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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.R., a Person Coming
Under the Juvenile Court Law

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff,

v.

C.M.,

Defendant and Appellant;

K.R.,

Respondent.

B342187

(Los Angeles County
Super. Ct. No. 24CCJP00349A)

APPEAL from findings and order of the Superior Court of
Los Angeles County. Linda L. Sun, Judge. Affirmed.

Megan E. Turkat-Schirn, under appointment by the Court
of Appeal, for Defendant and Appellant C.M.

Shaylah Padgett-Weibel, under appointment by the Court of Appeal, for Respondent K.R.

No appearance by Los Angeles County Department of Children and Family Services.

Mother C.M. appeals the juvenile court's order declining to vacate an out-of-home placement order for her minor son K.R. Mother wants K.R. returned home to her care and custody.

Finding no abuse of discretion by the juvenile court, we affirm.¹

FACTUAL AND PROCEDURAL BACKGROUND

I. Petition and Detention

On January 25, 2024, the Los Angeles County Department of Children and Family Services (DCFS) received information that at 7:30 a.m. Mother and her 14-year-old son K.R. (born April 2009) argued and engaged in a physical altercation during which minor broke a television set and tried to kick Mother. Mother slapped minor and pinned him on the bed to keep him from breaking more items in the home. The police were called. Mother refused to let minor back into the home. K.R. was taken to school and police notified DCFS that the situation might escalate if minor returned home.

This was not a solitary event. Call records from February 2023 to November 2023 indicate Mother had called police on a monthly basis at least 11 times to report that minor had violent

¹ In light of this affirmance, we deny as moot K.R.'s motion to dismiss and request for judicial notice.

outbursts, ran away from home, disrespected her, and refused to listen to directives.

A DCFS social worker met with Mother on January 25, 2024, to investigate the referral. Mother stated she wanted K.R. removed from her home due to his constant disrespect; she also stated her request for his removal should not be held against her. Mother said she was pregnant and K.R. was too much for her to handle. Mother quit her job because K.R. was constantly being suspended from school for behavior issues and she had to be home to supervise him. She said K.R. had assaulted his teacher at a previous school and was now attending a nonpublic school. She did not know why he was so aggressive and his behavior created an unsafe home environment for her other children.

The social worker also interviewed K.R. He reported he and Mother argued all the time. Mother was upset with him because he fought with his sibling (which he thought was normal sibling behavior) and he had recently brought home a dog, which Mother had threatened to take to the pound. K.R. said their arguments were always verbal, although Mother's boyfriend had grabbed him by the neck, bruising him.

While the social worker was speaking to K.R. Mother entered the room and said she wanted him out of the home. The two began arguing. The social worker could not calm things down and called 911 for police assistance. Mother told the responding officers that she wanted K.R. out of her home, but K.R. refused to leave. Maternal grandmother was unwilling to have K.R. at her home because of his behavior. Eventually Mother stated she was willing to give K.R. one more chance to stay in the home.

Five days later, on January 30, 2024, DCFS received another referral that Mother had locked K.R. out of the residence, while he was visiting maternal grandparents. K.R. called the police who told him to enter the residence through a window. When Mother arrived home and saw K.R. in the residence, she yelled at law enforcement who had told her she had no right to exclude her minor son from the home. Mother told police her boyfriend would take care of kicking K.R. out.

The DCFS social worker returned to the home that day in response to the new referral. Mother denied saying she would have her boyfriend remove K.R. from the home. She confirmed, however, that she wanted him removed, although she was open to conjoint therapy with him.

On February 1, 2024, DCFS filed a petition under Welfare and Institutions Code² section 300, subdivision (a) alleging Mother had physically abused K.R. on January 25, 2024, by grabbing him by the neck and pinning him to the bed, resulting in long linear purple bruising and deep scratches to K.R.'s back. The petition also alleged past incidents where Mother physically abused K.R. It was also alleged under subdivision (b)(1) that Mother had limited ability to properly supervise K.R. and had asked on January 30, 2024, that K.R. be removed from her care.

