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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B294370
(Los Angeles County
Super. Ct. No.
18CCJP05324A-C)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.C. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Kristen Byrdsong, Commissioner. Dismissed in part, affirmed in part.

Brian Bitker, under appointment by the Court of Appeal,
for Defendant and Appellant V.C.

Nicole Williams, under appointment by the Court of
Appeal, for Defendant and Appellant M.M.

Office of the County Counsel, Mary C. Wickham, County
Counsel, Kristine P. Miles, Assistant County Counsel, Brian
Mahler, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

M.M. (mother) and V.C. (father of mother's eldest child) appeal from an order of the juvenile court, which sustained a Welfare and Institutions Code¹ section 300 petition under subdivisions (a), (b)(1), and (j), finding that mother's three children, eldest child (who was 13 years old at the time of the jurisdictional hearing), middle child (who was 11 years old), and youngest child (who was six years old), were at risk of harm due to mother's conduct, and that eldest child was at risk of harm due to V.C.'s conduct. The court also issued a dispositional order removing all three children from mother's custody and the eldest child from V.C.'s custody.

On appeal, mother and V.C. contend there was insufficient evidence to support the jurisdictional findings related to their conduct. Each also challenges the dispositional order. We affirm the juvenile court's jurisdictional orders as to all three children, affirm the dispositional order removing eldest child from V.C.'s

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

custody, and dismiss mother's appeal of the dispositional order as moot.

II. BACKGROUND

A. *Prior Referrals*

From February 2008 to February 2017, the three children, who share the same mother but have different fathers, were the subject of eight prior referrals to the Los Angeles County Department of Children and Family Services (Department). The Department concluded that four referrals were unfounded and four were inconclusive. In a February 2017 referral alleging physical abuse and general neglect, middle child told a school psychologist that mother had struck her with a belt approximately one month earlier. Middle child reported that she did not want to live with mother and instead wanted to live with her father because she felt safe with him. Mother did not oppose middle child living with her father. The Department deemed the allegation of physical abuse and general neglect inconclusive and closed the referral based on the situation being stabilized.

B. *Current Referral and Section 300 Petition*

On June 12, 2018, the Department received another referral alleging that mother neglected all three children. A caller reported that mother had difficulty keeping the lights on in her home and that the home was dirty with unwashed dishes and flies. The Department commenced an investigation, the relevant details of which we discuss below.

On June 18, 2018, mother told a social worker that she disciplined the children by talking to them although she also sometimes yelled. Mother admitted to striking eldest child on the buttocks a few months earlier but stated that she did not leave any marks. The social worker advised mother about the laws on corporal punishment and mother responded that she had been unaware of these laws but now understood them. Mother denied using any form of physical discipline on middle or youngest child.

By July 12, 2018, eldest child was staying with V.C. at paternal grandmother's home. Eldest child denied that she was abused or neglected. V.C. told the social worker that when eldest child was in his care, he stayed with paternal grandmother, but when eldest child was with mother, V.C. lived at his girlfriend's home. V.C. further reported that he had a criminal history related to marijuana, and had previously used marijuana, but had not used it since 2008.

C. Dependency Petition and Detention Hearing

On August 21, 2018, the Department filed a section 300 petition on behalf of the three children. The Department alleged under section 300, subdivisions (a), (b)(1), and (j) that mother physically abused eldest child by striking her with a belt, which placed all the children at risk of serious physical harm (counts a-1, b-1, and j-1). The petition also alleged mother had a history of substance abuse, including use of cocaine and marijuana, which placed all three children at risk of serious physical harm (count b-2).

On August 22, 2018, the juvenile court conducted a detention hearing and found that all three fathers were the

presumed fathers of their respective children. It ordered the eldest child released to V.C. and middle and youngest child released to their respective fathers, with the condition that each of the presumed fathers submit to a drug test.

