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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B242307

(Los Angeles County
Super. Ct. No. CK92465)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C. F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Rudolph Diaz, Judge. Affirmed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and
Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant C. F. (mother) appeals a juvenile court order asserting jurisdiction over her daughter R. W. pursuant to Welfare and Institutions Code section 300, subdivision (b)¹ and a separate dispositional order removing R. from her physical custody. Mother contends there was no substantial evidence supporting either order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *R.'s Early Life With Mother and Father*

R. was born in February 2000. In the early years of her life, R. lived with mother and Re. W. (father), her biological and presumed father. When R. was about six years old, mother and father separated. R. began living solely with mother when she was about seven years old.

2. *R.'s Time Living With Mother*

R. lived with mother until she was about nine years old. During this time period she witnessed mother having sex with different men in the studio apartment where they lived. Some of the men at times kissed R. on the neck and cheek, but R. denies that they touched her "private parts."

According to father, mother was working as a prostitute. When R. was initially interviewed by a social worker employed by respondent Los Angeles County Department of Children and Family Services (the Department or DCFS), she too acknowledged that mother was a prostitute. Subsequently, however, R. advised the Department that mother had sex with "boyfriends" and that although R. saw this activity when she woke up at night, she never saw anyone pay mother for sex.² Mother denies having sex in front of R.

3. *R.'s Time Living With Father*

In approximately 2009, when R. was about 9 years old, mother dropped R. off at father's home. By this time, father was living with a new wife, S. C. (stepmother), and

¹ All future statutory references are to the Welfare and Institutions Code.

² R. stated to a Department social worker: "I know when I was at Court I saw one of my mom's friends and said that was her pimp but I didn't mean to say it."

their small children. According to father, mother told him that she could no longer care for R. and that she was going to “take care of [her] warrants.”³ R. advised the Department, “I think she couldn’t afford the rent so she dropped me off until she could get herself together.”

Father claims he noticed a big change in R. after her time living with mother. He remembered R. as a “very loving, sweet child, who was very normal.” While R. lived with father, however, she was very defiant and seemed to have “no regard for what is right or wrong.” R. urinated on herself and in the sink. She chewed her clothes, tissue and other items. She smashed her half-siblings’ fingers and took food away from them. She had difficulty maintaining friends. She would not shower unless she was monitored. She showed no affection towards others and was not receptive to affection. She engaged in dangerous behavior, such as playing with electric sockets.

R. claims that father and stepmother physically and verbally abused her. Father hit her with his belt or fists. Stepmother called her names such as “stupid” and “ugly.” R. claims she was forced to live in a bathroom and would urinate on herself “as a result of the abuse and isolation of being in the bathroom.”

After R. began living with father, mother occasionally visited. Mother apparently retained visitation rights or part custody over the child pursuant to a court order. According to father, however, mother’s visits were inconsistent and often at random times. He also claimed that mother frequently came intoxicated and that when she was denied an unscheduled visit, she broke windows and acted violently. As a result of mother’s erratic behavior, father and his family moved to another residence.

4. *The Department’s Involvement*

On November 30, 2011, the Department received a referral regarding alleged general neglect and emotional abuse by father. Department social workers thus began an

³ Mother has a criminal record of arrests, detentions and convictions for incidents occurring between 1992 and 2011. She allegedly committed a variety of crimes, including prostitution and possession and purchase of cocaine base. Father also has an extensive criminal record.

investigation. The Department initially could not contact mother and did not know her whereabouts. According to father, mother had not visited R. since approximately January 2011. Father advised the Department that although he loved R., he could not help her change her behavior. Father requested that R. be placed by the Department in foster care.

A Department mental health provider diagnosed R. with post traumatic stress disorder as a result of possible emotional abuse by father and stepmother, emotional abuse by mother, and mother's "sexual misconduct." By February 2012, R. was placed in foster care.

5. *The Petition*

On March 8, 2012, the Department filed a juvenile dependency petition alleging that the juvenile court had jurisdiction over R. pursuant to section 300, subdivisions (b) and (d). Counts b-1 and d-1 alleged that mother "sexually abused" R. by engaging in sexual acts with unrelated men in the presence of the child. Count b-2 alleged that father was unwilling and unable to provide the child with ongoing care. As we shall explain *post*, the petition was later amended to add count b-3.

