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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re VICTOR I., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSICA C.,

Defendant and Appellant.

B242564

(Los Angeles County
Super. Ct. No. CK91496)

APPEAL from orders of the Superior Court of Los Angeles County,
Sherri S. Sobel, Juvenile Court Referee. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant
and Appellant.

Office of the County Counsel, John F. Krattli, County Counsel,
James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Deputy County
Counsel, for Plaintiff and Respondent.

Jessica C. (mother) appeals jurisdictional findings under Welfare and Institutions Code, section 300, subdivisions (b) and (j) and dispositional orders made by the juvenile court with respect to mother's four children.¹

Mother claims substantial evidence does not support the jurisdictional findings or the order removing the children from her care. We reject mother's contentions. The record indicates mother had been the subject of voluntary family maintenance programs in 2001 and 2010. Nonetheless, on January 13, 2012, mother was arrested for shoplifting while her eight year old daughter and a newborn were with her. When mother was apprehended, she said her daughter was stealing, not mother. The evidence also indicated mother regularly engaged in such behavior. Based thereon, the juvenile court reasonably could conclude the two children with mother during the shoplifting incident, and the 12-year-old twins who were at home alone during the incident, were at substantial risk of harm in mother's care and could be protected only by removal from her custody. We therefore affirm the orders under review.

FACTS AND PROCEDURAL BACKGROUND

1. Detention

Mother's family came to the attention of the Department of Children's and Family Services (the Department) with respect to the instant dependency matter when mother was arrested for shoplifting and burglary in the early morning hours of January 14, 2012, by Temple City Sheriff's Deputies. Social worker Robles went to the

¹ Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

Sheriff's Station, arriving at 2:50 a.m. Sheriff's Deputy Wilson advised Robles that Macy's Loss Prevention officers caught mother and her friend, Violeta, shoplifting on the evening of January 13, 2012, and mother's two children, eight year old Elizabeth and three month old Leonel, were present during the crime. Deputy Wilson indicated mother and Elizabeth were videotaped removing clothing from hangers, folding the clothing and placing the clothing and other articles in the bottom of the stroller. Violeta exited the store with the children and the stroller containing \$425 worth of merchandise while mother waited inside the store. One loss prevention officer approached Violeta and the children outside the store. Another officer approached mother "who was waiting in the store." When mother was questioned by Macy's personnel, mother stated, "I didn't steal. My daughter did."

Robles interviewed mother at the Sheriff's station. Mother indicated she came to this country from Mexico 14 years ago and was unemployed. Mother had two other children, 12 year old twins Victor and Larri, who remained at home when mother went to Macy's. After mother's arrest, she called her friend, E.S., to care for the twins. Mother indicated her four children had three different fathers, she did not know their whereabouts and the children had no contact with them. Mother denied stealing and claimed she was unaware Violeta had concealed merchandise in the stroller or that Violeta was stealing.

The social worker awoke Elizabeth and interviewed her. Elizabeth was clean, appropriately dressed, friendly and polite. Elizabeth indicated her family recently moved to a two-bedroom apartment they shared with another family. Elizabeth denied

abuse or neglect and stated mother loved her and her brothers and cared for them appropriately. Regarding the incident at Macy's, Elizabeth indicated mother intended to pay for the shirts and pants Elizabeth put on the stroller. When mother was somewhere else in the store, Violeta placed merchandise on the stroller and then left the store with Elizabeth and the baby. Elizabeth denied she knew mother and Violeta were going to steal and denied that mother told her to steal.

The next day, the social worker went to mother's apartment to interview mother's friend E.S. and the twins. Mother's family occupied one bedroom of a two-bedroom apartment which the social worker found to be "relatively clean and in order." The twins denied abuse or neglect and reported mother took "good care" of them. The twins appeared clean, they were appropriately dressed and they appeared healthy. The twins were taken into protective custody and detained in foster care.

On January 15, 2012, E.S. informed the social worker that mother could not post bail because an immigration hold had been placed on her.

2. Mother's Prior Dependency History

The detention report set forth mother's dependency history which commenced with a referral dated March 16, 2001, alleging general neglect of the twins by mother after mother left the twins, then two and a half years of age, at home without supervision while mother ran errands. This allegation was substantiated and mother received voluntary family maintenance services for a year.

On October 24, 2002, an allegation of substantial risk of sexual abuse of the twins by mother's then male companion, Rafael, was found to be inconclusive. The

caller indicated Rafael had been arrested for lewd conduct after he touched the breasts of a 13-year-old neighbor.

A referral dated January 21, 2005, alleged emotional abuse of the twins and Elizabeth by Rafael and general neglect by mother. The referral, which indicated Rafael pointed a gun at mother and threatened to kill her, was closed as inconclusive.

