Filed 5/8/17 In re J.M. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

In re J.M. et al., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B275792 (Super. Ct. Nos. 1435555, 1435556, 1435557) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Plaintiff and Respondent, v. M.M., Defendant and Appellant.	

M.M. (mother) appeals the juvenile court's dispositional orders removing her three minor children from her physical custody. (Welf. & Inst. Code,[1] §§ 300, 361, subd. (c).) Mother contends that there were reasonable means to protect the children without removing them. We affirm.

FACTS AND PROCEDURAL HISTORY

Between March 2011 and March 2016, Santa Barbara County Child Welfare Services (CWS) received 11 referrals

[1] All statutory references are to the Welfare and Institutions Code.

that mother was neglecting and/or abusing her minor children J.M. (born in April 2006) and twins E.M. and I.M. (born in July 2012). In September 2014, CWS responded to a report that "mother yells, screams, and curses at the children at the top of her lungs all the time at all hours of day and night and the neighbors are continually calling the cops out on her." Mother's house was "filthy dirty, the children have no beds to sleep on, and there is no food in the home." Mother was also "continually talking to herself, acting delusional (talking to people who are not there) [and] thinks that people are after her[.]" The following December, other residents of the shelter where mother and the children were staying reported that mother was "constantly slapping the twins' faces" and left them in dirty diapers for hours at a time.

In January 2016,[2] mother went to the police station several times "tell[ing] some really strange stories, like someone is following her, [or] that her son [J.M.] was switched when he was around four years [old]." The next month, two witnesses saw mother yell at the children in a supermarket parking lot, call them "little bastards," and tell them to "shut the fuck up[.]" Mother also grabbed one of the twins by his arm and threw him into a stroller. When a police officer asked mother about the incident, she became irate and claimed that someone had made a false report.

On March 15, another witness saw mother "roughly slam[]" one of the twins' head and back against a bench. Mother then picked up the stroller in which the other twin was sitting and "slam[med] it down onto the sidewalk[.]" When the social worker asked mother about these incidents, mother repeatedly

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[2] All further date references are to the year 2016.

interrupted and demanded to know who made the "false" reports against her.

On March 17, the manager of the homeless shelter where mother and the children were staying reported that mother was "in constant chaos" and began each morning by "yelling at the children at the top of her lungs things such as, 'get the fuck up, you're taking too long, and what the fuck is wrong with you.'" The manager thought mother was suffering from a mental illness and suspected she "may be hitting or slapping the children in the restroom as [the manager] has heard smacking noises followed by crying[.]" On two occasions, mother allowed one of the twins to urinate in his pants or in a corner because she did not want to take him to the restroom. The manager also reported that J.M. "urinates and defecates all over the restroom, and [mother] refused to address the issue or supervise him[.]" Although mother had a Section 8 voucher, "no one will rent to [her] due to her reputation."

Three days later, a police officer contacted CWS to report that the children were running around a pet store eating dog treats and trying to grab fish from their tanks. The store manager heard mother call the children "pieces of shit" and "mother fuckers" and saw her grab one of the twins by the arm and lift him off the ground. When contacted by the police, mother denied the incident. The officer reported that his department often received calls from different community members and businesses "reporting constant yelling, yanking, and overall roughness with the children."

On March 21, CWS filed a section 300 petition alleging that mother was unable to care for the children because she "was

suffering from an undiagnosed and untreated mental illness."[3] The petition also alleged mother regularly failed to ensure that J.M. took his prescribed medication for Attention Deficit Hyperactivity Disorder (ADHD).[4]

At the conclusion of the detention hearing, the court ordered the children detained and granted mother a minimum of four hours of supervised visitation each week. J.M. was placed in a foster home and E.M. and I.M. were placed together in another foster home.

