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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.B. et al., Persons Coming
Under the Juvenile Court Law.

B283265
(Los Angeles County
Super. Ct. No. DK21562)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Nancy A. Ramirez, Judge. Affirmed

Nancy E. Nager, under appointment by the Court of Appeal, for Defendant and Appellant R.B.

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

R.B. (father) appeals from orders declaring his children dependents under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1),¹ removing them from parental custody under section 361, subdivision (c)(1), and imposing reunification services under section 362, subdivision (d). Father contends the jurisdictional findings and removal orders are not supported by substantial evidence, and the order requiring reunification services was an abuse of discretion. We affirm the court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns a family consisting of mother,² father, and five children ranging from two to eleven years

¹ Statutory references are to the Welfare and Institutions Code.

² Mother did not appeal the court's orders.

old. The oldest child and the only boy is not biologically related to father, but he has been raised by father since infancy. Mother and father met when they were working at a carnival in Texas in 2006. They married six months later and were together over 10 years. In Palmdale on Christmas Day 2016, father left mother and the children to fend for themselves.

The Los Angeles County Department of Children and Family Services (Department) began investigating the family in January 2017, after a reporting party expressed concerns about mother's housing instability and potential exposure to domestic violence. A woman in Palmdale took mother and the children in after seeing them walking in the rain in the middle of the street. The Palmdale woman reported the children were not wearing shoes or proper clothing, their stench was horrible, and they were coughing and sneezing. She washed the children's clothes, let mother bathe them, and helped feed them. Mother told the woman she was running away from her husband who was domestically violent. Mother said she had been to different domestic violence shelters in Eureka, California and Antioch, California, and she had been in Palmdale for about two months.

The Palmdale woman called a friend named Drea to help connect mother with assistance. Drea lived in Los Angeles and worked for a group advocacy family foundation. She helped mother apply for welfare assistance, but was skeptical of mother's story and motivations and described

her as “hard headed and resistant.” She said mother claimed to be running away from father who dumped her on the street with the kids and left. Mother also said her family kept calling child protective services on her from Bowie, Texas. Drea helped mother get situated at one hotel, which mother left and then asked for more financial help to go to a different hotel. Drea offered to take the children to the doctor, but mother refused. Drea suspected that mother was taking her government financial assistance and transferring it to a friend in jail. According to Drea, mother’s story was constantly changing, and mother reported she was a “carnie.”

An employee from child protective services in Bowie County, Texas informed the Department about an investigation into a 2011 referral for “neglectful supervision.” Father had tested positive for marijuana, but there were no concerns raised about domestic violence, and the case was closed under the category “unable to determine.” There were no open referrals or outstanding warrants for the family in Texas.

The Department located and interviewed mother at a motel in Palmdale on February 6, 2017. Mother reported she was in hiding from her husband who left her and the children on Christmas Day to fend for themselves. Mother was initially reluctant to give father’s phone number to the social worker because she was afraid of what he would say about her, but she eventually gave his phone number to the social worker. She did not know where father was, but said

he could be in Texas. Mother reported that father was “homeless and smokes weed.” Mother said no family law order was in place. The Department’s detention report included the following summary of the social worker’s interview on the topic of domestic violence: “Mother reported numerous previously unreported instances of DV. According to mother, father has been abusive with her for ten years since they were married. Mother reported she never called the police because ‘I don’t want anyone in our business.’ Mother reported the last DV incident occurred a week before they came to Palmdale. Father slapped mother across the face. Mother did not give the reason why he slapped her.”

Mother agreed to drug test, but not until the following week. The children did not show any signs of abuse. They had dirty feet but did not smell. Mother said she planned to enroll the kids in school by the end of the week. Mother did not permit the social worker to interview the children outside of her presence. The following day, when the social worker tried to follow up with mother about drug testing, mother was irritable and insisted she and the children were fine.

The Department social worker spoke to a social worker in Humboldt County on February 10, 2017. The agency in Humboldt had two or three open referrals for the family. The youngest child was at risk of failure to thrive because mother was breastfeeding but the infant was not gaining weight. A voluntary case was previously opened to assist the

family. Mother eventually agreed to feed the baby formula. The Humboldt social workers asked mother about domestic violence, but she always denied it. The parents' relationship appeared good, but mother was dependent on father, who presented as "old school" and controlling. Mother seemed scared of social services and disliked working with them, and the social worker believed mother's fear stemmed from her husband always scaring and threatening her that her children were going to be taken away. Mother's processing abilities seemed slow and the Humboldt social worker worried about her ability to engage with other people. The social worker could never interview the children alone.

Several Humboldt County referrals from 2014 and 2015 reflect concerns that father was physically and verbally abusive with the older children. A March 2014 referral stated father has mood swings suggestive of methamphetamine use and that father told his son's school they need to "whoop" him to make him behave. The son reported his father gives him "whoopings" up to 10 times when he is in trouble. The referral was closed due to lack of contact with the family. A referral in September 2015 stated the family was homeless with no support system, and father had stated that in Texas "parents can beat their kids." The referral was closed because the agency could not locate the family. A December 2015 referral described father as having an angry and escalated demeanor, and while his daughter was putting on her shoes, father told her "knock it off or I'll beat you." The referral was evaluated out.

Also on February 10, 2017, the Department received information from Palmdale School District that mother started the school enrollment process for two of her children, and both would need evaluation for individual education plans. The Department unsuccessfully tried multiple times for over a month afterwards to reach mother or the school district to confirm the children were attending school. Mother was not answering her phone and had moved to a different hotel.

Father's criminal history showed he was arrested in 2012 for assault with a deadly weapon that was not a firearm. In 2013, father was charged with exhibiting a deadly weapon that was not a firearm, carrying a concealed dirk or dagger, possession of a deadly weapon with intent to commit assault, and using offensive words in a public place, but the charges were dismissed due to delay.

On March 27, 2017, the Department filed a petition under section 300 based on the parents' 10-year history of domestic violence and father's marijuana abuse. Because the Department was unable to contact the family, the court issued protective custody warrants for the children and an arrest warrant for mother. Mother and the children were located on March 29, 2017, and the children were taken into protective custody.

The Department's report described the children as wearing soiled clothing, with visibly dirty and uncombed hair, and emanating a foul odor of feces. At least one child appeared to have pinkeye, and mother's eyes were red and

dilated. The son, who was 11 years old, said he was fine and did not want to tell the social worker anything else. The oldest daughter, who was 9 years old, had a noticeable speech delay and underdeveloped sentence structure. When a social worker asked about bruising under her eyes, she first said she did not know, then she said she had pinkeye from sharing a pillow with her sister. She also said “I got bit and that’s why. My mommy don’t hit us or nothin like that.” She told the social worker “my daddy smokes weed everyday but not my mommy.” She also said “daddy hits us with a belt when he mad but not mommy. I’m glad my daddy left. He not nice to my mommy and hurted us. Him leave us at Palmdale and left.” Social workers examined the children and did not find any marks or bruises other than a red scaly patch under the noses of two of the children. The younger children, ages 2, 3, and 4, were pre-verbal. The children were placed with foster parents. The court recalled the warrants and appointed counsel for mother and the minors on April 3, 2017.

The social worker received a call from father on April 3, 2017. Father was in Wyoming vacationing with friends. He said maternal aunt had informed him the children were in foster care. He initially denied any drug use history, but then said he used to use methamphetamine but quit a few years ago. After the social worker explained the petition allegations, father admitted being physically violent with mother over the course of their 10-year relationship, and said he had the legal right to smoke marijuana. Father

appeared in court on April 4, 2017, and the court appointed counsel for him as well. Father's counsel stated father was not requesting release of the children to him because he did not have stable housing, but he requested liberalized visitation. Minor's counsel requested that mother's visits and father's visits be separate in light of the domestic violence concerns, and the Department agreed and requested monitored visits. The parents were granted monitored visitation with the children, but were to visit separately.

Social workers interviewed mother and father on April 13, 2017. Mother acknowledged that when they were younger they "fussed, pushing each other." She also said, "We did fight. Nothing like black and blue (marks and bruises)." Father denied any domestic violence and declined to provide a statement, saying "I'll skip all that (providing statement as to the allegations). I'll get to it with my attorney."

At the May 16, 2017 hearing, the court admitted the Department's reports into evidence. After hearing oral argument from all parties, the court sustained all three counts alleged in the petition. Counts a-1 and b-1 alleged that mother and father have a 10-year history of domestic violence, and that mother's failure to contact law enforcement after father slapped her in January 2017 demonstrates the children are at risk of harm, based on father's abusive conduct and mother's failure to protect. Count b-2 alleged that father is a current abuser of marijuana, mother was aware of father's substance abuse

and still permitted father to have unlimited access to the children, placing them at risk of harm.

The court removed the children from parental custody, finding by clear and convincing evidence that it was reasonable and necessary to remove the children from the parents, and there are no reasonable means by which their physical health could be protected without removing them from the parents. The court ordered reunification services for both mother and father, ordering father to complete weekly random or on demand drug and alcohol testing, a 52-week domestic violence program, an anger management program, and individual counseling to address domestic violence, parenting, and life skills. Father objected to the drug testing order and objected that many of the services ordered were repetitive and duplicative, giving the example of a 52-week batterer's program, anger management, and individual counseling.

Father filed a notice of appeal.

DISCUSSION

Substantial evidence supports the court's jurisdictional finding under section 300, subdivision (b)

Father contends there was insufficient evidence to support the court's findings that domestic violence between mother and father put the children at substantial risk of suffering serious physical harm or illness. We disagree.

“We review the juvenile court’s findings and orders to determine whether they are supported by substantial evidence. [Citations.]” (*In re M.R.* (2017) 8 Cal.App.5th 101, 108.) We look “to see if substantial evidence, whether contradicted or uncontradicted, supports the findings. [Citations.]” (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.) The appealing party “bear[s] the burden to show there was no evidence of a sufficiently substantial nature to support those findings and orders. [Citation.] We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court and review the record in the light most favorable to the court’s determinations; we do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the trial court’s findings. [Citation.] Thus, we do not consider whether there is evidence from which the juvenile court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. [Citation.]” (*In re M.R., supra*, 8 Cal.App.5th at p. 108.)

