Filed 5/8/17 In re Jonathan U. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JONATHAN U. et al., Persons Coming Under the Juvenile Court Law.	B277588 (Los Angeles County Super. Ct. No. DK14400)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ALEJANDRO U., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Annabelle G. Cortez, Judge. Affirmed.

Jamie A. Moran, by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

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After finding that Alejandro U. (father) had sexually abused his 13-year-old stepdaughter and shown her younger brother and half brothers adult pornography, the juvenile court removed the children from father's custody. Father appeals this ruling. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

Athena J. (mother) has five children—Cynthia V. (born 2002), Luke V. (born 2005), Jonathan U. (born 2008), Christopher U. (born 2009), and Nickolas U. (born 2011).[1] The three youngest boys are father's.

Between 2011 and 2015, father repeatedly touched Cynthia's clothed buttocks, fondled her clothed vagina, and kissed her neck and back. In 2014, Cynthia reported the abuse to mother, but she did nothing once father denied it. Father also allowed his three boys—Jonathan, Christopher, and Nickolas—to watch adult pornography on his cell phone.

After Cynthia first reported the sexual abuse to school officials, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over all five children because (1) father's sexual abuse of Cynthia, and mother's failure to protect her from that abuse, constituted "sexual abuse" and the "failure . . . to adequately . . . protect" Cynthia, and also posed a

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1 Mother is not a party to this appeal, nor are father's stepchildren, Cynthia and Luke.

"substantial risk" that she and her brothers "will suffer[] serious physical harm or illness" (in violation of Welfare and Institutions Code section 300, subdivisions (b), (d), and (j))[2]; and (2) father's display of adult pornography, and mother's failure to prevent it, constituted a "failure . . . to adequately supervise or protect" all four boys, and placed the boys at "substantial risk [of] suffer[ing] serious physical harm or illness" (in violation of section 300, subdivision (b)).

The juvenile court sustained these allegations. Mother and father pled no contest to the allegation involving the display of adult pornography, and the Department dismissed a number of other allegations.[3] The matter proceeded to a contested hearing on the allegation regarding Cynthia's sexual abuse. The juvenile court found Cynthia's statements set forth in the various reports to be "credible," and that she had suffered sexual abuse and remained at substantial risk of the same. The court also found that Jonathan, Christopher, and Nickolas were at substantial risk of abuse, noting that father had "inappropriate sexual boundaries [with] . . . the kids" and that the risk to the boys, while "slightly different" than the risk to Cynthia, was not "so

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[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[3] Specifically, the Department dismissed its allegations that (1) father sexually abused Christopher and mother did not intervene (in violation of section 300, subdivisions (b), (d), and (j)), (2) father sexually abused Nickolas and mother did not intervene (in violation of the same provisions), and (3) father sexually abused Jonathan and mother did not intervene (in violation of section 300, subdivisions (b) and (d)).

insubstantial as to prevent the court [from] taking steps to protect" them.

The juvenile court removed the children from father. In so ordering, the court noted the continued risk to the children and rejected father's argument that the risk was mitigated because father had attended 77 group or individual counseling sessions, finding that father's attendance—while "commendable"—did not result in "actual substantive progress in a way that would minimize the risk that exists today."

The juvenile court set a six-month progress report hearing, and father immediately filed this timely notice of appeal.

DISCUSSION

Father argues that substantial evidence does not support the juvenile court's order removing from his custody his three boys—Jonathan, Christopher, and Nickolas.[4]

A juvenile court may remove a child from his parent's custody only if, among other things, it finds by clear and convincing evidence that "[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 the [child] were returned home, and there are no reasonable means by which the [child's] physical health can be protected without removing the [child] from the . . . parent's . . . physical custody." (§ 361, subd. (c)(1).) We review a juvenile court's removal order for substantial evidence by asking whether the record contains evidence that is reasonable, credible, and of solid value to support that order. (*In re F.S.* (2016) 243 Cal.App.4th 799, 811-812.) Although the

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[4] Father does not attack the juvenile court's ruling exerting dependency jurisdiction, and mother has not appealed at all.

courts are divided over whether appellate courts must apply the clear and convincing evidence standard in undertaking this review (compare *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492-1493 [higher standard disappears on appeal] with *In re Noe F.* (2013) 213 Cal.App.4th 358, 367 [higher standard must be "ke[pt] in mind" on appeal]), we will assume that the standard still applies in this case.

Substantial evidence supports the juvenile court's removal order with respect to father's three boys. Father sexually abused Cynthia for four years. That level of abuse posed a substantial risk of harm to the three boys as well. *In re I.J.* (2013) 56 Cal.4th 766 (*I.J.*) is directly on point. There, as here, the father sexually abused his daughter (or stepdaughter) and argued that such abuse provided no basis to remove his sons from his custody. Our Supreme Court rejected that argument, reasoning that a parent's sexually aberrant behavior toward a child of one sex posed a substantial risk of similar behavior toward his remaining children, regardless of their sex. (*Id.* at pp. 778-780.) Indeed, the risk in this case is even greater than in *I.J.* There, the father had never "sexually abused . . . the boys" (*id.* at p. 773); here, father engaged in sexually inappropriate behavior with his three boys by showing them adult pornography.

Father raises two arguments in response. First, he contends that his boys are not at risk unless he has previously sexually abused *them*, and notes that the boys each indicated that they felt safe with him. This argument ignores *I.J.* as well as Christopher's statement that he felt "weird" and "nasty" when father bathed Christopher's private parts. For support, father cites *In re James T.* (1987) 190 Cal.App.3d 58 and *In re Steve W.* (1990) 217 Cal.App.3d 10. But *In re James T.* found insufficient

evidence to support a 16 year old's removal from his mother due to her "economic instability" (*In re James T.*, at p. 65), and *In re Steve W.* found insufficient evidence to support an infant's removal from his mother when it was the *father* who killed the infant's older sibling (*In re Steve W.*, at pp. 12-13, 22). Neither decision casts any doubt on the situation presented in this case, or in *I.J.*

Second, father asserts that his voluntary efforts to sign up for and attend 77 group and individual sex therapy sessions has removed all risk of harm to his three boys. Yet there was no evidence that father's efforts, however commendable, have resulted in any "substantive progress" in addressing the issues that prompted the need for the Department's intervention in the first place. The provider of these services stated that father, while "very receptive" and "very positive," was just "becoming aware of the dangers" the counseling is designed to address; the provider did *not* indicate father had addressed, let alone fully addressed, those dangers. (Cf. *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 285-289 [parents who twice used corporal punishment, but who had foresworn such punishment, expressed remorse, undergone therapy, and attended parenting classes had made sufficient progress to negate need for removal].) Father cites *In re Paul E.* (1995) 39 Cal.App.4th 996, 1005, but that case held that removal was not warranted when a parent maintained a "chronic[ally] mess[y]" home; this case is entirely different.

DISPOSITION

The juvenile court's dispositional order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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