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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re EMMA O., et al.,
Persons Coming Under the
Juvenile Court Law.

B276006

(Los Angeles County
Super. Ct. No. DK15703)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VERONICA R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, D. Zeke Zeidler, Judge. Affirmed.

Nancy O. Flores, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Steven D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Veronica R., mother of dependent minors Emma O. and V.F., appeals from jurisdictional and dispositional orders of the juvenile court. (Welf. & Inst. Code, § 300).¹ The orders are affirmed.²

FACTUAL AND PROCEDURAL BACKGROUND

Emma, born in 2010, and V.F., born in 2015, are half-sisters. Alan O. is the father of Emma, and Rafael F. is the father of V.F. Neither father is a party to this appeal.

Emma, mother, and Rafael were living together when mother became pregnant with V.F. Rafael entered a residential drug treatment program shortly before V.F. was born but did not complete the program. A few weeks after V.F. was born, on

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

² During the pendency of this appeal, the juvenile court granted mother custody of the children, and dismissed the dependency case. The department moved to dismiss mother's appeal as moot. Mother argued to proceed with the appeal. We denied the motion to dismiss, finding the appeal was not moot in light of the adverse consequences that could flow from the jurisdictional findings in a future family law or dependency proceeding. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

January 21, 2016, Rafael pressed a knife against mother's body, leaving "little puncture dots" on her chest. Mother obtained a temporary restraining order against Rafael later that day.

The next day, January 22, 2016, Rafael let himself into the house with his key. He demanded to see mother's cell phone, but she refused. He shoved mother, who was holding V.F. Mother handed V.F. to her cousin, and told Rafael to return her car keys. Rafael headed toward the door to leave, but mother grabbed the hood of his sweater. Rafael pushed her down on the bed and started choking her. When mother's cousin entered the room, Rafael let go of mother and went outside. Mother called police, and Rafael was arrested.

As a result of these domestic violence incidents, the Department of Children and Family Services (department) received an emergency referral regarding mother and the children. A children's social worker (CSW), M. Rincon, visited mother's home on January 26, 2016. Mother refused to allow Rincon inside the home, which belonged to her aunt, saying she did not want her aunt to know there was an investigation regarding her children. Mother told Rincon that her children had nothing to do with the domestic violence incidents. Mother refused to give Rincon any information about Emma, including Emma's last name or her father's name. Mother stood in front of the window holding V.F. in her arms, which allowed Rincon to see the infant through the window. When Rincon explained to mother that the allegations were sufficiently serious for the department to seek an investigative warrant, mother replied, "Do what you have to do but I do not want you to ask [Emma] any questions." When asked how she planned to keep the children safe from Rafael's violence, mother said that Rafael

would never harm the children, and she hoped he would be deported because of his criminal record. Rincon concluded that mother was unaware of the risk of harm that Rafael posed to the children.

Rincon returned the next day, and was allowed inside mother's home. However, mother refused to allow Rincon to meet Emma, stating she did not want Emma to know about the domestic violence incidents.

Rincon finally met Emma and V.R. at mother's home on February 2, 2016. Emma was clean, appropriately dressed, and had no observable marks or bruises. V.F. also had no visible marks or bruises. Rincon asked mother about the police report, which contained Rafael's admission regarding his illicit drug use.³ Mother stated that Rafael had been arrested several times for drugs, and had tried to stop using drugs before V.F. was born. Mother denied using drugs, and agreed to submit to a drug test the following day. Although mother missed that test, she tested negative one day later.

Rincon interviewed Rafael in jail. He said that he did not use any drugs before meeting mother, who introduced him to crystal methamphetamine. He claimed that early in her pregnancy with V.F., mother smoked crystal methamphetamine. He admitted being high on methamphetamine when the domestic

³ The police report contained Rafael's statement that the argument began when he discovered mother had been breastfeeding V.F. and smoking crystal methamphetamine. Rafael told police that while he was under the influence of methamphetamine, he shoved mother, who was holding V.R., used a knife on mother, and choked her.

violence occurred. He admitted holding a knife to mother's neck, but said he could not remember much else because he was high.

