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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.R., et al., Persons Coming
Under Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.R.,

Defendant and Appellant.

B295466

(Los Angeles County Super.
Ct. No. 18CCJP08147A-C)

APPEAL from an order of the Superior Court of Los Angeles County, Kim L. Nguyen, 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 Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother appeals the juvenile court's dispositional order removing her three children from her custody. She argues that there were alternatives that were available short of removal. We conclude that the order was supported by the parents' long pattern of failing to keep their home in a safe and sanitary condition.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have three children: daughter (born in June 2011), son (born February 2015), and infant (born December 2018).¹ Mother's fourth child, a teenager who is a half-sibling of the children at issue on appeal, is in his father's sole custody and is not a dependent in this case.

1. Prior Dependency Case: History of Unsanitary Living Conditions

The Los Angeles County Department of Children and Family Services (DCFS) first investigated the family four years ago in February 2015 in response to reports that the family home was filthy and unsanitary. The parents' home was alleged to have had foul odors, a filthy bathroom with an inoperable sink, and dirty walls, floors, kitchen appliances, and dishes. The juvenile court dismissed the petition in June 2015 because the parents agreed to participate in Family Preservation Services, which they successfully completed in December 2015. These services included parenting classes and in-home outreach counseling.

2. Present Investigation

On September 21, 2018, DCFS received a referral from a nutritionist, who reported that the three-year-old son was dirty and smelly, and that the family's apartment was dirty and roach-

¹ Father is not a party to this appeal.

infested. The nutritionist had seen son for a nutrition appointment, and observed that mother and son smelled badly, and that son had dirty feet. When son exited the stroller, the nutritionist observed multiple live roaches scatter from the stroller.

In late September and early October, the DCFS social worker made attempts to visit the family's apartment, but no one answered and the social worker left a business card. When interviewed at her school by DCFS, seven-year-old daughter denied all forms of abuse and told the social worker that mother cared for her, provided her clean clothes, and cooked her meals. Daughter said she showered every other day or every day if she played a lot.

On October 10, 2018, the social worker first visited the family's studio apartment. Mother and the children slept on the large bed in the main living area and father slept on the floor. Mother was four months pregnant at the time (with her third child) and she informed the social worker that the baby's crib would go against the wall in the kitchen entryway. The social worker noted there were no visible safety hazards, the kitchen and bathroom were clean, and the home had working utilities, hot water, and plenty of food. Son, who was the only child present, was well-groomed, clean, and free of marks or bruises.

Mother cared for the children at home and father worked two jobs. The family had the support of the maternal grandmother, who lived nearby and visited often.

When asked about the allegations that the home was dirty, mother said the whole building had roaches and they were having a hard time getting rid of them. She said she showered every night. She explained that her fingernails were dirty because she picked up recyclables to earn money. Mother said

she and the children wore old clothes because that was all they could afford, but the clothes were clean.

The social worker made an announced visit to the home again on November 6, 2018. Father, mother, and the two children were present.² The home was cleaner and more organized. Father acknowledged that they needed to maintain a clean apartment due to the previous dependency case and a new baby on the way. He also stated the building was infested with roaches and the family could not afford to live anywhere else. Both parents were open to services.

3. December 2018 Unannounced Visit

On December 17, 2018, the social worker arrived at the family home unannounced and knocked on the door. Through the door, a child asked, “what do you want?” The social worker identified herself and the purpose of the visit, but there was no response. The social worker knocked on the door repeatedly and tried to make contact with the child, but there was no answer. The social worker called the police department to perform a child welfare check. Police and firemen forcibly entered the apartment after knocking on the door for over an hour. From the closed bathroom, mother emerged with daughter, son, her newborn baby, and a small, dirty dog.

Mother came out into the hallway with her right breast exposed; the newborn was asleep on her left breast. Mother displayed no emotion, had a flat affect, and did not appear to be alarmed by law enforcement’s presence or forcible entry. Police officers determined that although she appeared “off,” she was not under the influence of drugs. Daughter told the social worker that when the social worker knocked on the door, mother had told daughter not to answer the door, to go with mother to the

² Mother was still pregnant with their third child.

bathroom, and to be quiet until everyone left. Mother acknowledged hearing the knocking and admitted she did not answer the door because she did not have a crib for the newborn. Daughter stated the baby slept in a box, and the social worker observed a large hard plastic container on top of a wooden table. The social worker noted the infant was free of marks or bruises. Son had dirt around his mouth and a runny nose, but lacked marks or bruises.