Referrals dated May 13 and 18, 2010, alleging general neglect of the twins and Elizabeth by mother were determined to be inconclusive. However, allegations of physical abuse of Larri by Rafael were substantiated. The Department reported Rafael had been arrested for selling drugs from the home. Also, Rafael punched Larri in the stomach and pulled his ear for receiving bad grades. As a result of this referral, mother received voluntary family maintenance services through June of 2011.

3. *Detention Hearing*

On January 19, 2012, the juvenile court ordered the children to remain in foster care, granted mother monitored visitation and ordered mother to attend parenting class. Mother's counsel indicated there were no criminal charges pending following what appears to have been a civil compromise. (See Pen. Code, §§ 1377 et seq.) Counsel indicated mother was not prosecuted after she paid "a sum of money that sounded like whatever it was that Macy's felt the items were valued at"

4. *Jurisdiction/Disposition Report*

A Macy's External Apprehension Report dated January 13, 2012, was attached to the jurisdiction report. The Macy's report indicated that, on January 13, 2012, at 7:48 p.m., Loss Prevention Detective Nawal observed a "suspicious" female, later

determined to be Violeta, during routine floor surveillance. Violeta had a stroller and multiple shopping bags and she was quickly looking through merchandise. Nawal notified Loss Prevention Detective Vargas of his observations. Nawal saw Violeta meet mother and Elizabeth. Vargas and Nawal saw Violeta select a pair of jeans and a top which she placed on top of the stroller. Violeta then proceeded to a mirrored pillar where she covered the jeans with a baby blanket. Nawal saw Elizabeth select a pink hat which she concealed in the stroller. In the Levi's department, Violeta selected three pair of jeans and placed them on top of the stroller. Mother selected two pairs of Levis and placed them on top of stroller. Moments later, Nawal observed mother holding a top and a pair of Levis. Mother selected another top and removed it from the hangar, folded a pair of jeans and a gray top and gave the items to Elizabeth. Vargas advised Nawal that Elizabeth hid the items in the bottom of the stroller. Violeta, mother, and Elizabeth then went to the Juniors department where Violeta and mother each selected a vest. Mother removed the vest she selected from the hanger and placed it in the stroller on top of the baby. They then proceeded to the Ready to Wear department where Nawal saw Violeta and Elizabeth "go thr[ough] all the selected items" During this time, mother became very aware of customers in the area as she continued to look at merchandise. Nawal saw Elizabeth remove the pink hat from the bottom of the stroller and conceal it behind the baby. Violeta concealed the remaining items under the baby and a blanket, then left the store with Elizabeth without paying for the merchandise in the stroller. Nawal confronted Violeta outside the exit and escorted Violeta and Elizabeth back into the store. When mother saw Violeta and Elizabeth being

apprehended, she “immediately proceed[ed] further into the store” and was hesitant to accompany the loss prevention officers to the security office but informed the officers Elizabeth was her daughter.

Violeta admitted a vest, three pairs of jeans, and a top Nawal removed from the stroller were hers. Mother admitted a beanie, a vest, a top and two pairs of Levi’s were for her. When Vargas asked mother and Violeta why they decided to steal from Macy’s, Violeta said it was “pure stupidity” and mother, after first refusing to respond, said her daughter was stealing, not mother.

With respect to the allegations of the petition, Larri told a dependency investigator he did not believe mother would shoplift and indicated mother worked as a cleaner. Victor and Elizabeth stated they did not believe mother shoplifted and blamed mother’s friend, Violeta. Elizabeth had no explanation as to why mother would say Elizabeth was the one who stole. Elizabeth indicated mother told her to put merchandise under the stroller so the baby would not “get squished” and to allow mother to have her hands free while she shopped.

In an interview conducted at maternal aunt’s home on February 1, 2012, mother denied shoplifting, asserting she had “never done anything like that.” Mother indicated she received \$480 a month in welfare and \$500 in food stamps. Mother also cleans a restaurant three or four times a week and pays rent of \$500 per month. Mother stated she worked hard and tried to be a good example for her children. Mother claimed she was unaware that Violeta stole merchandise and exited the store with her children.

Mother asserted she had \$30 in cash and a bank card and she intended to pay for the merchandise she put on the stroller.

Mother identified maternal aunt for possible placement of the children.

However, maternal aunt's apartment was observed to be dirty, cluttered and rodent infested.

On February 9, 2012, mother requested a contested adjudication and the juvenile court continued the matter to April 4, 2012.

An Interim Review Report filed April 4, 2012, indicated mother's immigration case had been continued to April 23, 2012, pending the result of the dependency case. Elizabeth and Leonel had been placed in the same foster home with Victor and Larri. Mother reported she was participating in parenting education classes. Mother wanted to reunify with the children and was willing to comply with all court orders.

