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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In Re M.A. et al.,
Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.A.,

Defendant and Appellant.

B277578

(Los Angeles County
Super. Ct. No. CK97115)

APPEAL from an order of the Superior Court of Los
Angeles County, Philip Soto, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

In this dependency action, C.A. (mother) appeals from the order denying her petition to reinstate family reunification services. (Welf. & Inst. Code, § 388.)¹ Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is a former dependent minor who remained in foster care until she reached age 18. At age 17 she developed a habit of wandering the streets. She was diagnosed with major depression with psychosis traits. She has a pattern of complying with mental health services, then becoming resistant to services and unable to function.

Mother has a daughter, M.A., age 11. M.A.'s father, Armando A., is not involved in M.A.'s life and has not appeared in these proceedings.

Mother also has a son, J.A., age 9. J.A.'s father, Jaime L., was living with mother and both children (M.A. and J.A.) when the family came to the attention of the Los Angeles County Department of Children and Family Services (Department) in December of 2012.

On that date, an anonymous passerby reported that mother was pushing a shopping cart with M.A. and J.A. inside the cart. The cart also contained a dead bird, cardboard boxes, twigs from

¹ All further statutory references are to this code.

trees, and a box of Kool-Aid Jammers. The children were hungry and inappropriately dressed for the cold weather. Both had bare feet. J.A. was wearing a tee shirt and shorts, and M.A. was in a thin summer dress. Mother was incoherent and unable to provide a home address or the name of M.A.'s father. She was confused and at one point said they were going camping in the mountains. J.A. had bruises on his arms and chest. When the children were examined at the hospital emergency room, M.A. told the physician that Jaime L. had struck J.A.'s face with a belt on Saturday, causing J.A.'s nose to bleed.

The Department filed a section 300 petition and detention report, and requested a mental health evaluation for mother. At the December 27, 2012 detention hearing, the court found a prima facie case for detaining the children had been made.

The children told a dependency investigator that Jaime L. had committed acts of domestic violence against mother and J.A. At the February 13, 2013 jurisdictional hearing, mother and Jaime L. denied the domestic violence allegation (count b-1), which was stricken, and pleaded no contest to two amended allegations: (1) Jaime L.'s inappropriate discipline of J.A. with a belt, and mother's failure to protect the child, which places both siblings at risk of harm (count a-1); and (2) mother's mental and emotional difficulties which periodically render her unable to care for the children, thus placing them at risk of harm (count b-2).

The juvenile court sustained amended counts a-1 and b-2, and ordered the children removed from their parents. It granted mother reunification services that included a parenting program; mental health counseling; a psychiatric evaluation; family preservation services; and individual counseling to address mental health issues, anger management, and domestic violence.

The court ordered Jaime L. to participate in parenting classes and individual counseling to address case issues including domestic violence, anger management, and mother's mental health problems. Both parents were granted monitored visitation.

After the detention hearing, mother and Jaime L. moved to a home in Palmdale. At the six-month review hearing, they both were in compliance with the case plan, and the Department was allowed to provide unmonitored and overnight visits if appropriate. At the 12-month review hearing, the court granted family maintenance services and placed the children in the home of mother and Jaime L.

In October 2014, shortly before the 18-month review hearing, the parents had a violent argument in which Jaime L. placed mother in a choke hold. Mother took the children and went to stay with her mother (the children's maternal grandmother).

Based on the October 2014 domestic violence incident, the juvenile court issued a temporary restraining order precluding contact between Jaime L. and mother or the children. The court also directed the Department to file a new petition.

In the section 342 petition, the Department alleged that Jaime L. had a history of committing domestic violence against mother—which included choking her with a belt and his hands, throwing a chair at her, and pinning her against a refrigerator—and that the children, who had been present during these incidents, were at risk of harm.

On October 14, 2014, the court found a *prima facie* case had been made to detain the children from Jaime L., and granted him

monitored visits. Mother and the children moved into a domestic violence shelter.

