

Filed 11/15/18 In re Dennis V. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re DENNIS V. et al., Persons  
Coming Under the Juvenile Court  
Law.

B287426

(Los Angeles County  
Super. Ct. Nos. CK99191 A and B)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los  
Angeles County. Julie F. Blackshaw, Judge. Affirmed.

Karen J. Dodd, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, Aileen Wong, Deputy County Counsel,  
for Plaintiff and Respondent.

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## I. INTRODUCTION

S.A. (Mother) appeals from a dispositional order entered pursuant to Welfare and Institutions Code<sup>1</sup> section 361, subdivision (c)(1). Mother argues there was no substantial evidence to support removing her two children, Dominic V. and Dennis V., from her care. Mother also argues the juvenile court abused its discretion by ordering her to submit to six random drug tests. We affirm.

## II. BACKGROUND

### A. *Prior Dependency Proceedings*

Dennis, who is 12 years old, and Dominic, who is 10 years old, were the subject of prior referrals to the Los Angeles County Department of Children and Family Services (DCFS). A referral was filed on August 27, 2009, for emotional abuse and general neglect of the children by the parents because of domestic

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

violence. DCFS closed the referral as inconclusive because it was unable to make contact with the family.

On October 5, 2011, a referral was filed alleging emotional abuse by Father. Mother stated during a counseling session that Father abused her in the children's presence. Mother obtained a restraining order. DCFS closed the referral as unfounded because there was no current abuse evidence.

On July 30, 2013, the juvenile court sustained a section 300 petition alleging that Mother used inappropriate discipline, including a belt, and that on April 23, 2013, Mother placed the children in a detrimental and endangering situation by harboring in the children's home a person who had failed to check in with probation. Mother harbored the fugitive in the children's bedroom while police were entering the apartment with guns drawn. Mother was arrested for child endangerment. The court ordered Mother to participate in family preservation services, individual counseling, parenting education, and anger management, and ordered family reunification and family maintenance services for the children with Mother. On October 29, 2014, jurisdiction was terminated, and Mother was granted sole legal and physical custody of the children, with the father Pedro V. (Father) permitted monitored contact.

In December 2015, Mother twice reported to law enforcement that Father had thrown rocks through the window of her bedroom where the children were sleeping.

#### *B. Current Referral*

On March 6, 2017, DCFS received a referral that Father emotionally abused the children and committed domestic violence

in the presence of the children by hitting Mother on her body and head, causing a laceration above her upper right eyelid.

On March 15, 2017, social worker Manukyan interviewed Mother and the children about the March 6, 2017 incident. Mother explained that the children had been living at paternal grandmother's home since January 2017, when Mother was evicted because Father vandalized her apartment. Mother was living with a friend. When Mother arrived at the grandmother's home on March 6, 2017, she saw Father. She told Manukyan that she did not expect to see him because he was not living there, and she was avoiding him due to past domestic violence. However, Mother told law enforcement that she was living at paternal grandmother's home with the children and Father. Father told a social worker that both parents stayed at the grandmother's residence, at least on occasion.

The March 6, 2017 physical altercation erupted when Mother told Father not to tease Dominic. Both children witnessed the fight until their aunt took them to the bedroom. Mother left the paternal grandmother's home, with Father chasing and punching her. Neighbors called the police, but by the time they arrived, Father had left.

Manukyan observed Mother had a stitch over her right eyebrow and her right eye was swollen and black. Mother reported past and present domestic violence by Father, including hitting Dennis. She said Father had been arrested previously for domestic violence, was on probation, and had a warrant for his arrest. When Manukyan asked Mother if she would be willing to obtain a restraining order, Mother said she had no intention of doing so.

During the conversation, Mother's speech was mumbled and hard to understand at times. Manukyan asked Mother about substance abuse, which she denied, but she agreed to voluntary drug testing. The record does not show whether Mother completed the agreed-upon drug testing.

Dennis reported seeing the March 6, 2017 altercation. He said Mother and Father argued after Father had accused Mother of seeing other men, and Father punched Mother in the face. Dennis was scared and called his aunt, who separated the parents. Dennis also witnessed past domestic violence, including in January 2017 when Father vandalized Mother's apartment. Dennis reported Father used to hit him with a shoe on his back and legs and once with a bamboo stick. Dennis said he felt safe with Mother and was scared of Father when he is mad because he does not know how Father will act.

