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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re O.G., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.Q.,

Defendant and Appellant.

B279317

(Los Angeles County
Super. Ct. No. DK15258)

APPEAL from an order of the Superior Court of Los Angeles County, Stanley Genser, Referee. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

The juvenile court removed two-year-old O.G. from her parents' physical custody, finding the parents' propensity to engage in domestic violence posed a substantial risk of harm to the child's health and safety. (See Welf. Inst. Code, § 361, subd. (c)(1).)¹ On appeal from the removal order, mother contends the evidence was insufficient to support the substantial risk finding.² She argues the existence of a restraining order and her recent pledge to have no more contact with father compelled the juvenile court to allow her to retain physical custody of O.G. during the dependency case. The record shows, however, that despite a prior restraining order and over a year of voluntary services the parents continued to engage in violent altercations in their daughter's presence. The evidence was sufficient to support the juvenile court's finding. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's findings, drawing all reasonable inferences in favor of the court's order. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881 (*Sheila S.*); *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038 (*Amos L.*); see *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.)

The family consists of mother, father, and their daughter, O.G. (born August 2014). Mother and father are married and, at all relevant times, lived together with O.G. in a studio apartment.

¹ Statutory references are to the Welfare and Institutions Code, unless otherwise designated.

² Father is not a party to this appeal.

The family originally came to the attention of the Los Angeles Department of Children and Family Services (the Department) on March 4, 2015, due to a report that father had emotionally abused O.G. and that mother had neglected the child. The Department's investigation revealed that father had slapped mother and dragged her by the hair during a domestic dispute that occurred in front of O.G., who was six months old at the time. Mother refused to pursue a restraining order against father, forcing the Department to obtain an emergency protective order on her behalf. Father was convicted of battery and placed on probation. At a subsequent criminal court hearing, mother sought to have the protective order against father dismissed. The criminal court denied the request, but modified the order to allow the parents to live together under " 'Peaceful Contact.' "

The Department ultimately concluded no further intervention was warranted as the situation had stabilized and the incident appeared to be isolated. Father enrolled in domestic violence counseling, mother accepted alternative response services, and the Department closed the referral.

On July 1, 2015, the Department received another referral, alleging mother was verbally abusive to father and that she drove under the influence of alcohol with O.G. in the car. The Department's investigation substantiated the allegations. After meeting with the Department, the parents agreed to a voluntary family maintenance plan, requiring both parents to complete a domestic violence program and to enroll in couples counseling. Father continued to attend domestic violence counseling and the parents participated in family maintenance services and couples therapy; however, mother did not enroll in a domestic violence program, but instead attended " 'Mommy and Me' " classes.

On December 31, 2015, the parents again engaged in a belligerent altercation in the child's presence. Father claimed mother instigated the incident when she accused him of infidelity. He admitted he was intoxicated, and that the accusation angered him, causing him to throw a lamp in the living room where O.G. watched from her crib. He left the apartment and broke his phone, then returned to the apartment, still angry, and broke mother's phone. Father said mother's relentless accusations of infidelity had been a persistent cause of conflict in their relationship.

Both parents told the Department they no longer wanted to be together, but neither was willing to leave the apartment. Mother eventually took O.G. to stay with the maternal grandmother, and the Department filed a non-detained dependency petition, allowing O.G. to remain in parental custody so long as the parents continued to live at separate residences. However, on January 11, 2016, mother returned to the apartment with O.G., prompting the Department to request a removal order. The juvenile court denied the request.

On February 19, 2016, the court found the domestic violence between mother and father placed O.G. at risk of serious physical harm. However, rather than adjudicate O.G. a dependent child, the court ordered the Department to provide services to keep the family together and placed O.G. with the parents, under the Department's informal supervision for a period of six months. (See §§ 360, subd. (b), 301, subd. (a), 16506.) Pursuant to the court's order, the Department offered the parents voluntary family maintenance services until August 4, 2016, when the case closed.

On August 13, 2016, the Department received a new referral, alleging mother provoked an altercation with father that resulted in another violent confrontation in O.G.'s presence. A police report of the incident disclosed that, on July 22, 2016, officers responded to a dispatch to the parents' apartment, where they found father outside, apparently intoxicated, with a strong odor of alcohol on his breath. Father told the officers he and O.G. were asleep when mother returned home from work and attacked him in bed. He pulled up his shirt to show the officers scratches on his torso and arms. Father said this was the second night mother woke him to argue because she was upset.