D. *Jurisdiction/Disposition Report*

On October 9, 2018, the Department submitted a Jurisdiction/Disposition Report, which contained the following information relevant to this opinion. Mother admitted to using a “kid’s belt” to strike eldest child on the buttocks. She explained that she did so because eldest child had engaged in inappropriate phone communications with someone who claimed to be 14 years old and sent a picture of his genitals to eldest child. Mother was upset because eldest child had previously communicated with someone from another country who pretended to be a girl. Mother reported that although eldest child cried, the strike did not leave marks or cause bleeding. Referring to the strike, mother reported that this was the first time that she had done anything like that.

Eldest child stated that mother struck her on her buttocks with a belt on one occasion because eldest child had come home at 9:00 p.m., which eldest child described as “super late.” The strike did not hurt and it did not leave marks.

M.C., father of youngest child, stated that when he lived with mother, he observed mother scream and hit eldest child, who “wasn’t the greatest kid.” M.C. stated, “I would tell [mother] to stop sometimes but she wouldn’t listen.” M.C. further stated that youngest child would come over to M.C.’s house for the weekend and would state, ““my mom hit me.””

Middle child stated that mother would hit eldest child with her hands when eldest child “did big things.” Youngest child also stated that mother hit eldest child “[s]ometimes in our old house, but not in our new house. It was kind of weird.”²

Mother reported that she had learned from C.E., V.C.’s ex-girlfriend, that V.C. had hit both C.E. and eldest child when he was unable to obtain money for drugs and alcohol. Mother also stated that she had encountered people who were looking for V.C. because he owed them money for drugs.

C.E. confirmed mother’s statements and added that she had recently observed a Facebook post that showed V.C. smoking marijuana in his truck.

V.C. stated that he used marijuana from 2015 to January 2018, and previously smoked marijuana daily. According to V.C., he was “stuck on” marijuana for four to five years. He had used marijuana to cope with his depression, but did not currently use it. V.C. also reported that on a date he could not recall, after being pulled over while driving, he told a police officer that he was under the influence of marijuana.

By mid-October 2018, V.C. (along with the fathers of middle and youngest child) had failed to submit to a drug test.

E. *Amended Dependency Petition and Last Minute Information*

On October 18, 2018, V.C. admitted to currently using marijuana.

² Mother reported moving residences on August 16, 2018, because of a situation involving a stalker.

On October 23, 2018, the Department filed an amended section 300 petition, adding additional counts, including count b-3, which alleged that V.C. had a history of substance abuse, including marijuana, which placed eldest child at risk of serious physical harm. That same date, the juvenile court ordered that eldest child be detained from V.C.'s custody.

F. *Final Last Minute Information*

On November 30, 2018, the Department filed a last minute information, which attached the results of V.C.'s two drug tests. An October 23, 2018, test was positive for cannabinoids with a result of 5,549 nanograms per milliliter. A November 9, 2018, test was also positive for cannabinoids with a result of 10,250 nanograms per milliliter.

The last minute information reported that V.C. had moved out of paternal grandmother's home and now resided at a new address in Hollywood.³

G. *Jurisdictional/Dispositional Hearing*

On November 30, 2018, the juvenile court conducted a jurisdictional hearing and sustained all counts regarding mother. As to V.C., the court sustained count b-3.

The juvenile court then proceeded with the dispositional hearing and removed all three children from mother's custody. The court also removed eldest child from V.C.'s custody, and placed eldest child with her paternal grandmother. The court

³ It is unclear from the record whether this was V.C.'s girlfriend's address or a different address.

placed youngest child with her paternal grandmother and middle child with her father.

On December 3, 2018, V.C. timely filed his notice of appeal. On December 5, 2018, mother timely filed her notice of appeal.

H. *Post-Disposition Proceedings*

On March 1, 2019, the juvenile court terminated jurisdiction over middle child, finding that the conditions justifying jurisdiction no longer existed. On March 12, 2019, the juvenile court issued a custody order awarding middle child's father sole physical custody and mother joint legal custody.

On May 31, 2019, the court ordered that eldest child and youngest child be returned to mother's custody and allowed V.C. to have monitored visits with eldest child. The court retained section 300 jurisdiction over the two children.