The next day, the juvenile court detained K.R. from Mother's care and custody and granted Mother monitored visitation twice a week, two hours each visit. Over DCFS's objection, the court also ordered unmonitored telephonic and virtual visitation. Mother's other children are not a part of this proceeding and K.R.'s father is deceased.

² Undesignated statutory references are to the Welfare & Institutions Code.

II. *DCFS Investigation*

In preparation for the March 15, 2024, adjudication hearing, a DCFS investigator interviewed K.R. who was in his second out-of-home placement. He stated he liked the placement, revealed he is bisexual, and denied that Mother is homophobic. He was in the ninth grade and school was going well. He said he feels safe with Mother and needs her. He denied physical abuse at home and said Mother triggered him at times by the way she spoke to him. He said the January 25, 2024 altercation started as an argument during which he called Mother a bitch, which he knew was wrong. They ended up tussling on the bed in his room and Mother's boyfriend tried to pull him away because he thought K.R. was trying to hurt her. K.R. said the bruising was caused accidentally by pressure on the rope chain he wore around his neck. He wanted to visit Mother, with whom he had been communicating virtually. He felt his family needs therapy. Going to foster care had been a learning experience and he had learned his lesson.

Mother was interviewed as well. She said K.R. had challenging behaviors, but he was not a runaway. He would leave the house when angry and he would return and apologize after he calmed down. She thought K.R. needs help with his behaviors and she confirmed she had told the social workers to remove her son from the house. Like her son, she downplayed the January 25, 2024 screaming match and fight.

III. *Jurisdiction and Disposition*

At the adjudication hearing on March 15, 2024, the juvenile court dismissed counts a-1 and b-1. The court sustained the b-2 count as interlineated. This count as amended reads in full (with

our omission of names): “[M]other . . . demonstrated a limited ability to provide appropriate parental care and supervision of the child. The child demonstrates aggressive behavior. On 1/25/2024, the child engaged in verbal altercation with the mother. On 1/30/2024, the mother requested the child be removed from the mother’s home and care. Such limited ability to provide appropriate parental care and supervision of the child, on the part of the mother, endangers the child’s physical health and safety, and places the child at risk of serious physical and emotional harm and damage.”

The juvenile court declared K.R. a dependent and removed him from Mother’s custody. The court ordered reunification services, conjoint counseling for Mother and K.R, and unmonitored visitation in a public or neutral setting.

IV. Continued DCFS Investigation

The six-month review hearing was set for September 13, 2024. In the meantime, DCFS provided further information to the court.

As of May 31, 2024, Mother appeared not to understand why she needed to participate in court-ordered services when it was her son’s behavior that initiated the proceedings. She said she was not going to comply “with anything if [K.R.] ain’t doing what he needs to do.” She also opposed her son’s sexual orientation and said “that gay shit is no go for me.” Mother had not enrolled in any court-ordered services. Her last in-person visit with K.R. was on April 30, 2024.

The caregiver reported that when Mother and K.R. spoke on the telephone, they had loud verbal exchanges and the caregiver would attempt to calm things down. K.R. participated in wraparound services. He regularly smoked marijuana and

continued to have behavior problems at school. K.R. told the caregiver he was trying to defuse his conversations with Mother by ending and then resuming them when both were calm.

On June 22, 2024, K.R. was placed with his third caregiver. The previous caregiver asked for removal because K.R. continued to smoke marijuana and would not curb his behavior. Less than 48 hours after placement, the third caregiver asked that K.R. be removed because of his behavior. The third caregiver reported that K.R. took his backpack and did not return. The caregiver called police and reported K.R. as a runaway. K.R. called his social worker and reported he had left the caregiver because of the caregiver's homophobic comments. K.R. would not disclose his location. He said he was safe and unwilling to return to the placement.

On June 25, 2024, the juvenile court ordered a protective custody warrant to detain K.R. On June 26, 2024, the juvenile court recalled the warrant because K.R. had walked into a sheriff's station and was transported back to the caregiver's home. K.R. was then removed from the third caregiver and placed at Temporary Shelter Care.

By July 26, 2024, conjoint counseling had not commenced. The court reiterated its order that DCFS refer Mother and K.R. to conjoint counseling and address it in the next report.