Mother denied initiating the altercation. She told the officers she had merely tried to retrieve bedding to sleep on the floor, when father awoke angry, grabbed her by the hair, and pulled her toward the front door. She said she punched and scratched father to defend herself until he let go. Mother later admitted she was upset with father because he had not answered her telephone calls during the day, and she had confronted him that night by shaking him until he awoke. She also admitted that the altercation woke O.G., who slept in the same room as the parents. Based on mother's statement, the officers arrested father for domestic violence. The charges were ultimately dismissed.

On September 7, 2016, after an investigative period during which mother cancelled two child and family team meetings and refused to receive voluntary services, the Department filed a request for a warrant to remove O.G. from the parents' custody. The court granted the warrant, and the Department placed O.G. with a relative.

On September 12, 2016, the Department filed a new dependency petition on behalf of O.G. The petition alleged the parents had a history of domestic violence, including the most recent altercation in July 2016, and that father was a current abuser of alcohol.~(CT 152-158)~ The juvenile court found the Department established a prima facie case for dependency jurisdiction, and ordered O.G. to remain placed with a relative pending a full evidentiary hearing.

Both parents questioned the need for protective intervention. Mother maintained O.G. was not in danger because the charges against father were dismissed and a restraining order was in place. She said she was committed to have no more contact with father. Father likewise saw no reason for the Department's involvement since the charges against him had been dropped. Although he initially wanted to have the restraining order modified so he could reunite with mother, father later said they needed to separate and that he wanted O.G. placed in mother's care.

The Department confirmed that father had signed the apartment lease over to mother and that mother paid a \$250 deposit for document preparation assistance with divorce proceedings. Mother also enrolled in a parenting class and a domestic violence support group, and she began treatment with a therapist. Notwithstanding these steps, the family's prior social worker was skeptical about the parents' commitment to separating, noting that mother had pledged to get a divorce or move out many times in the past, but never followed through.

Records obtained from the local police department revealed the parents' history of domestic violence included several incidents that were not reported to the Department. According to those records, between March 2015 and March 2016, the police department received more than 10 calls regarding domestic disturbances or violent altercations at the parents' studio apartment, several of which reportedly occurred in O.G.'s presence.

On November 16, 2016, the juvenile court held a combined jurisdiction and disposition hearing. The court sustained the jurisdictional counts under section 300, subdivisions (a) and (b), finding the parents had a long history of domestic violence and father was a current alcohol abuser, which placed O.G. at risk of serious physical harm. With respect to disposition, father joined with mother's request to place O.G. in her physical custody during the dependency case. Both parents argued safety measures, such as unannounced visits, could be implemented to ensure father stayed away from the home. Minor's counsel joined with the Department's request to remove O.G. from the parents' custody and maintain her in a suitable placement. With respect to alternative safety measures, minor's counsel stressed that mother had at times failed to report when father violated the restraining order and mother continued to question the need for intervention since the charges against father were dropped.

The juvenile court found returning O.G. to mother's physical custody would pose a substantial danger to her physical and emotional well-being, and that the proposed safety measures were insufficient to protect the child. The court explained that mother had received voluntary family maintenance services, followed by informal supervision and services, and in each

instance had failed to “internalize[] the services,” resulting in subsequent and repeated incidents of domestic violence in O.G.’s presence. Although the court remained optimistic about mother’s ability to resolve the issues, it concluded a suitable placement order was necessary to “minimize the substantial risk to the welfare of the child.” The court granted mother monitored visitation and ordered her to complete individual counseling and a domestic violence program.

DISCUSSION

“ ‘[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ ” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576 (*E.B.*).) “ ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children.’ ” (*Id.* at p. 576; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5.) “ ‘[P]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of these relationships.’ ” (*E.B.*, at p. 576, quoting Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash. L.Rev. 973, 977-978.)

Mother does not dispute that the juvenile court properly exercised jurisdiction to protect O.G. from the danger posed by the parents’ propensity to engage in violent altercations in the child’s presence. (See, e.g., § 300, subd. (b)(1); *E.B.*, *supra*, 184 Cal.App.4th at pp. 575–576.) She contends, however, that the evidence was insufficient to support the court’s finding that returning O.G. to her physical custody would pose a substantial

risk to the child's physical and emotional well-being. In that regard, she maintains the evidence of her recent steps to separate from father, and the availability of other safety measures to protect O.G., require reversal of the removal order. We disagree.

