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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re MADELYN F. et al.,
Persons Coming Under the
Juvenile Court Law.

B294896
(Los Angeles County
Super. Ct. No.
DK10468A-E)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CYNTHIA F.,

Defendant and Appellant.

APPEAL from findings and orders of the Superior Court of
Los Angeles County, Pete R. Navarro, Juvenile Court Referee.
Affirmed.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Cynthia F. (mother) appeals from the juvenile court's orders sustaining a subsequent juvenile petition under Welfare and Institutions Code section 342¹ and a supplemental petition for more restrictive placement under section 387; removing Madelyn F. (Madelyn, born Oct. 2006), Cruz B. (Cruz, born Nov. 2007), Marley F. (Marley born Jan. 2014), and E.F. and A.F. (twins, born Jan. 2015) (collectively minors) from her custody; and ordering monitored visitation. We affirm.

BACKGROUND

I. Minors Become Dependents of the Court in 2015

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in January 2015 after the twins were born premature and mother tested positive for amphetamines and methamphetamines. The twins' meconium also tested positive for methamphetamines. Attending nurses at the hospital where mother gave birth reported that the

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

infants exhibited signs of withdrawal, including irritability and difficulty feeding.

In July 2015, after mother pled no contest to the first amended dependency petition filed by DCFS, the juvenile court sustained a count under section 300, subdivision (b)(1),² alleging that she had a history of substance abuse and was a current user of methamphetamine, and that her illicit drug use placed minors at risk of serious physical harm. The court also sustained counts under section 300, subdivision (b)(1), pertaining to the substance abuse and mental health issues of Marley's father,³ as well as a count under section 300, subdivision (g),⁴ based on the incarceration of the father of Madelyn and Cruz.

² Under section 300, subdivision (b)(1), the jurisdiction of the juvenile court extends to a "child [who] 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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse."

³ Marley has a different father than Madelyn and Cruz, who share a father. The twins also have a different father than their siblings. None of the three fathers is a party to this appeal.

⁴ Section 300, subdivision (g), provides dependency jurisdiction where, as relevant here, "the child's parent has been incarcerated . . . and cannot arrange for the care of the child[.]"

Minors were declared dependents of the court and placed with mother at home under DCFS supervision. DCFS was ordered to provide family maintenance services, including referring mother to a drug rehabilitation program with aftercare, random drug testing, and individual counseling.

II. Progress and Setbacks During the Provision of Family Maintenance Services

Over the next three years, DCFS supervised the family and offered various services, while the juvenile court continued to exercise its jurisdiction. Mother was generally compliant with the case plan and cooperative with DCFS. She successfully obtained a Section 8 housing voucher, and the family moved to a new home that a social worker deemed “appropriate with no concerns.” In April 2017, the court relieved mother of the random drug-testing requirement but ordered her to submit to on demand testing if she appeared under the influence.

But the family struggled in other respects.

In August 2016, DCFS received information that Cruz made comments about killing Madelyn and animals. A temporary safety plan was implemented to keep Cruz from being alone with other children and accessing sharp objects. In November 2017, an immediate response referral was generated after Madelyn came to school with scratches and bruises on her body and reported that she had gotten into a fight with mother. An allegation of physical abuse of Madelyn, however, was deemed unfounded. Madelyn began exhibiting aggression toward mother and admitted to hitting her. Madelyn and Cruz were also chronically tardy or absent from school, which had a severe detrimental effect on their academic progress.

In its April 2018 status report, DCFS reported a variety of concerns to the juvenile court, including Madelyn and Cruz “missing or being excessively late to school, [and Madelyn’s] decline in hygiene, lack of participation in therapy, and aggressive [behavior] toward siblings and adults.” Despite previous advisements that mother’s boyfriend, Anthony (or Tony), who had significant access to minors, needed to submit to live scanning for clearance by DCFS, he had failed to do so. “[M]other’s lack of compliance and follow through with [the] [W]raparound services provider” was another source of concern. “Wraparound team members . . . reported that mother ha[d] failed to open the door for the team or ha[d] not come out from her bedroom to participate in [team] meetings.” A social worker asked mother to submit to an on demand drug test, which mother missed, blaming the need to be at home while repairs took place. According to DCFS, mother failed to make “minimal efforts to mitigate the expressed concerns from her team.”

Mother, Madelyn, and Cruz failed to attend a student attendance review board hearing in early April 2018. The school committee expressed concern that, over the phone, mother had sounded “loopy[,]’ alluding to a possible substance abuse issue.”

DCFS’s July 2018 status report described mother’s “lack of follow up on dental appointments, psychiatrist appointments, [and] school attendance, as well as lack of age appropriate discipline[,]” as “a battle of the wills with [the juvenile c]ourt and [DCFS], which has had a detrimental effect upon” minors. Anthony had still not submitted to live scanning. Despite these concerns, DCFS recommended that the juvenile court terminate its jurisdiction and that mother be awarded full legal and physical custody.

