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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R.L., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

BLAIR S.,

Defendant and Appellant.

B275650

(Los Angeles County
Super. Ct. No. DK15213)

APPEAL from an order of the Superior Court of
Los Angeles County, Marilyn K. Martinez, Juvenile Court
Referee. Affirmed in part, reversed in part, and remanded with
directions.

David A. Hamilton, 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.

INTRODUCTION

Mother Blair S. appeals from the disposition order of the juvenile court. She contends that the court erred as a matter of law in removing her son R.L. from her physical custody pursuant to Welfare and Institutions Code section 361, subdivision (c)(1),¹ because R.L. did not reside with her at the time the petition was filed. We agree with mother and reverse the removal order only. In all other respects, the disposition order is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

R.L., age 5, has never been the subject of a custody proceeding. In mid-December 2015, a police detective from the Human Trafficking Bureau notified the Department of Children and Family Services (the Department) that mother was a victim of human trafficking and domestic violence and was being exploited by her pimp, Trayvon B. Mother filed a police report claiming that she was sexually assaulted by her pimp, but later refused to testify against him. Mother also informed the police that she and her pimp forced a minor to have sex with them and the pimp beat mother up for getting a minor “ ‘too drunk to work for him on the street.’ ” The detective expressed concern to the Department that mother could have access to R.L.

In an interview conducted by the Department in December 2015, mother denied that R.L. had ever seen the pimp. Mother

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

had not seen the child in over three months. R.L. lived with father who did not communicate with mother and blocked her calls. Mother was sometimes able to communicate with father on Facebook. She would like very much to see R.L. but father would not allow it. Mother related that father takes good care of R.L. and she did not want to create any problems. The social worker nonetheless expressed concern because the pimp is violent and knew where mother lived.

Father and R.L. lived with the paternal great-grandmother Kathy L. in a different part of the county. Kathy told the social worker that mother had a drinking problem and is not stable. She confirmed that mother had not seen R.L. in “several months.” R.L. appeared well groomed and appropriately dressed. He had no marks or bruises and had enough to eat. He told the social worker that mother did not live with him and he had not seen her since August 2015. R.L. did not know mother’s pimp. According to the Department, R.L. was not likely to be in danger of harm or neglected in father’s care.

Father was unaware of mother’s activity but related that Trayvon B. called to let him know that mother was the pimp’s “bitch.” Father described mother as having a long history of alcohol abuse as does the maternal family. Father had not been with mother in over two years and had not allowed mother to visit the child because, “a few months” earlier, mother had shown up “drunk” and tried to visit. Father asked her to leave. Mother did not attempt to visit the child or send him anything at Christmas. Father wished mother was more active in the child’s life but was willing to do what was necessary to continue to care for his son. The social worker told father that to ensure R.L.’s

safety, he would need to seek a family law order awarding him custody of the child.

Three weeks later, father told the social worker he had been unable to file for custody of R.L. Each time he went to the courthouse, the clinic that would help him fill out the paperwork was booked. Father's inability to obtain a family law order giving him legal and physical custody of R.L. caused the Department concern that mother could take the child at any time. In mid-January 2016, the social worker told father, although the Department had given him plenty of time to file for custody, that it needed to file a petition to prevent mother from having access to the child.

Hence, in January 2016, the Department initiated a petition on R.L.'s behalf alleging under section 300, subdivision (b) that mother posed a risk of serious danger to R.L. because of her history of alcohol abuse, and her involvement in human trafficking, prostitution, sexual exploitation and criminal activity, including providing alcohol to a minor child and forcing the child to have sex with mother and mother's pimp. The Department recommended that R.L. remain in father's custody.

The juvenile court detained R.L. and released him to father and ordered a written schedule for mother's monitored visits.

In its evaluation for the jurisdiction hearing, the Department recognized that R.L. had not been in mother's care since she met Trayvon B. and thus had not been exposed to her illegal activity, and that mother could be viewed as a victim herself. Yet, the Department emphasized that mother's activity posed a risk to the child. Mother was fearful of retaliation by her pimp and uncooperative with the attempts by police to arrest the pimp because Trayvon B. continued to make threats and assault

her. The violence and retaliation involved in human trafficking cases endangered the well being of *any* child, the Department explained, and so protective measures had to be put in place to ensure R.L.'s safety. The Department recommended that the court sustain the petition and release R.L. to father, issue an order granting father sole physical and legal custody of the child with monitored visits for mother, and terminate its jurisdiction.

