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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re JASMINE C., et al., Persons Coming
Under the Juvenile Court Law.

B235574

(Los Angeles County
Super. Ct. No. CK87882)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

C. C., et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County. Stanley Genser, Commissioner. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant C. C.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant Paul C.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel for Plaintiff and Respondent.

Appellants C. C. (mother) and Paul C. (father) appeal from the juvenile court's jurisdictional and dispositional orders over their four children -- Jasmine (born June 1995), Solomon (born September 1997), T. (born October 1999), and Elijah (born May 2001). Both parents contend the evidence was insufficient to support the juvenile court's jurisdictional findings and the dispositional order removing the children from their custody.

Substantial evidence supports the jurisdictional findings and the dispositional order. We therefore affirm the juvenile court's orders.

BACKGROUND

1. The original petition

In January 2011, the Los Angeles Department of Children and Family Services (the Department) received a referral alleging that the family lived in a recreational vehicle (RV) with no running water or electricity and littered with dog feces. The caller reported that the parents smoked marijuana in front of the children. The caller further reported that the children were illiterate and did not attend school, did not bathe, had rotting teeth, and appeared to be malnourished. The youngest child exhibited tic or twitching behavior.

The family's history with the Department included six prior referrals -- two in 2005, one in 2006, three in 2008, and one in 2011-- all alleging general neglect. The 2006 referral included an allegation of sexual abuse, and the May 2008 referral included an allegation of suspected drug activity. All of the prior referrals had been closed as either inconclusive or unfounded.

Both parents had criminal histories. Mother had two 2006 cases for perjury and welfare fraud, with no disposition. Father had a 1989 felony conviction for first degree burglary and an arrest without disposition for desertion.

On January 19, 2011, the Department's social worker met with the family, who lived in an RV parked on a city street in Culver City. The social worker noted that father smelled of alcohol but did not appear to be impaired. Father told the social worker that

the RV had a working generator, a propane tank, a water tank, and supplied all of the family's needs.

Mother said the family had been living in the RV for five years after they lost their home. Although the living arrangement was intended to be temporary, the RV had become the family's permanent residence because they continued to struggle financially. When asked about the children's education, mother said she home schooled them, with the help of a friend who was a professor at Phoenix University. Mother stated that the school district had rejected the children because the family did not have an address.

The children confirmed that mother home schooled them. They denied any physical abuse, substance abuse, or domestic violence in the home and said they had enough to eat.

After meeting with the family, the social worker attempted to schedule a team decision meeting to assess the family's needs and to determine appropriate services for them. Mother refused all services, however, stating that all she needed was stable housing and employment.

On January 21, 2011, the social worker received a telephone call from a family friend named Ken. Ken explained that he and his wife had assisted the family and had allowed the children to sleep at his home from time to time and often fed them. He expressed concern about the children's lack of education.

On February 18, 2011, the Department received another referral reporting that father and Solomon engaged in regular fist fights, and that the most recent one had occurred on February 13, 2011. After the fist fight ended, father verbally berated Solomon, stating: "You are not tough. You are a stupid f---. I can kick your ass or I will beat your ass next time." Father sustained a black eye and cuts on his face and hand. The caller noted that Solomon was six inches taller than father. Mother was present during the fight but did not intervene.

The social worker visited the family again on February 25, 2011. Mother and the children denied that father and Solomon engaged in fist fights. When asked directly,

Solomon smiled and responded, “It was nothing, really.” The social worker observed no marks or bruises on Solomon.

Mother told the social worker that the children were now enrolled in school but that none of them had attended that week because the entire family was sick. When asked whether the children had seen a doctor, mother said she believed the body healed naturally. The children had not been immunized or seen by a doctor. Mother initially agreed to participate in a services assessment but subsequently declined to meet with an in-home counselor.

Teachers at the children’s respective schools reported that the children’s attendance had been sporadic and that they were struggling academically. Ten-year-old Elijah could not read. Fifteen-year-old Jasmine was functioning at the third grade level. A school counselor offered to enroll Jasmine in a counseling program, but mother and father had refused to allow it.

Steve Blustajn, a school district homeless education advocate, arranged for tutors to assist the children four days a week and provided bus passes for the family. According to Blustajn, the children were excited about school, and mother had expressed her willingness to work with him.

Blustajn contacted the social worker in March 2011 to report that mother had taken Elijah and T. out of school completely and planned to resume home schooling them. Because they were no longer enrolled in school, Elijah and T. would no longer be eligible to receive tutoring assistance and other supplemental educational services. Blustajn expressed concern that the children were illiterate and that mother lacked the proper experience and materials to instruct the children properly. Blustajn also expressed concern that father was an alcoholic.