In its jurisdiction report, CWS recommended that the allegations of the section 300 petition be found true, that the children remain detained pending a disposition hearing, and that mother be ordered to complete a psychological evaluation. The social worker reported that she had supervised three visits between mother and the children. During the first visit, the social worker "observed . . . mother struggling to parent all three children." J.M. was withdrawn and the twins constantly fought with each other. Mother also allowed the twins to throw toys all over the room. The social worker noted that "mother also does not follow through on discipline and gives in to the children's request when they begin to cry or throw a tantrum." Mother agreed to allow the social worker to coach her at the next visit, but did not follow through with any of her suggestions. The last visit was initially more successful, but after about an hour the children began fighting again.

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[3] The alleged father, J.M., is not a party to this appeal.

[4] On March 17, J.M.'s school principal reported "it is very clear when [J.M.] is not receiving his ADHD medication as his behavior is 'night and day' and he sometimes goes weeks without medication." J.M. had been suspended numerous times as a result of his behavior and was often late to school.

At the conclusion of the contested jurisdiction hearing, the court sustained the allegations of the petition, set the matter for a disposition hearing, and ordered that "services are to commence immediately for mother." In its disposition report, CWS recommended that the children be declared dependents and that mother be offered reunification services as indicated in a proposed case plan. CWS reported that mother had been consistent in her visitation with the children, which consisted of one visit each week with all three children, one visit with J.M. individually, and one visit with E.M. and I.M. She did well with J.M. individually, but "continues to struggle parenting [I.M.] and [E.M.]." She missed a makeup visit and another scheduled visit. When informed that she had missed the scheduled visit, she did not recall having spoken to her case aide about it the day before. She also went to a wrong location for a visit with J.M., became angry, and claimed no one had told her where the visit would be.

J.M.'s Court Appointed Special Advocate (CASA) reported that J.M. was "a completely different child" since being placed in foster care and that "his behavior has improved drastically." The doctor and nurse who treated J.M. also "noticed a 'huge difference' from when he used to go in with the mother and now that he is with the foster family." The social worker reported that I.M. and E.M. were both diagnosed with Adjustment Disorder and continued to exhibit difficult behavior, particularly after visits with mother. J.M. was developmentally on track, but the twins were not.

At the initial disposition hearing, the court ordered mother to submit to a psychological assessment and set the matter for a trial confirmation hearing. Mother's assessment was set for June 30. Although the contested disposition hearing was set for June 15, no earlier date for mother's assessment was available.

Mother testified at the contested disposition hearing. She claimed that the children always behaved during their visits and either denied or could not recall E.M. throwing tantrums, I.M. hitting mother and ripping the pages out of a book, or the children stealing each other's toys and hitting each other. J.M. testified that he missed his mother and brothers and would be happy if he were sent home, but agreed that seeing his brothers during their weekly visits was enough.

At the conclusion of the hearing, the court declared the children dependents, ordered reunification services, and set the matter for a six-month review. In issuing its orders, the court "look[ed] at the jurisdiction report and the prior situation that brought the family before the Court, and it was quite serious." The court recognized "some positive things . . . ha[d] been demonstrated" and that mother was consistent in her visitation, but noted "[m]other's presentation quite frankly is odd" and that her upcoming psychological evaluation "will give some great insight into what's going on." Although "this is clearly a case where reunification is called for," the court concluded "there would be a risk to the children if they were returned to their mother prematurely" and that the children's current placements were "necessary and appropriate." The court added: "[T]his is not a situation where I can place the children back home at this time in family maintenance. The children would not be safe with the mother at this time."

DISCUSSION

Mother contends that the dispositional orders removing J.M., I.M., and E.M. from her custody must be reversed because

there were reasonable and less drastic alternatives to the children's removal.[5] We are not persuaded.

Section 361, subdivision (c)(1) provides that the juvenile court may remove a dependent child from his or her parents' custody upon clear and convincing evidence of a substantial danger to the child's physical or emotional health or well-being if there are no other reasonable means to protect the child. Such an 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 Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 736.)