On March 13, 2012, a dependency investigator interviewed Violeta at her home. Violeta stated she has known mother for a few years and they recently renewed their friendship. On the day of the Macy's incident, mother called Violeta to shop and they went to Macy's where mother "started picking out pants I told her it was getting late and I had to go home to my family. She said she just needed to find a black shirt I noticed that [Elizabeth] had grabbed a hat and she put it under the baby's blanket. I told her she shouldn't do that and she just ignored me." When Violeta told mother she was going to pay for her items while mother continued to shop, mother asked why Violeta was going to pay and said, "Just put it there with the rest of my stuff." Violeta was concerned because "it wasn't right [but mother] kept saying don't

worry nothing is going to happen.” Mother told Elizabeth to leave the store with the stroller. Violeta grabbed the stroller and exited the store with Elizabeth. As they did, a detective approached them. Violeta saw another detective approach mother.

Violeta told the Macy’s detectives which items were hers and, as they searched the stroller, they found women’s undergarments Violeta believed mother had taken from a store they had been in before they entered Macy’s. In retrospect, Violeta realized mother always had Elizabeth push the stroller when they shopped. When they went Christmas shopping, mother said she had \$40 but came home with many items. Violeta believed what mother was doing was wrong, especially “the way she has [Elizabeth] trained.” Violeta also stated Elizabeth is afraid of mother and mother uses foul language to address her children.

The Department reported due diligence searches had failed to reveal the whereabouts of any of the fathers involved in this case.

On April 4, 2012, the juvenile court noted it anticipated a lengthy adjudication and continued the matter. The parties discussed discovery of the Macy’s surveillance video and the juvenile court ordered Violeta, who was present in the courtroom, to return for the adjudication.

In a letter dated May 23, 2012, the director of Family Counseling Programs indicated mother enrolled in weekly individual therapy on May 2, 2012, and had attended four sessions.

5. *Contested Adjudication and Disposition*

On May 24, 2012, mother completed a Waiver of Rights – Juvenile Dependency (form JV-190) and submitted the allegations of the petition on the social reports in evidence. The juvenile court sustained the petition, which alleged mother placed Elizabeth and Leonel in a detrimental and endangering situation on January 13, 2012, when she was apprehended for shoplifting in their presence, thereby placing the children and their siblings, Victor and Larri, at risk of harm. The juvenile court found the children dependents within the meaning of section 300, subdivision (b) and (j), removed the children from mother's custody, directed the Department to provide family reunification services, ordered mother to attend individual counseling and parenting classes and granted mother monitored visits at least three times per week.

In response to mother's request for return of the children, the juvenile court indicated the evidence suggested mother shoplifted with her children "regularly and consistently, cannot figure out why people pay for anything, and uses her . . . child's stroller as a place to secure goods that she steals. . . . How can [the children] not be at risk?" Although mother did not physically abuse the children, the juvenile court asked: "How about the morality, the ethics, and everything else that comes along with being a parent?" The juvenile court indicated it needed mother's therapist and the director of her parenting class to be aware of the reason for mother's referral to ensure the problem was addressed.

When mother's counsel requested unmonitored visitation, the Department's counsel noted mother had two previous voluntary family maintenance cases but her poor judgment

remained an issue. The juvenile court agreed and ordered mother's visitation to remain monitored.

DISCUSSION

1. The Juvenile Court Properly Exercised Dependency Jurisdiction

At a jurisdictional hearing, the juvenile court determines whether the child named in the petition falls within any of the categories specified in section 300. (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1082.) To find jurisdiction under section 300, the juvenile court must determine whether circumstances at the time of the hearing subject the child to the defined risk of harm. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Evidence of past events may have a probative value in finding jurisdiction, but only if circumstances existing at the time of the hearing make it likely the child in the future will suffer the same type of serious physical harm or illness as alleged in the petition. (*In re Janet T.*, *supra*, at p. 388; *In re Rocco M.*, *supra*, at p. 824.) The jurisdictional finding must be supported by a preponderance of the evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; § 355, subd. (a).) In reviewing a juvenile court's jurisdictional finding, we apply the substantial evidence test. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Mother contends her children were well cared for and there was no evidence the children were at risk of harm at the time of the adjudication. Mother notes she was not charged with a crime related to the incident of January 13, 2012, and she had no prior arrests for shoplifting or any other offense. Mother argues it was Violeta who exited Macy's pushing the stroller filled with stolen clothing, there is no evidence mother

attempted to hide items in the stroller or that mother told Elizabeth to conceal property in the stroller, and Elizabeth said mother intended to pay for her items. Mother claims the more reasonable explanation of the evidence is that Violeta involved Elizabeth in her criminal behavior.

