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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Amber C. et al., Persons
Coming Under the Juvenile
Court Law.

B278781
(Los Angeles County
Super. Ct. No. DK16606)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

A.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los
Angeles County. Kristen Byrdsong, Commissioner. Affirmed.

Law Offices of Vincent W. Davis & Associates and
Stephanie M. Davis for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Sally Son, Senior Associate
County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant A.R. (Mother) appeals the juvenile court's August 26, 2016 dispositional order removing her five children from her custody. Mother argues substantial evidence does not support the juvenile court's order. We conclude Mother has waived her argument on appeal and, therefore, affirm the order.

BACKGROUND

Mother and Father have five children together, four daughters (ages ten, seven, five, and two) and one nine-year-old son.¹ Because Mother agreed to the court-ordered case plan, we do not recite all the facts supporting the juvenile court's removal order. Instead we briefly summarize the facts and procedural history of the case below.

1. Incident leading up to the Welfare and Institutions Code section 300 petition²

On April 14, 2016, Mother and Father's five-year-old daughter's school teacher noticed two red and blue, square bruises on the child, one on her arm and one on her thigh. When asked about the bruises, the five-year-old said Father had hit her

¹ Father is not a party to this appeal.

² Subsequent undesignated statutory references are to the Welfare and Institutions Code.

with a belt the night before because she had misbehaved. The teacher brought the five-year-old to the school nurse, who examined the child and contacted the Los Angeles County Department of Children and Family Services (Department).

That day, all the children except the oldest, who was on an overnight school field trip with Mother, were taken to the police station, where their maternal grandmother and two maternal aunts met them. Father was taken into custody. A Department social worker interviewed the five-year-old and the two older siblings at the police station.³ The five-year-old said she “[s]ort of” felt safe at her home, stating, “ ‘I don’t feel safe when my dad hits me and I don’t feel safe when my mom and dad are mean to each other.’ ” She said that when Father is mad or when she misbehaves, Father hits her “ ‘very hard’ ” with a belt. The five-year-old also said Father hits all of the children, except the youngest, with a belt. The child reported Father usually waits until Mother is not home before he hits them. The five-year-old reported Mother did not want Father to hit them and would tell him to stop. The two older siblings present at the police station echoed the five-year-old’s claims, stating Father used a belt to discipline them and their parents fought at home.

The social worker also spoke with Father, who was remorseful and admitted he had disciplined the five-year-old by hitting her with a belt. He also stated he sometimes disciplined the other children the same way. He reported he and Mother were having relationship problems.

³ Throughout the case, the youngest child was too young to give a meaningful statement.

Once Mother and the oldest daughter returned from the overnight school field trip, the social worker interviewed them as well. The oldest daughter confirmed that Father sometimes disciplined the children by hitting them with a belt. Father had used a belt on her, but she felt he hit her siblings more. The oldest daughter stated Father would “‘whoop’” her siblings with his belt when he was “‘really mad.’” She said Mother does not tolerate Father hitting the children with a belt and he hit them when Mother was at work and out of the house.

Mother was not home at the time of the April 13 incident, but she said both Father and her five-year-old daughter told her about it. Mother reported she believed Father usually disciplined the children by spanking them “on the butt with his hand or spankings with the belt.” She stated she rarely used corporal punishment and believed that, when discipline leaves a mark or causes injury, it is excessive and “she does not welcome excessive discipline in her home or to her children.” Mother also stated she never hit or spanked the children and does not believe in corporal punishment. Mother agreed she and Father had relationship problems and argued frequently, sometimes in the children’s presence. She denied any physical fighting with Father.

2. Petition

On April 20, 2016, the Department filed a 21-count petition under section 300, subdivisions (a), serious physical harm, (b), failure to protect, (c), serious emotional damage, and (j), abuse of sibling. The Department claimed the parents had physically and emotionally abused the four older children, failed to protect the children, and had a history of domestic violence, all of which put the children at substantial risk of harm. At the detention hearing held the same day, the juvenile court ordered the

children detained and released to Mother pending the next hearing. Father was still in custody.

A couple weeks later, it came to the Department's attention that, despite previously denying the use of corporal punishment, Mother also disciplined the children by hitting them with a belt. On May 4, 2016, Mother admitted to a Department social worker that she hit the children with a belt "as the last resort." She said if the Department did not want her to discipline her children with a belt, she would not do it while the case was open. The four older children also reported Mother hit them with a belt, sometimes so hard it left a mark. They reported Mother would give them a "‘whooping’" when they misbehaved, did not clean around the house, or did not finish homework. Although not entirely clear, the son indicated that, after Father had been removed from the home in April, Mother hit one of his sisters with a belt, leaving a mark, because she did not want to clean her room.

