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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re JESSICA S. et al., Persons Coming
Under the Juvenile Court Law.**

**SOLANO COUNTY HEALTH &
SOCIAL SERVICES DEPARTMENT,**

Plaintiff and Respondent,

v.

ROSA R.,

Defendant and Appellant.

A131430

**(Solano County Super. Ct.
Nos. J40487, J40488, J40489)**

Defendant Rosa R. (Mother), the mother of Jessica S. (born in March 1996), Anthony S. (born in August 2000), and Abraham S. (born in May 2003) (collectively, Minors), appeals the juvenile court’s March 1, 2011 dispositional orders maintaining Minors in out-of-home placement.¹ Mother contends the court’s findings that placement of Anthony and Abraham with her would be detrimental to their health, safety, protection or physical or emotional well-being, and that there were no reasonable means to protect

¹ Because Mother’s notice of appeal states the appeal is from the court’s February 23, 2011 minute order from the dispositional hearing, we treat it as a premature appeal from the March 1 dispositional order. (Cal. Rules of Court, rule 8.104(d)(1).)

them without removing them from her custody, were unsupported by substantial evidence.²

BACKGROUND

In November 2010, the Solano County Health and Social Services Department (Department) filed a juvenile dependency petition regarding Minors (Welf. & Inst. Code, § 300, subd. (b))³ alleging: Mother had an untreated alcohol abuse problem that impaired her ability to adequately care for Minors, Mother permitted Jessica to have inappropriate relationships with adult men, Abraham was hit in the head by one of the men when Mother left him in the man's care, and Mother failed to comply with case plan objectives. Minors were not detained. Mother submitted on the petition and its allegations were sustained.

In December 2010, Minors were detained and a section 342 subsequent petition was ultimately filed. Section 300, subdivisions (b), (d) and (g) allegations were asserted as to Jessica, and subdivisions (g) and (j) allegations were asserted as to Anthony and Abraham. The petition additionally alleged that, since the age of 12, Jessica had been repeatedly sexually molested by a family friend;⁴ Mother knew or should have known of the sexual abuse and failed to protect Jessica; the abuse placed Anthony and Abraham at risk; and Minors' father (Father)⁵ had been deported to Mexico following domestic violence with Mother and was unable to provide support to Minors.

In February 2011, following a contested jurisdictional hearing on the subsequent petition, the court sustained the failure to protect (§ 300, subd. (b)), sexual abuse (§ 300, subd. (d)), failure to support (§ 300, subd. (g)), and abuse of sibling (§ 300, subd. (j))

² Mother does not raise any claims of error as to the court's jurisdictional and dispositional findings and orders regarding Jessica. Mother also does not challenge the court's jurisdictional findings and orders as to Anthony and Abraham.

³ All undesignated section references are to the Welfare and Institutions Code.

⁴ A Department social worker's report stated that the family friend was 73 years old when he began molesting Jessica.

⁵ Father is not a party to this appeal.

allegations as to Minors. The court expressly found that Mother knew Jessica was being molested by a family friend and that Mother's statements to the contrary were not credible. It ordered supervised visitation between Minors and Mother and ordered Mother to submit to alcohol and other substance abuse testing.

Dispositional Report

Department social worker Martha Hammon's February 8, 2011 dispositional report recommended, in relevant part, that detention of Minors be continued, Minors be adjudged dependent children of the juvenile court and reunification services be provided to Mother. It noted that Minors had been placed in a foster home, where they appeared to be emotionally adjusted.

The report noted that Mother told Hammon she began drinking alcohol at age 23, and, in 2008, began drinking more heavily when she experienced family problems and domestic violence with Father. She said she also drank heavily because it was hard for her to raise three children without Father's support. Mother admitted having an alcohol abuse problem and was open to attending a residential treatment program. She also said Minors' counseling and support services had been helpful to her and Minors. On January 11, 2011, Mother attended "detox" as recommended and was in the process of enrolling in a residential treatment program.

On numerous occasions, Jessica has said Mother is an alcoholic and does not believe Mother can change. On January 11, 2011, Minors learned that Mother was entering a detox program. Jessica said Mother needed to do this for herself and was very supportive of her. Anthony appeared supportive of Mother and told her she needed to do this for herself and those who loved her. Hammon was not sure that Abraham understood the concept of detox, but said he also seemed supportive of Mother and affectionate toward her when Jessica and Anthony expressed their support. Substance abuse counselor Irma Johnson said she would help Mother with entry into the Casa Maria treatment program. Johnson also said the two other county programs had no Spanish speaking staff and the county had limited services in Spanish for undocumented persons.

The report noted that as of December 2010, Anthony and Abraham were in good physical health. Anthony appeared to be developmentally on track for his age. His school recommended tutoring for him. Abraham had speech needs and possible developmental delays and was receiving speech therapy at school. In January 2011, he participated in a developmental assessment; the results were pending. Anthony was participating in weekly therapy and Abraham's case was being managed by a social worker with the county's mental health services. Minors were to receive "therapeutic behavior services" in their foster placement.

Mother's weekly supervised visits with Minors were appropriate and beneficial to all parties, although she had some trouble setting limits with Jessica.

Hammon opined that there was a "very high" risk that Minors would be at substantial risk of harm if returned home to Mother due to Mother's (1) long history of alcohol abuse and continued use despite court intervention; (2) child welfare history, including substantiated allegations of neglect; (3) inconsistent "AA" attendance and failure to provide verification of attendance; (4) arrest record associated with public intoxication; and (5) inability to protect, supervise and parent Minors, which resulted in the sexual assault of Jessica and the attempted sexual assault of Anthony and Abraham.

