

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B294984

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP06263)

Plaintiff and Respondent,

v.

F.A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Daniel Zeke Zeidler, Judge. Affirmed.

Vincent W. Davis for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Jeanette Cauble, Principal Deputy
County Counsel, for Plaintiff and Respondent.

F.A. (Father) appeals from the juvenile court's disposition order made after the court adjudged his daughter, M.A., a dependent under Welfare and Institutions Code section 300.¹ Father contends that the evidence did not support the removal order. We disagree. Substantial evidence supported the court's finding that a substantial risk of harm existed to the child because of Father's unresolved abuse of alcohol and that the child would not be protected without her removal from his custody. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The family consists of Father, minor M.A.² (born in January 2012) and the child's mother, M.G. The parents met in 2005 and were in a romantic relationship from 2011 until 2014, but they never married. According to M.A.'s mother, Father comes from a family of "heavy drinkers;" he abused alcohol prior to and throughout their relationship and was prone to domestic violence. They had no formal family law custody order regarding the child; instead, they had an oral agreement that M.A. would spend every other week with Father.³

Father had a criminal history dating back to 2002. His record discloses several convictions for alcohol-related disorderly conduct in 2014 and 2015, convictions for driving while under

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

² M.A. also has several half-siblings, who have the same mother but a different father. Neither M.A.'s half-siblings nor the child's mother are parties to this appeal.

³ The mother had a restraining order against Father because of his prior threats of violence against her and her boyfriend; thus, the exchange of custody of M.A. every other week occurred at M.A.'s elementary school.

the influence (DUI) in 2015, and 2017, and a second DUI arrest in 2017.

The family came to the attention of the Department of Children and Family Services (DCFS) on September 4, 2018. The mother had reported that on August 31, 2018, while in Father's custody, six-year-old M.A. had called, screaming, crying, and pleading for help because Father was under the influence of alcohol while driving M.A. in the car. The mother did not call the police because she did not know where Father lived or the location of where he was driving at the time. The mother also reported that two weeks before the incident, M.A. had failed to attend school while in Father's custody because Father had been drinking.

When the DCFS social worker interviewed the child, she denied physical abuse or neglect by her parents and reported that she was more bonded to Father than to her mother because Father spent all of his time with her when she visited him. In spite of her attachment to him, M.A. disclosed that on more than two occasions, Father had driven drunk while she was in the car. She denied she was ever injured, but reported that she was scared when he drove under the influence. She described that Father would swerve, almost hit cars, and on one occasion, he backed up into another car, damaging it. M.A. also described an incident in which Father fell asleep after he had been drinking while he and M.A. were in his car parked in the garage. M.A. woke him up, walked him to his bedroom, and then put herself to bed. She reported that when she called her mother on August 31, 2018, Father was swerving and almost hitting cars. M.A. asked the social worker not to disclose Father's drinking to anyone because she feared that Father would be taken away.

The mother told the social worker that Father would drive while under the influence of alcohol when they were dating,

and he had a “hit and run” involving alcohol. She reported that Father would sometimes drink to the point of passing out. The mother told the social worker that she feared for her daughter’s safety while the child was in Father’s custody and indicated that she would go to the family law court to seek an order granting her sole custody.

The social worker also interviewed M.A.’s 12-year-old half-sibling, who was staying with M.A. and their mother at the time. The sibling reported that M.A. had confided in her that Father “drives drunk a lot” with M.A. in the car and that he drank to excess on numerous occasions. M.A. described that when Father is drunk, he acts “crazy”—that he “pushes people” and is “mean.”

The social worker did not have Father’s home address and attempted to contact him by telephone several times over a couple of days. She left Father voicemail messages asking for a call back as soon as possible regarding the investigation. A week later, the social worker was able to speak to Father briefly over the telephone. Father denied the allegations, claiming that the mother had fabricated them. Father stated that he needed to end the call to get back to work, but he agreed to meet with the social worker in person at his home the next morning and said he would call her back within the hour to provide his address. He did not do so. The social worker called Father back later that day to follow up; she left him a message, asked him to call back immediately, but he failed to return the call.