As a result of this new information, on May 5, 2016, the Department removed the children from Mother's care and custody and placed them with their maternal grandmother. On May 10, 2016, the Department filed an ex parte application to terminate release to Mother and instead order the children suitably placed. At the ex parte hearing, the juvenile court ordered the children detained from Mother and placed with their maternal grandmother.

3. Adjudication and Disposition

Prior to the adjudication and disposition hearing, the Department conducted further interviews. Although not as forthright as in their earlier interviews, the children reiterated their claims of corporal punishment, including being hit by both

parents with a belt. Mother and Father also admitted using a belt to discipline the children. The children and parents denied domestic violence between Mother and Father. Mother began to take responsibility for her actions, stating she understood the form of discipline she used was wrong and could have negatively affected her children psychologically and emotionally. Mother had enrolled in one-on-one parenting classes and individual counseling. In May 2016, her therapist reported Mother had attended two parenting classes and was “beginning to open up” about what led to the removal of the children from her care. The therapist stated, “[Mother] appears motivated and willing to learn from this situation. I do believe [Mother] will greatly benefit from this Parenting program and her Individual Therapy. I will provide a Progress Report midway in the program as well as at the end of the process.” The record does not include any further reports from the therapist.

On August 26, 2016, the juvenile court held the jurisdictional and dispositional hearing. At the start of the hearing, counsel for the Department stated, “[T]he matter has been resolved. I have amended the petition. Mother and Father [will] be pleading no contest to the amended petition. Also, disposition has been resolved. Mother and Father have signed the case plan.” The Department amended the petition by dismissing without prejudice nine of the 21 counts—specifically, all six of the subdivision (j) counts (abuse of sibling), the one subdivision (c) count (serious emotional damage), and the two counts related to alleged domestic violence.

Mother and Father each entered a no contest plea to the amended petition and signed and filed a waiver of rights, with which each of their counsel joined. Based on their pleas, the

juvenile court sustained the petition as amended and declared the children dependents of the court.

During the dispositional portion of the hearing, counsel for the Department explained the children “are going to be suitably placed; so the court will be removing from parents’ care and custody. The children currently live with the maternal grandparents.” Neither Mother, Father, nor either of their counsel objected to the Department’s statement as to removal and placement. Accordingly, the juvenile court ordered the children removed from their parents’ custody and placed with their maternal grandparents.

Toward the end of the hearing, Mother’s counsel noted Mother had completed all her programs and requested a 90-day progress report to address releasing the children to Mother at that point. In the meantime, counsel also requested discretion to liberalize Mother’s visits with the children and indicated Mother would submit proposed monitors to the Department. The Department’s attorney indicated the case plan already reflected discretion to liberalize and that the Department had no objection to a 90-day progress report to assess the parents’ progress. Accordingly, the juvenile court scheduled a 90-day progress report hearing for November 22, 2016. Mother and Father each signed the court-ordered case plan, which included monitored visits with the children.

On September 27, 2016, Mother filed a notice of appeal.

DISCUSSION

Mother makes one argument on appeal, namely that we must reverse the juvenile court’s removal order because it is not supported by any evidence, substantial or otherwise. The Department claims Mother waived her argument on appeal

because she did not object to or challenge the juvenile court's removal order below and because she invited the alleged error. Mother did not file a reply brief on appeal and, therefore, did not respond to either of these claims.

We agree with the Department and conclude Mother has waived her argument on appeal. At the August 2016 hearing, counsel for the Department stated, "[D]isposition has been resolved," and Mother had signed the case plan, which ordered the children to be suitably placed and permitted monitored visits for Mother. Moreover, neither Mother nor her counsel objected to the juvenile court's order removing the children from her custody and care. Instead, Mother's attorney requested a 90-day progress report to address the issue of releasing the children to Mother at that time. It is apparent from the record that Mother agreed both to the juvenile court's jurisdictional finding based on the amended petition as well as to the juvenile court's dispositional order. By failing to object to the juvenile court's removal order and by signing the case plan, Mother waived her right to challenge on appeal the children's removal from her care. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558 ["In dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal"]; *In re Richard K.* (1994) 25 Cal.App.4th 580, 590 ["by submitting on the recommendation without introducing any evidence or offering any argument, the parent waived her right to contest the juvenile court's disposition since it coincided with the social worker's recommendation"].)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.