonable trier of fact to find detriment by clear and convincing evidence.⁴ (*In re John M.* (2006) 141 Cal.App.4th 1564, 1569-1570 (*John M.*))

In assessing whether placing a child with her noncustodial parent would be “detrimental to [her] safety, protection, or physical or emotional well-being,” the juvenile court must “examin[e] . . . the circumstances of the parent and child” (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1503, 1506 (*Nickolas T.*)), although “the focus in dependency is on the child, not the parent.” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1423 (*Luke M.*); see generally § 300.2 [“The focus [of dependency law] shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child.”].) The court is to “weigh *all* relevant factors to determine if the child will suffer net harm.” (*Luke M.*, at p. 1425, italics added.)

Substantial evidence supports the juvenile court’s finding, by clear and convincing evidence, that R.A. would suffer a detriment to her emotional well-being if she were placed in mother’s custody. This finding is supported by the totality of the relevant factors. It is undisputed that R.A. was repeatedly victimized by her family and caregivers throughout most of her

⁴ We recognize that some courts do not consider the elevated burden of proof when evaluating a finding for substantial evidence (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1492-1493), but we will sidestep this split of authority by applying the more parent-friendly standard.

life: She was abandoned by mother when she was a toddler, physically and emotionally abused by her stepmother, sexually abused by her father's friend, physically and later sexually abused by her father, and exposed to violence by her paternal grandmother. This has left R.A. emotionally fragile, as confirmed by her comments about her negative thoughts, about not wanting to live with any other family members, and her threats of suicide if forced to live with her stepmother. Mother is not entirely blameless for R.A.'s emotional state, as the prior juvenile court found that mother had abandoned R.A. at age four, exerted dependency jurisdiction on that basis, and then removed R.A. from her. Mother subsequently made no efforts to contact R.A. for the next nine years. What is more, since reappearing in February 2018, mother has not demonstrated that she has the emotional or financial resources to care for an emotionally fragile child, like R.A., given that mother is currently caring for her other child, who is "severely autistic and requires 24/7 care." Mother's failure to interact with R.A. in person also makes it impossible to know whether she is able to provide R.A. with the emotional support R.A. keenly needs, at least at the time of the jurisdiction/disposition hearing. In sum, the whole of this evidence supports the finding that R.A. needs "a safe and consistent environment where she [could] receive regular therapy to address her history of sexual abuse, physical abuse, and emotional abuse," and that mother cannot provide that environment, such that placing R.A. with mother would be detrimental to R.A.'s emotional well-being. (Accord, *Luke M.*, *supra*, 107 Cal.App.4th at p. 1425 [detriment finding can be supported by emotional harm arising from conditions to which the noncustodial parent did not contribute].)

Mother raises what amounts to three arguments in response.

First, mother contends that the juvenile court made legal errors in its analysis by (1) considering that she was previously found to be an offending parent, and (2) ordering an investigation into mother's suitability under the ICPC. These contentions lack merit. Although a finding in a prior juvenile case that the noncustodial parent was an offending parent does not *automatically* amount to a detriment under section 361.2, it is certainly *relevant* to the court's inquiry into detriment. (E.g., *In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 302 [juvenile court "should [not] ignore evidence supporting sustained jurisdictional allegations in determining placement" under section 361.2]; *Nickolas T.*, *supra*, 217 Cal.App.4th at p. 1506 ["The court may assign such weight to a prior removal order or detriment finding against a noncustodial parent as it considers appropriate in view of the parent's and child's current circumstances."].) And while an investigation under the ICPC is not required *before* a juvenile court places a child with her noncustodial parent (*Patrick S.*, *supra*, 218 Cal.App.4th 1254, 1264), a court that finds detriment on other grounds may order an investigation with a view toward obtaining information that may eliminate that detriment (*John M.*, *supra*, 141 Cal.App.4th at p. 1572).

Second, mother points to evidence in the record that counsels against a finding that placing R.A. with her would be emotionally detrimental to R.A. at this time—namely, that mother's abandonment of R.A. occurred a long time ago, that mother has since put her life into order and has resumed contact with R.A., and that R.A. has expressed a desire to live with mother. Mother is effectively asking us to reweigh the evidence;

we must decline mother's request because our task in reviewing a finding for substantial evidence is not to opine on what *we would have done*, but rather to ask whether substantial evidence supported what the *juvenile court did do*. (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 450.) Further, the factors mother cites fall short of negating the substantial evidence outlined above in favor of the juvenile court's finding: Mother may have abandoned R.A. nine years ago, but she remained absent from her life until contacted about this case; mother's re-establishment of contact, while encouraging, is recent and at the time of the detriment finding had been limited to monitored telephone calls and letters; and R.A.'s wishes are not dispositive (e.g., *Patrick S.*, *supra*, 218 Cal.App.4th at p. 1265).

Lastly, mother argues that several cases with similar facts all but dictate reversal of the juvenile court's finding in this case. In particular, she cites *C.M.*, *supra*, 232 Cal.App.4th 1394; *Patrick S.*, *supra*, 218 Cal.App.4th 1254; *In re Abram L.* (2013) 219 Cal.App.4th 452 (*Abram L.*); and *John M.*, *supra*, 141 Cal.App.4th 1564. To begin, drawing parallels between the evidence sufficient to constitute detriment under section 361.2 in different cases is somewhat perilous because the inquiry into detriment looks to the totality of the circumstances and, for that reason, is necessarily case-specific. That being said, none of the cases mother cites is directly analogous to the facts in this case. *C.M.* held that substantial evidence did not support a finding of detriment to keep a child away from her noncustodial father even though the child did not want to be placed with father; father lived in a different state; father worked long hours; and father had a history of alcohol abuse and, from 20 years before, domestic violence. (*C.M.*, at p. 1402.) *Patrick S.* held that substantial

evidence did not support a finding of detriment to keep a child away from his noncustodial father even though the child did not want that placement; father lived in a different city; and father was about to be deployed on a military assignment and would therefore leave the child with another caregiver. (*Patrick S.*, at pp. 1263-1265.) *Abram L.* held that the juvenile court failed to make the necessary finding of detriment required under section 361.2 to keep two children away from their noncustodial father where the children did not want that placement and father, while visiting the children bi-weekly, was “uninvolved” in their “lives.” (*Abram L.*, at p. 464.) And *John M.* held that substantial evidence did not support a finding of detriment to keep a teenager from his noncustodial father when the teenager did not want that placement, the father lived in a different state, and the teenager wanted to remain with his infant sibling. (*John M.*, at p. 1570.) Critically, none of these cases involved the combination of a noncustodial parent from whom the child had been removed due to that parent’s offending conduct, the noncustodial parent’s complete absence from that child’s life for nearly a decade, a child suffering from a degree of trauma due to physical, emotional and sexual abuse akin to what R.A. had suffered, or a noncustodial parent who had yet to demonstrate having the wherewithal to care for the child herself or any plan to place the child in the care of others.

DISPOSITION

The juvenile court's finding of detriment and its order denying mother's request for placement under section 361.2 are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