By August 22, 2024, K.R. was in his fourth foster placement in seven months. On September 3, 2024 that caregiver asked that K.R. be removed from her home because of his behavior. According to DCFS, K.R. was participating in services and trying to reduce his negative behavior. He wanted to return home to Mother and his siblings.

Mother, however, had not enrolled in individual or conjoint counseling. She actively participated in the parenting program but had not visited K.R. in person since April 2024. They participated in weekly facetime calls. Mother wanted K.R. to return but she said she would not accept his sexual orientation in her home. This “bothered” K.R.

Neither had Mother scheduled overnight visits since they were authorized on June 24, 2024. She declined one on the weekend of July 9, 2024, because she had argued with K.R. On August 1, 2024, Mother told the social worker, “You don’t have to bring [K.R.] down this weekend. Thanks.” On August 3, 2024, Mother told the social worker she was angry seeing videos of K.R. smoking a vape pen, dancing, and singing. She blamed the caregiver for allowing K.R. to engage in behaviors she disapproved. She told the social worker she did not want any visits and did not want to see her son at all. DCFS opined that the lack of a regular visitation schedule prevented Mother and K.R. from repairing their relationship, despite their evident love for one another. K.R. would continue to call Mother even after heated arguments. DCFS also predicted a very high risk of future abuse or neglect. DCFS stated: “Given how mother has not enrolled into the Court ordered individual counseling, the conversations between mother and child have not improved, there have been no con-joint counseling sessions to address case related issues; there is safety concern if the child was to be returned back to mother care. Furthermore, neither mother nor child have made changes in their behavior. Moreover, mother is not fully accepting of the minor [K.R.], despite mother’s mentions of having safety concerns with [K.R.]’s location of placement being in the Lancaster/Palmdale area and the troubles with

African American foster youth in that area. Mother loves her child enough to worry about his safety, but not enough to accept [K.R.] as he is or identifies.” DCFS concluded: “It is in the best interest of the child and the family, the Court ordered continued Family Reunification Services to ensure the family is connected to services and the family participates in conjoint counseling, preserving the relationship between mother and child, allowing time for the family to understand each other.”

Yet, not one month later, on September 10, 2024, DCFS changed its position and recommended returning K.R. to Mother’s home with family reunification services. By then Mother and K.R. had participated in one overnight visit on August 31, 2024 that went “well for the most part.” Mother had not scheduled more visits because she did not want to “reward” K.R.’s negative behavior by allowing him to come home and she did not want him to be a negative influence on or danger to his younger siblings. She was trying to redirect K.R.’s negative behavior. Conjoint and individual therapy had not started, yet Mother “realized” she wanted K.R. to return home and she was willing to participate in services to improve the situation. DCFS thought it was now in K.R.’s best interest to go home because Mother was accepting of him and was willing to welcome services into her home.

V. Six-Month Review Hearing

At the September 13, 2004, six-month review hearing, K.R.’s counsel told the court K.R. did not feel ready to return to Mother’s care. He wanted to finish out the semester at his current school and participate in homecoming. At this time, he was in his fourth placement, in 10th grade with an IEP on file, and had been suspended from school for fighting.

The juvenile court stated Mother was in “substantial compliance and she had had very, very successful overnight visits with” K.R. The court again ordered DCFS to ensure that conjoint counseling started and found by clear and convincing evidence that returning K.R. to Mother’s custody would create a substantial risk of detriment. The court continued reunification services for Mother “because there is a substantial probability that [K.R.] may be returned to her within the next six months.” Specifically, the court found: “[L]ooking at [K.R.]’s progress, [he] has been placed with multiple families, and his education has been significantly disrupted. [¶] Now he is finally improving his school attendance. He is completing his assignments. He is finally gaining insight into his responsibility and taking responsibility. And he is able to work through his differences with his mother. He is able to use all the tools that he has gained to de-escalate contentious situations. [¶] So I think this is still a little bit premature to have [K.R.] returned to the mother right now. Not that the mother has not done her part, but [K.R.] is just at the stage that everything is taking off correctly and in a right direction for him. [¶] So we don’t want to disrupt that, especially [since] he is doing quite well in his current school.”

