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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B245663
(Super. Ct. No. J068751)
(Ventura County)

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Petitioner and Respondent,

v.

SARAH S.,

Respondent and Appellant.

Sarah S. (mother) appeals from the juvenile court's orders sustaining a supplemental petition (Welf. & Inst. Code, § 387),¹ removing her son, Caleb S., from his parents' physical custody, and placing him in foster care. Mother argues that the evidence is insufficient to support the court's jurisdictional findings and dispositional order. We affirm.

Factual and Procedural Background

Caleb S. (child) was born in May 2011. Child's half sibling (sibling) was born in July 2004. Mother is sibling's biological parent. Child's biological father (father) is

¹ All statutory references are to the Welfare and Institutions Code unless otherwise stated.

sibling's stepparent. Mother and father (parents) are married and resided in the family home with child and sibling.

In March 2012 Ventura County Human Services Agency (HSA) investigated a report that sibling had been the victim of emotional abuse. A social worker interviewed mother, who said that sibling chronically wet his bed and that the bedwetting was getting worse. Mother "stated that she knew that extreme bed wetting can be a behavior associated with molest[ation] or other traumatic experiences." Mother said that father and sibling "mutually 'tease' one another regularly, but . . . she did not view the teasing as abusive."

The social worker interviewed sibling, who declared as follows: He did not "feel safe in the home" with father. Father called him "mean names" and often made an obscene hand gesture at him. Sibling is not allowed to sleep in his bedroom "because he might pee in there." He "sleeps on the floor near the front door because if he pees there it can be mopped up easily." He is not allowed to have blankets "because he may pee on them." Father told him that he cannot sleep in a bed until he stops wetting the bed. Sibling wears diapers at night and father "makes fun of him for wearing the diapers." Both father and father's 12-year old biological son, Mike, tease him about his bedwetting.

At night mother sleeps in a bedroom with child. Father sleeps in the living room with sibling. Father watches pornographic movies in sibling's presence. Father once "offered him '10 marshmallows' to watch with him."

Father disciplined sibling by hitting him with a leather belt "that had been cut into strips which had been tied in knots at the end to hurt when it hit the skin." Mother was aware that father had used the belt to discipline him. "[T]he last time the belt was used was 'maybe a year ago.' "

The social worker asked sibling to show her the belt. While searching for the belt, sibling opened a drawer that contained a loaded pellet gun. Sibling said, " '[T]hat's [father's] gun but I'm not supposed to touch it.' "

After interviewing sibling, the social worker spoke with mother. Mother acknowledged that father had watched pornographic movies in sibling's presence, but "she . . . never suspected any sexual abuse and believe[d] that [father] doesn't watch those movies often." Mother also acknowledged that father had used a leather belt to discipline sibling and that father's teasing "was escalating [sibling's] stress and bed-wetting episodes." Mother knew that father kept weapons at home, "but did not seem to associate risk to the fact that a weapon was being stored within reach of the children."

In March 2012 HSA filed a juvenile dependency petition. The petition alleged that (1) parents had failed to protect child (§ 300, subd. (b)), and (2) sibling had been abused and there was a substantial risk that child would also be abused. (§ 300, subd. (j).)

In May 2012 the petition was sustained after an uncontested hearing, and child was adjudged a dependent of the juvenile court. Parents retained physical custody of child.

After the May 2012 hearing, HSA became aware of new information concerning father's sexual abuse of sibling. In June and July 2012, sibling made the following statements to the police: One night father put his penis on sibling's penis and "humped him." Mother came into the room and told father to stop. Father said to sibling, "I will kill you if you tell anyone." Sibling watched father's biological son, Mike, "hump [father] weener to weener" like [father] would do to [sibling]." Father "made [Mike] get on top of [sibling] and . . . hump him." Father had sibling "hump the floor one time while they were watching the porn together." These incidents started when sibling was six years old and continued until he was removed from parents' home in March 2012. Father called sibling "humpie" in the presence of [mother]." Sibling "believes [mother] knows exactly why [father] calls him humpie and never defends him." Sibling's bedwetting stopped after his removal from parents' home. Sibling attributed the bedwetting to "stress from being with [father]." Sibling had not

previously mentioned the humping incidents because he was concerned that father was serious about his threat to kill him.

The police asked mother about sibling's allegations of sexual abuse. Mother denied the allegations and said she believed that sibling's "biological father ha[d] coached him into making it all up."

Father was arrested and charged with committing a lewd act upon a child (Pen. Code, § 288, subd. (a)) and threatening to commit a crime that will result in great bodily injury or death. (*Id.*, § 422, subd. (a).) After father's arrest, mother told the social worker "that she was going to stand behind her husband all the way through." Mother said that she "and the paternal grandmother . . . were going to bail the father out."