Dominic too reported being present during the March 6, 2017 altercation. He said it started because Father thought Mother was talking to another man. Father hit Mother causing her to have a bruise on her eye and bleed. Mother ran out, and Father followed. Dominic reported ongoing domestic violence between his parents. Dominic felt safe in the care of Mother and Father.

Manukyan spoke with Detective Charles who had interviewed Mother. Charles observed that Mother appeared disheveled, her speech was very fast at times, and she mumbled, which led Charles to believe Mother might have been coming off a controlled substance. Father had an active arrest warrant because he had violated his probation by engaging in the physical and verbal altercations with Mother. Father was later arrested on March 24, 2017.

On March 16, 2017, Manukyan attempted to notify Mother about completing her drug test, but Mother did not answer the phone. Manukyan made unsuccessful attempts to contact Mother on March 24, April 5, and April 28.

On May 5, 2017, social worker Perez interviewed Dennis, Dominic, Mother, paternal grandmother, and paternal aunt. Mother's speech was mumbled and difficult to understand, and she required prompting and redirecting to stay on track. Mother said she had received the calls from DCFS but did not answer because she thought the referral was closed. Mother again stated she did not intend to seek a restraining order against Father because he was in jail. Mother denied any mental health or substance abuse issues.

Dennis said Father hit him with a wooden stick around March 2017. Dennis denied sustaining bruises or marks and any current hitting. Dominic denied being hit by Father. Paternal grandmother denied witnessing Father hit Dennis with a stick in March 2017. Later, Dennis reported that Father had hit him multiple times and that the children had witnessed domestic violence between the parents for years.

On May 11, 2017, Manukyan again attempted to contact Mother. On May 24, 2017, Manukyan contacted the school counselor who said Mother was not responding to calls from her, the police, and the district attorney's office. On May 30, 2017, Manukyan interviewed Dominic and Dennis at their school. Dennis again stated that he was afraid of Father, while Dominic stated he was not. Manukyan gave Dominic a note asking Mother to call her.

On June 6, 2017, the paternal grandmother told social worker Navarro that Mother may use drugs because she

sometimes looked disheveled and did not want people to look directly at her face.

On June 12, 2017, Manukyan interviewed Father. Father denied any domestic violence. He said he lived at paternal grandmother's home. Father did not witness Mother using drugs, but had heard from others that she might be using something.

On July 3, 2017, Manukyan interviewed the children who said that they talked to their father on the phone, despite a current restraining order. Dominic also visited Father in jail. The social worker again gave them a note for their mother to call her.

On July 11, 2017, the department obtained a removal warrant for Dominic and Dennis. After the social worker texted Mother about the removal order, Mother finally responded.

### *C. Section 300 Petition and Disposition*

On July 14, 2017, DCFS filed a section 300 petition alleging that Father abused Dennis by striking him with sticks and shoes, and Mother failed to protect Dennis, placing Dennis and Dominic at risk. DCFS further alleged a history of domestic violence in the children's presence, including the March 6, 2017 incident, which placed the children at risk. At the July 14, 2017 detention hearing, the juvenile court found a prima facie case, ordered the children detained, and gave Mother twice weekly monitored visits.

At the September 19, 2017 jurisdiction and disposition hearing, the juvenile court sustained these counts and found the children were dependents. Mother argued the children should be

placed in her care because she was living with a maternal uncle and the children felt safe with her. With Father incarcerated and a restraining order in effect, she said there was no current risk of domestic violence. Mother argued against drug testing because no evidence showed she acted under the influence.

The juvenile court found Mother failed to protect the children from violence between the parents and between Father and the children. The court noted Mother had said she would protect the children and comply with the restrictions of the restraining order against Father, but had not done so. The court ordered the children removed from Mother pursuant to section 361, subdivision (c)(1) and placed in suitable placement. Reunification services were offered to both parents. The court also ordered Mother to take six random drug tests.

### **III. DISCUSSION**

#### *A. Standard of Review*

We review a removal decision for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “In making this determination, 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.’ [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citation.]” (*Ibid.*)



An order requiring a parent to participate in drug testing is reviewed for abuse of discretion. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 769-770.)