On the same day the petition was filed, the juvenile court found that there was a *prima facie* case for detaining R. Mother was granted monitored visits and father was granted unmonitored visits.

6. *The Department's Jurisdiction/Disposition Report*

On April 23, 2012, the Department filed a jurisdiction/disposition report. The report stated: "It is uncertain at this time if mother is able to ensure the safety and well being of R. as mother has not had any contact with R. in the past two years and has expressed an interest in 'taking small steps in establishing a relationship with her.' " The report further indicated that mother was renting a room from a friend who was not willing to allow the Department to come to her home to assess mother's living situation. Mother's friend said that she had her own children living in the home, "and prefers if her family does not have to be involved with and/or exposed to DCFS." The report also stated that after the petition was filed, mother had three "positive" visits with R., but mother conceded that she needed to work on her relationship with her daughter.

Additionally, the report stated that mother “has expressed a strong desire to reunify with R. as to address all of the issues that have caused her to be involved with DCFS.” Further, mother agreed to participate in parenting classes, individual counseling to address “unresolved” childhood issues, and conjoint counseling with R. to assist her in establishing a “healthy and loving mother/daughter relationship.”

7. *May 21, 2012, Hearing and Order*

On May 21, 2012, the juvenile court held a jurisdictional and dispositional hearing. At the hearing, the Department’s lawyer asked the court for permission to amend the petition to add count b-3 to conform to proof. The Department’s counsel described this count as “[s]tating that the mother is currently unable to care for the child and that this places the child at risk of harm in the mother’s care.”⁴

In response to the new count, mother testified. She stated that she was employed at “Mental Health” in Long Beach. She further testified that she lived with a friend in a three bedroom home and that R. would be able to stay with her. Although mother admitted that she previously told the Department she was not willing to have R. reside with her, she did so because she thought “it would be best” for her to first find a larger home where she and R. could reside. Mother also testified she was participating in parenting classes but that she was not participating in individual counseling, though she conceded she needed such counseling.

The Department argued that mother was unable to provide a home for R. at that time because, among other things, mother’s friend would not submit to a “live scan” test or allow the Department to come to her place.

At the end of the hearing, the court issued an order dismissing counts b-1 and d-1 and sustaining counts b-2 and b-3. The court continued the disposition hearing to June 21, 2012.

8. *June 21, 2012, Last Minute Information and Dispositional Order*

On June 21, 2012, the Department filed a document entitled “Last Minute

⁴ This count was not memorialized in a written amendment to the petition.

Information for the Court.” In this document, the Department stated: “[M]other’s housing has not been stable throughout this case and presents a barrier as to reunification.” The Department discussed the possibility of placing mother and R. in a program which provides shelter for women and their children. It determined, however, that “while mother is progressing she has not begun any individual counseling or con-joint counseling with R. which is essential due to the dynamics between mother and R.” The DCFS further expressed “concerns” about mother’s ambivalence towards counseling given her “unresolved issues” as to her own childhood and her relationship with R. The Department thus concluded that “it would be best if mother is placed on a waiting list to enter the program when it is determined, based on a recommendation from the assigned therapist that it is healthy for mother and R. to be reunified.”

On June 21, 2012, after a hearing, the juvenile court issued an order removing R. from mother’s physical custody pursuant to section 361, and declaring R. a dependent child of the court. The order also required mother and R. to attend individual and conjoint counseling.

Mother filed a timely appeal of the May 21 and June 21, 2012, orders.

9. *December 19, 2012, Order*

On February 8, 2013, we granted the Department’s request for judicial notice of the juvenile court’s December 19, 2012, order. In that order, the juvenile court placed R. in mother’s physical custody under the supervision of the Department.

CONTENTIONS

Mother argues there was no substantial evidence to support the juvenile court’s jurisdictional order sustaining count b-3 in the petition. She also argues that there was insufficient evidence to support the juvenile court’s dispositional order removing R. from her physical custody.