In the meantime, M.A. had another week-long visit with Father. When she returned to the mother’s home, M.A. disclosed to the mother that Father had been drinking and driving during that visit. M.A. asked her mother not to tell anyone because she did not want Father to go to jail. The mother confirmed that the child was scheduled to be in the Father’s home again

the following week and that she was concerned for her safety. When the social worker interviewed M.A. again, the child denied Father drank and drove the week before; she said that Father promised her that he would not drink again and would not drink while driving with her in the car anymore.

The social worker had not yet obtained the Father's home address—neither the child, her mother, nor the child's school had a valid address for him. On September 26, 2018, the juvenile court granted a warrant request to remove M.A. from Father's custody. Later that day, the social worker was able to make in person contact with Father at the child's school. The social worker gave Father the removal warrant and interviewed him. Father stated he would contest the detention, and that he had been falsely accused. Father said he was homeless but later said he switched between two homes. After being confronted with his alcohol-related convictions, Father admitted he had a criminal and substance abuse history, but he denied that he currently abused alcohol, claiming that he only drank occasionally. He specifically denied drinking and driving with his daughter in the car.

On September 26, 2018, Father was given community resource referrals. Father told the social worker that he would agree to a drug test. He stated that he was a great parent and was bonded to his child; he claimed that he was involved in his daughter's life, that he participated in her school functions and coached her soccer team.⁴ He reported that he was willing to cooperate with DCFS and the court to reunify with his daughter.

⁴ Father provided two letters from the parents of his daughter's soccer team and another from a friend, attesting to his commitment to his daughter and the fact that they had never observed him drink in front of his child.

Father said he had served in the military and was a veteran. The detention report indicated that DCFS had offered Father referrals for services, including substance abuse counseling, case management, and parenting training to prevent removal.

The DCFS social worker re-interviewed M.A. after her removal from Father. She stated that her mother struck her three times and had hit her with a sandal the day before. M.A. also reported that her mother told her to say that she wanted to stay with her, but M.A. said she wanted to be with her Father because he was “nicer.”

On September 28, 2018, DCFS filed a section 300 petition, pursuant to subdivisions (a) and (b)(1). Counts a-1 and b-2 alleged physical abuse by M.A.’s mother, and count b-1 contained an allegation of Father’s unresolved history of alcohol abuse and instances of his driving under the influence of alcohol while M.A. was in the car.⁵

⁵ As sustained the b-1 count as follows:

“[M.A.]’s father . . . has an unresolved history of alcohol abuse which renders the father incapable of providing regular care and supervision of the child. On multiple prior occasions, the father has been under the influence of alcohol while the child was in the father’s care. On prior occasions, the father drove the child in a vehicle while the father was under the influence of alcohol.

On 12/14/2015 the father was convicted of DUI Alcohol Drugs and on 4/18/2014 the father was convicted of Disorderly Conduct: Intox Drug/Alcohol. The child is of such a young age that the child requires constant care and supervision and the father’s substance abuse interferes with providing regular care and supervision of the child. Said substance abuse by the child’s father endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage, and danger.”

At the October 1, 2018, detention hearing, Father asked the court to release the child to his custody, but in accord with M.A.'s counsel's request, the court ordered the child detained from Father and released to M.A.'s mother. Father was granted monitored visits and weekly random and on-demand drug and alcohol testing.

The jurisdiction/disposition report indicated that M.A. confirmed the allegations of Father's excessive drinking and his driving under the influence. She also recalled an incident the prior year when Father was drunk, and he grabbed and threw her down on the bed. She also reported that Father would sometimes steal things from the store when he was drinking. M.A. also gave the social worker a copy of a cellular phone video that she had taken when she was at a restaurant with Father when he had been drinking.