We review the juvenile court's dispositional orders for substantial evidence. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581 [although the juvenile court makes findings by the elevated standard of clear and convincing evidence, substantial evidence test remains the standard of review on appeal].) We view the evidence in the light most favorable to the court's determination, drawing all reasonable inferences in favor thereof and affirm the order even if there is other evidence supporting a

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[5] Mother's notice of appeal also refers to the court's jurisdictional orders, but her briefs do not purport to challenge those orders. Mother has thus abandoned any appeal of the issues relating to the jurisdictional orders. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4 [failure to raise issue in briefs waives issue on appeal].)

contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant bears the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Substantial evidence supports the court's dispositional findings. We reject mother's claim that both CWS and the court failed to consider alternatives to removal. The disposition report, in compliance with rule 5.690(a)(1)(B)(i) of the California Rules of Court, contains a discussion of the efforts CWS had made to prevent the need for removal.[6] At the contested disposition hearing, mother's attorney argued, "it is our vehement position that family maintenance can provide the most reasonable and least onerous option for this family for the safety and protection of the children." The court and CWS both rejected this assertion. The court expressly found "there would be a risk to the children if they were returned to their mother prematurely" and that the children's current placements were "necessary and appropriate." The court also found "this is not a situation where I can place the children back home at this time in family maintenance. The children would not be safe with the mother at this time." In addition, the dispositional orders all state that "[r]easonable efforts . . . were . . . made to prevent or eliminate the need for removal from the home." These findings comply with the requirements of the statute. (§ 361, subd. (c)(1).) The court was

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6 The section, with the heading "REASONABLE EFFORTS," states that CWS had provided mother (1) a referral for parenting classes; (2) the phone number to schedule a mental health assessment; (3) weekly supervised visitation; and (4) bus passes to attend visits. The social worker further stated that she "has also met with the mother on a consistent basis to address her concerns and provide case management services."

not required to expressly state it considered less drastic alternatives to removal because that conclusion can be reasonably inferred.

Moreover, substantial evidence supports the court's conclusion that no reasonable alternatives to removal existed. The jurisdictional findings are prima facie evidence that the children could not safely remain in the home. (§ 361, subd. (c)(1).) Mother both minimizes the seriousness of the issues that led to the children's removal and disregards the standard of review, which compels us to view the evidence in the light most favorable to the judgment. When the evidence is so viewed, it is clear the court did not err in finding that the children's removal was essential to their physical and emotional safety. According to mother, her "willingness to participate in parenting classes and a mental health evaluation establishes [she] will remain compliant with the juvenile court's orders and cooperative with [CWS] if permitted to regain custody of her children." Her purported willingness to participate in services is too thin a reed upon which to base a finding that such services were a reasonable alternative to removal.

Mother's reliance on *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*), is unavailing. In that case, the Court of Appeal reversed the juvenile court's findings removing the children from the mother's custody at disposition. The mother had physically abused her children, but then moved out of the family home. The father remained in the home with the children after juvenile court proceedings were initiated. (*Id.* at pp. 806-807.) The record did not include any discussion of the reasonable efforts taken to possibly prevent the need for the children's removal. The court reasoned: "By the time of the hearing Father had already completed a parenting class. Furthermore, 'reasonable means'

for protecting the children that should at least have been considered include unannounced visits by [the social services agency], public health nursing services, in-home counseling services and removing Mother from the home. [Citation.]" (*Id.* at p. 810.) The court further noted that the mother had expressed remorse for the injuries she had inflicted on her children. (*Ibid.*)

Here, unlike in *Ashly F.*, the father was not a potential alternative caretaker. Moreover, CWS reported that in an effort to prevent removal it had provided mother with various services, including parenting classes, monthly visits, and case management services. CWS concluded that despite these services, the children's safety still necessitated their removal from her custody. Finally, mother repeatedly demonstrated a lack of insight into the behaviors that precipitated the children's removal. This evidence supports the juvenile court's finding that CWS made reasonable efforts to prevent the children's removal.

DISPOSITION

The June 15, 2016 dispositional orders are affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

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