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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re KARTER W., a Person
Coming Under Juvenile Court
Law.

B341491

(Los Angeles County
Super. Ct. No. 24CCJP02591)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff,

v.

D.W.,

Defendant and
Appellant;

KARTER W.,

Respondent.

APPEAL from orders of the Superior Court of Los Angeles County, Pete Navarro, Judge Pro Tempore. Reversed and remanded.

Monique Hemli-Munoz, under appointment by the Court of Appeal, for Defendant and Appellant.

Marissa Coffey, under appointment by the Court of Appeal, for Respondent.

At an October 2024 adjudication and disposition hearing, after the juvenile court sustained a petition filed by the Los Angeles County Department of Children and Family Services (DCFS) against appellant father D.W. on behalf of respondent Karter W. under Welfare and Institutions Code section 300, subdivision (b)(1), the court found that releasing Karter to Father would place Karter's physical well-being in substantial danger, and there were no reasonable means short of removal to protect Karter.¹ The court ordered Karter to be placed with his maternal grandmother (MGM) and granted Father unmonitored weekend visits with Karter.

On appeal, Father contends no substantial evidence supports either the finding that releasing Karter to him would place Karter's physical well-being in substantial danger or that there were no reasonable means short of removal to protect Karter. Specifically, Father argues the court could have ordered Karter released to him on the condition that Karter reside with MGM during the week, which would result in, for all practical

¹ Undesignated statutory references are to the Welfare and Institutions Code.

purposes—at least in terms of Karter’s safety—the same arrangement ordered by the court, but without removing Karter from Father. While we find substantial evidence supports the court’s finding that Karter’s physical well-being would be in substantial danger if released to Father, substantial evidence does not support the court’s finding that there were no reasonable means to prevent removal. We therefore reverse the court’s finding to the contrary and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

A. *DCFS Provides Family Maintenance Services*

In March 2024, a children’s social worker (CSW) “received a Voluntary Family Maintenance case for allegations of General Neglect . . . due to the concerns related to Father’s ability to parent and care for Karter.” On January 30, 2024, Father tested positive for amphetamine, methamphetamine, marijuana, and alcohol.² On February 14, 2024, he tested positive for methamphetamine and marijuana. Father stated he did not know why he tested positive for methamphetamine or amphetamine, claiming he had used these drugs in the past but not recently. He also admitted past use of ecstasy, marijuana, and crystal methamphetamine, as well as occasional alcohol use. In March 2024, Father agreed to enroll in a substance abuse program.

² The record does not explain why Father was drug-testing.

On March 29, 2024, Father tested positive for marijuana and alcohol. On April 18, 2024, he tested positive for marijuana. On April 29, 2024, Father missed his drug test.

On April 30, the CSW spoke with MGM, who expressed concerns that Father was “not providing financially for the child” and that he “drugs that money up [sic]. MGM said she has to provide the child’s basic needs like clothes, shoes, and provides money so that the child can buy food/snacks at school.” MGM also claimed Father constantly drank and smoked outside the apartment. MGM asserted Father would “talk[] down on” and insult Karter.

During a visit with the family on May 7, 2024, Father told the CSW the last time he used any substances had been a month ago at a family gathering. However, Karter told the CSW he had seen Father drunk “the day before (5/6/24) and he had fallen on the living room floor,” requiring Karter and the paternal grandmother (PGM) to pick him up. Karter classified this incident as “a ‘medium’ in relation to past experiences he had with father under the influence.” When asked to describe a “high” incident, Karter “said the situation involved father attempting to exit the home while intoxicated.” Karter claimed Father “typically waits for this CSW to leave visits before exiting the residence to drink with his ‘friends’ who reside across or near the premises.”

On May 17, 2024, Father tested negative for all substances. On May 29, 2024, he tested positive for marijuana.

On June 5, 2024, MGM reported to the CSW that she received a message from Karter stating, “I’m hungry Nana, there’s no food.” “MGM said she saw the screenshots between the child and Father where child asked for food and father said he

had been hungry his whole life.”³ MGM claimed Karter was only in Father’s custody so Father could receive survivor’s benefits.⁴ In December 2023, MGM filed for legal guardianship of Karter, causing Father to tell her, “You could have waited [un]til he’s 18 because I won’t get no more money.”

When the CSW spoke with Karter about Father denying him food, Karter stated it had happened twice, once on May 24, 2024, and once over a month ago. For the incident that happened a month ago, Father claimed he lacked money, but Karter saw him buy “weed and liquor or food.” Karter clarified the food Father bought was usually for Father, and Father would tell Karter he did not think Karter would want any. Karter said he wanted to live with MGM.

On June 11, 2024, Father tested positive for alcohol and marijuana. However, the court denied DCFS’s request for a removal order the next day. On July 11, 2024, and again on July 26, 2024, Father tested positive for marijuana. In August 2024, the CSW discovered Father had been untruthful to the CSW about how frequently he attended therapy as well as the topics covered therein.