Father was interviewed on October 25, 2018; he continued to deny the allegations of substance abuse but admitted that he had a DUI. He was not participating in any services to address case issues. Initially, Father said he stopped drinking 30 days before the interview but then claimed he had stopped drinking in early June 2018. He reported that he had previously taken classes about substance abuse in connection with one of his criminal matters. Father submitted two negative drug and alcohol tests—one in the last week of October 2018 and another in the first week of November 2018.

On November 19, 2018, the juvenile court conducted the contested jurisdiction/disposition hearing. M.A. testified that her mother told her to tell the truth and denied that she had been coached. She stated that when she called her mother, she was crying because Father was drinking. She described a video she made of herself inside a restaurant; she made the video during the summer 2019 when she and Father had lunch with her friend

from school and his family. She testified that after her friend and his family left the restaurant, she and Father stayed because he was still drinking alcohol.

Father testified, denying that he drank alcohol around his daughter. Father stated that he had tested for alcohol with Veteran's Affairs (V.A.) six or seven times, and he had not been advised that any of those tests came back positive. He testified that he had attended parenting classes, but did not claim that he was attending any alcohol abuse or 12-step programs. On cross-examination, Father admitted he had trouble with alcohol in the past and had been stopped by the police for DUI's, but stated that his daughter was never in the car at the time. He claimed that he last consumed alcohol nine months before the hearing and that he had stopped drinking by using "self-discipline," and making "better choices." He also said the V.A. had required that he go into a "sober living facility."

The mother pled no contest to an amended section 300 petition. The DCFS counsel and M.A.'s attorney asked the juvenile court to sustain the allegations against the parents. The juvenile court found M.A.'s testimony about Father's abuse of alcohol to be credible and Father's denial of his recent alcohol abuse unbelievable. The court stated its view that Father lacked awareness concerning his alcohol abuse problem. The court sustained the Father's alcohol abuse allegation.

The juvenile court then addressed the disposition and announced it was considering the same evidence presented for jurisdiction. M.A.'s attorney joined with DCFS to request that the court remove the child from Father's custody. Father's attorney opposed removal, arguing alternative protective measures such as a court order preventing Father from driving the child in the car would reduce the risk of harm.

The juvenile court found that clear and convincing evidence of substantial danger to M.A. existed if she remained in Father's custody, that DCFS provided reasonable services to prevent removal, and that no reasonable services existed that would prevent further removal. The court declared M.A. a dependent, placed the child in her mother's home and ordered services for both parents, and monitored visits for Father.

Father timely filed an appeal.

DISCUSSION

On appeal, Father does not challenge the jurisdictional findings or the order declaring M.A. a dependent of the juvenile court. Rather, Father contends that sufficient evidence did not support the disposition order removing the child from his custody. We disagree.

As relevant here, section 361, subdivision (c)(1), provides that "[a] dependent child shall not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence" that "[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." "The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) "In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

This court applies the substantial evidence standard of review to trial court findings supporting an order removing children from their custodial parents at the disposition. (See *In re Angelique C.* (2003) 113 Cal.App.4th 509, 519 [on appeal the clear and convincing test that the trial court applies to the disposition determination disappears, the substantial evidence standard governs the appellate court's review]; accord, *In re F.S.* (2016) 243 Cal.App.4th 799, 813.)

When asked to assess whether substantial evidence exists to support a juvenile court's findings, our task begins and ends with a determination as to whether there is any substantial evidence, to support the juvenile court's conclusion. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We do not reweigh, judge the value of, or resolve conflicts in evidence; nor do we exercise independent judgment or evaluate the credibility of witnesses. (*In re B.D.* (2007) 156 Cal.App.4th 975, 986.) The court's findings are reviewed in a light most favorable to the challenged order; all conflicts and reasonable inferences are resolved in favor of the order. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 450–451.) Further, we affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) The appellant has the burden to show that substantial evidence does not support the finding or the order. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1087.)