The report's "Assessment/Evaluation" section stated that Mother had consistently admitted to having an alcohol addiction and was continuing to drink heavily on a daily basis. She had even attended her psychological evaluation and meetings with Hammon while under the influence of alcohol. Department was concerned that Mother will not be able to stop drinking on her own and her inability to protect, supervise and parent Minors is directly related to her untreated alcohol addiction. Hammon did note that Mother attended a detox program for seven days and stopped drinking during her stay. Hammon opined this was a "good indication that [Mother] has the capacity to successfully complete a residential treatment program." Mother also realized she may be suffering from depression and agreed to also engage in counseling. Hammon also noted "the love between" Mother and Minors and their desire to be together.

Dispositional Hearing

At the February 23, 2011 dispositional hearing, Hammon testified that after Mother left her detox program, she was unable to maintain her sobriety. The day of the hearing, Mother told Hammon she had used alcohol the previous Thursday and the Saturday of the week before that. Mother also told Hammon that she is able to abstain from drinking three or four days before drinking again. Hammon also said a Spanish speaking residential treatment program had not yet been identified for Mother. However, Mother had not followed through with the referral to a substance abuse treatment program pending entry into a residential treatment program. Although Mother was also supposed to meet weekly with substance abuse counselor Johnson and follow Johnson's recommendations, she had not been keeping those appointments. Hammon said Mother was found eligible for services from North Bay Regional Center.

Hammon expressed concern that Mother may have comprehension issues unrelated to her language, which may impede her ability to meet Minors' needs. Hammon reiterated that Mother's continued alcohol use was one of the major risk factors in the case and indicated Mother's inability to properly supervise Minors. She said the Department's risk assessment tool found Minors at very high risk for being unable to be safely returned to Mother's care. Hammon said, although Mother recognizes that her alcohol use poses a potential risk to the children, she is unable to address the problems which led to the dependency petitions. Hammon said she was still recommending continued reunification services to Mother.

Hammon said Minors have indicated their love for Mother but also recognize she has an alcohol problem and have encouraged her to get help.

On cross-examination, Hammon said that during a December 7, 2010 home visit, Mother's home was clean and organized, there was ample food and Mother appeared able to get Anthony and Abraham to school in the mornings. At that time Mother reported attending AA meetings while Minors were at school. At the December 17 home visit, Minors told Hammon that Mother had no trouble getting them up for school and making

them breakfast and dinner. Jessica said Mother was capable of caring for them and Minors expressed a desire to return to Mother's care.

Counsel for Minors joined Department counsel's argument that Mother's issue was not her ability to meet Minors' basic needs of housing and food. Instead, the concern was Mother's ongoing, unaddressed substance abuse and her inability to avoid placing Minors in situations where they could be sexually abused or physically harmed; these factors precluded placing Minors back in Mother's care. Mother's counsel argued that Mother's substance abuse did not interfere with her ability to adequately provide for Minors' needs, particularly as to Anthony and Abraham.⁶ Counsel noted that despite Mother's alcohol abuse, she was able to make breakfast and dinner for the boys and make sure they got to school.

In following the Department's recommendation of continuing Minors in out-of-home placement with reunification services to Mother, the court stated that Mother's unresolved alcohol abuse issues presented a substantial risk of detriment to Minors. (§ 361, subd. (c)(1).)

DISCUSSION

Mother contends there was no substantial evidence to support the juvenile court's findings that placement of the boys with her would create a substantial risk of harm to them.

"Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); [citation].) The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) 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

⁶ Hereafter, Anthony and Abraham are referred to as "the boys."

well as present circumstances. [Citation.]” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

We conclude substantial evidence supports the court’s finding that Mother’s unresolved alcohol abuse issues presented a substantial risk of detriment to the boys. Mother admits she has an alcohol abuse problem and is open to attending a residential treatment center and counseling. However, despite having one successful week of sobriety at a detox program, she was unable to maintain her sobriety after leaving the program. On the day of the dispositional hearing, she conceded to Hammon that she had used alcohol during the previous two weeks and could only abstain from drinking for three or four days before drinking again. In addition, she failed to keep her weekly appointments with Johnson while awaiting entry into a residential treatment program, had inconsistent AA attendance, and failed to provide verification of her AA attendance. The boys recognize Mother has an alcohol problem and have encouraged her to get help. Although Mother was capable of providing the boys housing, providing them food, and making sure they got to school, she had previously been arrested for public intoxication and had left the boys with a person who attempted to sexually abuse them, sexually abused their sister Jessica, and physically abused Abraham. Finally, the Department’s risk assessment tool found Minors at very high risk for being unable to be safely returned to Mother’s care. The court could clearly conclude that Mother’s continued alcohol abuse and inability or unwillingness to engage in treatment put the boys at substantial risk of harm if returned to her home.

Mother next contends there was no substantial evidence to support the juvenile court’s finding that the boys could not be protected by other reasonable means. For the first time on appeal, she argues that, because she was found eligible for regional center services, she must have a developmental disability and regional centers provide services including counseling and assistance finding and utilizing community and other

resources.⁷ In addition, she asserts that, in light of her developmental disability, willingness to participate in services and eligibility for regional center services, reasonable means exist to protect the boys without removing them from her custody. Mother's argument is speculative at best. The fact that regional centers provide services does not establish what services will be provided to Mother and whether provision of those services will be sufficient to protect the boys if they are in her custody. Moreover, Mother has previously demonstrated that her *willingness* to participate in treatment or services does not equate with her actual participation in treatment or services. Substantial evidence supports the court's finding that the boys could not be protected by other reasonable means.

DISPOSITION

The orders are affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.

⁷ Although Mother has likely forfeited this argument by failing to raise it below (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 970), we exercise our discretion to consider the argument and conclude it fails on the merits.