In May 2011, the social worker received a telephone call from Kaitlyn O., a friend of the family. Kaitlyn said she became acquainted with the family in 2010 when she observed father walking past her home at midnight and yelling at the girls. Father appeared to be intoxicated. He asked Kaitlyn if he could fill several water jugs from her

garden hose. Kaitlyn and her partner Ken befriended the family, and allowed the children to stay with them at times. They provided the family with clothes and food, and Ken had contacted Blustajn to assist the children with their educational needs.

Kaitlyn said she had seen father with black eyes and bloodied fists, and that father had once told her that he “pulverized” Solomon. Although Kaitlyn had not observed any injuries on Solomon, she was concerned about his safety. According to Kaitlyn, a friend had reported seeing Solomon with two black eyes. The same friend reported seeing Solomon on another occasion sitting on a bench at midnight and crying. Solomon had told the friend that he hated father and did not want to go home.

Kaitlyn suspected that father was using drugs. She told the social worker that on one occasion she had seen father with three men near the RV, and that all of them had appeared to be under the influence.

Kaitlyn was also concerned that the children were malnourished. The family did not use food banks but relied instead upon the generosity of strangers for their needs. The children had once told Kaitlyn that a family friend had brought a bag of chips that they shared for breakfast.

On May 18, 2011, the Department filed a non-detained petition under Welfare and Institutions Code section 300, subdivisions (a), (b), and (g),¹ alleging that father abused alcohol and physically abused Solomon; mother failed to protect the children from father’s abuse; both parents refused to have the children assessed for remedial services, individual education plans, and special education services and intervention; and both parents failed to provide the children with an adequate amount of food.

Mother and the children were present at the May 18, 2011 detention hearing, but father was not. The juvenile court found that notice of the proceedings had been given to all parties. Mother agreed to inform father of the court’s orders. The juvenile court ordered the children released to their parents on the following conditions: (1) mother was

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

to enroll the children in a public school and ensure their attendance unless excused by a licensed doctor; (2) the parents were to take the children to all medical and dental appointments; (3) the family was to cooperate with family preservation services; (4) the children were to receive mental health/developmental assessments; (5) father was to participate in counseling and weekly random alcohol and drug testing; and (6) no corporal punishment was to be imposed on any of the children. The court ordered the Department to undertake a multidisciplinary assessment of the family to determine its needs, and schedule medical appointments and mental health assessments for the children.

On June 3, 2011, the social worker informed father that he had missed a scheduled toxicology screening on May 25, 2011. Father responded that he was unaware of any testing requirement. The social worker explained the screening process to father and provided him with the testing location and its business hours. During their conversation, the social worker observed that father was holding a plastic bag that contained several beer bottles.

Neither parent attended a team decision meeting that had been scheduled for June 9, 2011. Father also failed to attend scheduled meetings with the dependency investigator on June 10 and June 11, 2011.

In mid-June 2011, the Department reported that mother and father had failed to comply with court orders requiring regular school attendance, medical and dental examinations for the children, and toxicology screenings for father. Both parents failed to maintain contact with the Department and did not respond to attempted in-person and telephonic contact by the Department's staff. Neither the parents nor the children appeared at the June 15, 2011 hearing.

On June 15, 2011, the social worker contacted the children's schools to verify their attendance and learned that the children were absent. When the social worker went to the family's RV, mother refused to accept a copy of the case plan and would not

permit the social worker to photograph the children. The social worker returned later that day and was told by an adult sibling, Jharena, that the family was “gone.”

2. Section 385 petition and detention

On June 16, 2011, the Department filed an ex parte petition under section 385, seeking a court order to detain the children. The Department expressed concern that the family was uncooperative and non-compliant and might flee the jurisdiction.

At the June 16, 2011 hearing on the ex parte petition, the juvenile court ordered the children detained and issued a protective custody warrant. On June 17, 2011, the Department requested that the warrant be recalled, because the children had been located and taken into protective custody. Jasmine and T. had been placed together in one foster home, and Elijah and Solomon placed together in a different home.

Father appeared for the first time at the hearing held on June 22, 2011. Mother and the children were also present. The juvenile court recalled and quashed the outstanding protective custody warrant, ordered sibling visits and monitored visits for the parents, and set the matter for an adjudication hearing.

3. Review proceedings and adjudication

In July 2011, the Department reported that both Elijah and Solomon felt comfortable in their foster home and were treated well. Elijah missed mother, however, and wanted to go home. He was having trouble sleeping at night because he was used to sleeping with mother.

