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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B277102  
(Los Angeles County  
Super. Ct. No. DK15342)

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LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

BRENDA M.,

Defendant and Appellant.

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

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

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In this juvenile dependency case, defendant and appellant Brenda M. (Mother) appeals the juvenile court's June 2, 2016 dispositional order removing her nine-year-old daughter M.C. (Daughter) from her custody. Mother argues substantial evidence does not support the juvenile court's order. We disagree and affirm.

## **BACKGROUND**

### **1. Events Leading Up to Section 300 Petition**

On January 13, 2016, the Los Angeles County Department of Children and Family Services (Department) received a report that Mother was using drugs, drinking excessively, and not caring properly for Daughter. It was also reported that Daughter had not attended school in two months, had 40 unexcused school absences, and had to care for herself because Mother was "constantly abusing drugs and alcohol" and was "usually passed out." The reporting party was concerned for Daughter's safety.

That same day, a Department social worker went to Mother's home to investigate, but neither Mother nor Daughter was there. However, the paternal grandfather was there and spoke with the social worker. The paternal grandfather expressed concern that Daughter was missing so much school. He explained Mother went out with her friends a lot, sometimes

all night. The paternal grandfather said he, his son (paternal uncle), and the paternal grandmother all helped care for Daughter when Mother was unavailable. While still at the home, the social worker spoke with Mother by phone. Mother told the social worker that Daughter had missed 40 days of school because Daughter had been in Mexico with her father for the past 19 days.

After speaking with Mother, the paternal uncle entered the home with Daughter. The paternal uncle said he and Mother worked at the same place. He stated they start work before school opens and, therefore, Mother brings Daughter with her to work. He said Mother was going out after work that day so he offered to care for Daughter.

The social worker interviewed Daughter, who said she had never seen Mother use drugs but had seen her drink alcohol at home. Daughter had never seen Mother pass out and wanted Mother “to not go out and stay home with her.” When asked about school, Daughter began to cry. She said she missed her friends and wanted to go to school, but Mother only took her to work.

The social worker also interviewed the paternal grandmother at her home that same day. The paternal grandmother said sometimes Daughter spent the night with her and she would take Daughter to school. The paternal grandmother suspected Mother had a substance abuse problem because Mother stayed out at night, was unable to take Daughter to school in the morning, and became defensive when paternal grandmother asked about it.

The next day, January 14, the social worker interviewed Mother at a Department office. Although Mother admitted

drinking with friends, she denied having a substance abuse problem. She explained she was a nightclub promoter and, therefore, was at the nightclub two to three nights a week. Mother said she stopped taking Daughter to school because she had to work, did not have a sitter, and the previously free YMCA afterschool program was no longer free. She said she lied the day before about Daughter being in Mexico because she was scared. Mother agreed to an on-demand drug test that day, but later said she was too busy and could not do it. Mother took a drug test the following day, January 15, which was positive for methamphetamine and amphetamine. The Department referred Mother to local agencies for counseling and other services.

By January 20, 2016, Mother had enrolled Daughter in a new school. Daughter's old school had given her spot to a new student because Daughter had missed so much school. A school official reported trying on many previous occasions to contact Mother, including going to Mother's home, but Mother did not respond until after the Department became involved.

On January 22, 2016, the juvenile court granted the Department's request to remove Daughter from Mother. The Department placed Daughter with her paternal grandmother.

## **2. Section 300 Petition**

On January 28, 2016, the Department filed a petition under Welfare and Institutions Code section 300, subdivision (b)<sup>1</sup> on behalf of Daughter. The petition contained one count, which alleged that, because of Mother's substance abuse, Mother failed to supervise or protect Daughter and was unable to provide

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<sup>1</sup> Subsequent undesignated statutory references are to the Welfare and Institutions Code.

regular care for Daughter. At the detention hearing held the same day, the juvenile court found a prima facie case existed showing Daughter was a person described by section 300, subdivision (b) and ordered Daughter to remain detained and placed with her paternal grandmother. The juvenile court also ordered the Department to provide family reunification services as well as case appropriate referrals including drug testing for Mother. Mother was given monitored visits with Daughter.