In August 2018, the Wraparound team went to the family home and observed the twins with very wet diapers that mother failed to change even though, at one point, feces started to escape. Madelyn and Cruz failed to attend school at the beginning of the academic year.

At a status review hearing on August 30, 2018, the paternal grandmother of Madelyn and Cruz told the juvenile court: “I’m very concerned about the children. . . . I feel that . . . there’s concerns in the home.” She further explained, “I feel that there’s drugs involved here. There’s a gentleman that is there, and I don’t care for him being around the kids. I just have concerns.” The court determined that continued jurisdiction was necessary. Mother was ordered to submit to on demand drug testing if DCFS suspected her of being under the influence.

III. Minors Are Detained from Mother

DCFS received information from a caller that, on September 6, 2018, mother’s mother (maternal grandmother) and Anthony were having an argument when Anthony pushed maternal grandmother on the bed. Mother was in the bed at the time and presumed to be sleeping. Although she was informed of the incident, mother “did not say or do anything,” and Anthony remained in the home. Madelyn “stated she wanted to stab [Anthony] for pushing [maternal] grandmother.” The caller found knives in Madelyn’s room. Madelyn had “mentioned wanting to hurt people,” expressing the desire “to be an assassin in the future.”

Mother failed to show up for an on demand drug test on September 10, 2018.

A social worker made an unannounced home visit on September 12, 2018. Mother reported that Anthony was no

longer living there and agreed to not allow him back in the home. The social worker spoke with Madelyn, who explained that she had not seen the violent incident between Anthony and maternal grandmother but that she had been told about it, including by Marley. Madelyn was upset that Marley was present during the incident. Madelyn reported that Anthony had also punched a hole in the wall. She denied seeing drug or alcohol use in the home; however, she observed strange behavior from Anthony like talking/yelling at himself and walking around and outside the house in the middle of the night.

The social worker met with maternal grandmother the following day. Maternal grandmother explained that Anthony was not living in the family home at that time because he was in jail for an unknown reason. According to maternal grandmother, the incident with Anthony started when she told him to pick up after himself and it escalated to him pushing her. Marley, who was present, became scared and cried. Maternal grandmother also reported that Anthony had punched a hole through the wall, scaring Marley and making her cry. Maternal grandmother had not seen Anthony using drugs but stated that his behavior was “not normal,” including that he stayed up all night and did not sleep.

The social worker also met with Marley, who told her that “Grandma and Tony [were] fighting.” When asked how Anthony made her feel when he was at home, she responded, “He also made a hol[e] in the hallway, he scared me and I cry.”

By September 21, 2018, Anthony had reportedly returned to the family home.

DCFS received another referral on September 27, 2018, after Madelyn reported that mother and Anthony were using

drugs in the home. Madelyn reported being fearful and that she could not sleep. She was worried about what Anthony might do at night.

On October 2, 2018, maternal grandmother told a social worker that things were getting worse at the family home. Anthony still lived there despite maternal grandmother's pleas to mother to make him leave. He continued to be confrontational and display odd behaviors such as talking to himself and keeping the family up at night.

Another social worker spoke with mother that day and asked why Anthony had been allowed to return. Mother stated that his name was on the electricity bill and that she would not have light if he left. The social worker asked mother to submit to an on demand drug test. Mother stated that she could not drive because she did not have a license. The social worker explained that mother had over six hours to use public transportation to get to the testing location. Mother failed to test that day.

DCFS sought and was granted an order from the juvenile court authorizing the removal of minors on October 9, 2018. In support of the application, a social worker opined that the conduct of mother and Anthony endangered minors' emotional and physical well-being. The social worker cited Anthony's violent behavior, drug use, and criminal history, and mother's failure to drug test, follow up with minors' medical assessments, and properly supervise her children.

On October 10, 2018, three social workers conducted a home visit. The twins responded to the door and tried to open the screen. They were wearing "wet/soaked diapers that were dragging down to their knees." Anthony opened the door to the home but did not say anything. Mother was provided removal

orders for minors. Cruz told one of the social workers that he “knew this was going to be bad for them since Tony moved into the home.” Cruz stated, “Tony is weird, he’s selfish, talks to himself and he yells at mom. He has hit my mom. Mom is just hiding the truth.”

Madelyn and Cruz were placed at the home of their paternal grandmother; Marley was placed with her paternal aunt; and the twins were placed in foster care.

IV. Subsequent Petition and Supplemental Petition for More Restrictive Placement

On October 12, 2018, DCFS filed a subsequent petition under section 342 and a supplemental petition under section 387. The subsequent petition alleged that mother had “created a detrimental and endangering home environment for” minors. Minors were at risk of serious physical harm due to Anthony’s violent behavior and mother permitting him to reside in the family home with unlimited access to them. The supplemental petition alleged that the previous disposition permitting minors to remain at mother’s home had been ineffective in protecting them. Mother had missed drug tests on September 10 and October 2, 2018.

