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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re JACKLYN M., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B245786
(Super. Ct. No. JV51109)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

ANTONIO B.,

Defendant and Appellant.

Antonia B, the mother of nine-year-old Jacklyn M. (daughter), appeals from the judgment (1) removing daughter from her custody, (2) awarding sole custody to father in Mexico with twice-yearly visitation by mother in California, (3) terminating the jurisdiction of the juvenile court, and (4) dismissing the juvenile dependency petition. We affirm.

Factual and Procedural Background

Father was born in Mexico and came to the United States when he was 10 years old. He lived with mother and daughter from daughter's birth in 2004 until 2006, when he was arrested, placed in immigration detention for six months, and deported. Shortly thereafter, he returned to the United States because he wanted to be with his family.

Father and mother eventually separated. In May 2010 father returned to Mexico because "he was tired of living in fear of being deported again, and realized he could not provide a positive future for [daughter] if he constantly felt like he had to hide."

Daughter lived in a two bedroom home with mother, her maternal grandparents and uncle, and three cousins. On August 17, 2012, police officers went to the home in response to a report of fighting between mother and daughter's maternal aunt. The aunt told the police that, without any provocation, mother had scratched the back of her arm. The aunt "expressed concern for the safety of [daughter] due to the behavior of her mother."

The officers saw " 'fingernail scratches' " on daughter's arm. Daughter said that, 20 days earlier, mother had asked her if her uncle had abused her. "[Daughter] said no, which made her mother angry." Mother grabbed daughter's arm and scratched her. Daughter's arm bled.

An officer asked mother why she had scratched daughter. "[Mother] explained that [daughter] had disrespected her, which caused her pain inside and she wanted [daughter] to feel that pain." The police arrested mother for corporal injury to a child. Daughter was placed with her paternal grandmother and aunt. A criminal protective order prohibited mother from contacting daughter. The San Luis Obispo County Department of Social Services (the Department) filed a juvenile dependency petition. (Welf. & Inst. Code, § 300.)¹

Daughter told a social worker that two years earlier she had witnessed an act of violence between mother and father in Mexico. The violence occurred during an argument about whether daughter should return with mother to the United States. The violence caused bleeding to mother's face. Mother described the incident as "mutual combat." Mother and daughter left Mexico after the argument, and daughter has not seen father since their departure. Father "denied ever being physically violent toward [mother]."

¹ Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

Daughter also witnessed acts of violence between mother and her boyfriend and between mother and daughter's maternal grandmother and uncle. Daughter "recalled a time when her mother and uncle were hitting each other, and . . . she and her cousins hid upstairs and were scared." "[Daughter] stated all of the fighting makes her sad, depressed, and mad because 'I have to deal with it too.' [Daughter] reported she is unable to sleep due to all the yelling in the home. [She] described her mother as 'mad all the time.' "

Daughter complained that her "home was 'really dirty.' " Because of its unkempt condition, "she was afraid she would 'get hurt.' " Daughter said that she had stepped on a needle that had made her foot bleed.

On September 11, 2012, mother was taken into custody. She was released on October 3, 2012, and the protective order was modified to allow supervised visitation with daughter. On October 10, 2012, mother contacted the Department to request visitation. The Department scheduled a visit for October 19, 2012.

At the beginning of the visit, mother wanted to check daughter's body for injuries. A social worker told her that this was inappropriate. Mother "responded by rolling her eyes and 'snorted' at [the social worker]." Mother "had [daughter] sit on her lap, and began squeezing [daughter] and sobbing." Daughter tried to pull away from mother, and the social worker directed mother to let go of her. Mother replied that the social worker "could not tell her what to do." Mother asked daughter what she had done at school that day. Daughter responded that she had not gone to school because she had a doctor's appointment. Mother said, " '[D]on't lie to me.' " When the social worker expressed her disapproval of this comment, mother "roll[ed] her eyes and 'snorted'." Mother "then asked [daughter]: 'Why did you lie about mom to the police and CWS [Child Welfare Services], why did you tell so many lies?' " At this point the social worker terminated the visit, and daughter "was taken out of the room. [Mother] became angry, flipped off [the social worker], and left."

After the visit, a different social worker, Monica Montury, met with daughter and asked how the visit with mother had gone. "[Daughter] shook her head side to side and

stated 'not very well.' [Daughter] reported that her mother was not nice to her or the social worker during the visit. [Daughter] stated that she did not feel safe during the visit. When asked what made her not feel safe, [daughter] stated that she was afraid her mother would 'hurt me again.' " In view of mother's inappropriate behavior, the juvenile court granted the Department's request to stay visitation between mother and daughter.

Montury noted that she "has not once had an interaction with [mother] where she was not rude, insulting, threatening, and hostile." Mother testified that she had told Montury, " 'Whether you like it or not, I will have my child back.' "

Mother admitted that her home was unsuitable for daughter: "I don't have a home where I feel comfortable taking my daughter at this time, but I'd like to regularly see her so we can . . . start forming . . . our relationship again"

Daughter described father as " 'nice.' " About once every week, she talks to him over the telephone and enjoys the conversations. She would like to live with him in Mexico. She has family and friends there, and she speaks Spanish.

As of September 2012, father had been employed in Mexico for 19 months and had been promoted to a management position. A letter from his employer showed that he was earning approximately \$310 per week. Father "reported he is able to provide for [daughter's] needs, and has medical insurance for her." He lives with his father and stepmother. A Mexican social worker visited father's three-bedroom home. She reported: "The home's furnishings are new, well maintained, clean and in good condition."