On February 3, 2016, mother told Rincon that she had been subpoenaed to testify in criminal court, but did not plan to attend. When Rincon encouraged mother to testify to prevent Rafael from being released, mother became "very hostile cursing that she was not planning on going."

The department sought to avoid detaining the children by providing mother with numerous services: "Counseling, Emergency In-Home Caretakers, Case Management, Emergency Shelter Care, Public Assistance Services, Out of Home Respite Care, Teaching and Demonstration Homemaker, [and] Transportation" After concluding that additional services were needed to address the family's problems, the department applied for and obtained an emergency removal order. The children were detained in shelter care on February 17, 2016.

It was not until the children were detained that mother finally gave Rincon the name and contact information for Emma's father, Alan. When Rincon met Alan on February 18, 2016, he was upset that mother had not told him about the department's investigation. Alan stated that he had a family law order granting him visits with Emma on weekends. Alan said he never saw mother ingest an illicit substance, but when she was under the influence, she displayed "increased energy." Alan stated that when they were together, he "got her off [s]ubstance [a]buse." He said that substance abuse "was part of the lifestyle," referring to the fact that he met mother at a strip club called Deja Vu where he was a DJ and she was a bartender. Alan agreed to on-demand drug testing. The department released Emma to Alan on February 19, 2016.

The department filed a section 300 petition on behalf of Emma and V.F. on February 22, 2016. It also filed a detention report on that date. The section 300 petition, as amended, contained allegations against Rafael for domestic violence (count b-1), and against mother for drug abuse (count b-2) and failure to protect (count b-3). There were no allegations against Alan.

Detention Hearing. Mother and Alan appeared at the February 22, 2016 detention hearing. Alan was deemed to be the presumed father of Emma. Rafael, who was in custody, was found to be the presumed father of V.F. The juvenile court found that a prima facie case for detaining the children had been shown under section 300, subdivision (b), and that there were no reasonable means to protect the children short of removal. The court ordered Emma released to Alan, who was granted family maintenance services. Emma was granted individual counseling, sibling visits, and monitored visits with mother. The court ordered V.F. detained in shelter care, and granted mother monitored visits with weekly random drug and alcohol testing. The department was given discretion to release V.F. to mother, but was directed to initiate permanency planning services. The court directed the department to investigate the home of maternal great aunt, Mrs. S., as a possible placement for V.F.

March 2, 2016 Interim Review Report. Rincon visited Mrs. S. on February 26, 2016, and learned that her adult son, Joseph, had been living in the home when he had been arrested for a physical altercation with Mr. S. According to Mrs. S., when Joseph completed his court-ordered residential drug treatment program, he would only be allowed to visit her home; he would have to live elsewhere. Rincon recommended that a further assessment be conducted of the home, and that V.F.'s release to

Mr. and Mrs. S. be conditioned on Joseph living elsewhere and having only monitored contact with V.R.

Arraignment Hearing. Rafael appeared for his arraignment on the petition on March 2, 2016. Also on that date, the court ordered V.F. detained with Mr. and Mrs. S.

Jurisdiction/Disposition Report. In its May 2, 2016 Jurisdiction/Disposition Report, the Department provided the most recent interview statements of Emma, mother, and Rafael:

Emma. Emma, age six, said that her “step-dad [Rafael] said bad stuff about my mom. My mom didn’t tell me what he said. It was bad because he used to play with me and then he stopped. They never fought. He always exercised. Sometimes he was mean but not fighting. He would just work out and work out. They never yelled at each other.” Emma also stated that “Rafael and my mom would drink beer. Beer is a drink for grown-ups. She would have some a little bit. She mostly drinks it a lot. It’s blue and short like other cans. Nothing happens.”

Mother. Mother said that she went to a bar called Club 21 on January 21, 2016. Emma and V.F. were with their maternal grandmother. Rafael came to Club 21 and was watching mother, who was with a friend. After several drinks, mother and Rafael went home in separate cars. Mother was in the kitchen when Rafael came up from behind and held a knife to her chest. She was scared and told him to leave her alone. Her cousin and friend were in the living room. Rafael and mother argued for a couple hours. He left in mother’s car. She had “little puncture dots” from the knife.

