

Filed 10/3/17 In re A.V. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.V. et. al, a Person Coming
Under the Juvenile Court Law.

B281004
(Los Angeles County
Super. Ct. No. DK19956)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Wada, Commissioner. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court declared three siblings, A.V., M.V., and D.V., dependents of the juvenile court, finding them at substantial risk for serious physical harm (Welf. & Inst. Code, § 300, subds. (a), (b))¹ based on a series of domestic violence incidents involving mother and her boyfriend. The juvenile court removed the children from mother's custody and placed them with a paternal relative.

Mother's appeal presents the following question: May the juvenile court sustain a dependency petition based on domestic violence and remove the children from mother's custody where mother obtained a restraining order against the abusive boyfriend, but otherwise failed to cooperate with the Department of Children and Family Services (DCFS)? On the record before us, the answer is yes.

FACTUAL AND PROCEDURAL BACKGROUND

After two referrals in one week based on domestic violence between mother and her boyfriend, DCFS interviewed her and the children. The children witnessed numerous incidents of domestic violence perpetrated by the boyfriend. On one occasion, he cut mother by striking her in the head with a glass bottle. They were afraid of him and did not want mother to allow him to live with them.

DCFS also interviewed a teacher, paternal uncle and aunt, and the paternal grandmother. Relatives confirmed the abusive relationship. Mother sometimes left the children with relatives after violent episodes with the boyfriend.

¹ All Statutory references are to the Welfare and Institutions Code.

DCFS also knew mother had been arrested several months earlier on a drug-related offense, but mother told the social worker the drugs belonged to the boyfriend. Mother initially agreed to voluntary drug testing, but did not follow through. She also failed to keep appointments with the social worker who, within a week of the initial contact, reported mother's cell phone was "disconnected." Efforts to reach mother at the motel address she provided were also unsuccessful.

The juvenile court issued a removal order for the children. They were detained at their school and placed with the paternal aunt (by marriage). DCFS initiated a dependency petition under section 300, subdivisions (a) and (b)(1) based on domestic violence. According to the DCFS detention report, "Mother is being beat up by [the boyfriend] everyday and has not sought a restraining order." In the incident that prompted DCFS to contact the family, the boyfriend attacked mother while she was in a parked car with the three children. As he punched and bit her, mother told the children to get out of the car. They did, but she could not get away. Several bystanders called the police, and the boyfriend fled before they responded.

Mother appeared at the detention hearing. Her court-appointed attorney obtained a temporary restraining order against the boyfriend. The children's presumed father was identified. He was incarcerated in an out-of-state prison that accepts California prisoners. Mother agreed the children should remain with the paternal aunt, and the juvenile court so ordered.

The hearing on the restraining order was held three weeks later. Mother did not appear, but her counsel obtained a three-year restraining order against the boyfriend.

The combined jurisdiction and disposition hearing was scheduled for December 1, 2016. The report for that hearing indicated mother's visits with the children had been irregular. The paternal aunt had no way to contact mother, but "must wait for mother to call her." Mother had failed to contact DCFS, despite numerous efforts by social workers to reach out to her. Mother had agreed at the detention hearing to electronic service of court documents. While DCFS had an email address for mother, she had not provided DCFS with a telephone number or information concerning her current living arrangements. DCFS had no information concerning mother's participation in domestic violence counseling.

Mother appeared on December 1, 2016, for the jurisdiction/disposition hearing. The hearing was continued to December 19, 2016, as a contested matter. The "Last Minute Information" (LMI) report filed December 19, 2016, confirmed mother still had not contacted DCFS. The paternal aunt, who had been monitoring mother's visits, reported mother "looked a mess" at the visit a week earlier. The LMI stated "she suspected that mother has been abusing drugs . . ." and was still associating with the violent boyfriend—but it was unclear who "she" was. The report ended with "DCFS may file a First-Amended Petition to address chronic substance abuse by mother"

No amended petition was filed before the contested jurisdiction/disposition hearing. At that proceeding, all counsel submitted on the reports and presented arguments. After the court announced it sustained the jurisdictional findings, DCFS's counsel asked to place the matter on second call for the dispositional ruling. When the matter resumed, mother's counsel sought a continuance. The juvenile court denied the continuance,

but granted the request by mother's counsel for her to testify only "on the issue of enforcing the restraining order, to show the court that she would be enforcing the restraining order in the future if the boyfriend were to come around."