³ The next day, Karter showed the CSW a text message exchange with Father on May 24, 2024, in which Father responded to Karter’s request that Father buy him a pizza by saying “I’m broke son.” When Karter responded, “You always say that,” Father said, “I kno[w].” After Karter texted, “DAD I[] AM HUNGRY WHAT AM POST TO EAR [sic],” “T,” Father responded “Idk,” “I’m hungry to[o].” Father added, “I[’ve] been hungry my holdz [sic] life” followed by “Bye.” When the CSW asked Karter if he was able to get something to eat, Karter said, “My granny got something for me.”

⁴ Karter’s mother is deceased.

B. *DCFS Files a Petition*

The next day, DCFS filed a petition on Karter's behalf under section 300, subdivision (b)(1), alleging Father was a past and present abuser of methamphetamine, amphetamine, marijuana, and alcohol, rendering him incapable of caring for Karter. The petition also recounted Father's positive drug tests and the times when Father was under the influence while caring for Karter, including that "[o]n or about 05/05/2024, the father was under the influence of alcohol, resulting in the father falling to the floor and the child having to help the father up from the floor."

At the detention hearing, at the request of Father's counsel and with the agreement of Karter's counsel, the court ordered Karter to remain with Father, under the condition that Karter live with MGM during the week, returning to Father on the weekends, with Father responsible for transporting Karter to and from MGM's home in Lancaster (Father lived in Gardena). The court also ordered Father to continue drug-testing.

C. *DCFS Continues to Investigate*

On September 18, 2024, Father told a dependency investigator (DI) he had not used methamphetamine since January 2024. Father denied falling on the floor or needing Karter to help him up on May 5, stating Karter "was not with me because that was Cinco de Mayo."⁵ Father also denied ever blacking out, using any substances "frequently," or using any substances "currently." Father stated he last smoked marijuana

⁵ While the petition alleged Father fell "[o]n or about 05/05/2024," Karter informed the CSW Father had fallen on May 6, 2024.

“last week” and last drank alcohol “last month.” Father cancelled a drug test scheduled for August 13, 2024, and missed one scheduled for September 6, 2024. He tested positive for marijuana on September 11, and then again on September 20, 2024.

Ten days later, the DI spoke with Karter. Karter claimed Father “was drinking the ‘whole day’, fell in the kitchen, and hit his head,” requiring Karter and PGM to pick him up off the floor; Karter said Father did not remember what happened. Karter did not specify the date this happened. Karter also asserted Father “drinks every other day” and “smokes weed every day.” Karter recounted an incident in which Father “zoned out” while cooking noodles on the stove; Father “went outside leaving the noodles cooking, and the noodles ended up burning.”

Karter also stated Father frequently neglected providing him with necessities, claiming Father always told him to ask MGM for things. When Karter needed medicine, it was MGM who had it delivered to Father’s home. Karter also stated Father and PGM would frequently ask him why he informed the CSW of events occurring in the home, and would instruct him not to tell her anything, or lie to her.

In October 2024, the DI spoke with MGM, who stated she had been providing for Karter since his mother (MGM’s daughter) died in 2014, despite the family receiving survivor benefits due to the mother’s death. MGM claimed she needed to send medications to the family home when Karter was sick and needed to send food when Father said there was none in the house. MGM asserted Father used crystal meth and drank alcohol.

D. *The Court Removes Karter From Father*

At the October 2024 adjudication hearing, Karter testified that Father did not pick him up from MGM's home in Lancaster every weekend, but when he did, he would arrive around 10:00 p.m. with a friend. On the way back to Father's home in Gardena, they would drive through the Angeles National Forest, while Father and his friend smoked marijuana in the car. Upon questioning from the court, Karter clarified both Father and his friend would be smoking marijuana, but the friend was the one driving. The surrounding areas were dark, the friend would drive fast, and this would cause Karter to feel fear. Karter stated he wanted MGM to have custody of him. When DCFS's counsel asked Karter if he felt his safety was at risk when living with Father, Karter responded, "No," but when counsel followed up by asking if Karter felt physically safe in Father's custody, Karter said, "Yeah. Sometimes."

Father's counsel asked the court to dismiss the petition, arguing DCFS failed to meet its burden to prove both a current risk to Karter, and that Father's use of substances endangered Karter. Furthermore, counsel pointed out Father's drug tests were negative for methamphetamines, amphetamines, and alcohol since July 2024. Counsel argued that, should the court not dismiss the petition, allegations that Father used those substances should be struck, and that Father should be labeled a "user" and not an "abuser" of marijuana. As for disposition, Father's counsel asked for a "360(b) dispo"⁶ or, in the alternative,

⁶ (§ 360, subd. (b) ["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
(Fn. is continued on the next page.)

for the court to release Karter to Father “with an appropriate plan with the maternal grandmother.”

Karter’s counsel did not object to striking allegations regarding methamphetamines and amphetamines but asked the court to sustain the petition, remove Karter from Father, and place him with MGM.

DCFS’s counsel recommended the court release Karter to Father and order family maintenance services but stated he would “submit” on the request by Karter’s counsel for “suitable placement.”

