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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re I.A. et al., Persons
Coming Under the Juvenile
Court Law.

B294842
(Los Angeles County
Super. Ct. Nos.
17CCJP02199A-F)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Daniel Z. Zeidler, Judge. Reversed with directions.

Jane B. Winer, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, William D. Thetford, Principal Deputy
County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

S.A. (mother) appeals from an order removing her children from her custody following true findings made on a Welfare and Institutions Code¹ section 387 supplemental petition. Mother contends insufficient evidence supports the juvenile court's findings that the previous placement of the children with her was ineffective in protecting the children and there was a substantial risk of danger to them if they were returned to her custody. The Los Angeles County Department of Children and Family Services (Department) has conceded several of the findings were not true. Given the substantial number of factual findings that were conceded as untrue, we conclude that the appropriate remedy is to reverse and remand for the juvenile court to hold a new section 387 hearing.

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

II. BACKGROUND

A. *Initial Jurisdiction and Disposition Hearing*

On January 29, 2018, the juvenile court sustained a section 300 petition, finding that all six of mother's children came within the jurisdiction of the juvenile court under subdivision (b) because mother had a history of illicit drug use (count b-1) and mother had shoplifted while the children were under her care and supervision and on a prior occasion had shoplifted with one of the children (count b-2).² The court, however, did not remove the children from mother's custody because it concluded that reasonable services were available to prevent such removal. Instead, the court ordered mother to participate in a full drug program with aftercare, weekly drug testing, a parenting program with family preservation, and individual counseling to address "substance abuse, child neglect, impact on the children due to involving children in criminal activity, child protection, [and] case issues."

B. *July 27, 2018, Review Hearing*

On July 9, 2018, the Department submitted a status review report reflecting that mother had enrolled in a parenting class and a substance abuse program. The program director for mother's programs reported that her attendance was sporadic.

² The children's father was incarcerated at the time. He is not a party to this appeal.

From January 31, 2018, to June 29, 2018, mother had 19 negative drug tests and three excused no-shows. Mother had yet to begin individual counseling.

The Department filed a last minute information report on July 26, 2018, showing that mother tested negative twice and failed to appear for three scheduled drug tests in July.

At a July 27, 2018, review hearing, the juvenile court found the Department had provided reasonable services. The court ordered additional family maintenance services and scheduled another review hearing for December 14, 2018.

C. Section 387 Supplemental Petition

On November 1, 2018, the Department filed a supplemental petition pursuant to section 387, alleging that the previous disposition had not been effective in protecting the children. In count s-1, the Department alleged: “The children[’s] . . . mother . . . has failed to comply with the orders of the Juvenile Court. The mother has failed to regularly submit to random drug testing. The mother missed the following testing dates 7/3/18, 7/10/18, 7/11/18, 7/25/18, 7/31/18, 8/13/18, 8/27/18, 9/14/18, 9/25/18, 10/3/18, 10/9/18, and 10/15/18. The children’s mother has failed to participate in an After Care program, and obtain a sponsor. The children’s mother failed to enroll and participate in individual counseling. The mother failed to active [*sic*] participate in Wraparound Services. Further the children’s mother has failed to submit proof of completion to [the Department] regarding the mother’s parenting and substance abuse treatment programs. Such noncompliance by the children’s mother endangers the children’s physical health and

safety and places the children at risk of serious physical harm, damage, and danger.” In count s-2, the Department alleged that mother had neglected the children by failing to provide medical and dental care for them in a timely manner.

D. *Section 387 Petition Hearing*

On December 17, 2018, the juvenile court held the section 387 petition hearing. The court admitted the section 387 petition, status review report, detention report, and jurisdiction/disposition report as evidence and sustained counts s-1 and s-2 without amendment. The court found by clear and convincing evidence that the children remaining in mother’s custody would pose a substantial danger to the children’s physical health and safety and therefore ordered the children removed from mother’s custody and suitably placed. The juvenile court ordered that mother participate in: random weekly drug and alcohol testing; a 12-step program with court card and sponsor; random or on demand drug testing in the event of a missed or dirty test; and individual counseling to address “substance abuse, child neglect, impact on children due to involving them in criminal activity, child protection, [and] case issues.” Mother was granted monitored visitation with the children, with discretion for the Department to liberalize visitation. Mother timely filed a notice of appeal.

III. DISCUSSION

A. *Standard of Review*

“When an agency seeks to change the placement of a dependent child from a parent’s care to a more restrictive placement, . . . it must file a section 387 petition. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161) The petition must allege facts that establish by a preponderance of the evidence that a previous disposition order was ineffective, but it need not allege any new jurisdictional facts or urge additional grounds for dependency because the juvenile court already has jurisdiction over the child based on its findings on the original section 300 petition. ([*Ibid.*]; *In re A.O.* (2010) 185 Cal.App.4th 103, 110)” (*In re F.S.* (2016) 243 Cal.App.4th 799, 808.) “At the conclusion of the hearing on a supplemental petition the court must make findings that: [¶] (A) The factual allegations are or are not true; and [¶] (B) The allegation that the previous disposition has not been effective is or is not true.” (Cal. Rules of Court, rule 5.565(e)(1).)

“If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. (*In re T.W.*, *supra*, [214 Cal.App.4th] at p. 1161, citing *In re H.G.* (2006) 146 Cal.App.4th 1, 11 . . . ; see also *In re Javier G.* (2006) 137 Cal.App.4th 453, 462 . . . ; *In re Miguel E.* (2004) 120 Cal.App.4th 521, 542) “‘The ultimate ‘jurisdictional fact’ necessary to modify a previous placement with a parent or relative is that the previous disposition has not been effective in the protection of the minor.’” (*In re A.O.*, *supra*, [185

Cal.App.4th] at p. 110.)” (*In re F.S.*, *supra*, 243 Cal.App.4th at p. 808.)

“We review the court’s jurisdictional and dispositional findings on a supplemental petition for substantial evidence. (*In re T.W.*, *supra*, 214 Cal.App.4th at p. 1161; *In re A.O.*, *supra*, 185 Cal.App.4th at p. 109.) Evidence is substantial if it is “‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings.” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140)” (*In re F.S.*, *supra*, 243 Cal.App.4th at pp. 811–812.)

B. *Remand for New Section 387 Hearing*

Count s-1 alleged that mother had failed to comply with the orders of the juvenile court in various ways. Mother contends, and the Department concedes, that many of the allegations in count s-1, which the juvenile court found to be true, were untrue. Specifically, the Department states it “does not object to an order for the juvenile court to strike from count s-1 the allegations that mother failed to obtain a sponsor, participate in wraparound services, and provide proof of her completion of a parenting program and a substance abuse program.” The juvenile court, however, did not have the opportunity to consider the Department’s concessions when it made its finding that the previous disposition was ineffective to protect the children.

On this record, we are unable to conclude that the juvenile court would have entered the same order at the section 387 petition hearing had it known that the Department conceded many of the allegations in count s-1 were untrue. It is the role of the lower court in the first instance to make findings of fact.

(See, e.g., *In re D.M.* (2015) 242 Cal.App.4th 634, 643.) We therefore remand for the juvenile court to conduct a new section 387 hearing in light of the Department's concessions. We express no opinion as to how the juvenile court should rule at the new section 387 hearing.

IV. DISPOSITION

The order is reversed and the case remanded for a new section 387 hearing consistent with this opinion.

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KIM, J.

We concur:

RUBIN, P. J.

BAKER, J.