Before a dependent child may be taken from the physical custody of a parent, section 361, subdivision (c)(1) requires the juvenile court to find "clear and convincing evidence" of "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 [parent's] physical custody." (§ 361, subd. (c)(1).) In assessing whether reasonable means are available to protect the child, the statute directs the court to consider each of the following: "(A) The option of removing an offending parent or guardian from the home. [¶] (B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm." (*Ibid.*)

Although section 361, subdivision (c) requires a finding by "clear and convincing evidence," this heightened burden of proof is "for the edification and guidance of the trial court and not a standard for appellate review. [Citations.] ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing

evidence, ‘the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’” (*Sheila S.*, *supra*, 84 Cal.App.4th at pp. 880–881; *Amos L.*, *supra*, 124 Cal.App.3d at p. 1038.) Our task is simply to determine whether there was substantial evidence, contradicted or uncontradicted, upon which the juvenile court could have reasonably based its removal order. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We conclude there was.

The evidence showed the parents had a long history of engaging in verbal and violent altercations in O.G.’s presence, which persisted despite the Department’s prior interventions and over a year of voluntary services. In March 2015, the parents engaged in a violent confrontation resulting in father’s criminal conviction for spousal battery. Mother sought to have the resulting restraining order dismissed, and ultimately succeeded in having it modified, setting the stage for a subsequent altercation in December 2015, during which father, intoxicated and angry with mother’s accusations of infidelity, threw and broke a lamp in O.G.’s presence. A period of informal supervision and services followed, during which, apparently unbeknownst to the Department, the police received multiple reports of disturbances at the family’s studio apartment, culminating in a July 2016 incident in which father was again arrested on charges of domestic violence after reportedly dragging mother by the hair, in front of O.G., while under the influence of alcohol. Following the incident, when the Department confronted mother with the prospect of taking O.G. into protective custody, mother protested that the child was not in danger because the charges against father had been dismissed.

On appeal, mother contends “it would have been appropriate” to remove O.G. from father’s custody and place the child in her care, citing actions she took since the most recent domestic violence incident to separate from father. In support of her contention, mother highlights evidence showing she called the police during past altercations, took father off the lease, requested divorce documents, enrolled in classes, and expressed a renewed commitment to enforce the restraining order in advance of the disposition hearing. While this evidence shows mother took commendable steps toward securing O.G.’s safety in the wake of the most recent confrontation with father, it did not preclude the court from reasonably finding that a substantial danger remained. Given the countervailing and compelling evidence of mother’s past failures to follow through with her stated commitments, the juvenile court had ample basis to conclude that returning O.G. to mother’s custody would pose a substantial danger to the child’s physical and emotional well-being. (See § 361, subd. (c)(1).)

The juvenile court also reasonably rejected the assertion that alternative safety measures were available to ensure O.G.’s protection without removing her from mother’s custody. *In re Yolanda L.* (2017) 7 Cal.App.5th 987 (*Yolanda L.*), the case upon which mother principally relies, supports our conclusion. There, the appellate court affirmed that the father’s possession of methamphetamine and improper storage of a loaded gun in the home posed a sufficient risk to the parents’ children to authorize dependency jurisdiction. With respect to disposition, the court observed that “ ‘[s]ection 361, subdivision (c)(1)(A) clearly requires the court to consider the “option” of removing an offending parent from the home as a possible alternative to

removal of the child’ ” and thus contemplates that, “ ‘[i]f only one parent engages in the conduct underlying a dependency petition, the juvenile court might conclude that it is appropriate to remove the child only from the offending parent and allow the child to remain in the other parent’s custody.’ ” (*Yolanda L.*, at p. 997.) Because there was “substantial evidence that mother was unaware of father’s negligent conduct . . . , and once made aware of it, was committed to doing what was necessary to protect the children from such conduct in the future,” the *Yolanda L.* court held “it was appropriate to remove [the children] only from father and allow them to remain with mother.” (*Ibid.*)

Unlike the mother in *Yolanda L.*, mother is not a non-offending parent – a fact she tacitly concedes by not challenging the jurisdictional finding regarding *her* involvement in past violent altercations with father. Apart from instigating some of the endangering confrontations in O.G.’s presence, the evidence showed mother repeatedly failed to follow through with commitments to end the cycle of violence, despite numerous interventions by the juvenile and criminal courts. Even during the period of informal supervision that followed the juvenile court’s section 360, subdivision (b) order, the local police department’s call logs show there were numerous domestic disturbances involving the parents and O.G. that occurred without the Department’s knowledge. In view of this evidence, the juvenile court reasonably concluded that returning O.G. to mother’s custody would pose a substantial risk to the child, even if the Department made unannounced visits to discourage father from returning to the home. We find no error in the court’s ruling.

DISPOSITION

The disposition order is affirmed.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.*

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