The jurisdiction and disposition hearing was held in March 2016. Counsel for the Department, R.L., and father asked that the juvenile court either (1) sustain the petition, place the child with father, and terminate jurisdiction; or (2) stay any jurisdiction order until the family court could issue a custody order (§ 360, subd. (b)). The juvenile court rejected proposal number two, to send the case to the family law court, because there was sufficient evidence to sustain a dependency petition. Nor was the court inclined to terminate its jurisdiction immediately under plan number one because the court wanted to show compassion for mother who was prostituted, by providing her with services to assist her in getting out of her situation. Hence, the court found that R.L. needed protection from mother and declared him a dependent of the court under section 300, subdivision (b).

As for a disposition, the court found that there was no custody order and father had been unsuccessful in seeking one, which meant that mother could take the child at any time and go anywhere with him and expose him to her pimp who is a "thug." Accordingly, over mother's objection, the court *removed* R.L. from her physical custody pursuant to section 361, subdivision (c)(1). The court ordered R.L. placed in father's home under the

Department's supervision and ordered the Department to provide mother with enhancement services. Mother appealed.

DISCUSSION

Mother contends that the juvenile court erred as a matter of law in relying on section 361, subdivision (c)(1) to remove R.L. from her physical custody because he did not reside with her at the time the Department initiated the petition. Our review is de novo. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 298.)

Section 361, subdivision (c)(1) reads, "A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians *with whom the child resides at the time the petition was initiated*, unless the juvenile court finds clear and convincing evidence . . . [¶] . . . There 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 or guardian's physical custody." (Italics added.)²

² Mother argues as an alternative basis for appeal pursuant to *In re A.R.* (2015) 235 Cal.App.4th 1102, that section 361, subdivision (c)(1) does not apply in this case because, in view of the fact that mother did not have custody of R.L., the evidence does not support the juvenile court's finding that there is a substantial danger to the child's health or well-being if the child were returned to mother and no reasonable means of protecting him without removal from her physical custody. (*In re A.R.*, at p. 1118.) Because there is no dispute that R.L. did not reside with mother at the time the Department initiated the petition, we need not reach this contention.

We recently held that section 361, subdivision (c)(1) “does not authorize an order of removal from *every* parent having legal custody rights Rather, . . . the Legislature chose to authorize removal only from a parent who is *residing* with his or her child. [Citation.]” (*In re Dakota J.* (2015) 242 Cal.App.4th 619, 629, second italics added.) In *Dakota J.*, we reversed the juvenile court’s order removing two of mother’s children from her physical custody under section 361, subdivision (c)(1) because, although the mother had been granted legal and physical custody of her two sons in an earlier dependency proceeding, the children were not residing with her at the time the petition was initiated, and had not for at least five years. (*In re Dakota J.*, at pp. 629-630; accord, *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 352.)

Likewise here, it is undisputed that R.L. did not reside with mother at the time the petition was initiated and by all accounts had not been for some time.³ Accordingly, removal of R.L. from mother’s physical custody pursuant to section 361, subdivision (c)(1) was error. (*In re Dakota J.*, *supra*, 242 Cal.App.4th at p. 630; *In re Anthony Q.*, *supra*, 5 Cal.App.5th at p. 352.)

Turning to the question of prejudice, we conclude that the error was not harmless. We can only reverse juvenile court errors that are prejudicial, that is, when it is reasonably probable that a result more favorable to mother as appellant would have been reached in the absence of the error. (*In re Dakota J.*, *supra*, 242 Cal.App.4th at p. 630, citing *In re Abram L.* (2013) 219 Cal.App.4th 452, 463.) In *Dakota J.*, we concluded that the

³ Unlike *Dakota J.*, no order was issued by any court granting mother legal or physical custody of R.L. However, this is a distinction without a difference as there also exists no family law order granting father legal or physical custody.