III. DISCUSSION

A. *Sufficient Evidence for Jurisdiction Based on Mother's Conduct*

Mother contends that there was insufficient evidence to support the juvenile court's exercise of jurisdiction over the three children based on the allegations regarding her conduct.⁴ "When

⁴ Although the juvenile court terminated jurisdiction over middle child, the jurisdictional findings have the potential to adversely affect mother's custody rights and we thus address the merits of her appeal as to middle child. (*In re J.K.* (2009) 174

a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We focus our analysis on counts a-1 and j-1.

Section 300, subdivision (a) provides for jurisdiction where: “The 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 or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.” We review a juvenile court's jurisdictional findings for substantial evidence. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; *In re M.R.* (2017) 8 Cal.App.5th 101, 108.)

“Whether a parent's use of discipline on a particular occasion falls within (or instead exceeds) the scope of th[e] parental right to discipline turns on three considerations: (1) whether the parent's conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3)

Cal.App.4th 1426, 1431-1432; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

‘whether the amount of punishment was reasonable or excessive.’” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641.)

Mother asserts there was insufficient evidence to support counts a-1 and j-1 because she struck eldest child on the buttocks only once and did not leave any marks. We disagree.

Contrary to mother’s contention, there was ample evidence that mother had struck eldest child numerous times. M.C. (youngest child’s father), middle child, and youngest child all reported multiple instances of mother striking eldest child. Moreover, there was evidence that even the striking to which mother admitted was not related to genuine discipline because mother and eldest child disagreed on the reason for the purported discipline, with mother reporting that she was responding to the child receiving an inappropriate text and the child reporting that she had come home late. Based on this evidence, the juvenile court could reasonably conclude that mother’s conduct was not warranted by the circumstances and was excessive. Thus, there was sufficient evidence to support count a-1.

Next, we turn to count j-1, which alleged that mother’s abuse of eldest child placed all three children at risk of serious physical harm. Under section 300, subdivision (j), a child is within the jurisdiction of the juvenile court if (1) the child’s sibling has been abused or neglected and (2) there is a substantial risk that the child will be abused or neglected. Subdivision (j) allows a juvenile court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of the other subdivisions. (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.)

Mother’s challenge to the juvenile court’s exercise of jurisdiction pursuant to section 300, subdivision (j) is expressly

predicated on her unsuccessful assertion that the court's sustaining of count a-1 must be reversed. As we discuss above, we affirm the court's sustaining of that count. Moreover, there was evidence that eldest child was not the only victim of mother's physical abuse. In 2017, middle child reported to a school psychologist that mother had struck her with a belt; and, according to M.C., youngest child also reported that mother had struck her. We therefore conclude there was substantial evidence to support the court's exercise of jurisdiction over middle and youngest child in count j-1.

B. *Sufficient Evidence for Jurisdiction Based on V.C.'s Conduct*

V.C. contends there was insufficient evidence to support the juvenile court's exercise of jurisdiction over eldest child, pursuant to section 300, subdivision (b)(1), based on his conduct.⁵ For a child to be found a dependent of the court under section 300, subdivision (b)(1), the court must find: "The 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 by the inability of the parent or

⁵ Even though we affirm the juvenile court's exercise of jurisdiction over eldest child based on mother's conduct, we further consider the merits of V.C.'s appeal as the jurisdictional findings for eldest child in count b-3 affect V.C.'s potential custody rights and future dependency proceedings. (*In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 762-763; *In re J.K.*, *supra*, 174 Cal.App.4th at pp. 1431-1432.)

guardian to provide regular care for the child due to the parent's . . . substance abuse."

V.C. contends there was insufficient evidence to support the conclusion that he has a substance abuse problem because he was neither diagnosed with a substance abuse disorder (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766), nor was there evidence of "life-impacting effects of drug use" (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 726). V.C.'s arguments are without merit.

Although V.C. was not diagnosed with a substance abuse disorder, he admitted to using marijuana daily from 2015 to 2018, to cope with his depression. V.C. failed to comply with the court's order to undergo a drug test. When he did finally participate in two drug tests, he tested positive for cannabinoids and his cannabinoid levels nearly doubled from the first to the second test. Nonetheless, V.C. initially lied to the Department regarding his current usage of marijuana. "One cannot correct a problem one fails to acknowledge." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.) Accordingly, substantial evidence supports the juvenile court's finding that V.C. had a substance abuse problem within the meaning of section 300, subdivision (b).