The home was dirty, cluttered, and in disarray. There were piles of trash, roaches crawling around, and the kitchen floor was covered in dirt. There were several open cereal boxes on top of the refrigerator, dirty mops and dirty water in front of the stove, a mousetrap on the counter next to some dishes, several dirty pots with leftover food in them on the stove, and a gallon of milk sitting on the table next to the box where the infant slept. There was an electrical cord running from the kitchen into the bathroom. In the bathroom, the sink was covered with a pile of clothes, the toilet was filthy, there were roaches on the floor, and glass was missing from the window.³

Mother stated she understood the home had to be cleaned and signed a safety plan requiring her to move the infant's box to a secure spot, clean the home, throw away trash, and secure all electrical cords. Father claimed they had last cleaned the home two days ago and said he would make sure to clean again.

The children's paternal aunt stated the parents' home had been dirty and disorderly for "a few months," and had roaches,

³ Daughter explained to the social worker that the family placed dirty clothes in the bathroom sink because the sink was not working. When asked where she washed her hands after using the bathroom, daughter answered, "in the bucket my mom has in the kitchen."

mice, trash, foul odors, piles of clothes, electrical cords, spoiled food on the table, and dirty dishes on the table and in the sink.

4. Removal, Section 300 Petition, and Detention

On December 20, 2018, DCFS obtained a removal order and detained the three children from mother and father.

On December 24, 2018, DCFS filed a Welfare and Institutions Code section 300⁴ petition alleging that the children were at risk of harm due to the filthy condition of the family home. The juvenile court observed this was not the first time the family had come before the court with the same issues. The court found a prima facie case that the children were described by section 300 and detained them from parental custody. The court ordered DCFS to provide the parents reunification services, and granted the parents monitored visitation.

On January 11, 2019 (several days before the adjudication hearing), DCFS reported it had been unable to re-assess the parents' home because parents had not made themselves available.

The parents had not visited the children between detention and adjudication, but mother called them every day and father had called them several times since their detention. Both parents enrolled in parenting classes on January 7, 2019, and completed one session.

5. Adjudication

On January 16, 2019, the court held the adjudication hearing. The court heard testimony from the parents, and accepted DCFS's reports and some documents from the parents into evidence.

⁴ All further statutory references are to the Welfare and Institutions Code.

Mother testified that she understood DCFS's concerns over the state of the home, and that the home was currently clean. She said she had cleaned the home using Pine-Sol, bleach, and soap, had taken care of the electrical cords, and fumigated for roaches. When asked if she recalled participating in a voluntary case plan in 2015, mother said yes but admitted she could not remember why. When asked what she had learned during that voluntary case plan, she said she learned not to take the children to school late, to pick them up on time, and to give them clean clothes. When asked what she was learning in her current parenting classes, mother answered, "To pay attention to the children." She stated she called the social worker the day before the hearing to arrange a home visit but did not hear back, and she was willing to allow the social worker to visit the home and to abide by all court orders.

Father testified that he and mother had cleaned the kitchen floor, the bathroom, fixed the issue with the electrical cords, and fumigated for roaches. He stated he currently had one job. When asked what had led to the home being in the condition found by the social worker, father responded, "I wasn't there that day. I was working."

Counsel for DCFS and the children asked the juvenile court to sustain the section 300 petition. Counsel for mother and father asked that the petition be dismissed. The juvenile court found that the parents' testimony that they had cleaned and fumigated and that the home was no longer hazardous was not credible. The court stated the condition of the home at the December unannounced visit indicated the home had been unsanitary and hazardous for months. The court sustained the section 300 petition as follows:

"b-1: [Mother and father] have exposed the children to a filthy, unsanitary and hazardous home

environment. On 12/17/18, roaches were crawling throughout the home, various debris, and a pile of trash were observed in the home. The kitchen floor was covered in layers of dirt. Roaches were observed crawling on the kitchen walls, a mouse trap was observed on the counter next to clean dishes. The stove had several pots with leftover food inside them. A container with dirty water was observed on a chair in front of the stove. A large pile of objects were observed in front of the bed. Plates with leftover food and a gallon of milk were observed on the table next to the box where the [infant] slept. Electrical cords were running throughout the house. A pile of clothes was observed in the restroom on top of the sink, the toilet was covered in filth and layers of grim[e]. Roaches were observed on the restroom floor. Remedial services failed to resolve the family problems due to the ongoing filthy, unsanitary and hazardous home environment established by the parents. Such a filthy, unsanitary and hazardous home environment established by the mother and father endangers the children's physical health and safety, creates a detrimental home environment and places the children at risk of serious physical harm, and damage."

The court proceeded to disposition. Counsel for the children agreed with DCFS's recommendation that the children be removed from parental custody and suitably placed. Counsel for mother requested a home-of-parent order and argued DCFS failed to show there were no reasonable means to protect the children short of removal.