In November 2014, M.A. disclosed to a social worker that Jaime L. had kissed her on the mouth, made her drink urine from his penis, and choked and hit her. M.A. told a sheriff's deputy that Jaime L. had "kissed and touched her mouth, buttocks, and vagina, placing his penis in her buttocks."

The juvenile court sustained the section 342 petition at the November 21, 2014 hearing, and found the children were dependent minors under section 300, subdivision (b). The court issued a no contact order for Jaime L. and M.A, and ordered that Jaime L.'s visits with J.A. be conducted at the Department's office.

During this period, mother's mental health deteriorated. In January 2015, the children's social worker (CSW) reported that mother was not taking her psychotropic medication and was resistant to receiving continuous care for her major depression. Mother was yelling and hitting the children, roaming the streets looking for objects, and failing to provide proper care for the children.

In early 2015, mother lost her housing at the domestic violence shelter. After moving several times, mother rented a bedroom in a private residence for herself and the children. The children's lives were unstable, and both children told the CSW they did not want to live with mother.

During this period, M.A. was pressured by mother and Jaime L. to retract her allegations of sexual abuse. Despite the no contact order, mother allowed M.A. to remain in contact with Jaime L. Mother directed M.A. to send Jaime L. "I love you" text messages on her phone. He replied that he loved her too.

In January 2015, M.A. told the CSW that she had lied about the sexual molestation because she was angry at Jaime L. for hurting her mother. Later, M.A. admitted to the CSW that she had been told to say she had lied about the sexual abuse. M.A. had been told by her mother and Jaime L. that unless she recanted the allegation, Jaime L. would be physically harmed by unnamed persons.

The Department believed the children were at risk of harm because mother was in denial about the sexual molestation committed by Jaime L. The Department filed a subsequent petition under section 342, alleging that Jaime L. had sexually abused M.A. on numerous occasions during the previous year (count d-1), and that by failing to protect M.A., mother had placed M.A. and J.A. at risk of harm (count j-1).

In the February 2015 detention report, the CSW summarized the family members' interview statements. M.A. reported she had been sexually abused by Jaime L. on five occasions, including once when he put his penis in her buttocks, which hurt. He also made her "drink his pee" and kissed her on the mouth.

Mother denied being in communication with Jaime L. However, mother also said she thought Jaime L. was allowed to see the children.

According to the maternal grandmother, mother wanted her to give Jaime L. money and had asked her to give him an ATM card. The maternal grandmother stated that mother still referred to Jaime L. as her boyfriend and said she intended to be with him.

J.A. disclosed that he had not been eating regularly when he was with mother, and that mother had made him walk the

streets. J.A. appeared pleased when he learned that he would be going with the CSW.

On March 25, 2015, the juvenile court sustained counts d-1 and j-1 of the subsequent petition. It ordered the children removed from the parents, and issued a no-contact order as to Jaime L. and mother or the children. Jaime L. was granted monitored visits with J.A.

The following month, in April 2015, the court returned the children to mother's care. But in May 2015, the Department learned the children were regularly arriving at school late, wearing dirty clothing, and without having bathed.

It also learned that Jaime L. was seeing both children at the park, and, according to the maternal grandmother, was in daily contact with mother. When she was asked about this, mother told the CSW she was not in contact with Jaime L.

In light of the information that mother was allowing Jaime L. to have contact with M.A., the Department filed a section 387 petition seeking a removal order. In her supporting declaration, CSW Anderson stated in relevant part that the "Department has been providing . . . Family Maintenance services to . . . mother and children. During this supervising period mother left the Domestic Violence shelter as it was reported to this CSW that mother had to be verbally redirected and instructed to provide . . . basic needs for the children. Mother appeared to have great difficulty with parenting her children, therefore considering the fact that she was to be monitored closely she was not eligible to be accepted by a transition housing program in Los Angeles County. Mother appeared to minimize the fact that she does not provide [for] the children's basic needs by stating that she takes [care] of her children. Mother asked to be allowed to live alone

but due to not being able to provide financially she agreed with MGM [maternal grandmother] and this CSW to share housing with MGM.” Later, however, mother rented a bedroom for herself and the children. When mother attempted to work full time, the situation became too stressful and the maternal grandmother intervened to help care for the children. Both the CSW and the maternal grandmother asked mother to stop working so she could care for the children full time, but mother disagreed. The Department’s assessment was that mother lacked the capacity to care for her children while maintaining her own mental health services.

