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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

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

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

J.J. et al.,

Defendants and Appellants.

A133546

(Solano County Super. Ct.
No. J40587)

J.J. and R.D. are the mother and father, respectively, of one-year-old R.J.D., a dependent child of the juvenile court. The court removed R.J.D. from the custody of the parents and placed him in foster care, because of the parents' drug use and other factors. The parents appeal from the juvenile court's dispositional order, arguing there was insufficient evidence to remove R.J.D. from their custody. We uphold the juvenile court's determinations and actions and affirm.

I. FACTS

R.J.D. (hereafter "the child") was born January 2, 2011.¹ On January 11, when the child was nine days old, respondent Solano County Department of Health and Social Services (Department) filed a dependency petition alleging that Mother and Father were

¹ Subsequent dates are in 2011.

failing to protect the child (Welf. & Inst. Code, § 300, subd. (b)).² The Department alleged: Mother abused controlled substances; both the child and one of his two siblings were born testing positive for methamphetamine; Mother had inadequate prenatal care and refused voluntary family maintenance services; Mother left the child's two siblings with relatives and did not arrange for their care and support; Father was not able to care for the child; and due to all these circumstances the child was at serious or substantial risk of physical harm or illness.

The detention report noted Mother “has an extensive history of methamphetamine use and has been in active treatment for only a week.” The report also noted the child and one of his siblings were born testing positive for methamphetamine. The Department concluded Mother’s “substance abuse has contributed to a transient lifestyle, lack of ability to care for her children and an inability to adequately prepare for her infant.”

On January 19, the juvenile court declined to detain the child and ordered a program of services, including referrals for alcohol and drug testing, substance abuse treatment, parenting education, and counseling.

On February 28, the Department filed a jurisdiction/dispositional report with the court. The Department acknowledged Mother’s “renewed commitment and regular attendance at her outpatient treatment program,” but “continue[d] to have concerns about [Mother’s] long history of substance abuse stemming from 2008 and failed attempts at completing substance abuse services.” Mother had not participated in any drug treatment program “from 2008 to the present,” until she recently enrolled in the outpatient treatment program, and had admitted “recent drug use despite Court and Child Welfare Services intervention.” Mother had four pending criminal cases “all involving theft which, as her substance abuse, stem back to 2008.” Father is “using or experimenting with drug use given . . . recent drug test results.” The Department recommended continued services, and a detailed case plan, given the risk to the child. The Department

² Subsequent statutory citations are to the Welfare and Institutions Code.

also noted that the child's two siblings were currently not being cared for by Mother, but by family members.

On March 2, the juvenile court held a combined jurisdiction/dispositional hearing. The court sustained the three allegations of the petition regarding Mother, and, by agreement of the parties, sustained the allegation of an amended petition as to Father to conform to proof.³ The court continued in-home placement of the child with Department supervision and continued services. Mother and Father continued to be subject to a detailed case plan designed to remedy their parenting issues and Mother's substance abuse. The parties agreed Father would submit to random drug testing over the next three months.

On July 22, the Department filed a supplemental petition (§ 387) alleging the whereabouts of the child had been unknown to the Department since June 13 and the parents had not made the child available to the Department for an assessment of his safety and well-being; the parents had not provided the child with routine medical care and had not taken him for a well child checkup since January 14, two weeks after his birth; Mother had not been complying with her case plan with regard to substance abuse treatment, parenting classes, and random drug testing; and Father was not complying with random drug testing. The Department alleged these circumstances continued to place the child at risk of physical and emotional harm.

Also on July 22, the Department filed a detention report based on its supplemental petition. The report stated: "Due to the fact that whereabouts of the child are unknown to the Department, it is unknown if the child is in substantial danger. However, given the reports that the child is apparently staying with the parents' friends in Oakland, the parents are living in another location in Oakland, the family was kicked out of their residence in Vallejo, the parents stole money from the maternal grandmother when she offered to have the family reside with her and the family has failed to keep the

³ The amended petition alleged that Father "should reasonably have been aware of [Mother's] substance abuse, yet continued to allow the [child] . . . to remain in her care. Such conduct by . . . [F]ather places the [child] at risk of abuse and/or neglect."

Department informed of their current circumstances, it appears there is a substantial danger to the physical health of the child and no reasonable means by which the child's physical health may be protected without removing the child from the parents' physical custody. In addition, there is concern regarding the child's lack of routine medical care, and the fact that [the child] does not have active [M]edi-[C]al insurance, so whomever may be caring for him at this time is unable to provide him with routine medical care. [¶] The parents have already fled the jurisdiction of the Court, and have failed to provide updated information regarding their whereabouts or the whereabouts of the child."

The report also listed the detailed services provided to the parents and concluded those services "were not effective in preventing or eliminating the need for removal of the child from the home."

On July 26, the juvenile court ordered the child detained, finding "there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the physical custody" of the parents. The court ordered continued services to the parents.

On August 8, the Department filed an addendum to the detention report just discussed. The Department reported that the child's safety and well-being "continues to be in question based on the parents' lack of compliance with case plan services, and the parents' failure to keep the Department informed of their whereabouts." Mother "has attempted to keep her child safe and care for his needs," but her "inability to follow through with case plan activities and failure to make herself and [the child] available for monthly contact places the child at risk of future neglect." Father "has yet to take this case seriously as he has not engaged in any services since the start of this case, and he does not make himself readily available to discuss the court ordered case plan services." The Department recommended the continued detention of the child until Mother "is fully engaged in case plan services including completion of random drug testing and attending substance abuse treatment."