On the following day, Rafael entered the house using his key. He was angry because she had spoken to “some guy at the bar” and “had called him.” He demanded to see her cell phone,

but she refused. Mother handed V.F. to her cousin. Mother told Rafael to return her car keys. When Rafael headed to the door, Mother grabbed the hood of his sweater. He pushed her down on the bed and started choking her. She started seeing black spots and could not breathe. Her cousin was scared and came into the room. Rafael let go of mother and walked out the door. He was pacing outside when mother called police. She had a scratch on her neck and lost her voice from being choked. Her neck was sore for a couple days. She stated, “I was scared the second time because [V.F.] was there. Emma was at school.” “[H]e was up all night. He just had a horrific look on his face like he was the devil.” “At the time, I thought he was joking but he said that if I was with someone else, he would kill me.”

Mother used “meth or cocaine” only once at age 21 or 22, and it felt like her “heart was popping out of [her] chest.” She dabbled with marijuana while in high school, but it made her too sleepy. When she was pregnant with V.F., she had some alcohol but no methamphetamine.

She admitted being “non-cooperative” at the beginning of the investigation because she was feeling threatened and was recovering from being choked. She was not uncooperative because there was something to hide.

Mother first met Rafael at a bar in 2013. They lived together in 2015 until his arrest. She stopped working after she had knee surgery in 2014. Rafael was helping with her bills and was good to her and Emma. She knew he was using methamphetamine “on and off” and “kicked him out of the house” in August 2015. Rafael went to an inpatient facility but came back in October because she was pregnant with V.F. “He was supposed to leave again in July then all of the incidents

happened. I told him, “You need to go. Figure out what you have to do.” He was in and out of jobs. He would take my car. It wasn’t working.”

Rafael. Rafael stated that he became angry because mother was at the bar on January 21, 2016. “She was drinking and she was breastfeeding but she said that she hadn’t.” He “put the knife on her to scare her. . . . I didn’t choke her.” “I had both hands in my pockets as I was trying to leave.” “I told her to not mess with me. I didn’t threaten to kill her.”

Rafael said that mother asked him for methamphetamine on January 21, 2016, and he gave her the drug because she was threatening to get it elsewhere. He saw her use methamphetamine that day. When police came, he asked them to check her for drug use but they did not.

Mother also used methamphetamine early in the pregnancy, but stopped after learning she was pregnant. He did not think mother has a problem with methamphetamine because she was able to stop during the pregnancy. Before the pregnancy, they used methamphetamine together, sometimes every day. They did not use it at home when Emma was there, but went to the bar to use it.

Alan. Alan recalled being stopped by police when he was with mother, and a “pipe” was found in her car. “That was the furthest it got. . . . I didn’t ask her anything. I just heard what she had to say to the officer.” Alan sought to clarify his previous statement about getting mother off substance abuse: “I did say that. I mean to say, “I got her out of that scene, that life.” What she used to do. That was what the social worker said so I said it that way. I have never seen it. I wanted to take her out of that scene so that it wouldn’t get to that point.”

Visitation. The report stated that mother was attending monitored visits with V.F. and Emma. Emma and V.F. were spending time together at Mr. and Mrs. S.'s home twice a month. The report did not identify any issues or concerns as to visitation.

Recommendation. The department sought to have V.F. declared a dependent of the court and ordered suitably placed with Mrs. S.

Mother's reunification services included parenting education, individual counseling to address case issues, domestic violence program, substance abuse program, and weekly on-demand and random drug testing. Mother was testing negative for drugs and alcohol, and the department was in favor of providing additional reunification services.

The department requested family reunification services for Rafael, including individual counseling to address case issues, domestic violence program, substance abuse program, and weekly on-demand and random drug testing.

As to Emma, the department sought to sustain the amended petition and terminate jurisdiction with a family law order granting Alan and mother joint legal custody, with Alan to have sole physical custody. The department recommended that mother's visits with Emma be monitored, and that any modification be subject to her proof of compliance with court orders.

Additional documents provided by the Department included:

- March 23, 2016 letter from Shepherd's Door Domestic Violence Resource Center verifying mother's enrollment in domestic violence counseling, healing art workshop, support group, and other services.