Father contends substantial evidence did not support the court's removal order because there was "thin" evidence to support the findings that he had a current alcohol problem that posed a substantial danger to his daughter. Father maintains that the child felt safe in his custody and wanted to live with him. He acknowledged his criminal history involving alcohol use but also asserts that by the time of disposition, he had

stopped drinking and had twice tested negative for alcohol. He also complains that the evidence did not support the court's finding that there were no reasonable means to protect his daughter without removing her from his custody. We are not persuaded.

Substantial evidence in the record demonstrates that Father had an unresolved alcohol problem that presented a substantial danger to the child if left in his custody. First, M.A. provided detailed reports to the DCFS social worker and consistent testimony during these proceedings that Father had recently and repeatedly abused alcohol when she was in his custody. She reported that Father had driven drunk while she was in the car on several occasions and that he would swerve, almost hit other cars and that at least once he struck another vehicle. She called her mother seeking help when she was with Father in the car, and she felt afraid of his impaired driving. Although Father testified that he had not consumed alcohol for nine months before the disposition hearing, M.A. provided evidence of Father's drinking after that date, including, a cellular phone video M.A. took of Father in a restaurant while he was drinking during the summer of 2018. And his drinking continued in September 2018 even after the DCFS social worker initiated the investigation and had the first contact with Father about the allegations.

Second, other evidence corroborated M.A.'s report of Father's ongoing alcohol abuse. The minor's mother and the child's half-sibling confirmed that M.A. had independently reported to them that Father used alcohol to an excess when M.A. was in his custody and that Father drove under the influence with M.A. in the car. The mother disclosed that Father's alcohol abuse spanned at least 15 years, predating their relationship. In addition, Father had committed multiple

criminal offenses fueled by his over-consumption of alcohol, including several DUI arrests and convictions in the last several years—two in 2017, less than a year before the proceedings began.

The trial court acknowledged that Father also lacked awareness into how to address his ongoing struggle with alcohol. When asked about his efforts to engage in services and seek treatment, Father claimed that he no longer had a problem and represented that he was able to stop drinking on his own, using self-discipline. At the same time, he also conceded that the VA had required him to live in a “sober-living” facility. Other than Father’s two alcohol tests he submitted to during the weeks before the disposition hearing, the record contains no other evidence that Father had stopped drinking or that he was participating in alcohol treatment programs or services. Given the Father’s criminal history, his prior behavior, and his failure to participate in any services or treatment, the court did not err in doubting his credibility and rejecting his claim of sobriety. Substantial evidence supported the court’s conclusion that Father’s drinking and his lack of insight into alcohol problems indicated that the child would not be safe in his custody.

Likewise, the record also demonstrates that DCFS made reasonable efforts to prevent removal of the child. The DCFS social worker informed Father of the allegations against him and made several attempts to engage with him during the initial stage of the investigation, prior to the child’s removal. Father, however, failed to return the social worker’s telephone calls and never provided his address. In the meantime, while the child was in his custody, Father again drank and drove with M.A. in the car. After that, DCFS provided Father with service referrals to seek treatment, but there is no evidence that he enrolled in programs or treatment. And even though his counsel proposed,

that as an alternative to removal, the trial court could issue an order prohibiting Father from driving with M.A. in the car, the court did not err in rejecting that suggestion. The danger created by Father's aberrant alcohol abuse was not limited to his driving. It also impaired his ability to parent his child in other ways. Father physically attacked the daughter while he was drunk, and his abuse of alcohol caused him to abandon his parental role. On at least one occasion, the six-year-old M.A. had to act as caretaker for her Father—she walked him into the house and put him to bed after he passed out drunk in the car. Father's on-going alcohol abuse limited his ability to provide consistent supervision and care, resulting in a substantial risk of harm to the child. The focus of dependency proceedings is the protection of minor children. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492.) The juvenile court need not wait until a child is seriously injured to take steps necessary to protect the child. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383.) We accordingly affirm the juvenile court's disposition findings; Father did not demonstrate the court erred when it ordered M.A.'s removal from his parental custody.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.