Under section 300, subdivision (b)(1), a child may be found a dependent when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or

substance abuse.” Section 300, subdivision (b)(1) “authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.” (*In re R.T.* (2017) 3 Cal.5th 622, 624, 627–633, 636–637, fn. 6 [disapproving *In re Precious D.* (2010) 189 Cal.App.4th 1251, and rejecting the reasoning requiring parental neglect for jurisdiction as set forth in *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820].)

“[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ [Citation.] Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1453–1454 [“ongoing domestic violence in the household where children are living, standing alone, ‘is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”]; *In re T.V.* (2013) 217 Cal.App.4th 126, 135 [even though the child was not “physically harmed, the cycle of violence between the parents constituted a failure to protect her ‘from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”].) “A section 300, subdivision (b) jurisdictional finding may not be

based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur. [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.)

Substantial evidence supported the court’s finding that a 10-year history of domestic violence between mother and father created a substantial risk of serious physical harm. During her initial interview with a Department social worker, mother acknowledged a lengthy history of domestic violence, stating that father was abusive with her for 10 years since they were married, and explaining she did not call the police because she did not want anyone in their business. Father admitted to being physically violent with mother over the course of their 10-year relationship. The couple’s nine-year-old daughter told a social worker “I’m glad my daddy left. He not nice to my mommy and hurted us. Him leave us at Palmdale and left.” On appeal, father views the evidence through a selective lens, ignoring the proper standard of review. He points out that concerns about domestic violence were never raised by child welfare agencies in Texas or Humboldt County and argues that mother’s statements about domestic violence made to the woman in Palmdale who assisted the family in February 2017 were fourth-level hearsay. While this evidence arguably contradicts the evidence of longstanding domestic violence, it does not change the fact that the court’s conclusion was based on substantial evidence.

Father also argues that there was no substantial evidence to support the court’s jurisdictional finding under

section 300, subdivision (a), based on domestic violence, or under section 300, subdivision (b), based on his abuse of marijuana. “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Citing to *In re Drake M.* (2012) 211 Cal.App.4th 754, at pages 762–763, father urges us to exercise our discretion to review the validity of the jurisdictional finding based on father’s substance abuse, arguing that allowing the jurisdictional finding to remain in place will lead to adverse consequences for father in this case and in the future. We decline father’s request, noting that he has failed to identify any specific prejudice or adverse consequence that could flow from the jurisdictional findings in this case. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493 [not reaching the merits of an appeal where an alleged father “has not suggested a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings”].)

Substantial evidence supports the court’s removal order

Father appears to argue in his opening brief that even if substantial evidence supported the juvenile court’s

jurisdiction finding, it did not support the removal order under a clear and convincing evidence standard. He misapprehends the standard of review. “The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial.” (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 578; see *In re Alexzander C.*, *supra*, 18 Cal.App.5th at p. 451 [“on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong””].)

“The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child. [Citation.]’ [Citation.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) “The court may consider a parent’s past conduct as well as present circumstances.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 170.) “[C]ourts have recognized that less drastic alternatives to removal may be available in a given case including returning a minor to parental custody under stringent conditions of supervision by the agency such as unannounced visits.” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 148.)

Here, there was substantial evidence to support the decision to remove the children from parental custody.

Father had abandoned the family and made no arrangements for ensuring the children received adequate food, clothing and shelter. Father was not requesting custody, but arguing the children should be released to mother.³ The same evidence supports the court's jurisdictional findings supporting the court's decision to remove the children from parental custody under section 361, subdivision (c)(1).

Reunification programs were not an abuse of discretion

Father contends the dependency court abused its discretion by ordering multiple, duplicative services. We find no abuse of discretion.

“The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of

³ Father's brief makes separate arguments regarding the sufficiency of the evidence to support the court's determination that there was (1) substantial danger to the children if they were returned to father and (2) no reasonable means to protect the children without removal. Because father did not want to take custody of the children and only argued they should be released to mother, we need not examine whether the Department established there were no reasonable means to protect the children without removing them from father's custody.

discretion.’ [Citation.]” (*In re A.E.* (2008) 168 Cal.App.4th 1, 4.) “The program[s] in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the minor is a person described by Section 300.” (§ 362, subd. (d).) But the court “is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the [child]. [Citations.]” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) The court acts within its discretion when its orders are reasonably tailored to advance a child’s best interests. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 187.)

Here, the court’s dispositional orders requiring father to participate in reunification services were aimed at advancing the children’s best interests. The record shows that parents have been offered voluntary services before, and have often shown either an unwillingness or an inability to follow through. In light of evidence that father has attitudes about drug use and parental discipline that are not necessarily in the children’s best interests and his apparent disinterest in ensuring stable housing for his children, we conclude that it was not an abuse of discretion to order father to participate in random drug and alcohol testing, a domestic violence program, an anger management program, and individual counseling to address domestic violence, parenting, and life skills.

DISPOSITION

The court's jurisdictional findings and dispositional orders are affirmed.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIM, J.*

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