Mother was arraigned on the subsequent and supplemental petitions on October 15, 2018, and entered a general denial. The juvenile court found that a prima facie showing had been made that continued placement in mother’s home was contrary to minors’ welfare and that removal was necessary. The court ordered monitored visitation for mother.

Madelyn was interviewed on October 18, 2018. She explained that she was currently living with paternal grandmother because mother “wasn’t doing her part of being a

mom . . .” and had neglected minors. Madelyn believed that Anthony’s behavior had suddenly changed because of his drug use. Although she had not actually seen Anthony and her mother using drugs, she believed that she knew they were using because they had bloodshot eyes. Mother and Anthony stayed at home “24/7[.]” Madelyn also found it suspicious that mother would not let anyone use her private bathroom; on the occasions that Madelyn had needed to use it, mother went in first and then gave her permission to enter. She claimed to have seen bruises on mother’s arm. Madelyn admitted to keeping a knife in her room, explaining, “If anyone tries something. I’m intimidating. . . .” She stated that she did not wish to reunify or visit with mother.

Interviewed the same day as Madelyn, Cruz reported that Anthony hit mother and that she had bruises. Cruz admitted to being afraid of Anthony. He stated that he wanted to live with mother because she was nice and gave him food that he loved.

Mother was interviewed on October 22, 2018. She not only denied current drug use but also denied ever using illicit drugs. She stated that she failed to drug test on September 10 and October 2, 2018, because she lacked transportation. She denied that Anthony had ever hurt her, maternal grandmother, or minors at any time. According to mother, Anthony no longer resided with her “because ‘the Court said’ he was not [allowed]” If the court or DCFS was not involved, mother stated that she would reconcile with Anthony and allow him to reside in her home.

The juvenile court sustained the subsequent and supplemental petitions on November 5, 2018.

V. December 10, 2018 Disposition Hearing

The juvenile court held a contested disposition hearing on December 10, 2018.

Mother's counsel argued that minors should be returned to mother's home or, in the alternative, mother should be granted overnight visits. Mother's counsel noted that, earlier that year, DCFS had recommended closing the case. Mother had drug tested negative twice since the last hearing. According to her counsel, mother had "made sure" that Anthony was no longer residing in the family home "so that her children do not feel any type of fear." Both counsel for minors and counsel for DCFS urged the juvenile court not to return minors to mother's custody.

The juvenile court found by clear and convincing evidence that minors should be removed from mother. The court concluded that allowing Anthony unfettered access to the home and minors, despite reports of his bizarre and violent conduct, evidenced a substantial danger to minors absent removal. The court ordered family reunification services, and a full drug and alcohol program for mother if she missed or failed a test. Mother was granted twice weekly monitored visits with minors, with DCFS having the discretion to liberalize.

Mother timely appealed.

DISCUSSION

On appeal, mother contends that the jurisdictional findings for the subsequent petition under section 342 and the supplemental petition under section 387, as well as the dispositional orders removing minors from mother's custody, are not supported by substantial evidence. She also argues that the juvenile court abused its discretion by restricting her visits to monitored visits. We disagree with each of these contentions.

I. Standards of Review

“We review the court’s jurisdictional and dispositional findings for substantial evidence. [Citations.] Evidence is “[s]ubstantial” if it is “reasonable, credible, and of solid value.” [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record in favor of the juvenile court’s order and affirm the order even if other evidence supports a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161–1162 (*T.W.*))

“We review an order setting visitation for abuse of discretion. [Citation.]” (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284 (*R.R.*))

II. Substantial Evidence Supports the Jurisdictional Findings for the Subsequent Petition Under Section 342.

“A section 342 ‘subsequent’ petition is filed by the agency to allege new facts or circumstances about a current dependent child that constitute an additional ground to adjudge the child a dependent. [Citation.]” (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1075.) Ample substantial evidence supports the count under section 300, subdivision (b)(1), in the subsequent petition that minors were at substantial risk of harm based on mother’s permissive attitude toward Anthony’s presence in the family home.

Anthony was repeatedly violent in the family home. He pushed maternal grandmother in the presence of Marley, punched a hole in the wall, and, according to Cruz, hit mother.

Both Cruz and Madelyn reported seeing bruises on mother. Anthony's behavior frightened minors, even causing Madelyn to keep a knife in her bedroom.

Mother attempts to minimize Anthony's violence and its effects on her family. According to mother, the incident between Anthony and maternal grandmother was "only" witnessed by Marley. She argues that the incident "was isolated in nature and unlikely to reoccur, particularly because [mother] had Anthony move out of the home immediately upon learning of the incident." We are unpersuaded by these contentions.