The court issued the removal order in June 2015, and detained the children in foster care. In its June 19, 2015 detention report, the Department advised the court of the children’s statements that they had been meeting with Jaime L. on a daily basis, and had gone to the movies with mother and Jaime L. on June 16, 2015. The children also said they had spent all day at the restaurant where Jaime L. worked. M.A. stated that when they did not see Jaime L., they talked to him on the phone.

At the July 30, 2015 hearing on the section 387 petition, the court made several findings: (1) mother had not completed the court-ordered sex abuse awareness class; (2) mother had violated the no-contact order by allowing Jaime L. to see M.A.; and (3) mother refused to accept the fact that Jaime L. had sexually molested M.A., and in doing so created a high risk of harm to both children. The court terminated services for the parents. Mother’s services were terminated under section 361.5, subdivision (b)(10) (failure to reunify with child who was removed under section 361 and failure to make reasonable effort to treat

problems that led to removal), and Jaime L.'s services were terminated under section 361.5, subdivision (b)(6) (severe sexual abuse inflicted on child). The court granted supervised visits for the parents, but ordered that Jaime L. was to have no contact with M.A. Finally, the court scheduled a selection and implementation hearing to develop a permanent plan for the children under section 366.26.

In November 2015, the Department sought a 120-day continuance of the section 366.26 hearing in order to complete its assessment of a permanent plan. The court continued the hearing to March 21, 2016.

The Department requested an additional continuance in March 2016, citing the paternal grandmother's inability to provide a permanent home for the children. The Department also requested a psychological evaluation of the children, who were exhibiting severe emotional, behavioral, and learning problems due to the abuse they had suffered. The children's foster mother, Ms. C., was interested in adopting M.A., but not J.A. due to his "uncontrollable explosive anger [and] sudden outbursts." The court continued the section 366.26 hearing to June 20, 2016.

On April 14, 2016, Mother filed a section 388 petition seeking reinstatement of reunification services. The petition alleged that mother had been addressing her mental health issues while under the care of a psychiatrist, and had completed an intensive parenting program. Mother believed she was ready to provide the children with a stable and loving home.

Mother submitted two letters from the Southern California Health & Rehabilitation Program (SCHARP). One confirmed that she had been receiving mental health treatment since

January 6, 2015, and was receiving individual psychotherapy twice a month. The other stated she had completed a 12-week parenting program with weekly group sessions. Without identifying any specific issues, the letter stated in general terms that mother had made great strides in overcoming the obstacles that prevented her from reunifying with the children.

The court scheduled a June 2016 evidentiary hearing on mother's petition.

In its response to the section 388 petition, the Department argued that mother had failed to show that she had received any training or counseling on child sexual abuse awareness. In addition, mother was continuing to violate the no contact order. The Department cited three separate incidents based on information obtained from the foster mother: (1) in March 2016, mother came to a meeting in a car driven by Jaime L.; (2) Jaime L. asked the foster mother if M.A. could have an "electronic tablet"; shortly thereafter, mother delivered a tablet to M.A.; and when M.A. showed the tablet to the CSW, M.A. said it was a gift from Jaime L.; and (3) mother used Jaime L.'s cell phone to call the foster mother. In light of these violations, the Department believed mother remained in a relationship with Jaime L., and lacked understanding of the risk of harm he posed to the children.

In supplemental reports for the continued section 366.26 hearing, the Department stated that M.A. had expressed a desire to be adopted by Ms. C. M.A. was exhibiting promiscuous behavior as a result of the sexual abuse committed by Jaime L., and the Department believed she was in need of greater supervision than mother would be able to provide.

At the June 20, 2016 evidentiary hearing on mother's petition, the court received mother's stipulated testimony that she was participating in a mental health treatment program and was receiving individual therapy twice a week. Mother testified that she had stopped taking all medications while in counseling. She was working five days a week, and renting a room in a private home. She testified that she no longer was in contact with Jaime L.