- March 11, 2016 letter from City of Commerce Department of Public Safety and Community Services verifying mother's enrollment in parent education classes.
- March 3, 2016 Certificate of Completion from Parents in Partnership.
- Character reference letters on behalf of mother from Raquel R. (maternal aunt), Jessica Arthur, Veronica R. (maternal grandmother), unidentified friend (signature illegible), Sarah Aranda, Edward Turner, Mrs. Nakahara (Emma's teacher), Valerie C. (maternal relative), Deisy Perez, unidentified friend (signature illegible), and Vanessa Barrera.

Last-Minute Information. The department informed the court that mother had negative tests for drugs and alcohol on March 15 and April 5, 2016. Mother was enrolled in a substance abuse program, "AA/AL anon meetings, drug and alcohol testing, individual counseling, parenting education, and a domestic violence program." The department recommended that mother be granted two 3-hour unmonitored visits per week, and requested discretion to further liberalize visitation.

Adjudication Hearing. The juvenile court conducted a contested adjudication hearing on May 2, 2016. Alan, who submitted to the court's jurisdiction, did not appear but was represented by counsel.

The parties submitted the matter for adjudication based on the department's reports and mother's three additional documents:

- April 28, 2016 letter from Shepherd's Door Domestic Violence Resource Center verifying mother's

participation in 12 hours of domestic violence counseling from March 9 to April 28, 2016. Mother attended eight hours of healing arts workshops, participated in luncheons and Friday support groups, and demonstrated “a complete change in her since her first visit. She represents herself well and show[s] great strength.”

- April 15, 2016 letter from City of Commerce Department of Public Safety and Community Services verifying mother’s attendance at parent education classes on February 25, March 3, 10, 17, 24, and April 14, 2016.
- April 28, 2016 letter from Latino Family Center verifying mother’s participation in outpatient treatment for drug abuse. She attended four individual sessions, 11 educational group sessions, 20 twelve-step meetings, and had two negative drug tests.

Mother’s attorney argued to dismiss the allegations for insufficient evidence. The children were not at risk of harm from domestic violence. Mother had protected the children from Rafael’s violence by testifying at his criminal trial, obtaining a three-year restraining order, and terminating their relationship. The children were not present during the knife-brandishing incident, and, since then, Rafael had been incarcerated.

Nor were the children at risk of harm from Rafael’s drug use. Mother erroneously thought he was drug-free—he was in a drug program—and was giving the relationship a chance because he was the father of her child. But when mother saw there were continuing issues, she terminated the relationship. Moreover,

she immediately enrolled in domestic violence counseling for victims, participated in group and individual counseling sessions, entered a substance abuse program, and tested clean throughout her program.

There was no evidence of any current substance abuse by mother. At most, she had a history of substance abuse in 2007 or 2008, and marijuana use while in high school. Rafael made some false statements regarding mother's substance abuse in order to retaliate against her. Mother missed the first drug test, but tested negative soon after and has had negative tests ever since.

To the extent mother was not cooperative at the inception of this case, counsel argued she was simply being guarded because of her concern that her children would be removed. This was an understandable concern for any parent. After the children were detained, mother became very cooperative and willingly complied with court orders. She was "a very different person today than in the beginning," and realized "she used poor judgment in not being more cooperative" at the inception of the case. "Her children have had to pay for that."

Rafael submitted the matter without presenting any argument.

The attorney for the minors stated that mother had taken effective measures to protect the children from domestic violence by Rafael. However, the children were at risk because of mother's and Rafael's unresolved problems with methamphetamine and alcohol. Mother endangered the children by allowing Rafael into their home despite his substance abuse issues.

Counsel for the department submitted without presenting any argument.

The court stated that it had read and considered the evidence, and found the department had established by a preponderance of the evidence that counts b-1, b-2, and b-3 of the amended petition were true. After declaring the children to be dependent minors, the court scheduled a contested disposition hearing as to Emma. The issues were whether to close Emma's case with a custody order, whether a custody order should be home of mother or home of parents, and whether mother's visits should be monitored.