juvenile court's error in relying on section 361, subdivision (c)(1) was prejudicial. A removal order based on clear and convincing evidence of risk to the child is the first step toward possible termination of parental rights. (242 Cal.App.4th at p. 631.) “[A] dispositional order removing a child from a parent’s custody is “a critical firebreak in California’s juvenile dependency system” [citation], after which a series of findings by a preponderance of the evidence may result in termination of parental rights.’ [Citation.] Further, the issuance of a removal order triggers the provision (or denial) of reunification services [under section 361.5] and starts the clock running on reunification efforts.” (*Id.* at p. 631, but see *In re Anthony Q.*, *supra*, 5 Cal.App.5th at pp. 353-356 [disagreeing with *In re Dakota J.* that the error was prejudicial]; *In re Julien H.* (2016) 3 Cal.App.5th 1084, 1090 [same].) Therefore, the juvenile court’s order *removing* R.L. from mother’s physical custody under section 361, subdivision (c)(1) was prejudicial error.

However, the juvenile court is not without tools to achieve its stated goal. Neither the Department, nor father, nor R.L.’s attorney advocated the child’s *removal* from mother’s physical custody. Instead, they discussed an arrangement under which the court could, without taking jurisdiction, provide mother with informal supervision (§ 360, subd. (b)),⁴ or a plan where the court

⁴ Section 360, subdivision (b) reads: “If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child’s parent or guardian under the supervision of the social worker for a time period consistent with Section 301.”

would declare R.L. a dependent, place him with father, and terminate jurisdiction with an exit order granting father sole legal and physical custody. (§ 364.) The court here rejected the first proposal, finding that R.L. was at substantial risk of harm under section 300 and so it declared R.L. a dependent of the court, an order unchallenged on appeal. The court also declined to terminate its jurisdiction because it wanted to provide mother with services. Yet, the court could have achieved this result without removing R.L. from her physical custody.

Subdivision (c)(1) of section 361, is not the sole statutory authority for the physical placement of a dependent child. (*In re Anthony Q.*, *supra*, 5 Cal.App.5th at p. 353.) Numerous statutes empower the juvenile court to limit parental control of a dependent child and determine what services the child and family need to be reunited free of court supervision. (*Id.* at pp.

As we explained in *In re Adam D.* (2010) 183 Cal.App.4th 1250, “ ‘In some cases the parties may resolve an in-home case at disposition by recommending an order for informal supervision pursuant to Welf. & Inst. Code § 301(a). The court may also determine on its own or following a request by one of the parties that even though it has jurisdiction, the child is placed in the home, and the family is cooperative and able to work with the social services department in a program of informal services without court supervision that can be successfully completed within 6 to 12 months and which does not place the child at an unacceptable level of risk. In such cases the court may order informal services and supervision by the social services department instead of declaring the child a dependent [Welf. & Inst. Code § 360(b); see Welf. & Inst. Code § 301].’ [Citation.]” (*Id.* at p. 1259, quoting from Seiser & Kumli, *Cal. Juvenile Courts Practice and Procedure* (2009) § 2.124[2], pp. 2-283 to 2-284.)

345-346 & 353-354, citing §§ 358, subd. (a), 360, 361, subd. (a)⁵ & 362.⁶) The juvenile court has broad discretion to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court's supervision (*In re Anthony Q.*, at p. 346; see also § 302, subd. (c)⁷), and “broad authority, pursuant to sections 361, subdivision (a), and 362, subdivision (a), to enter orders reasonably necessary to address the problems that led to these dependency proceedings and to

⁵ Section 361, subdivision (a)(1) reads in relevant part, “In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court *may limit the control to be exercised over the dependent child by any parent* or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child.” (Italics added.)

⁶ Section 362, subdivision (a) reads in relevant part, “If a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, *the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court.*” (Italics added.)

⁷ Section 302, subdivision (c) reads, “When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the child remains a dependent of the juvenile court.”

protect [R.L.'s] well-being. [Citations.]” (*In re Anthony Q.*, at pp. 353-354.) Thus, on remand, the juvenile court here may consider entering the same disposition orders placing R.L. with father and providing mother with the same enhancement services without relying on section 361, subdivision (c)(1) to remove R.L. from mother’s physical custody.

DISPOSITION

The portion of the juvenile court’s disposition order of March 24, 2016 removing R.L. from mother’s physical custody under section 361, subdivision (c)(1) is reversed and remanded to the juvenile court in accordance with the views expressed herein. In all other respects the order is affirmed.

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ALDRICH, Acting P. J.

We concur:

LAVIN, J.

GOSWAMI, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.