Mother testified the boyfriend attempted contact on one occasion after issuance of the temporary protective order and he was arrested that same day. To her knowledge, he was still incarcerated. Mother's counsel objected to a question asking if mother had enrolled in any domestic violence classes; the juvenile court sustained the objection.

Mother's counsel argued for the children's immediate release to her client. She did not address mother's living situation or lack of compliance with orders that had been in place since the detention hearing.

The juvenile court found by clear and convincing evidence that the children could not safely be returned to mother (§ 361, subd. (c)), and ordered them to remain in the home of the current relative caregivers. Visits for mother were to be monitored, and the family reunification plan provided for drug testing, parenting classes, and domestic violence counseling.

DISCUSSION

Jurisdictional Findings

Mother first challenges the sufficiency of the evidence to support the jurisdictional findings. The applicable standard was met here.

In the juvenile court, the jurisdictional finding must be supported by a preponderance of the evidence. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366.) At the appellate level, "our power begins and ends with a determination as to whether

substantial evidence exists, contradicted or uncontradicted, supporting the dependency court's determinations. We review the evidence in the light most favorable to the dependency court's findings and draw all reasonable inferences in support of those findings. [Citations.] Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw." (*Ibid.*) "We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible." (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Mother's assertion that the boyfriend never directed his anger at the children does not lessen the substantial risk for serious physical harm to them. (See, e.g., *In re T.V.* (2013) 217 Cal.App.4th 126, 134 (*T.V.*)). Moreover, a "court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

While "[a] parent's past conduct is a good predictor of future behavior" (*T.V.*, *supra*, 217 Cal.App.4th at p. 133), speculation alone concerning future risk of physical harm is not sufficient to justify dependency jurisdiction (*In re Steve W.* (1990) 217 Cal.App.3d 10, 22). Mother suggests the juvenile court based the jurisdictional findings on unsupportable speculation concerning the risk of future harm because she followed through with obtaining the domestic violence protective order and "[made] sure [the boyfriend] was incarcerated." The argument significantly overstates the evidence.

Mother never testified she would not resume a relationship with the boyfriend. Her testimony that she thought he was currently in custody could not be considered as evidence he was, in fact, incarcerated. She was not asked whether she had a plan in the event the boyfriend found her. Neither her family nor DCFS knew where or with whom she was living; she did not respond to email communications. She did not maintain any contact with DCFS. Contact with her children and their caregiver was irregular. If she had a telephone or access to one, no one knew the number. Under these circumstances, substantial evidence supported the decision to declare the children dependents of the juvenile court. (§ 300, subd. (b)(1); *In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

Dispositional Findings

The same evidence justified the juvenile court's decision to remove the children from her custody. While the juvenile court's decision to remove children from a parent's home must be supported by clear and convincing evidence, that "is not a standard for appellate review. (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750) The substantial evidence rule applies no matter what the standard of proof at trial. 'Thus, on appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.'" (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.) In the two months between the detention hearing and the contested jurisdiction/disposition hearing, mother obtained a domestic violence protective order and

contacted law enforcement on the occasion when the boyfriend was parked in front of her residence. But her refusal to respond to DCFS efforts, enter domestic violence counseling, drug test, and maintain regular contact with her children and the agency left the juvenile court without the option to return the children to her care. When viewed under the applicable substantial evidence standard, that evidence was more than sufficient to support the dispositional findings.

DISPOSITION

The order is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.