*B. Substantial Evidence Supports the Removal Order*

Mother contends that the order removing the children was not supported by substantial evidence because the children were not of tender years, wanted to live with Mother, and faced no current risk in Mother's care. "A dependent child shall 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 . . . . [¶] (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)(1).) "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.] The court may consider a parent's past conduct as well as present circumstances." (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170; accord, *In re T.V.* (2013) 217 Cal.App.4th 126, 135-136.)

Substantial evidence supports the juvenile court's removal order. The evidence showed Mother's history of failing to protect the children from actual physical harm or serious risk of physical harm, especially from Father. In October 2011, Mother obtained a restraining order against Father but then moved back in with

him. This became a pattern. In October 2014, Mother obtained a custody order, giving her sole legal and physical custody, with Father having monitored visits. After Father was incarcerated for violating the restraining order, in 2015 the parents started seeing each other and “kind of living together.” Evidence suggested that in 2017 the parents again were together, at least with both parents occasionally living at the paternal grandmother’s residence.

By continuing a relationship and living with Father over these years, Mother exposed the children to domestic violence, a serious risk of harm, and actual harm. Father repeatedly hit Dennis with shoes and a stick. In 2015, Father twice threw rocks through the bedroom window in Mother’s apartment where she and the children were sleeping. Multiple times before the March 6, 2017 altercation, Father physically abused Mother with the children present, including on March 3, 2017, when Father punched her several times.

In addition, Mother exposed her children to a very serious risk of harm in April 2013, when she harbored a fugitive in her children’s bedroom. She placed the children in extreme danger because the police entered the apartment with guns drawn to search for the fugitive.

Mother argues that Father presents no risk because he is incarcerated and a restraining order is active. But, we do not have evidence of when Father will be released or when the restraining order will expire. In any event, substantial evidence shows that prior incarceration and a prior restraining order did not protect the children. Instead, Mother continued her relationship with Father contrary to the terms of the prior restraining order and the custody order giving Father monitored

visits. Mother fails to acknowledge her role in exposing the children to a serious risk of physical harm. By placing the blame on Father, Mother appears to take no responsibility for her part. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 “[o]ne cannot correct a problem one fails to acknowledge”.)

Mother also contends that means other than removal exist to protect the children, such as by placing the children in her care under strict supervision. However, Mother has demonstrated that she avoids communicating with DCFS and law enforcement. For months in 2017, she avoided calls from DCFS, the school, and law enforcement. And, there is no evidence Mother ever completed the agreed-to drug testing. The evidence does not support the conclusion that Mother would participate in strict supervision. Rather, substantial evidence supports the juvenile court’s removal order.

### *C. The Drug Testing Order is Not an Abuse of Discretion*

Mother contends the juvenile court abused its discretion by ordering her to submit to six random drug tests because DCFS did not allege a drug problem as a basis for dependency jurisdiction and there is no evidence she uses drugs. If a child is found to be a dependent under section 300, “the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court.” (§ 362, subd. (a).) This section has been “broadly interpreted to authorize a wide variety of remedial orders intended to protect the safety and well-being of dependent children . . . .” (*In re Carmen M.* (2006) 141 Cal.App.4th 478, 486.) Further, “[t]he juvenile court may

direct any reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section . . . .” (§ 362, subd. (d).)

Contrary to Mother’s argument, “[t]he problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.] In fact, there need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311; see *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 “[a] jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established”].)

The juvenile court did not abuse its discretion by ordering Mother to take six random drug tests. Several people saw indications that Mother was abusing drugs. Two social workers noted that Mother’s speech was mumbled and hard to understand and one commented that she required prompting and redirecting to stay on track during an interview. A detective observed that Mother appeared disheveled, her speech was very fast at times, and she mumbled, which caused the detective to believe Mother might have been coming off a controlled substance. Paternal grandmother believed Mother may use drugs because she sometimes looked disheveled and did not want people to look directly at her face.

Mother contends that this is all speculation. To the contrary, it is evidence from which the court could infer that Mother was using drugs that could pose a risk to the children. (See Evid. Code, § 600, subd. (b) “[a]n inference is a deduction of

fact that may logically and reasonably be drawn from another fact or group of facts”].) Given the circumstances here, Mother’s possible use of drugs “pose[s] a potential risk of interfering with [her] ability to make a home for and care for” the children. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1007.)

#### IV. DISPOSITION

The dispositional order is affirmed.

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SEIGLE, J.\*

We concur:

BAKER, Acting P.J.

MOOR, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.