V.C. next contends that even if substantial evidence supports the juvenile court's finding of substance abuse, there was insufficient evidence that his substance abuse placed eldest child at a substantial risk of serious physical harm. We disagree. "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) On this record, "the effect of [V.C.'s] substance abuse is not now confined to [his] private moments alone" and thus placed

eldest child at a substantial risk of serious physical harm. (See *In re L.W.* (2019) 32 Cal.App.5th 840, 850 [substantial evidence supported finding mother’s substance abuse placed child at substantial risk of future harm; mother was convicted of reckless driving and arrested twice for driving under the influence].) V.C.’s ex-girlfriend reported that V.C. resorted to abuse when he was unable to obtain money for drugs. Even if that were not true, V.C. admitted to driving while under the influence of marijuana. Accordingly, we find the juvenile court did not err in its jurisdictional finding here.

C. *Dispositional Order as to V.C. Supported by Substantial Evidence*

V.C. asserts the juvenile court erred in removing eldest child from his physical custody and argues that less drastic means were available because paternal grandmother V.D. was the primary care provider.⁶

Under section 361, subdivision (c)(1), a juvenile court may remove a dependent child from a parent’s custody when 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 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 . . . physical custody.”

We review the court’s dispositional finding for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.)

⁶ V.C. does not dispute he was a custodial parent for purposes of section 361.

Because the trial court's finding must itself be made on clear and convincing evidence, some appellate courts have stated that, in determining whether substantial evidence exists, we must determine if there was substantial evidence of the existence of clear and convincing proof. (E.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Other courts disagree, on the following reasoning: ““The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citation.] 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.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) We need not take a position on this dispute because the evidence was sufficient in this case under either measure.

“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. [Citations.]” (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) The substantial evidence supporting the jurisdictional finding also supports the dispositional order removing eldest child from V.C.’s custody. As noted, V.C. admitted to prior daily use of marijuana, failed to appear for an on-demand drug test,

lied about his current marijuana usage, and eventually tested positive for cannabinoids. Further, V.C. had previously driven under the influence of marijuana, which has the potential to place others, including his child, at a substantial risk of serious physical harm. Finally, according to his ex-girlfriend, V.C. was violent toward eldest child when he was unable to find money for drugs.

V.C. nonetheless contends that because paternal grandmother takes care of eldest child, any inability of V.C. to care for her does not pose a substantial danger to eldest child's physical health. We are unpersuaded by V.C.'s argument because, among other things, V.C. did not reside with paternal grandmother. By the time of the dispositional hearing, V.C. had moved out of paternal grandmother's home. Substantial evidence supports a conclusion that returning eldest child to V.C.'s physical custody would pose a substantial danger to her. We find the juvenile court did not err here.

D. *Mother's Appeal of Dispositional Orders*

The Department has moved to dismiss as moot mother's appeal of the dispositional order removing the children from her custody. Mother does not oppose the motion. We agree with the Department.

"[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error." (*In re N.S.* (2016) 245 Cal.App.4th 53, 60; *In re Madison S.* (2017) 15 Cal.App.5th 308, 330, fn. 15.) "As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the

dependency proceedings moot.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

Here, as noted, eldest child and youngest child were returned to mother’s physical custody. Reversal of the removal order for the two children would therefore have no practical effect. (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 60.) The removal order for middle child is no longer in effect, as it has been superseded by the custody order. “When the juvenile court terminates its jurisdiction, it issues an exit order ‘determining custody of, or visitation with, the child’ that becomes part of an existing family law case or the basis for opening a family law file (¶ § 362.4); the exit order ‘shall be a final judgment and shall remain in effect after [the juvenile court’s] jurisdiction is terminated.’ (¶ § 302, subd. (d).)” (*Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1165.) As the removal of the children was the only issue mother disputed in the dispositional order, her appeal of the order is moot. The Department’s partial motion to dismiss mother’s appeal of the dispositional order is granted.

IV. DISPOSITION

Mother's appeal of the dispositional order is dismissed.
The jurisdictional and dispositional orders are otherwise affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.