Father does not have a criminal record in Mexico, but he has a criminal record in the United States. In 2003 he was convicted of disturbing the peace. In 2004 he was convicted of felony unlawful sexual intercourse with mother when she was 17 years old. (Pen. Code, § 261.5, subd. (c).) At the time of the offense, father was 19 years old. In 2006 he was convicted of drunk driving and attempting to elude a pursuing police officer. Father told a social worker that he had attempted to elude the officer because he feared being deported. In 2009 he was convicted of driving with a suspended or revoked

license. Later in 2009 he was arrested for the same offense. There are outstanding warrants in both of the 2009 cases.

At the Department's request, father participated in drug screening. Two tests were performed, and both were negative.

The Department recommended that daughter "be placed in the care of her father, . . . and that the case be dismissed granting full custody to [him]" In addition, it recommended that "visitation between [daughter] and her mother . . . not be allowed at this time due to visitation being detrimental to [daughter's] well-being."

A combined jurisdictional/dispositional hearing was conducted on November 2 and 8, 2012. The juvenile court found true the allegations of the dependency petition and declared daughter a dependent of the court. It ordered that she be removed from mother. Father was granted physical and legal custody. Mother was granted twice-yearly visitation with daughter in California. The court then terminated its jurisdiction over daughter and dismissed the petition.

Sufficiency of the Evidence: Reasonable Efforts

Pursuant to section 361, subdivision (d), the court must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home." Mother contends: "Insufficient evidence supports the order removing [daughter] from Mother's custody because there was no showing the Department made reasonable efforts to prevent removal"

"We review the court's jurisdictional and dispositional findings for substantial evidence. [Citations.] Evidence is ' "[s]ubstantial" ' if it is ' "reasonable, credible, and of solid value." ' [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. [Citations.]" (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.)

The trial court found that reasonable efforts had been "made to prevent or eliminate the need for [daughter's] removal from the home." Substantial evidence

supports this finding. On August 27, 2012, the Department referred mother to "County Mental Health and Drug and Alcohol Services." Social worker Montury requested that mother obtain an assessment from this agency. But mother did not go to the agency until November 1, 2012, the day before the jurisdictional/dispositional hearing began.

Moreover, the Department arranged visitation between mother and daughter, but mother made no effort to improve her relationship with daughter during a visit in October 2012. The visit was terminated shortly after it began because of mother's inappropriate behavior.

Failure to State Facts Justifying Removal

Section 361, subdivision (d) provides that the juvenile court must "state the facts on which the decision to remove the minor is based." Mother contends that the juvenile court failed to comply with this requirement. Such failure "will be deemed harmless where 'it is not reasonably probable [factual] finding[s], if made, would have been in favor of continued parental custody.' [Citations.]" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.)

It is not reasonably probable that the juvenile court's factual findings, if made, would have been in favor of mother's continued custody of daughter. Mother had intentionally caused physical harm to daughter, and she admitted that she did not "have a home where [she felt] comfortable taking . . . daughter at this time." Furthermore, mother negatively interacted with daughter during the visit in October 2012.

Alleged Abuse of Discretion in Awarding Custody to

Father and Terminating Jurisdiction over Daughter

Mother contends that the juvenile court abused its discretion by placing daughter with father in Mexico, awarding him sole custody, and then terminating its jurisdiction over daughter and dismissing the petition. " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason.' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.)

The juvenile court did not abuse its discretion. It complied with legal requirements. Section 361.2 provides that, when a child is removed from the custody of a

parent, "the court shall first determine whether there is [another] parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court *shall* place the child with the parent unless it finds that the placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (Italics added.)

"California's juvenile dependency law does not prohibit placement of children outside of the United States. [Citation.]" (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1261.)

The court reasonably concluded that placement with father would not be detrimental to daughter. Daughter liked father and wanted to live with him in Mexico. Father had steady employment and showed that he would be able to adequately provide for daughter's needs. A Mexican social worker visited father's home and interviewed him. The social worker described the home as clean and well-maintained. She confirmed that father "has the financial capability and resources to maintain custody of his daughter."

Father's criminal record in the United States did not warrant a denial of placement with father. His offenses were neither serious nor violent. The only sexual offense was unlawful sexual intercourse with mother when father was 19 years old. Father did not have a criminal record in Mexico.

The trial court did not abuse its discretion merely because daughter had witnessed an act of violence two years earlier between father and mother in Mexico. The record does not reveal who was the aggressor. Mother described the incident as "mutual combat." There is no reason to believe that, because of this single act of violence between father and mother, father posed a threat of violence to daughter.

In explaining why she felt comfortable releasing daughter to father, social worker Montury testified: "I've had multiple conversations with [him]. He's been very consistent in getting back to me and providing everything that I've asked of him. He does not have a criminal history where he resides He has spoken to me about making mistakes in

his past and why he has changed his behavior and his commitment to being a good father to [daughter]."

Where, as here, the juvenile court places the child with another parent, the court may "[o]rder that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child." (§ 361.2, subd. (b)(1).) This is precisely what the juvenile court did in the instant case. The availability of other options does not mean that the court abused its discretion. The court reasonably determined that there was no need for the ongoing supervision of daughter while she was living with father in Mexico. (See *In re Karla C.*, *supra*, 186 Cal.App.4th at p. 1245; *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134-1135.)

The court provided for twice-yearly visitation by mother in California. Mother contends that visitation was "unduly restricted." In view of her intentional infliction of physical harm upon daughter and her inappropriate behavior during the visit in October 2012, twice-yearly visitation was reasonable. The Department recommended that "visitation between [daughter] and her mother . . . not be allowed at this time due to visitation being detrimental to [daughter's] well-being."

Disposition

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Catherine C. Czar, under appointment by the Court of Appeal, for
Appellant.

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