In July 2012 HSA filed a section 387 supplemental petition requesting that child be removed from parents' physical custody because father had sexually abused sibling and mother had failed to intervene to protect him. In December 2012 the juvenile court sustained the petition and ordered that child be placed in a foster home. The court further ordered that family reunification services be provided to parents.

Section 387 Supplemental Petition and Standard of Review

Section 387, subdivision (a) provides: "An order changing or modifying a previous order by removing a child from the physical custody of a parent . . . and directing placement in a foster home . . . shall be made only after noticed hearing upon a supplemental petition." The petition "shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child." (§ 387, subd. (b).)

" In proceedings on a supplemental petition, a bifurcated hearing is required. [Citations.] In the first phase of a section 387 proceeding, the court must follow the procedures relating to a jurisdictional hearing on a section 300 petition At the conclusion of this so-called "jurisdictional phase" of the section 387 hearing [citation], the juvenile court is required to make findings whether: (1) the factual allegations of the supplemental petition are or are not true; and (2) the allegation that the previous

disposition has not been effective in protecting the child is, or is not, true. [Citation.] If both allegations are found to be true, a separate "dispositional" hearing must be conducted under the procedures applicable to the original disposition hearing [Citation.]' [Citation.]" (*In re Javier G.* (2005) 130 Cal.App.4th 1195, 1200.)

At the dispositional hearing, the court may not order removal of the child from the parents' physical custody unless it finds one or more specified circumstances true by clear and convincing evidence. (§ 361, subd. (c).) One circumstance is that "[t]he minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent . . . or member of his or her household, . . . and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent" (§ 361, subd. (c)(4).) "The court shall 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." (§ 361, subd. (d).)

We will uphold the juvenile court's jurisdictional findings and dispositional order if they are supported by substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529; *In re A.O.* (2004) 120 Cal.App.4th 1054, 1061.) "We review the evidence in the light most favorable to the [juvenile] court's determinations, resolve all evidentiary conflicts in favor of the prevailing party, and indulge in all reasonable inferences to uphold the [juvenile] court's findings. [Citation.] We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The burden is on the party or parties challenging the findings and orders of the [juvenile] court to show there is no evidence of a substantial nature to support the finding or order. [Citation.]" (*In re H.G.* (2006) 146 Cal.App.4th 1, 12-13.)

Jurisdictional Findings

The section 387 petition alleged that "[t]he previous disposition has not been effective in the protection or rehabilitation of the child." As supporting facts, the petition alleged: "The child's half sibling . . . stated that he was sexually abused by the

child's father Abuse included . . . having the child's sibling watch porn videos and 'humping' the child's sibling. The mother knew or reasonably should have known of the alleged sexual abuse and failed to intervene to protect the child's sibling. The actions by the parents place the child at risk of suffering similar abuse."

Viewing the evidence in the light most favorable to the juvenile court's determinations, we conclude that substantial evidence supports the finding that the petition's allegations are true. Mother knew that father had watched pornographic movies at night in sibling's presence, but she continued to allow sibling to sleep in the same room with father. Mother saw father "humping" sibling and did not protest when father referred to him as "humpie." Mother did not believe sibling's allegations of sexual abuse. She told the police that sibling's biological father had coached him into making up the allegations.

Father sexually abused not only sibling, but also his 12-year old biological son, Mike. It is therefore reasonable to infer that, in view of mother's failure to intervene, every child in the family home was at risk of sexual abuse by father. (See *In re I.J.* (2013) 56 Cal.4th 766, 780 ["[W]hen a father severely sexually abuses his own child, the court may assume jurisdiction over, and take steps to protect, the child's siblings"]; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1347 ["aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior"].) Accordingly, the juvenile court reasonably found that the previous disposition permitting child to remain in the home had "not been effective in the protection . . . of the child."

Dispositional Order

Substantial evidence also supports the dispositional order that child be removed from parents' physical custody and placed in a foster home. The juvenile court reasonably concluded that "there are no reasonable means by which [child] can be protected from . . . a substantial risk of sexual abuse without removing" him from the family home. (§ 361, subd. (c)(4); see *In re Karen R.* (2001) 95 Cal.App.4th 84, 90-91 ["we conclude a father who has committed two incidents of forcible incestuous rape

of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse . . . if left in the home"].) The court also reasonably concluded that "reasonable efforts [had been] made to prevent or to eliminate the need for removal" of child from the home. (§ 361, subd. (d).) The court noted that parents had been offered various parenting and counseling services.

Disposition

The juvenile court's orders sustaining the supplemental petition, removing child from parents' physical custody, and placing him in foster care are affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Ellen Gay Conroy, Judge
Superior Court County of Ventura

Frank H. Free, under appointment by the Court of Appeal, for
Respondent and Appellant

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