The boys’ foster parent said Elijah and Solomon were both well behaved. She noted that Solomon often refused to speak with father on the telephone. She expressed concern about the boys’ limited ability to interact socially with other children, their lack of familiarity with any sort of personal hygiene, and their substantial academic delays.

Jasmine’s and T.’s foster parent reported that both girls were doing well and were eating, sleeping, and communicating without problems. Both girls wanted to keep in contact with family members and to return home to their parents.

In August 2011, the Department reported that Elijah had been referred for neurological testing as the result of “tic” behavior he exhibited. He had demonstrated three episodes of upper arm jerking.

Father had missed drug tests on May 25, June 3, 10, 13, 24, and July 12, 2011. When the dependency investigator discussed the missed tests with father, father responded that the juvenile court’s testing order did not apply to him because he was not present when the order was issued.

The multidisciplinary assessment team (MAT) assessor, Diane Griggs, reported that her efforts to have the parents participate in a MAT assessment had been unsuccessful. The parents said they had been advised by their counsel not to participate. Griggs reported that the boys displayed “a high level of pathology and lack the ability for social interaction.” Solomon and father engaged in heated arguments during monitored visits, and when the subject was raised with Solomon, he said “that’s nothing.”

In September 2011, the Department reported that the girls were in a new foster home and liked their current placement more than the previous one. T. was eager to talk about school and the friends she had made. Jasmine, on the other hand, said she was having a difficult time at school. She had not made friends and was uncomfortable around other children.

The girls’ foster mother expressed concern about Jasmine. Jasmine had been scheduled for testing at school to determine her academic needs but she had hid in the bathroom and would not submit to testing. She had also missed school without telling the foster mother her whereabouts.

The foster mother also expressed concern about mother’s conversations with the girls. Mother often discussed the juvenile court proceedings and instructed the girls to say they did not like school. The foster mother reported that she had found a mobile telephone that mother had given to Jasmine without telling anyone.

Elijah and Solomon appeared upbeat and eager to discuss their experiences at school. Although both boys were behind as the result of never having attended school, they stated that school was a very positive experience.

Father had not yet submitted to any court-ordered drug tests. In addition, the parents had moved the location of their RV without notifying the Department.

At father's request, the juvenile court continued the September 26, 2011 adjudication hearing to October 27, 2011. Mother and the children were present at the continued hearing. Father was not present, and his counsel did not know father's whereabouts. After denying a request by father's counsel for a further continuance of the hearing, the juvenile court received into evidence six of the Department's reports. None of the parties presented any additional evidence.

Following argument by counsel, the juvenile court amended the petition to conform to proof and struck the allegation under section 300, subdivision (g). The court sustained the amended petition under section 300, subdivisions (a) and (b) after finding that father had abused alcohol and physically abused Solomon; mother had failed to protect the children from father's abuse; the children were significantly delayed in language arts, reading, and social interactions, and both parents had refused to allow the children to attend school or to be assessed for remedial services and intervention; and both parents failed to provide the children with medical care, dental care, and an appropriate amount of food. The court declared the children to be dependents of the juvenile court and ordered suitable placement for the children and reunification services for both parents. The juvenile court limited the parents' right to make educational decisions on behalf of the children and vested that right with the foster parents.

Mother and father filed the instant appeal.²

² Both parents had also filed a previous pro se appeal from the juvenile court's orders made at the May 18, 2011 detention hearing.

DISCUSSION

I. Standard of Review

We review the juvenile's court's jurisdictional and dispositional orders under the substantial evidence standard. (*In re David M.* (2005) 134 Cal.App.4th 822, 828; *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court's conclusions, resolve all conflicts in the evidence, and make all reasonable inferences from the evidence in support of the court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

II. Jurisdictional Findings

A. Section 300, subdivision (a)

Section 300, subdivision (a) accords the juvenile court jurisdiction over a child if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent.” (§ 300, subd. (a).)

Substantial evidence supports the juvenile court’s jurisdictional finding that father physically abused Solomon. Family friend Kaitlyn reported seeing father with a black eye and bloodied fists. Father told her he had “pulverized” Solomon. Another friend observed Solomon with two black eyes on one occasion, and on another occasion saw Solomon crying on a bench at midnight, saying he hated father. Father and Solomon engaged in heated arguments during monitored visits, and the girls’ foster mother expressed concern about father’s anger.

Father contends there was no evidence of abuse, because the social worker observed no marks or bruises on Solomon, who was substantially taller than father, and because all of the children denied any fist fights between father and Solomon. He also suggests that he and Solomon “might have occasionally engaged in boxing or physical sparring” causing others to mistakenly believe father and Solomon were fighting. The conflicting evidence and inferences father relies upon are insufficient to negate the

juvenile court's findings. Under the substantial evidence standard, all conflicts in the evidence must be resolved in favor of the juvenile court's findings, and we defer to the juvenile court on issues of credibility of the evidence and witnesses. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.)

