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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.M. et al., Persons Coming
Under the Juvenile Court of Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MICHELLE M.,

Defendant and Appellant.

B294184

(Los Angeles County
Super. Ct. No. 18LJJP00318)

APPEAL from an order of the Superior Court of Los Angeles County, Nancy Ramirez, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

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

The juvenile court found jurisdiction over H.H. and his siblings under Welfare and Institutions Code¹ section 300, subdivisions (b) and (j) and ordered the children removed from their home. Michelle M. (mother) appeals only the dispositional order, contending no substantial evidence supports the court's finding that return to her home would endanger the children. We disagree, and thus affirm.

BACKGROUND

The family in this case, which has a substantial history with the dependency system, consists of mother, her seven-year-old son H.H., 11 and nine-year-old daughters C.M. and S.M., and infant J.D.

On Saturday, April 21, 2018, mother's parents were visiting her home when H.H. threw a water bottle and piggy bank at them in the living room. Mother took away the piggy bank, which made H.H. angry, and he fled to a friend's house and was not seen again for some hours. Mother and "Phylis," a family friend, searched for H.H. but he eventually returned on his own. When he arrived, mother spanked him on the buttocks several times with a soft slipper but Phylis, believing the slipper was not hard enough nor the discipline sufficiently meaningful, dragged H.H. into an upstairs bathroom and severely beat him with a 15-inch rubber rod. H.H. told Phylis she was hurting him but she said she did not care. Mother did not see Phylis with the rod or

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

know she was going to beat the child, and when she found out she became upset and told Phylis she could not return to their home. Phylis became angry and left the home, and to date has had no further contact with the family.

At school the following Monday H.H.'s teacher noticed bruising on his arm and collarbone. A medical examination showed linear-patterned bruises consistent with H.H. having been beaten with a stick during a course of suspected physical abuse. The Department of Children and Family Services (DCFS or the department) detained the children and filed a section 300 petition alleging H.H. and his siblings were described by subdivisions (b) and (j) of that section due to mother's failure to protect H.H. from physical abuse.

When asked how she normally disciplined the children, mother reported that she would put them on time out or spank them over their clothes.

Phylis denied hitting H.H. with an object or causing any marks, but admitted she had to discipline the children so they would not "walk over" mother, who was overwhelmed by the children and unable to discipline H.H. or S.M. Mother always called Phylis when she had problems with the children.

Maternal grandfather stated he was concerned about the children's tempers and behavioral issues, and felt that mother was overwhelmed and consistently demonstrated poor judgement in choosing her friends.

The family had a substantial history of involvement with the dependency system. In September 22, 2009, a referral alleged mother was not appropriately feeding or clothing the children, the home was filthy, and domestic violence between mother and Ray, her boyfriend, in the children's presence

endangered them. The referral was substantiated and the children detained. On November 2, 2009, another referral alleged domestic violence between mother and her boyfriend in the children's presence. In March 2010, the juvenile court sustained a petition alleging domestic violence in the home and mother's mental and emotional problems put the children at risk of physical and emotional harm. Mother was provided family reunification services and ordered to participate in parenting classes and individual counseling to address domestic violence, and to undergo a psychological evaluation. In July 2011, the court returned the children to mother and terminated jurisdiction.

In 2013, a referral alleged possible sexual abuse of S.M. by mother's new boyfriend. The referral was closed as unfounded. Also, in 2013, a referral alleged mother and an unrelated woman had gotten into a physical altercation, but DCFS determined that mother adequately protected the children, and the referral was evaluated out.

In April 2014, a referral alleging mother's roommate sexually and physically abused S.M. was closed as inconclusive.

In March 2015, a referral alleging mother neglected the children was closed as inconclusive.

In May 2016, a referral alleging domestic violence between mother and her boyfriend and general neglect of the three older children was closed as inconclusive but mother was referred for Partnerships For Families (PFF) services.

In January 2017, a referral alleging then five-year-old H.H. was the victim of physical abuse by an unknown perpetrator and general neglect by mother was closed as inconclusive.

In April 2017, a referral alleged that mother's boyfriend had beaten her while the youngest child was home. Emotional abuse allegations were substantiated, and mother engaged in voluntary family maintenance services and was granted a permanent restraining order separating her and the children from the boyfriend.

In September 2017, a referral alleging general neglect of the children by mother was closed as inconclusive.

In total, allegations of domestic violence in the presence of children were substantiated three times.

A social worker that had dealt with the family reported that mother had "intellect challenges" and was easily influenced by others and needed to be educated about others disciplining her children. She tended to allow helpers too much influence in her life and needed it explained to her that objects were not to be used when physically disciplining her children.

Mother agreed to a safety plan with DCFS that no one would use physical punishment and the children would not have contact with Phylis.

At the May 21, 2018 detention hearing, the juvenile court ordered the children detained and ordered referrals for mother for individual counseling, family counseling, parenting classes, and anger management counseling.

Mother participated in parenting classes and individual counseling, and was diagnosed with depression, for which she was prescribed and took 10 milligrams of Fluoxetine twice a day. She enjoyed monitored visits with the children, but during one visit arrived with dark glasses on, and slouched and initially slurred her speech, claiming she was tired and had back problems. She reported she was isolated from others, her only

support person was the maternal grandfather, and she struggled with appropriately parenting S.M., who challenged her with aggressive behavior. A drug test was negative.

The maternal grandfather confirmed that S.M. was “a very aggressive and overwhelming child,” beyond mother’s ability to parent or control. And the supervising social worker opined mother did not yet understand the importance of consistently protecting her children.

By November 2018, mother had completed her parenting classes but had not participated in counseling for case-related issues. It was acknowledged all around that she needed more support in her life, including structure, connection with appropriate individuals, help caring for the children, education on violence, treatment for mental health and physical pain, and a Parent In Partnership companion to help provide guidance.

At the November 14, 2018 adjudication hearing, the juvenile court sustained a petition alleging mother inappropriately disciplined H.H. by striking him with a slipper and inappropriately permitted Phylis to beat him with a rod.

At the disposition hearing the next day, the court found there was no reasonable way to protect the children without removal, and ordered the children removed from parental custody.

Mother appealed.

DISCUSSION

Mother contends no substantial evidence supports the juvenile court’s removal order because nothing suggests that by the time of the disposition hearing H.H. or his siblings were at risk of suffering serious physical harm as a result of mother’s or Phylis’s conduct. She also argues no substantial evidence

supported the findings that there was no reasonable means to protect the children other than removal, or that DCFS made reasonable efforts to prevent removal.

A juvenile court may take a dependent child from the physical custody of his or her parent where “[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 [or] guardian’s . . . physical custody.” (§ 361, subd. (c)(1).) But “our dependency system is premised on the notion that keeping children with their parents while proceedings are pending, whenever safely possible, serves not only to protect parents’ rights but also children’s and society’s best interests.” (*In re Henry V.* (2004) 119 Cal.App.4th 522, 530.)

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘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. [Citation.] [¶] Before the court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

“Whether the conditions in the home present a risk of harm to the child is a factual issue” to which “we apply the substantial evidence test.” (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 170.) Accordingly, “we review the evidence most favorably to the court’s order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion.” (*Id.* at p. 168.)

Here, the confluence of three undisputed factors demonstrate that mother would face significant challenges should the children be returned to her custody. First, several sources reported, and mother concedes, that she suffers from significant mental health issues, including depression. Second, it is undisputed that mother is overwhelmed by the daunting task of parenting four children, at least two of whom are wilful and one who was beyond her ability to control. And finally, mother has an extensive history of passivity and victimhood.

No evidence suggests these challenges are abating. Mother had a nonstop history with the dependency system—six referrals from 2013 to 2017—due to domestic violence with her boyfriends, her mental and emotional problems, and neglect. She participated in a voluntary case plan from April 2017 to March 2018, but a month after it closed mother physically abused H.H. with a slipper and failed to protect him from a beating at the hands of a person she had invited to the home.

The evidence thus amply shows the children to be at virtually continuous risk of harm. (See *In re Maria R.* (2010) 185 Cal.App.4th 48, 70 [court may consider parent’s past conduct and current response to conditions giving rise to juvenile court

jurisdiction in determining whether to return the child to the parent's physical custody].)

Mother argues this was a one-time incident, and will not recur because Phylis no longer visits the home. But the juvenile court could reasonably infer it was a *first-time* incident, with more likely to follow; that the hiatus occasioned by Phylis's departure was transitory; and that mother, who admits the children overwhelm her, serially acquires abusive helpmates who put the children at risk and requires near-constant DCFS intervention. Every witness expressed concern about the children and none believed mother could appropriately parent them.

The juvenile court was wise to heed these ominous notes. Parenting wilful children does not get easier as they get older.

Mother relies on *In re A.E.* (2014) 228 Cal.App.4th 820 and *In re Jasmine G.* (2000) 82 Cal.App.4th 282 (*Jasmine G.*) for the proposition that children need not be removed from their home due to one instance of inappropriate discipline. But in *A.E.*, the family had no prior dependency history, no domestic violence, and no medical or mental illness in the family. (*A.E.*, at p. 822.)

In *Jasmine G.*, both parents were "employed, 'law-abiding citizens' with no alcohol or drug dependencies and no prior encounters with the juvenile dependency system." (*Jasmine G.*, *supra*, 82 Cal.App.4th at p. 285.) They voluntarily underwent counseling, completed parenting courses, and "testified that they had changed their attitudes toward corporal punishment for teenagers and expressed remorse that their physical abuse of their daughter had led to the dependency. Jasmine's therapist testified that Jasmine had no anger toward, or 'fear' of, either parent. Jasmine herself testified that she wanted to go back to

either her mother's or her father's house. Jasmine believed that her mother had 'learned from this whole thing' and didn't believe her mother would 'hit [her] again.' . . . [And t]he parent's therapist stated that Jasmine was in no 'danger' if she were returned to one of the parents, and noted that the parents had each expressed remorse and had the 'motivation to change their former forms of discipline.' ” (*Id.* at p. 286, fn. omitted.)

The contrast with mother's situation is stark.

Mother argues insufficient evidence supported the finding that no reasonable means other than removal existed to protect the children or that DCFS made reasonable efforts to prevent removal. We disagree. DCFS explored multiple avenues with this family over the course of many years, efforts with which the family sometimes cooperated but mostly resisted. None worked, and no witness showed any optimism that more of the same would work. When a long course of remediation leads to the precise event sought to be avoided, a juvenile court may reasonably infer it is time to try something new.

All parties seem to agree, as do we, that mother needs substantial continued support, which could include coping strategies, structured routines, connection with appropriate individuals, help with the children, education, treatment for mental health and physical pain, and/or a personal advisor. Substantial evidence supported the court's order that these avenues be explored without the children in the home.

DISPOSITION

The dispositional order is affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.