Disposition Hearing. The parties submitted the matter based on the same evidence presented at the adjudication hearing. Mother requested that the children be placed with her as the custodial parent, for all of the reasons discussed at the adjudication hearing. Mother also requested that Emma's case be left open to allow her to regain custody. Counsel for the minors requested that the court set a three-month progress date in light of mother's current participation in her programs.

The court found there was clear and convincing evidence that the children were at substantial risk of harm to their physical and mental health, and that leaving them in the home of mother and Rafael would pose a substantial risk of detriment to their physical and emotional well-being. The court found there were no reasonable means other than removal to protect the children, and that reasonable efforts had been provided to prevent or eliminate the need for removal.

The court placed Emma with Alan, and V.F. with Mrs. S., under the supervision of the department. Alan was granted family maintenance services.

Mother was ordered to attend and complete a full drug and alcohol program with aftercare, random and on-demand testing

for drugs and alcohol, a domestic violence support group for victims, parenting education, and individual counseling to address case issues, including domestic violence, substance abuse and child protection. Mother was awarded unmonitored visits provided she remained in compliance with court orders.⁴

Mother timely appealed from the adjudication and disposition orders.

DISCUSSION

I

Mother contends the evidence is insufficient to support the juvenile court's jurisdictional findings. We do not agree.

"The standard of review in juvenile dependency cases is the same as in other appeals on grounds of insufficiency of the evidence. We review the record to determine whether there is any substantial evidence, contradicted or not, which supports the court's conclusions. 'All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.' (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.)" (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

As to sustained counts b-2 and b-3, the juvenile court found mother had a history of substance abuse, was a current user of methamphetamine, and, as a result of her unresolved substance abuse problem, was unable to properly care for, supervise, or

⁴ Rafael also was granted family reunification services. He was ordered to attend and complete a full drug and alcohol program with aftercare, random and on-demand testing for drugs and alcohol, a domestic violence program, and individual counseling to address case issues. His visits, upon release from custody, were to be monitored, and the department was granted discretion to liberalize visitation.

protect the children. Mother contends that these findings must be reversed because Rafael was lying about her use of methamphetamine. But Rafael's statements are not the only evidence on which these findings were based.

Mother's initial missed drug test counts as a positive test. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217.) The juvenile court reasonably discounted mother's self-serving denial of current drug use. Mother's initial refusal to disclose the name of Emma's father was suspicious in light of the information he provided to CSW Rincon. During his initial interview, Alan stated that he had gotten "her off [s]ubstance [a]buse," which "was part of the lifestyle." This contradicted mother's statement—that she had used "meth or cocaine" only once at age 20 or 21. Upon weighing their conflicting statements and the evidence as a whole, the juvenile court reasonably determined that mother had misrepresented the true extent of her use of illicit drugs.

In addition, the juvenile court reasonably concluded that mother had placed the children at substantial risk of harm by allowing Rafael to move back home before he completed a residential drug treatment program. Mother's inability or failure to protect the minors from Rafael's unresolved substance abuse was demonstrated when Rafael, during a methamphetamine-fueled rage, pushed mother while she was holding V.R., placing the new-born infant at substantial risk of physical harm.

II

Section 361, subdivision (c) provides that "[a] dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition

was initiated, unless the juvenile court finds 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 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.”

“A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor 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.]’ [Citations.] The juvenile court’s findings must be based on clear and convincing evidence. [Citations.] We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings. [Citations.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

For the reasons previously discussed, we find the record contains substantial evidence to support a finding of detriment under the clear and convincing evidence standard of section 361. The evidence was sufficient to allow a reasonable trier of fact to conclude that Rafael’s statement—that mother used methamphetamine in 2016 while caring for the children—was corroborated by other credible evidence, and showed there was a current parental substance abuse problem which placed the children at substantial risk of detriment if they were left in mother’s home. (See *In re Stephen W.* (1990) 221 Cal.App.3d 629,

645–646 [drug addiction is basis for removal]; *In re Lana S.*
(2012) 207 Cal.App.4th 94, 108 [same].)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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EPSTEIN, P.J.

We concur:

WILLHITE, J.

COLLINS, J.