Substantial evidence supports the juvenile court's jurisdictional findings under section 300, subdivision (a).

B. Section 300, subdivision (b)

Section 300, subdivision (b) accords the juvenile court jurisdiction over a child if “[t]he child 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 or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian 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 or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b).)

1. Father’s alcohol abuse

Substantial evidence supports the juvenile court’s findings concerning father’s alcohol abuse. The social worker who first met with the family in January 2011 noticed that father smelled of alcohol. When the social worker confronted father several months later because father had failed to appear for a scheduled toxicology screening, father was holding a plastic bag containing several beer bottles. Father refused to submit to court-ordered alcohol and drug testing. Multiple people expressed concerns about father’s alcohol use and his apparent intoxicated behavior, including Blustajn, the school district’s homeless education advocate, and family friend Kaitlyn O., whose testimony the juvenile court found to be very credible.

2. Failure to provide food and medical and dental care

Substantial evidence supports the juvenile court's finding that the parents' failure to provide medical and dental care and an adequate amount of food created a substantial risk of harm to the children. Family friends Ken and Kaitlyn O. informed the social worker that they often fed the children, who appeared to be malnourished. The family did not use food banks but relied instead on others providing food for them. The children reported sharing a bag of chips for their breakfast.

The children had never been immunized or seen by a doctor because mother believed the body healed naturally. The parents did not comply with the juvenile court's order to take the children for medical and dental examinations.

3. Refusal to allow the children to attend school and receive services

Substantial evidence supports the juvenile court's findings that the children were significantly delayed academically and socially and that the parents had refused to allow the children to attend school or to be assessed for remedial services. Mother had no teaching credentials, textbooks, or other materials necessary to home school the children. Ten-year-old Elijah could not read or spell. Fifteen-year-old Jasmine was functioning at the third grade level. Jasmine, Solomon, and Elijah had difficulty interacting with other children. Mother and father failed to comply with the juvenile court's order to ensure that the children attended school regularly. The children's attendance was sporadic, and mother stopped taking Elijah and T. to school altogether less than two months after they were enrolled.

The parents contend their deficient home schooling of the children was not a valid basis for dependency jurisdiction. They further contend that the juvenile court's assertion of jurisdiction on that basis violated their due process rights because failure to educate the children properly is not a statutorily enumerated ground for assuming dependency jurisdiction over a child. In advancing these arguments, the parents parse through the evidence too finely, in an effort to isolate the juvenile court's finding on this issue from the court's other jurisdictional findings made in support of the petition. The parents

argue, for example, that “[w]hen there is no other sustainable abuse or neglect . . . the quality of education alone” cannot support jurisdiction. The children’s deficient education was not the only basis for the juvenile court’s assumption of jurisdiction in this case. The juvenile court also found the children to be at risk of harm because of father’s physical abuse of Solomon, father’s alcohol abuse, and the parents’ failure to provide them with adequate food and medical and dental care. Any one of these other findings would be sufficient to support the juvenile court’s assertion of jurisdiction over the children. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) Because there were multiple grounds for the juvenile court’s assumption of jurisdiction in this case, we need not address the due process issue as narrowly framed by the parents in this appeal -- whether deficient home schooling of their children *alone* can serve as a valid basis for the juvenile court’s assumption of jurisdiction.

III. Dispositional Order

The parents claim the juvenile court erroneously removed the children from their custody because there was insufficient evidence of substantial harm and there were reasonable alternatives to removal.

Before the juvenile court can order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is 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. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) A parent’s level of denial is an appropriate factor to consider when determining the risk to the child if placed with that parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future

without court supervision].) The parent need not be dangerous and the child need not actually have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.*, *supra*, at p. 1136.)

The family in this case came under the supervision of the juvenile court because of father's alcohol abuse and physical abuse of Solomon, and because both parents failed to provide adequate food and medical and dental care for the children, and failed to meet the children's educational needs. At the outset of the case, the juvenile court implemented the less intrusive alternative advocated by the parents in this appeal -- court supervision of the children while they remained in their parents' custody. That alternative proved to be unworkable because mother and father denied the existence of any problems, refused nearly all services and assistance made available to them, and failed to comply with court orders to take the children to medical and dental appointments and ensure the children's attendance at school. Substantial evidence supports the juvenile court's determination that the children were at substantial risk of harm if they were returned home and that there was no reasonable means to protect them without removing them from their parents' custody.

DISPOSITION

The orders establishing juvenile court jurisdiction over the children and removing them from their parents' custody are affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD