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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re S.P., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

B278351

(Los Angeles County
Super. Ct. No. DK18397)

APPEAL from an order of the Superior Court of Los
Angeles County, Rudolph Diaz, Judge. Affirmed and Remanded.

Marissa Coffey, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Kim Nemoy, Principal Deputy
County Counsel, for Plaintiff and Respondent.

Aida Aslanian, under appointment by the Court of Appeal,
for the Minor.

In this dependency case (Welf. & Inst. Code, § 300),¹
appellant A.P. (mother) appeals from the jurisdictional findings
and dispositional order as to her son, S.P. She raises two issues:
insufficient evidence to support the dispositional order; and
inadequate notice under the Indian Child Welfare Act (25 U.S.C.
§ 1901 et seq. (ICWA)). Respondent, Los Angeles County
Department of Children Services (Department), concedes notice
was inadequate, but argues the dispositional order is supported
by substantial evidence. We conclude that notice was improper.
We remand with directions to comply with ICWA requirements.
In all other respects, the jurisdictional findings and dispositional
order are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

This case involves a mother and son with special needs.
Mother has cerebral palsy and a history of mental illness. She
takes psychotropic medications for depression and anxiety. S.P.,
born in 2006, has been diagnosed with epilepsy and autistic

¹ All further undesignated statutory references are to this
code.

disorder. He attends school and is described as high-functioning, but requires assistance with personal grooming and hygiene.

Before the present petition was filed, the Department received several referrals regarding S.P.,² only one of which was deemed substantiated. In that instance, mother received voluntary family maintenance services from June 2013 to February 2014.

In June 2016, mother was hospitalized after telling police she was depressed. She was placed on an involuntary “5150 hold.” (See § 5150, subd. (a) [person suffering from mental health disorder, who is a danger to himself, herself, or others, or gravely disabled, may be taken into custody for up to 72 hours for evaluation and treatment].) During mother’s absence, S.P. was cared for by his maternal aunt R.M.

² The Department found the following referrals to be unsubstantiated:

- June 2009 Report of General Neglect – The home was filthy and had piles of dirty diapers and clothes on the floor.
- March 2013 Report of General Neglect – Drugs were left within the child’s reach and gang members were visiting the home.
- March 2013 Report of General Neglect – S.P. had been sexually molested by mother’s boyfriend.
- June 2013 Report of General Neglect – The same boyfriend had visited the home even though he was to have no contact with S.P. due to allegations of sexual abuse.
- October 2014 Report of General Neglect – The home was filthy; there were open pill bottles; the food in the refrigerator was old; and S.P.’s bed had no sheets.

In July 2016, mother went to the hospital because she heard voices telling her to harm herself and her family. She was hospitalized for suicidal ideation. The hospital notified the Department that S.P., who had gone to the hospital with mother, did not have a substitute caregiver. One maternal aunt (K.M.) was scheduled to have surgery the following week, and another (R.M.) had moved to Washington.

Children's Social Worker (CSW) Luna interviewed mother and S.P. at the hospital, but neither was able to provide a meaningful statement. Mother said a few words and stared straight ahead. S.P. appeared confused, had a flat affect, and said "I'm bored." Luna spoke with K.M., who said that mother had not been "following up on her mental health," and had been "very neglectful" of S.P. Because there was no relative who could care for him, S.P. was detained in emergency shelter care.

The Department initiated dependency proceedings. It filed a section 300 petition which alleged that mother's unresolved mental and emotional problems rendered her unable to provide regular care and supervision of S.P.; mother had been involuntarily hospitalized after demonstrating suicidal ideation; and as a result of mother's mental and emotional condition, S.P. was at risk of serious physical harm and damage. The Department also filed a detention report which requested that S.P. remain in foster care due to the lack of a substitute caregiver and mother's unresolved mental health issues.

The juvenile court found a prima facie case had been made for detaining S.P. The court ordered him placed in the Department's temporary custody.

The Department summarized the family's interview statements in its August 8, 2016 report for the jurisdictional and

dispositional hearing. S.P. said that he liked his foster home, but wanted to go home to mother. Mother expressed her love for and desire to be reunited with S.P. She claimed the voices were caused by a psychotropic medication, Blaclofen. She no longer heard the voices, and would meet with her therapist later that month. She was taking the following medications: Atenolol 50 mg (once daily), Ciprofloxacin 500 mg (two times a day), Blaclofen 20 mg (three times a day), Peroxetine 40 mg (once daily), Lorazepam .5 mg (every six hours daily), Tizanidine 4 mg (once daily), Topiramate 25 mg (once daily), and Lerothyroxine 112 mg (once daily). Mother was participating in monitored visits with S.P., and the visits were going well. She was willing to comply with all court orders, service providers, and medication intake services.

The August 8, 2016 report stated that mother was receiving services from the Frank D. Lanterman Regional Center, but her case manager (Karla) was unaware that S.P. had been detained. Mother was living in an apartment complex operated by United Cerebral Palsy (UCP), and her UCP case manager, Tracy Lovett, would be providing further information. Because mother had not met with her psychiatrist or therapist since her July 2016 hospitalization, the Department did not believe it would be safe to release S.P. to her care without an update on her mental health status. The Department asked that S.P. be declared a dependent child and suitably placed while mother complied with the following case plan: undergo a mental health evaluation; take prescribed psychotropic medications as directed; discuss her recent hospitalization with a therapist and psychiatrist to determine the cause of the voices she heard; seek assistance from the regional center regarding her recent stressors, depression,

and anxieties; cooperate with the Department; take an interactive parenting class; and participate in monitored visits and telephone calls with S.P. The Department planned to assist mother in obtaining services and referrals, and to work cohesively with the regional center for S.P.'s safe return.

In an August 23, 2016 Last Minute Information for the Court, the Department summarized a recent meeting of the family's various care providers (two regional center case managers, UCP case manager Lovett, CSW Reyes, and CSW Akoopi). The care providers agreed that if S.P. were returned home, the family would be provided with: (1) an in-home caretaker from 10 a.m. to 4 p.m. on weekdays; (2) 16 hours (or more) of respite care; (3) a Saturday program for S.P.; (4) family preservation services; (5) parenting classes; and (6) therapy.

However, the August 23, 2016 report informed the court of several concerns regarding mother's current mental health status. In particular, mother had stopped taking some of her psychotropic medications, had not seen her psychiatrist since her July 2016 hospitalization, and had met with her therapist only once after being discharged from the hospital. As a result of these concerns, the Department requested that the court assess mother's mental health status for at least three months before returning S.P. to mother's home.

The September 20, 2016 Last Minute Information for the Court stated that mother had not met with her psychiatrist. During a recent visit, CSW Akoopi observed that mother was agitated, angry, and clenching her fist. Shortly after this visit, mother called Akoopi to apologize for her behavior, stating she was in a bad mood.

These reports were admitted into evidence at the September 21, 2016 jurisdictional hearing. Over mother's objection, the court also admitted an August 20, 2016 Last Minute Information which disclosed that mother had been placed under a psychiatric hold in June 2016.

The Department argued that although a maternal aunt had cared for S.P. during mother's June 2016 psychiatric hold, there were no substitute caregivers during the July 2016 hospitalization. It contended that S.P. was at risk of harm because of mother's unresolved mental health issues which rendered her unable to care for him on a regular basis.

Minor's attorney argued to sustain the petition, citing the lack of evidence regarding mother's current mental condition. According to minor's attorney, until there is evidence that mother's mental condition has stabilized, S.P. is at risk of harm due to mother's unresolved mental health issues.

Mother's counsel argued to dismiss the petition, claiming that S.P. was never at risk of serious physical harm or illness. Counsel argued that in addition to actively seeking treatment for her mental health issues, mother provided for all of S.P.'s needs. At present, mother was receiving the support services she needs, taking her medications, and seeing her therapist and psychiatrist.

After considering the Department's reports and the arguments presented by the parties, the juvenile court sustained the petition. It found that mother had unresolved mental health issues which placed S.P. at risk of substantial harm, and that S.P. was a dependent child under subdivision (b) of section 300.

Turning to disposition issues, the court heard testimony by mother and Lovett. Mother testified that she no longer heard

voices, and attributed the cessation of the voices to the recent shift in her medication schedule: instead of taking the drug Risperidone during the day, she was taking it at night. Mother assured the court that if the voices return, she will follow the new plan by asking for help from her care providers and family members.

Lovett testified that she visits mother three times a week to assist with her daily needs. Lovett attends mother's psychiatric appointments once every two months, and makes sure her prescriptions are filled. Mother's medications were last changed in July 2016. Mother's next therapy appointment was scheduled for later that week, and her next psychiatric appointment was scheduled for early November.

Lovett testified that if mother hears voices again, the new plan is for mother to contact Lovett. Lovett will contact the regional center, mother's therapist, Kaiser's 24-hour call center, and other UCP staff members. Lovett will try to find a family member to care for S.P. If no family member is available, there will be some type of caregiver for at least four hours. Lovett was hopeful that mother would stabilize by the end of the four-hour period. These incidents did not occur often. Lovett explained that in previous incidents, mother would take "care of herself most of the time and . . . would not tell us."

As to mother's compliance with her medication schedule, Lovett testified that UCP staff members generally are present when mother takes her medications. However, the afternoon and bedtime medications are taken when caregivers are not present.

The Department argued that due to concerns over mother's current mental health status, it was not safe to return S.P. to mother at this time. The Department sought to monitor mother's

mental health status for at least three more months to ensure that she is following the case plan and taking her medications.

Minor's counsel agreed that it was not safe to return S.P. at this time because of mother's unresolved mental health issues. The current plan was deficient in that it relied on mother to monitor her medications and call for help in the event of another mental health crisis. The plan also relied on family members to provide substitute care without obtaining their commitment to do so.

Mother's counsel argued it would be safe to return S.P. to mother's care because she safely cared for him in the past. When mother recently heard voices, she had sufficient insight to seek treatment. The plan for S.P.'s substitute care is not perfect, but he is not at substantial risk of harm. There was no risk of harm when mother brought S.P. to the hospital in July 2016, because hospitals have mandated reporters who must look out for children. Mother is capable of caring for S.P. because she has daily in-home services and is taking her medications.

The court expressed concern that despite the services that were available to mother, she had been hospitalized twice in the last three months due to a serious mental health issue. Without current assessments from mother's mental health providers, there was insufficient information to determine whether mother was stable and complying with her medication schedule. The court found by clear and convincing evidence that returning S.P. to mother's care at this time would place him at substantial risk of physical or emotional harm, that reasonable efforts had been made to eliminate the need for removal, and there were no reasonable means of protecting the child short of removal. The court ordered that S.P. be detained from mother, and that mother

be provided with the reunification services recommended by the Department. The court granted the Department's request for an Evidence Code section 730 evaluation as to mother's current level of functioning.

DISCUSSION

I

Mother challenges the juvenile court's dispositional order removing S.P. from her custody.³

Subdivision (c)(1) of section 361 provides that a dependent child shall not be taken from the physical custody of a parent with whom the child resides unless the juvenile court finds by clear and convincing evidence that there is a risk of substantial harm to the child if he or she were returned home, and there are no reasonable means short of removal to protect the child's safety. (See *In re D.C.* (2015) 243 Cal.App.4th 41, 54.) The requirement that the risk of substantial harm to the child be proven by clear and convincing evidence is intended to promote family preservation. (*Id.* at pp. 54–55.) However, because the focus of the statute is to prevent harm to the child, the parent need not be dangerous and the child need not have been actually harmed in order for removal to be appropriate. (*Id.* at p. 55.) In making its determination, the juvenile court may consider the parent's past conduct and present circumstances. (*Ibid.*)

On appeal, we review the juvenile court's dispositional order under the substantial evidence test. (*In re D.C.*, *supra*, 243

³ According to the notice of appeal, the appeal was taken from the dispositional order and jurisdictional findings. The opening brief, however, raises no issues as to the jurisdictional findings, which are affirmed.

Cal.App.4th at p. 55.) It is the appellant's burden to show that the court's findings lack substantial support in the record. (*Ibid.*) We do not reweigh the evidence, resolve conflicts in the evidence, or evaluate the credibility of witnesses. (*Id.* at pp. 55–56.) We are required to view the “evidence in the light most favorable to respondent, giving respondent the benefit of every reasonable inference and resolving all conflicts in support of the [court's dispositional ruling]. If there is any substantial evidence, contradicted or uncontradicted, which will support the [ruling], we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

The record contains substantial evidence to support the juvenile court's dispositional findings and removal order. According to the August 23, 2016 report, mother had stopped taking some of her psychotropic medications, had not seen her psychiatrist since her July 2016 hospitalization, and had met with her therapist only once following her release from the hospital. In light of mother's recent auditory hallucinations and current belief that the voices were induced by medication, it was reasonable to conclude that a further assessment of mother's medications and mental status was required. The order for a new evaluation of mother's mental health status was appropriate and necessary under the circumstances.

In the event of another mental health crisis, the backup plan relies on mother to notify her care providers. But she has not done so in the past, and it is uncertain whether she will do so in the future. Given S.P.'s special needs—he has been diagnosed with autism disorder and epileptic seizures—and the fact that mother's relatives had not agreed to provide substitute care if needed, the court reasonably found that the backup plan was not sufficient to protect S.P. should another mental health crisis

occur. Because mother had been hospitalized twice within a short period of time due to serious mental health issues, the record contains substantial evidence to support the juvenile court's findings and dispositional order.

II

The parties concur that the ICWA notice requirements were not met, and that the matter should be remanded for further proceedings in accordance with these requirements. We agree.

When the notice provisions of the ICWA are not met, the deficiencies are curable prior to termination of parental rights. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 187 [only an order terminating parental rights is reversible for failure to give notice].) All other orders, such as the jurisdictional findings and dispositional order appealed from in this case, remain in effect. (*Ibid.*) Because mother's parental rights were not terminated, "the appropriate remedy is to remand for ICWA compliance." (*Id.* at p. 188.)

If, after proper notice is provided, the court finds that S.P. is an Indian child, it shall conduct a new disposition hearing in compliance with the ICWA and related California law. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1388–1389.)

DISPOSITION

The matter is remanded to the juvenile court with directions to comply with the inquiry and notice provisions of the ICWA as stated in this opinion. In all other respects, the jurisdictional findings and dispositional order are affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.