This appeal followed.

DISCUSSION

I. *Applicable Law*

A juvenile court may remove physical custody of the child from the parent where it finds by clear and convincing evidence that there is or would be substantial danger to the physical health, safety, protection, or emotional well-being of the child if the child were returned home, and there are no reasonable means

to protect the child without removal from the parent's physical custody. (§ 361, subd. (c)(1); *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.) The court may consider the parent's past conduct and current circumstances, as well as the parent's response to the conditions that caused the juvenile court to intervene. (*In re D.B.* (2018) 26 Cal.App.5th 320, 332.) The parent need not be dangerous and the child need not have suffered actual harm before removal is appropriate. (*Id.* at p. 328.) It follows that once a child is removed, these considerations are still in play when it comes time to determine whether to return the child to the parent's home.

Indeed, at the 12-month review hearing the court is required to determine whether return of the child to their parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being in the child. The social worker bears the burden of establishing that detriment. (§ 366.21, subd. (e)(1).) The court is required to review the social worker's report and recommendations and to consider the efforts or progress demonstrated by the parent or legal guardian and the extent to which they availed themselves of services provided. Regardless of whether the child is returned to the parent or legal guardian, the court must specify the factual basis for its conclusions. (*Id.*, subd. (e)(1), (2).)

Detriment is established by a preponderance of the evidence. The burden is a fairly high one. It means what it says: return presents a substantial risk of detriment to the child. (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 505.) This additional inquiry and heightened burden of proof are premised on the notion that keeping children with their parents while proceedings are pending, whenever safely possible, serves not

only to protect parents' rights but also children's and society's best interests. (*In re D.P.* (2020) 44 Cal.App.5th 1058, 1066–1067.)

II. *Standard of Review*

We review placement decisions for abuse of discretion. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) The reviewing court should interfere only if under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that was made. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

III. *Analysis*

In declining to allow K.R. to return to Mother, the juvenile court did not make a decision that “no reasonable judge” would have made.

The inquiry here is much broader than Mother's position that the “fundamental question” is whether the minor can be returned safely to the physical custody of the parent. The fundamental question as we see it in the statute is whether return of the child to the parent would result in physical *or emotional* detriment to the child. The preponderance of the evidence suggests that return would have been emotionally detrimental to K.R. Up until three weeks before the hearing, Mother was adamant that she would neither allow K.R. and his sexual orientation into her home, nor allow him to “negatively” influence her children. She maintained for quite a while that she was not at fault; it was K.R.'s inexplicably violent behavior that caused the proceedings to commence. She believed barring him from his home and siblings would, in effect, teach him a lesson, or at least not reward him for his negative behaviors. So, for four

months she refused to see him in person or let him see his siblings, despite his attempt to keep open their lines of communication. Then, just three weeks before the six-month review, Mother had an epiphany that she wanted her son enough to tolerate him in her home and try to live together in peace. The questions before the court were whether Mother could sustain that attitude and turn it into action, whether K.R. would continue on his laborious road to more socially acceptable behavior, and whether both of them would support and understand each other's sometimes stumbling efforts to resolve their differences.

No doubt K.R. was a headstrong child to rear. And no doubt Mother did have a limited ability to supervise him safely, at least at the beginning of these proceedings. It is difficult to put a lot of stock in Mother's turnaround just three weeks before the hearing, given the length of their time apart and the intense, confrontative, loving, yet no-holds barred nature of their mother/son relationship, which spilled over negatively into every aspect of their lives. The juvenile court wisely decided to give both more time for their skills to take root and their attitudes to mature. It also emphasized K.R.'s progress in school, stating it did not want to cause K.R. to change schools because of a change in placement and disrupt the positive strides he was making with his education and his behavior. In reiterating its conjoint and individual counseling orders for Mother, the court implicitly decided not to take the substantial chance that the relationship would backslide and K.R.'s emotional well-being would be detrimentally affected should he return home before both he and Mother were stable and equipped to understand each other and communicate effectively.

DISPOSITION

The findings and order are affirmed.

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STRATTON, P. J.

We concur:

WILEY, J.

VIRAMONTES, J.