DISCUSSION

1. *The Jurisdictional Order*

We review the juvenile court’s jurisdictional findings under the substantial evidence test. (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57.) “The term ‘substantial

evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) In determining whether there is substantial evidence, “we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Under section 300, subdivision (b), the juvenile court can take jurisdiction over a child if the child “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or . . . by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

There are three elements to section 300, subdivision (b) jurisdiction: “(1) neglectful conduct by the parent of one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 567; accord *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) The juvenile court must determine whether each of these elements are satisfied at the time of the jurisdictional hearing, though past conduct can be probative of current conditions. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) In reaching its decision, the court looks at the totality of the circumstances, including the severity of the incidents of abuse, whether there was a substantial lapse of time between the abuse and filing of the section 300 petition, and whether the parent has adequately addressed the issues that led to the neglectful conduct. (*In re J.K.*, *supra*, 74 Cal.App.4th at p. 1440.)

In the present case, the evidence consisted of the Department’s reports and attached documents, as well as mother’s testimony at the May 21, 2012, hearing.

Viewing this evidence in a light most favorable to the juvenile court's order, a reasonable fact finder could have concluded that R. suffered post traumatic stress disorder as a result of mother, as a prostitute, having sex on numerous occasions with various unrelated men in R.'s presence in a small studio apartment. This conduct lasted for about two years. To make matters worse, mother's male visitors sometimes kissed R. on the neck and cheek. This clearly placed R. at a substantial risk of physical harm while she was living with mother.

We acknowledge that there is no evidence that mother engaged in prostitution for more than two years before the jurisdictional hearing and that mother had made some progress in resolving her ongoing psychological, social and economic problems. Mother, however, had not commenced individual or conjoint counseling, which the Department reasonably believed were necessary for mother to overcome the issues that led to her neglectful conduct. Indeed, shortly before the jurisdictional hearing mother conceded that she was not ready to care for R. The Department also reasonably had concerns about mother's ability to provide a stable and safe home for R. because of mother's history of erratic, sometimes unlawful behavior, and her landlord's refusal to allow DCFS to inspect her home.

Under the totality of the circumstances, there was substantial evidence that at the time of the jurisdictional hearing, mother was unable to adequately supervise or protect R., and that if R. were placed in her care, there was a substantial risk that R. would suffer from physical harm or illness. The juvenile court therefore did not erroneously sustain count b-3 of the dependency petition.

2. The Dispositional Order

Mother argues that there was no substantial evidence supporting the juvenile court's dispositional order denying her physical custody over R. After the order, however, R. was placed with mother. Mother's appeal of the dispositional order therefore is moot.

Assuming, arguendo, mother's appeal is not moot, we reject it on the merits. At the dispositional hearing, the juvenile court declined to place R. in mother's physical

custody pursuant to section 361, subdivision (c)(1). This statute provides: “A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians *with whom the child resides at the time the petition was initiated*, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph 6: [¶] (1) 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 or guardian’s physical custody.” (§ 361, subd. (c), italics added.)

Mother contends that there was no substantial evidence that the circumstances described in section 361, subdivision (c)(1) existed. The Department, however, was not required to establish such circumstances because R. did not “reside” with mother in March 2012, when the petition was filed. At that time, R. was residing with father and stepmother and had not lived with mother for about two years.

Even assuming R. had been residing with mother when the petition was filed, we would affirm the dispositional order because there was substantial evidence showing the requirements of section 361, subdivision (c)(1) were satisfied. For the reasons discussed *ante*, there was substantial evidence of a substantial danger to R.’s physical and emotional well being at the time of the dispositional hearing. Based in this evidence, the juvenile court could have reasonably concluded that mother had not sufficiently addressed the problems that led to R.’s detention.

The court could have also reasonably concluded that there were no reasonable means by which R.’s physical health could be protected without removing her from mother’s physical custody. For a period of about two years, when R. was between the ages of seven and nine, mother regularly had sex with unrelated men in R.’s presence in a one-room studio apartment. At the time of the dispositional hearing, mother was renting one room in a house DCFS was not permitted to inspect. By then, R. was 12 years old, potentially making her more vulnerable than ever to unrelated men visiting mother’s

room for sex. In light of mother's failure to commence individual counseling and her ambivalence toward such counseling, the juvenile court reasonably and understandably saw no alternative but to deny placing R. in mother's physical custody, at least until mother made more progress with her long-term problems. We find no error in the dispositional order.

DISPOSITION

The orders dated May 21, 2012 and June 21, 2012 are affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.