In two orders filed September 6, the court ordered the continued detention of the child and the continuation of services. Again, the court found “there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child’s physical or emotional health may be protected without removing the child from the physical custody” of the parents. The court sustained all allegations of the supplemental petition except the allegation regarding the whereabouts and availability of the child. The court ordered the child placed in a foster home.

On September 13, the Department filed a dispositional report on the supplemental petition. The Department noted that during visitation Mother squeezed the child so hard the child cried, and Father tried to feed the child a hot dog, despite his being too young for solid food. The Department’s evaluation was that the parents love their child, but “have yet to take seriously the case plan services that address the issues that brought [the child] to the attention of the Court.” The parents had complied with drug testing, but not within the timeframe requested by the Department. Despite repeated admonitions, Mother had not yet returned to her substance abuse treatment program. The visitation incidents referred to above caused the Department concern about Mother’s and Father’s parenting skills. The Department believed the child’s safety “is still in question as the parents have not made a full commitment to the case plan responsibilities which were ordered by the Court over six months ago.”

Before the child could be returned to his parents, the Department wanted Mother “fully engaged in substance abuse treatment” and “engaged in a parenting class.” The Department also awaited the results of the parents’ hair follicle drug tests “to determine if the parents have remained clean and sober the last couple of months.”

In an addendum report filed October 17, the Department noted the results of the hair follicle tests were positive for methamphetamine and amphetamines. Mother admitted drug use in July. Father denied drug use in the last three months, and claimed the tests showed drug use occurring six months to a year ago.

The Department acknowledged that visitation was going well—although the parents missed about half the visits in the previous month—and that the parents’ residence is clean, neat and safe. “The biggest concern the Department has regarding this case is the lack of honesty from . . . [M]other regarding her substance abuse treatment.” Mother was not engaged in substance abuse treatment, and her reasons for noncompliance were inconsistent and showed a lack of commitment to addressing this issue. Father continued to deny recent drug use and did not seem to believe he had a substance abuse problem.

“Until the parents are engaged fully in substance abuse treatment and are demonstrating an ability to live a clean and sober lifestyle, the Department does not believe [the child] should return to the home of the parents. The parents’ transient lifestyle, inconsistent and at times dishonest information and their lack of follow through with case plan services placed [the child] a[t] high risk of neglect and led to his initial removal. Currently, this risk remains high, and [the child] should not be returned to the parents’ care until those issues are alleviated.”

The Department recommended the child remain in foster care and family reunification services be offered to the parents.

On October 21, after a contested disposition hearing, the juvenile court found the Department had met its burden to justify continuing detention of the child by clear and convincing evidence. The court ordered services for the parents and set the matter for a six-month status review hearing.

II. DISCUSSION

The parents contend there is insufficient evidence to support the juvenile court’s order removing the child from their custody. We disagree for the following reasons.

Our task “begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) We must resolve all conflicts in the evidence in favor of the ruling and “indulge in all legitimate inferences to uphold the court’s order.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965,

969.) We cannot reweigh conflicting evidence to change a juvenile court’s determination in a dependency proceeding. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

In this case, the juvenile court ordered the child removed from the parents’ custody because it found clear and convincing evidence that “[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 . . . custody.” (Welf. & Inst. Code, § 361, subd. (c)(1); see *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1077 (*Kimberly R.*)) “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. [Citations.]” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on an unrelated ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

There is substantial evidence to support the juvenile court’s finding in this case. The child, as did one of his siblings, tested positive for methamphetamine at birth. Mother has a long history of drug abuse. More importantly, Mother has failed to adequately address her substance abuse problem and maintain a program of substance abuse treatment. The parents were not in full compliance with their case plans, and Father appears in denial regarding his substance abuse problem. For a time, the parents and the child were not available to the Department for supervision. The parents were remiss in taking the child for a timely wellness check. The parents were not fully committed to participating in services and had recently tested positive for drugs. Given all these facts, we cannot say the juvenile court’s order was unsupported by substantial evidence. The juvenile court’s order is designed to protect this infant child from a substantial risk of harm, and to allow the parents time to participate in family reunification services with the hope of regaining custody of their child.

The parents rely on *Kimberly R.* for the proposition that a history of substance abuse, by itself, will not justify removal of a child from parental custody. But that case is

distinguishable. The mother in that case was no longer using drugs and was in compliance with her case plan. (*Kimberly R.*, *supra*, 96 Cal.App.4th at p. 1079.) Here, the parents continue to use drugs and are not in compliance with their case plan.

The parents also rely on *In re Henry V.* (2004) 119 Cal.App.4th 522, 525, which suggests that failure to comply, or an expected failure to comply, with a case plan is insufficient to remove a child from parental custody. But we must view the juvenile court's order in light of the entire record. The parents continue to use drugs and continue to fail to comply with their case plan, including substance abuse treatment programs. The juvenile court was entitled to view all the evidence and conclude there was a risk of danger to the child if he remained in the custody of the parents.

III. DISPOSITION

The jurisdictional and dispositional orders of the juvenile court are affirmed.

Marchiano, P.J.

We concur:

Dondero, J.

Banke, J.