The court reiterated it did not find credible the parents' testimony regarding the current cleanliness of their house. The court found the children were at substantial danger in parental custody, removed them from parental custody, granted the parents monitored visits, and ordered reunification services. The court ordered mother to participate in parenting classes, mental health counseling, and individual counseling with a licensed therapist to address case issues including child protection and housekeeping. The court ordered father to participate in a drug and alcohol program, parenting classes, and individual counseling with a licensed therapist to address case issues, including child protection and housekeeping.

Mother timely appealed.

DISCUSSION

Mother solely appeals the court's dispositional order removing the children from her custody. We review the court's dispositional order removing children from their parent for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529; *In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) Because the trial court's finding must itself be made on clear and convincing evidence, some appellate courts have stated that, in determining whether substantial evidence exists, we must determine if there was substantial evidence of the existence of clear and convincing proof. (E.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Other courts disagree, on the following reasoning: “ “The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” ’ [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, the clear and convincing test disappears and ‘the usual

rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) We need not take a position on this dispute, because the evidence was sufficient in this case under either measure.

Once the juvenile court determines that the child is described under section 300, it may issue an order at the dispositional hearing removing the child from parental custody pursuant to section 361. The court may only remove the child if there "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." (§ 361, subd. (c)(1).)

"The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citations.] The parent need not be dangerous and 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.]" (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1492; see *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.) "In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court's supervision." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

Here, the record affirmatively supported the trial court's determination that removal was necessary to protect the children from the substantial dangers created by living in an unsanitary and hazardous home. At the unannounced December 2018 visit, the home was filthy, cluttered, and roach infested. The family

had no place to wash hands after using the filthy toilet because the sink was filled with dirty laundry. There was an electrical cord running from the kitchen to the bathroom. Dirty dishes and leftover food littered the stove. Dirty mops and a bin of dirty water (which the family used for hand washing) stood in front of the stove. The state of the home placed the children's hygiene and health at risk. The court found the parents not credible in asserting that the home was clean and hazard free by the time of the adjudication hearing. This credibility finding was supported by (1) the parents did not allow DCFS to inspect the home before the adjudication hearing, (2) the parents' assertions that the home was cleaned regularly (despite the condition of the home showing otherwise), and (3) the parents' history of failing to keep the home in a sanitary condition illustrated by the previous dependency case.

The juvenile court also found that the filthy and unsanitary conditions were a recurrent problem. This problem was first identified by DCFS in 2015, when the family's home was described in the dependency petition as filthy and unsanitary, almost identically to how it appeared in December 2018. The parents' 2015 completion of parenting classes and counseling appeared to have had little effect.

Given the parents' failure to learn from previous services and the longstanding nature of this cleanliness problem, substantial evidence supported the juvenile court's finding that the children would be in substantial danger if they were returned home, and that there was no reasonable means by which the minors' physical health could be protected without removing them from the parents' physical custody. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215 [court may consider past events in deciding whether a child needs the court's protection, where there is reason to believe the conduct will continue].)

Mother argues that a dirty home did not justify the removal of children from their parents' custody, citing *In re Paul E.* (1995) 39 Cal.App.4th 996 (*Paul E.*). In *Paul E.*, the juvenile court found dependency jurisdiction based on unsanitary and filthy living conditions, but did not initially remove the child from his home. (*Id.* at p. 999.) Nine months later, the unsanitary conditions had been corrected, though the home was still "messy and dirty." (*Ibid.*) At this juncture, the social services agency identified several specific hazards: "a propeller protruding from a boat located outside the house, a lamp socket with a short, and a small child's plastic wading pool in the backyard filled with dirty water." (*Id.* at p. 1000.) Although the parents remedied these items within eight days, social workers nonetheless took the child into custody. (*Ibid.*) The agency filed a supplemental petition alleging the parents had failed to comply with their case plan. The juvenile court sustained the supplemental petition and placed the child in a foster home. (*Ibid.*) The Court of Appeal reversed the removal order, concluding that the alleged hazards identified by the agency were trivial to the point of being pretextual. (*Ibid.*)

Paul E. is incongruent to the case at bar. Here, no credible evidence suggested that the parents had meaningfully corrected the chronic unsanitary and filthy conditions. On the contrary, there was a roach infestation, filth in the bathroom, filth and dirty dishes in the kitchen, a dirty water basin where the children washed their hands, an electrical cord running from the bathroom to the kitchen, and dirty mops and debris in reach of the young children. The home was not just messy and dirty; it was unsanitary and hazardous. Mother's arguments otherwise are unpersuasive or at most go to the weight of the evidence, which we do not reweigh on appeal. (See *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.)

DISPOSITION

The juvenile court's dispositional order is affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.