### **3. Amended Petition and Adjudication**

In advance of the adjudication hearing, the Department conducted further interviews and investigation. A Department social worker interviewed Mother, who again denied having a substance abuse problem. She stated she was “‘shocked’” when she learned the January drug test was positive for methamphetamine. Mother explained that for the past year she had been working some nights at a nightclub and, as a result, had a hard time staying awake at her day job. A friend started giving her a blue pill that helped her stay awake until noon the following day, at which time Mother said she would “‘crash.’” Mother stated she did not know what was in the blue pill, but knew something in it gave her energy. She never asked her friend what was in the pill but “‘never imagined’” it contained methamphetamine. Mother said she never took methamphetamine by any other means and never experienced anything from methamphetamine other than being able to stay awake. Mother reported she took one blue pill once a week, although she spent about three nights a week at the club whether or not she was working. She also said the last time she took a blue pill was the day she tested positive that January. Since then Mother had missed two scheduled drug tests (one on

January 28 and the other on March 3, 2016), and had tested negative twice (once on February 4 and once on March 16, 2016).

Mother denied being with Daughter while under the influence of methamphetamine. Mother admitted, however, that when she came home and was with Daughter after being at the nightclub, she was still under the influence of the blue pill. Mother continued to repeat she did not know she was taking methamphetamine, stating, “ ‘I knew that I had taken something but I didn’t know it was meth.’ ” Mother told the social worker she had been visiting Daughter almost every day since the case began and helped her get ready for school. Mother stated she wanted to have her family back together.

Mother reported she had not signed up for any of the services to which the Department had referred her in January because she did not believe she had a substance abuse problem. Although more than a month earlier a social worker had given Mother a packet of referrals for counseling and other services, and Mother had signed an acknowledgment form acknowledging receipt of that information, Mother claimed she did not know where to go or how to enroll for any of the programs. Despite her belief that she did not need substance abuse counseling, Mother said she would participate in a program: “ ‘Because the court told me to do it and I want to get my daughter back. I will do whatever the court tells me to do but I don’t think I need it.’ ” The Department again referred Mother to local agencies for services, including parenting, drug and individual counseling, as well as on-demand and random drug testing.

The social worker also interviewed Daughter. Daughter said she missed her Mother and relatives and wanted to return to Mother’s care. Daughter was sad and felt alone when Mother

stayed out all night. She said she was “ ‘[s]ad because she (mother) would leave me alone.’ ” Daughter reported trying to wake Mother in the mornings because Daughter was hungry or had to go to school, but Mother would not wake up, which made Daughter feel “ ‘[s]ad’ ” and “ ‘alone.’ ” Daughter was also sad to miss school because she liked school. Daughter learned to cook for herself. Daughter also stated she did not know what drugs were, but knew what alcohol was and had never seen Mother drink it.

The social worker also interviewed paternal grandmother, with whom Daughter had been living for about one and a half months. Paternal grandmother said she knew Mother liked “ ‘to go out a lot at night,’ ” but she did not know Mother was using drugs. Paternal grandmother also stated Daughter had mentioned Mother slept a lot, but paternal grandmother assumed that was because Mother was tired from working and going out to nightclubs. While Daughter had been staying with paternal grandmother, Mother had been visiting three to four times a week, for three hours each time, and was interacting well with Daughter. Daughter had a healthy and good relationship with her paternal grandmother.

On March 17, 2016, the Department filed an amended petition, which is the operative petition. The amended petition contained three counts, one of which was the same as that contained in the original, one-count petition (the b-1 count), and the other two addressed domestic violence issues not at issue here.

The adjudication hearing was held March 24, 2016. At that hearing, the Department dismissed the two domestic violence counts, and Mother entered a no contest plea to the b-1 count.

The juvenile court sustained the b-1 count as amended. In its jurisdiction/disposition report for the court, the Department claimed Daughter should not be returned home because the “case issues that brought the child to the Court and the Department’s attention have yet to be resolved.” The Department could not ensure Daughter’s safety if returned to Mother because Mother had made no effort to enroll in programs to address either the domestic violence or substance abuse case issues. The juvenile court ordered Daughter to remain in paternal grandmother’s care.