Contrary to mother's argument, the evidence overwhelmingly supported the conclusion mother was shoplifting on January 13, 2012, in concert with Violeta and eight year old Elizabeth. Macy's loss prevention detective Nawal observed mother give Elizabeth tops that had been removed from their hangers and folded pairs of jeans which Elizabeth hid in the stroller, along with a pink hat, before exiting the store with Violeta. Thus, the juvenile court's finding mother involved Elizabeth and Leonel in her criminal activities is supported by the record.

Mother also contends there was no evidence to support the juvenile court's finding mother shoplifted on a regular basis except the uncorroborated, hearsay statement of mother's companion, Violeta, who mother asserts is an admitted thief. Mother concludes a single arrest for shoplifting is insufficient to warrant the assumption of jurisdiction. (See *In re J.N.* (2010) 181 Cal.App.4th 1010, 1026-1027 [single episode of driving under the influence with children in car insufficient to warrant dependency jurisdiction].)

In support of mother's argument the juvenile court should not have considered Violeta's statement, mother cites *In re Sergio C.* (1999) 70 Cal.App.4th 957, a case in which a father was ordered to drug test based on the mother's unsworn allegation he used drugs. *Sergio C.* found a drug testing order could not "be imposed based solely on

the unsworn and uncorroborated allegation of an admitted drug addict who has abandoned her children.” (*Id.* at p. 960.)

Unlike the situation in *Sergio C.*, mother had an opportunity to cross-examine Violeta at the contested adjudication but declined to do so and submitted on the social reports in evidence. By submitting on the reports, mother consented to the juvenile court’s consideration of the social reports in determining whether the allegations of the petition were true. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 588-589.) Although submission on the reports does not prevent mother from arguing the evidence was insufficient to support the juvenile court’s findings, she cannot now complain the evidence in the reports, including Violeta’s statement to the dependency investigator, should not have been considered. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565-566.)

Mother next argues that, even if mother shoplifted in the past, the juvenile court’s finding mother was likely to shoplift in the future was based on speculation. However, the juvenile court reasonably could conclude, based on Violeta’s statement indicating mother regularly shoplifted with her children, that mother’s conduct would continue and mother might engage in similar conduct with the twins, thereby placing them at risk of similar harm and danger. Consequently, the juvenile court properly exercised jurisdiction with respect to the twins under section 300, subdivision (j), which applies where abuse of a child shows there is a substantial risk the child’s sibling will be abused or neglected.

Here, even after mother completed year long family maintenance programs in 2002 and 2011, and despite the fact mother's first family maintenance program was initiated because mother left the then two and a half-year-old twins home alone while mother ran errands, mother left the twins home alone while she used Elizabeth and Leonel to shoplift and then blamed Elizabeth for committing the crime. Mother's failure to acknowledge guilt, show remorse or take personal responsibility for her criminal behavior or involving Elizabeth and Leonel in it, warranted the conclusion the conduct would continue and the twins also were at substantial risk of harm of exposure to similar criminal activity. Consequently, the juvenile court properly concluded children were described by section 300, subdivisions (b) and (j).

2. *The Order Removing the Children from Mother's Care is Supported by Substantial Evidence*

Mother contends the evidence showed the children were well cared for and mother cooperated with the juvenile court by completing parenting class and enrolling in individual counseling before the disposition hearing. Mother again notes Violeta's statement was unsworn and corroborated, mother had no prior criminal history and, after her arrest, she made appropriate arrangements for Larri and Victor's care with her friend, E.S. (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077-1078.). Further, mother denied shoplifting and Elizabeth denied that mother encouraged her to shoplift. Thus, the juvenile court removed the children from mother's care based on one arrest for shoplifting and Violeta's uncorroborated statement mother routinely shoplifted. Mother

asserts this evidence is not substantial and the order removing the children from her care must be reversed.

The standard for removal of a child from parental custody is found in section 361, subdivision (c) which provides, in relevant part, “A dependent child may 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 . . . [t]here 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.” (§ 361.5, subd. (c).)

“The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances. [Citation.]” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) Although the juvenile court’s findings must be based on clear and convincing evidence, we review an order removing a child from parental custody for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529.)

Mother argues there was insufficient evidence the children would be in danger if returned to her. However, as previously noted, mother left the twins at home unsupervised on January 13, 2012, while she went to Macy’s with Elizabeth and Leonel

to shoplift. Although mother previously participated in two voluntary family maintenance cases, she continued to exercise poor judgment and her criminal behavior directly endangered Elizabeth and Leonel. Further, based on Violeta's statement that mother regularly engaged in theft with her children, the juvenile court reasonably could find Victor and Larri were at risk of being subjected to similar harm.

In sum, based on mother's criminal activity, her history of poor judgment and her inability to identify any appropriate relatives to care for the children upon their detention, the juvenile court reasonably concluded removal was necessary to protect the children.

DISPOSITION

The orders under review are affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.