The Department argued that mother was still involved with Jaime L. When an investigator had tried to inspect mother's room, the investigator was denied access. Mother's counsel argued that mother was working for her uncle's house cleaning business five days a week. Mother's counsel argued the children were not adoptable, and it would be in their best interest to reunify with mother.

The court noted that the caregiver, Ms. C., was a stabilizing influence on the children and was meeting their special needs (the court described M.A. as "overly sexualized," and noted that J.A. wets his bed, needs special education, and talks back). The court indicated that because Ms. C. was handling the children's special needs, keeping them in the current placement was in their best interest.

Mother's counsel disagreed, and pointed out that Ms. C. was not interested in a permanent plan with J.A. Mother was visiting every week, and mother believed reunification would be in the children's best interest. Minors' counsel stated that M.A. did not wish to return to mother at this time, and that Ms. C. was meeting M.A.'s needs.

After considering the parties' arguments, the court stated that although mother was doing her best—she had housing, a job,

and was in a mental health treatment program—her situation remained shaky. The children have serious behavioral issues, and the evidence did not show that mother could address their issues. Many of the children’s issues had been caused by mother’s neglect, and it would not be in the children’s best interests to live with mother only to be removed yet again. M.A. did not want to live with mother, and the children’s needs would be better met in a permanent adoptive home.

The court granted mother monitored visits, and granted the Department discretion to liberalize her visits. The court continued the section 366.26 hearing in order to find an adoptive home for the children.

In its June 23, 2016 written order of denial, the court concluded that “[t]he best interest of the minor(s) would not be promoted by the proposed change of order.” Mother filed a timely notice of appeal.

DISCUSSION

At a hearing on a section 388 petition, the moving party bears the burden of proof to show by a preponderance of the evidence that there is new evidence or changed circumstances such that the requested change in the court’s order would be in the best interests of the children. (§ 388; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

In evaluating the section 388 petition, factors relevant to a trial court’s consideration may include: “(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been. While

this list is not meant to be exhaustive, it does provide a reasoned and principled basis on which to evaluate a section 388 motion.” (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

In reviewing the denial of a section 388 petition, “we are limited to whether the order is supported by substantial evidence. We view the record in the light most favorable to the order and decide if the evidence is reasonable, credible and of solid value. [Citation.]” (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.) We do not reweigh the evidence or assess the credibility of the witnesses. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.) “Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

A longstanding concern in this case is mother’s capacity to maintain her own mental health while caring for her children’s basic needs. As a result of the sexual abuse inflicted on M.A. and the physical abuse inflicted on J.A., the children’s needs have increased. The letters from SCHARP do not address the concern that mother is incapable of caring for herself while also caring for the children. Neither letter indicates that mother’s mental health providers were aware of the serious factors in this case, including the sexual and physical abuse committed by Jaime L.; the pressure mother imposed on M.A. to retract her sexual abuse allegation; M.A.’s desire to be adopted by Ms. C.; J.A.’s serious behavioral issues; and mother’s repeated violations of the no-contact order.

Mother argues that no specific finding was made as to whether she was in a continuing relationship with Jaime L. But

the absence of an explicit finding does not aid mother. Under the substantial evidence rule, we accept the evidence in support of the trial court's ruling, and reject the unfavorable evidence. We therefore may disregard her testimony that she had ended her relationship with Jaime L. In any event, regardless of the status of her relationship, the more pressing issue is whether the recent progress she made—addressing her mental health needs and obtaining housing and employment—can be maintained if she were granted another opportunity at reunification. During previous episodes of mental illness, mother did not consistently meet her children's needs. Unfortunately, these needs have become more complicated because of the abuse and multiple changes in placement that were precipitated by the harmful actions of both parents.

It is the trial court's responsibility to weigh the evidence and determine issues of credibility. Because there is substantial evidence to support the finding that reinstating mother's reunification services would not serve the best interests of the children at this time, we find no basis for reversal.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.