The juvenile court granted Mother’s request to continue the disposition hearing so that Mother could “build up her track record” with respect to drug testing and present her strongest case for why Daughter should be returned to her care. The court scheduled the disposition hearing for June 2, 2016. In the meantime, the juvenile court ordered Mother to continue drug testing and emphasized she should return with “a nice strong track record of [clean] drug testing” and “[a]ppropriate involvement with the child.” Both the court and counsel for the Department explained that a missed drug test could be considered a “dirty” test. The juvenile court also ordered the Department to file a supplemental report prior to the disposition hearing to include an update on not only Mother’s drug testing results, but also her compliance with programs.<sup>2</sup>

#### **4. Disposition Hearing**

At the June 2, 2016 disposition hearing, the juvenile court refused to release Daughter to Mother’s custody. Since the

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<sup>2</sup> It is unclear whether the juvenile court ordered Mother to participate in any programs or services other than drug testing.



March 24 adjudication hearing, Mother still had not enrolled in any services or programs as recommended by the Department. Mother said she had not enrolled because the juvenile court had not ordered her to do so. A Department social worker reported Mother arrived late to her appointments with the Department and was inconsistent visiting Daughter. Since the March hearing, Mother had tested negative twice for drugs and had missed one test. Mother explained she missed the most recent test because she had to work. Mother also stated, however, that she thought she would not have to test at that time because she had tested the week before. Based on this statement, the Department believed Mother was still using illicit drugs.

The juvenile court found Mother's two negative and one missed drug tests was not "a very strong track record as I would like." Thus, the court ordered Daughter to remain placed at paternal grandmother's home and Mother to continue with monitored visitation. The court ruled that, once Mother completed three consecutive negative drug tests, she could have unmonitored visits with Daughter and the potential for regaining custody. The juvenile court addressed Mother and explained she had to return with "a clean record, which means clean drug tests. No misses. . . . And if you miss it, make it up the next day." Over the Department's objection, the juvenile court scheduled a progress hearing for September 1, 2016, to address visitation and custody. A review hearing was scheduled for December 1, 2016.

At the disposition hearing, the juvenile court also signed the case plan for Mother, ordering her to continue drug testing as well as attend drug and alcohol programs, parenting classes, and individual counseling.

Mother appealed the juvenile court's June 2 order denying her custody of Daughter.

While this appeal was pending, we granted the Department's motion to take judicial notice of the juvenile court's minute orders from its September 1, 2016 progress hearing and December 1, 2016 review hearing. At the September progress hearing, the juvenile court reaffirmed its June order removing Daughter from Mother's custody. Similarly, at the December review hearing, the juvenile court again reaffirmed its placement order and ordered Daughter not returned to Mother.

### **DISCUSSION**

Mother argues we must reverse the juvenile court's removal order because it is not supported by substantial evidence. We disagree.

#### **1. Applicable Law**

We review the juvenile court's dispositional removal order under the substantial evidence standard of review. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) "The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.'" (*In re A.F.* (2016) 3 Cal.App.5th 283, 289.)

Section 361, subdivision (c)(1) permits the juvenile court to order a minor removed from his or her parent if the court finds by clear and convincing evidence that the minor is, or would be, at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. In considering the removal of a minor from his or her parent, the focus is on averting harm to the minor. (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 292.) Removal may be warranted even

when the parent is not dangerous and the minor has not been harmed; “the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child.” (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) It is appropriate to consider the parent’s past conduct as well as present circumstances. (*Ibid.*)

## **2. Removal**

On appeal, Mother minimizes the evidence supporting the juvenile court’s ruling and overstates the evidence supporting her position. She claims she was remorseful for her actions, cooperative and willing to comply with the case plan. This is not entirely accurate. Although Mother expressed shock that she had tested positive for methamphetamine, sadness that Daughter had been removed from her care, and the desire to have her family back together, she also denied having a substance abuse problem, failed to appear for four out of her nine scheduled drug tests, and refused to enroll in any referred services despite the juvenile court and the Department repeatedly explaining the importance of them to her. Mother told a Department social worker that, although she did not think she needed substance abuse counseling, she would participate in a program “ ‘[b]ecause the court told [her] to do it’ ” and she would “ ‘do whatever the court tells [her] to do.’ ” Yet Mother did not enroll in any counseling or other services.

Mother also discounted her drug use by insisting she did not know the blue pill contained methamphetamine. Even if true, however, Mother knew she was taking a drug every week for a year to stay awake for an extended amount of time, after which she would pass out and be unresponsive and unable to care for Daughter. Regardless of the substance, substantial evidence

supports the conclusion that Mother had a substance abuse problem and, in fact, she entered a no contest plea to that count of the amended petition.

“ ‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ” (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 293.) Throughout the proceedings here, Mother denied any substance abuse problem, was inconsistent with drug testing, and despite saying she would, she did not participate in counseling or other services. Under these circumstances, substantial evidence supports the conclusion that Mother had not changed her behavior—behavior she conceded had put her Daughter at risk and led to her Daughter’s initial removal.

In addition, although there was no evidence of abuse and Daughter had not been physically harmed as a result of Mother’s drug use, the evidence revealed Mother clearly neglected Daughter and was unable to provide regular care for or supervision of Daughter. Mother left Daughter alone at home, failed to take her to school for an extended period, would not wake up or respond to Daughter, and was unable to cook for her. “One of the goals of dependency is to protect a child before the harm takes place.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.) On the record here, we conclude the juvenile court reasonably could infer Daughter was at risk of harm were she to return to Mother’s care.

### **3. Alternatives to Removal**

Mother also argues there were reasonable means short of removal that would have protected Daughter from any possible harm. Mother claims the juvenile court could have ordered unannounced visits, random drug tests, and completion of a

safety plan. In addition, Mother argues Daughter and her relatives could report if Mother used drugs or exhibited other concerning behavior. Although Mother is correct that removal is not permitted unless the child can be protected by reasonable means short of removal, the Department offered reasonable means short of removal, but Mother failed to take advantage of those opportunities.

“The statute ‘is clear and specific: Even though children may be dependents of the juvenile court they shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the child’s physical health, safety, protection, or physical or emotional well-being *and* there are no “reasonable means” by which the child can be protected without removal.’ ” (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.)

Here, the Department repeatedly referred Mother to substance abuse, parenting, and individual counseling as well as random drug testing. In January 2016, Mother signed an acknowledgment form indicating she had received referrals and that she had “been informed that these referrals constitute reasonable efforts on the part of the Department . . . in order to maintain my family together.” Moreover, at adjudication, the juvenile court postponed the dispositional hearing specifically to give Mother time to demonstrate her readiness to have Daughter returned to her care. The court ordered further drug testing and explicitly told Mother she should return with “a nice strong track record of [clean] drug testing” and “appropriate involvement with the child.” More than two months later, Mother returned for the dispositional hearing with two clean drug tests, one missed drug test, no participation in any services or counseling, and

inconsistent visits with Daughter. Mother simply did not demonstrate her readiness to stop the behavior that put Daughter at risk. The juvenile court stated Mother did not have the “very strong track record” that the court wanted. The court did not err in maintaining Daughter’s placement with her paternal grandmother.

This case is different from *In re Ashly F.*, on which Mother relies. (225 Cal.App.4th 803.) In that case, the mother physically abused her two children and the father failed to protect them. (*Id.* at pp. 806–807.) The juvenile court ordered the children removed from their parents’ custody and we reversed. (*Id.* at p. 805.) We held the juvenile court and the Department did not satisfy their obligations to consider reasonable means to protect the children short of removal. (*Id.* at p. 810.) We found “[a]mple evidence” of reasonable means to protect the children in their home, including removing the mother from the home, unannounced visits, and in-home counseling services. (*Ibid.*) Also, by the time of the dispositional hearing, the mother had enrolled in a parenting course and the father had completed a parenting class. (*Ibid.*)

Here, however, the juvenile court and the Department reviewed reasonable means to protect Daughter short of removal. Moreover, Mother had not shown the same motivation to address her substance abuse as the parents in *In re Ashly F.* had shown in addressing their parenting skills. Additionally, Mother is a single parent and, therefore, removing her from the home was not an option. This case is more akin to *In re A.F.*, *supra*, 3 Cal.App.5th 283, where the mother failed to acknowledge her substance abuse, and *In re Cole C.*, *supra*, 174 Cal.App.4th 900, where the father failed to acknowledge his inappropriate

parenting techniques. In those cases, as here, reasonable means to protect the children short of their removal were considered, but were not effective. Similarly, here, we conclude the juvenile court and the Department appropriately considered reasonable means short of removal, but because of Mother's denial of her substance abuse issues and her all but refusal to participate in any programs that might help, removal was warranted.

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.