The court sustained the petition and found by clear and convincing evidence “a substantial danger if [Karter] were to be returned home to his physical health, safety, and protection and physical or emotional wellbeing” and that “[t]here are no reason[able] . . . means in which to prevent removal from the father’s home.” The court ordered Karter to be placed with MGM and remarked: “Now I understand that one of the reasons for the court formalizing placement with the grandma is that she can receive funding for Karter.” When Father’s counsel protested this was an inappropriate ground for removal, the court responded it was not “the sole purpose” and that funding just “eases the burden.” The court continued that the reason it was removing Karter from Father “is, for example, smoking weed. Father is smoking weed with his buddies while he’s driving over the hill, the Angeles highway. That is a frightening trip when you’re sober. . . . That is a dangerous thing to do.”

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”].)

The court ordered DCFS to provide Father with family reunification services and granted Father unmonitored weekend visits (akin to the arrangement prior to disposition). The court expressly ordered Father to refrain from using any substances, including marijuana or alcohol, around Karter, and to ensure that no one transporting Karter had consumed any intoxicating substances within ten hours of transporting him.

Father timely appealed.

DISCUSSION

“A dependent child shall not be taken from the physical custody of their parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following . . . [¶] (1) 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 . . . physical custody.” (§ 361, subd. (c).)

Here, the court found by clear and convincing evidence that there would be “a substantial danger if [Karter] were to be returned home to his physical health, safety, and protection and physical or emotional wellbeing” and that “there are no reason[able] . . . means in which to prevent removal from the father’s home.” Father challenges both findings.

“ ‘ “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. ‘In making this determination,

we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.' [Citation.] 'We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.' ” ” ” (In re S.R. (2020) 48 Cal.App.5th 204, 219.)

1. Substantial Danger

Substantial evidence supports the court's finding that releasing Karter to Father would place him in substantial danger. While there was no evidence Father ever physically abused Karter, ample evidence supports a conclusion that Father was unable to care for him. Both MGM and Karter recounted times where Father failed to buy food for Karter despite having sufficient money to buy alcohol and other substances. MGM stated that when Karter needed medicine, she was the one who provided it. Father once left food cooking and then burning on a stove after being “zoned out” from drug use. Father once was so intoxicated he fell over, requiring Karter to help him up. Further, Father allowed Karter (and himself) to be driven on a winding highway, late at night, by a friend who was smoking marijuana, while Father also smoked marijuana. On this record, substantial evidence supports a conclusion that releasing Karter to Father would place his physical well-being in substantial danger.

Father argues the court erred in this finding because: (a) it based its decision on funding being available to MGM if Karter was removed; (b) Karter stated he did not feel unsafe with Father; (c) there was no evidence Karter was ever harmed on the

drive through the Angeles National Forest; and (d) there was no evidence Father was still using amphetamines or methamphetamines. We are unpersuaded.

The court expressly stated that funding for MGM was not the only reason it was removing Karter from Father, citing as an example of danger the drive through the Angeles National Forest. Whether Karter felt physically safe with Father was not dispositive to the issue of whether there would be a substantial danger to his physical well-being should the court release him to Father—as discussed above, the danger here was from Father’s neglect. That Father had not gotten into a car accident *yet* while driving with a friend (as both smoked marijuana) on a dark, winding road does not foreclose removal. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 135–136 [“The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child”].) And because there was no evidence that Father’s previous parental lapses were due solely to his use of methamphetamines and amphetamines, evidence that he no longer used them did not negate the risk posed to Karter.

2. Reasonable Means to Protect Karter Short of Removal

Father argues that even if releasing Karter to him posed a substantial danger to Karter, “reasonable means existed to protect Karter without removal from Father” such as having “Karter remain in Father’s custody with the original plan to remain in place where he lived with MGM during the week and Father on the weekend.” Karter’s only response is that such an argument is “untenable” for the same reasons releasing Karter to

Father constituted a substantial danger to Karter's physical well-being.

We agree with Father. The court granted Father unmonitored visits during the weekend as had been occurring during the period between the detention and disposition hearings. In other words, while Karter would be placed with MGM during the week, Father would pick him up on Friday to begin his weekend visit and then would return him to MGM's home on Sunday.

"The law requires that a child remain in parental custody pending the resolution of dependency proceedings, despite the problems that led the court to take jurisdiction over the child, unless the court is clearly convinced that such a disposition would harm the child." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.) The difference between the detention and disposition orders was that, at disposition, the court additionally ordered Father to refrain from using any substances, including marijuana or alcohol, around Karter, and to ensure that no one transporting Karter had consumed any intoxicating substances within ten hours of transporting him. Because it ordered unmonitored weekend visitation with these additional restrictions, the court clearly believed the restrictions made it safe for Karter to live with Father on the weekends. Thus, the court's order placing restrictions on substance use around Karter while maintaining unmonitored weekend visitation demonstrates there were reasonable means by which Karter's physical well-being could be protected without resorting to removal, and substantial evidence does not support the court's contrary conclusion.

DISPOSITION

We reverse the portion of the juvenile court's order finding there were no reasonable means by which Karter's physical well-being could be protected without removing him from Father and remand for proceedings consistent with this opinion.

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M. KIM, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.