First, maternal grandmother stated that, in addition to Marley, the twins were in the room when Anthony pushed her. But even if "only" Marley witnessed the domestic violence, that was too many. Furthermore, it is clear from the record that the incident profoundly affected Madelyn, who reportedly "wanted to stab [Anthony] for pushing [maternal] grandmother." Madelyn admitted to keeping a knife in her bedroom and stated that, when she heard what Anthony had done, "[she] had to walk around the house for a few minutes. [She] wanted to punch him in the face' for 'messing' with her family."

We also disagree that the incident was an isolated event. In a separate incident, Anthony caused damage to the family home by punching through a wall. And Cruz accused him of hitting mother. As for the likelihood of reoccurring violence, the juvenile court could reasonably infer such a substantial risk. Contrary to mother's representation, Anthony was permitted to return to the home after mother became aware that he pushed maternal grandmother. In fact, Anthony opened the door for the social workers when they removed the children on October 10, 2018. Although, on October 22, 2018, mother stated that

Anthony no longer lived in the home, she admitted that if not for the involvement of the juvenile court or DCFS, she would reconcile with Anthony and allow him to move back in with her.

We conclude that substantial evidence supports the juvenile court's jurisdictional finding that, by allowing Anthony to be present around the family, mother created a detrimental and dangerous home environment and that minors continued to be faced with substantial risk of abuse.

III. Substantial Evidence Supports the Jurisdictional Findings for the Supplemental Petition Under Section 387 and the Dispositional Orders Removing Minors.

“A section 387 supplemental petition is used to change the placement of a dependent child from the physical custody of a parent to a more restrictive level of court-ordered care.

[Citations.] In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been ineffective in protecting the child.

[Citations.] If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. [Citations.]” (*T.W.*, *supra*, 214 Cal.App.4th at p. 1161.) “Before a minor can be removed from the parent’s custody, the court must find, by clear and convincing evidence, ‘[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.’ [Citations.]” (*Id.* at p. 1163.)

We find no lack of substantial evidence to support the juvenile court’s jurisdictional finding that the previous disposition had been ineffective in protecting minors. Mother’s failure to comply with on demand drug testing on September 10 and October 2, 2018, was very troubling. We are not swayed by mother’s weak excuses for missing these tests and observe that the court could properly view each missed drug test as “the equivalent of a positive test result[.]” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217; see also *In re E.A.* (2018) 24 Cal.App.5th 648, 657, fn. 6 [“Common sense suggests that a parent who consistently refuses to drug test without an adequate explanation does so because he or she knows the results will show substance abuse. [Citations.]”].)

But there was more. As DCFS argues, mother’s “already-marginal care of” minors showed signs of further deterioration. For example, mother continued to permit Anthony to have access to minors despite his displays of violence and the fear that he instilled in her children; she failed to follow through with minors’ medical appointments, including psychiatric assessments; she was unable to remedy Madelyn and Cruz’s chronic school attendance problems; and she allowed the twins to wear soiled diapers for excessive periods of time.

Mother argues that, even if she was using drugs again, that the previous disposition was effective in protecting minors and that there was no need to remove them from her custody. But mother had been provided a plethora of family maintenance services over the course of several years by the time minors were removed from her custody. And despite these significant efforts to keep the family together, mother was still incapable of protecting minors from abuse or the substantial risk of abuse.

In arguing that removal was unnecessary, mother attaches much weight to her claim that “Anthony no longer lived in the home as of October 2018.” Even assuming the truth of that statement, the juvenile court could reasonably infer from mother’s past conduct that there was a significant risk that mother would permit Anthony to return, particularly given her failure to recognize the harm caused by his presence. And although mother drug tested negative on November 20 and November 29, 2018, the court could consider these results insufficient to establish an adequate record of sobriety to outweigh the ample evidence supporting the removal of minors.

We conclude that the orders pertaining to the section 387 supplemental petition were supported by substantial evidence.

IV. Ordering Monitored Visitation Was Not an Abuse of Discretion.

Fashioning a visitation order “necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) We will not disturb a visitation order on appeal “unless the [juvenile] court made an arbitrary, capricious, or patently absurd determination. [Citation.]” (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

Given mother’s unresolved substance abuse, the potential that mother could continue to expose minors to Anthony and fail to ensure that minors’ basic needs—such as clean diapers for the twins—were met, and mother’s volatile relationship with Madelyn, we conclude that the juvenile court’s order for monitored visitation for mother, with discretion to DCFS to liberalize, was well within the court’s discretion. (Cf. *R.R.*, *supra*, 187 Cal.App.4th at p. 1284 [“Given father’s recent drug use and

his efforts to keep that information from DCFS and the court, we cannot say the juvenile court abused its discretion in requiring monitored visits”].)

DISPOSITION

The findings and orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT