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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Shaina E., a Person Coming
Under the Juvenile Court Law.

B287688
(Los Angeles County
Super. Ct. No. 17CCJP01513-A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Petitioner and Respondent,

v.

MARK E.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Debra Losnick, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for Objector and Appellant.

Amir Pichvai for Plaintiff and Respondent.

* * * * *

The juvenile court removed an infant from her father's custody. The father challenges that removal. Because the court's order is supported by substantial evidence, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Father, now age 59, met Samantha K. (mother), now age 27, at church in the summer of 2016. At that time, mother suffered from schizophrenia and bipolar disorder, was subject to a public conservatorship, and was homeless. Father had been on disability since 1984 after his job caused him "too much stress," had been seeing a psychiatrist for more than five years, and was taking several medications including clozapine and perphenazine.

In December 2016, father invited mother to move in with him. By February 2017, mother was pregnant.

During her pregnancy, mother became physically violent. She threatened and pushed a homeless man. She struck and punched father. And in April 2017, she waved an eight-inch kitchen knife at father "in a threatening manner." Mother was arrested, entered a plea to brandishing a deadly weapon, and was placed in a residential mental health facility.

In late October 2017, mother was temporarily transferred to a hospital and gave birth to Shaina. Although father had known of the pregnancy for over seven months, he had done nothing to prepare for Shaina's arrival and was "not ready" to take her home.

II. Procedural History

A. *Petition*

On November 1, 2017, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over Shaina because (1) mother's "history of unresolved mental and emotional problems" rendered her "incapable of providing regular care and supervision" to Shaina, and (2) father had "demonstrate[d] a lack of understanding of the severity of mother's mental health problems" and had a "limited ability to protect the child." The Department alleged that Shaina was consequently "at risk of serious physical harm and damage," rendering dependency jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b)(1).¹

B. *Visitation pending jurisdictional and dispositional hearing*

The juvenile court detained Shaina from mother (who had returned to the residential facility) and from father. After mother expressed a desire "not [to] be involved," the court ordered only father to receive monitored visits.

During his monitored visits, father displayed an inability to care for the newborn Shaina: He repeatedly held her in an improper and unsafe manner by failing to support her head and holding her face against his chest (which made it hard for her to breathe); he did not put the bottle in her mouth properly and overfed her to the point where she would spit up; he either failed to burp her or burped her while she lay on her back (which risked

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

her choking on any spit up); he let Shaina sit in a dirty diaper and, when he tried to change her diaper, he did not know how to do so, and would wipe her the wrong way (thereby risking infection) or put the clean diaper on backwards; and he did not know how to console her when she cried. The monitors and others repeatedly instructed father on how to do these basic tasks properly over the course of two months, but father was still unable to grasp them and, as time went on, became “angry” and “aggressive” with the continued instruction. Father also took one month of parenting classes and watched YouTube videos on infant care, but his care of Shaina did not improve; all he could remember from the parenting classes was a group exercise where the participants held hands. On several occasions, father was unable to accurately report Shaina’s age.

Father would sometimes bring his unemployed, 29-year-old niece with him to the visits. During those visits, the niece would often hand Shaina to the caregivers, would tell father to feed Shaina even when Shaina was already full and then she would proceed to spit up, and would argue with father while Shaina sat screaming.

C. *Jurisdictional and dispositional hearing*

The jurisdictional and dispositional hearings were held over two days in December 2017 and January 2018. Father testified. In his testimony, father reaffirmed his hope that mother will move back in with him once mother is released, and explained his view that mother’s assault with the kitchen knife was “a very indirect” use of physical violence. Father also indicated that his niece had moved in with him and could care for Shaina. The niece also testified that she was willing to serve as a “live-in nanny” for Shaina, and that she had cared for newborns

in the past. She also shared her opinion, after watching father during several of the monitored visits, that father “got it pretty well down” in terms of taking care of Shaina.

The trial court found true the sole allegation supporting dependency jurisdiction, and ordered that Shaina be removed from mother and father. In finding that there was clear and convincing evidence that Shaina faced a “substantial danger to [her] physical health, safety, protection, or physical or emotional well-being” if left in father’s care, the court observed that “it does not appear . . . that . . . father knows how to care for a newborn” and that, despite numerous visits with repeated instruction from the caregivers, father did not “seem to be getting much better” at caring for Shaina. The court accepted the caretaker’s observations of father’s conduct at the visits “as true and honest.” The court also noted that father appeared to have “his own mental health issues” and that father was “minimiz[ing] or just fail[ing] to recognize the severity of mother’s mental health issues,” which put Shaina in danger because father still wanted to have mother move back in with them after her release. In finding that there was clear and convincing evidence that “there are no reasonable means by which [Shaina’s] physical health can be protected” short of removal, the court observed that father’s niece did not “take advantage of” the caring for Shaina during the visits and that the niece’s limited experience with “newborn children” left the court with “too many unknowns” to conclude that measures short of removal could assure Shaina’s safety. The court then ordered reunification services for father.²

² The court did not order reunification services for mother due to mother’s loss of parental rights over her firstborn child. Mother has not appealed this ruling.

D. *Appeal*

Father filed a timely notice of appeal.

DISCUSSION

Father challenges the juvenile court's order removing Shaina from his custody.

A juvenile court may remove a child from her parents only after finding, by clear and convincing evidence, that (1) “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if [she was] returned home,” and (2) “there are no reasonable means” short of removal “by which the [child’s] physical health can be protected.” (§ 361, subd. (c)(1).) We review a removal order for substantial evidence (*In re R.T.* (2017) 3 Cal.5th 622, 633), and in so doing view the record in the light most favorable to the juvenile court’s ruling (*In re John M.* (2012) 212 Cal.App.4th 1117, 1124). Although courts remain divided over whether we do so through the prism of clear and convincing evidence (compare *In re Ashly F.* (2014) 225 Cal.App.4th 803, 808 (*Ashly F.*) [applying clear and convincing evidence standard to substantial evidence review on appeal] with *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492-1493 [disregarding clear and convincing evidence standard on appeal]), we will sidestep this conflict by using the more parent-friendly prism of clear and convincing evidence.

Substantial evidence supported the juvenile court’s finding by clear and convincing evidence that Shaina would be placed in “substantial danger” to her “safety” and “physical . . . well-being” if returned home, and that “no reasonable means” short of removal would assure her safety and well-being. Despite repeated instruction from caregivers, classes and watching

YouTube videos, father had not learned how to tend to Shaina's very basic needs—holding her, feeding and burping her, changing her diaper, and consoling her. Father's inability was only likely to persist given that he was becoming increasingly more and more belligerent whenever others tried to provide him caregiving advice. There were also no reasonable means short of removal of assuring her safety. Mother could not care for Shaina and was not in the household. (Cf. *In re Jeanette S.* (1979) 94 Cal.App.3d 52, 60-61 [court erred in removing child without considering placement with other parent] (*Jeanette S.*); *Ashly F.*, *supra*, 225 Cal.App.4th at p. 810 [same].) Parenting classes and individual instruction by caregivers were not improving father's care, and emergency in-home caretakers would not be able to provide the constant "24/7" care that Shaina would need. The court also had an ample basis for concluding that the niece would be unable to provide the necessary "24/7" care, despite living with father, because she erroneously believed that father "got it pretty well down" despite his clearly deficient caretaking and because she had demonstrated a marked insensitivity to Shaina's needs (by insisting that she be fed when she was already full, by ignoring her screams and by handing her off to others).

Father raises two categories of attacks on the juvenile court's ruling.

First, he argues that substantial evidence does not support the court's finding that Shaina would be at risk of harm in his care. His chief complaint is that the court erred in crediting the observations of Shaina's caregivers who had reported father's difficulties during the visits. Father is asking us to reconsider the juvenile court's finding that the caregivers were credible, but this is beyond our purview on substantial evidence review.

(*People v. Prunty* (2015) 62 Cal.4th 59, 89 [except in narrow circumstances, courts may not reweigh credibility findings].)

Second, father argues that substantial evidence does not support the juvenile court’s finding that “no reasonable means” short of removal would assure Shaina’s safety. Procedurally, he contends that the juvenile court did not comply with the California Rules of Court because the Department’s Jurisdictional and Dispositional Report did not “discuss[] . . . the reasonable efforts made to prevent or eliminate removal” (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).) This contention ignores that the Department’s Detention Report *did* contain this discussion, and that the Detention Report was admitted as evidence at the dispositional hearing. In other words, the requisite analysis was before the court.

Substantively, father asserts that (1) the Department did not (a) follow-up with the suggestions it set forth in the Detention Report (namely, “Emergency In-Home Caretakers, Case Management, Parent Training, Teaching and Demonstration Homemaker, Transportation,” (b) closely evaluate the parenting class he was currently taking, (c) refer father to other appropriate hands-on parent educational classes; (2) the court ignored father’s existing “support system” for caring for Shaina—namely, his niece and father’s unnamed “classmate” and “sisters”; and (3) *Ashly F.*, *supra*, 225 Cal.App.4th 803 and *Jeanette S.*, *supra*, 94 Cal.App.3d 52, dictate a different result.

These assertions do not call into question the substantial evidence supporting the juvenile court’s ruling. Father’s inability to master Shaina’s basic caregiving needs after two months of visits with one-on-one instruction is substantial evidence that further training *for father* was not a viable means of assuring

Shaina’s safety that would obviate the need for removal. The sole solution was a “24/7” live-in caregiver, and father cites no authority for the proposition that removal is invalid whenever the Department does not assign a bevy of live-in caregivers capable of providing around-the-clock care. The juvenile court also did not ignore father’s existing “support system.” To the contrary, the court explained why the niece’s caregiving was deficient. Further, father’s vague references to others who might be available to help him care for Shaina would not assure Shaina’s safety for those times when father was caring for her on his own. And *Ashly F.*, *supra*, and *Jeanette S.*, *supra*, invalidated removal orders when the other parent was potentially available to care for the child and where the child was not an infant who was especially vulnerable to injury in the absence of careful, full-time supervision. (*Ashly F.*, *supra*, 225 Cal.App.4th at pp. 806, 810-811 [child is five years old]; *Jeanette S.*, *supra*, 94 Cal.App.3d at pp. 54, 58-61 [child is five years old]; see generally *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [erecting presumption that children of “tender years” are presumed to be at risk when a parent is addicted to drugs due to their need for constant care], abrogated on other grounds in *In re R.T.* (2017) 3 Cal.5th 622; *In re Dylan T.* (1998) 65 Cal.App.4th 765, 775 [noting how “[n]ewborns, infants and toddlers are certainly among those more at risk”].)

DISPOSITION

The order is affirmed.

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_____, J.

HOFFSTADT

We concur:

_____, P.J.

LUI

_____, J.

ASHMANN-GERST