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

**In re HAYDEN W., a Person Coming Under
the Juvenile Court Law.**

**CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,**

Plaintiff and Respondent,

A141171

**(Contra Costa County
Super. Ct. No. J1300778)**

v.

JENNIFER W.,

Defendant and Appellant.

The juvenile court removed Hayden W. from Jennifer W.'s (mother) custody, granted physical custody to Kevin W. (father), and terminated dependency jurisdiction (Welf. & Inst. Code, §§ 361, 361.2).¹ Mother appeals the dispositional order. She contends the court erred by removing Hayden from her care, and by granting physical custody of Hayden to father and terminating jurisdiction. We affirm.

¹ Unless noted, all further statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father married in 2005 and lived in Utah. Hayden was born in 2006. Mother and father divorced in 2011; a Utah court finalized the divorce in 2012 and granted mother primary physical custody of Hayden. Mother lived in Utah until February 2013, when she and Hayden moved to California to live with Hayden's maternal grandparents.

Detention and Jurisdiction

As relevant here, the Contra Costa Children and Family Services Bureau (Bureau) filed a June 2013 petition alleging then seven-year-old Hayden came within section 300, subdivision (b) because mother: (1) had "a serious substance abuse problem" impairing her ability to adequately parent and protect Hayden; and (2) placed Hayden "at risk of serious harm" by "physically assault[ing]" him and his grandparents. The petition alleged mother was arrested in 2012 for "DUI for prescription medications with [Hayden] in the car." The petition further alleged mother bit Hayden during a June 2013 altercation with her father and was arrested "for battery, elder abuse and willful cruelty to a child while under the influence of alcohol and prescription medications." Following a detention hearing, the court detained Hayden and declared him a dependent of the court. The court ordered substance abuse treatment, and alcohol and drug testing, for mother. Additionally, the court authorized Hayden to have a month-long visit with father before the jurisdictional hearing.²

In a combined detention and jurisdiction report, the Bureau reported mother: (1) was diagnosed with bipolar disorder at age 21 but stopped taking prescribed medication; (2) suffers from acute depression; (3) takes pain medication for a back injury; and (4) is an alcoholic. According to the report, father separated from mother in 2010 because mother yelled at father and physically assaulted him. In February 2013, mother and Hayden moved into grandparents' house. In the four months preceding the filing of the

² The Utah Division of Children and Family Services (Utah DCFS) inspected father's home and determined it was "clean and appropriate with no safety or environmental hazards[.]"

dependency petition, grandparents called the “police three different times and attempted to 5150 [mother] due to her erratic behavior.” Mother would scream, lose control, and scare grandparents.

In June 2013, Hayden went into his mother’s room and immediately realized she had been drinking and was angry because — as Hayden explained — “she’s usually angry when she drinks.” Mother began ripping up a box, and Hayden started to clean up the pieces. As Hayden cleaned, mother began “yelling and grabbing objects around the room and making a bigger mess.” Hayden’s grandmother heard ““thumping”” and Hayden yelling and went upstairs. When grandmother opened the door to mother’s room, mother lunged at grandmother. Hayden cried and screamed for mother to stop. Mother pushed grandmother, who almost fell down the stairs. While Hayden’s grandfather called 911, mother attacked him, scratching and bloodying his face and hands. Hayden tried to separate mother and grandfather; mother bit Hayden on the arm and scratched his hand. Police officers arrived and arrested mother. Hayden told a police officer mother takes “green pills” and “had been drinking.”³ When a social worker asked Hayden whether he felt safe with mother, he said, “I used to when she was better.”

At the jurisdictional hearing, mother testified she did not clearly remember the altercation: she did not recall Hayden being in the room during the fight, nor did she remember biting him. She conceded, however, that she had been drinking before the altercation and was a “recovering alcoholic[.]” Mother began treatment for depression and panic anxiety in 2010 and took Diazepam for anxiety, and Percocet and Opana for back pain. She did not take prescribed depression medication. Mother denied being diagnosed with a mental health disorder.

Mother testified she could safely parent Hayden because she had “taken a lot of different steps to change [her] life.” She had begun a 52-week parenting course, had almost completed a 90-day outpatient drug treatment program, and was submitting to

³ The “green pills” are for the treatment of obesity; Hayden said the ““green pills make [mother] fight.”” Hayden’s grandmother found a “fifth of vodka” in mother’s room after the altercation.

random drug tests. She stopped drinking and was attending Alcoholics Anonymous (AA) meetings; she had also found a support system and located “a place to live in a sober environment[.]” Mother spoke frequently with her AA sponsor and her social worker and was looking for “doctors and therapists” to treat her “condition.” She claimed she was “in an environment where there’s no stressors or triggers[.]” On cross-examination, mother conceded she knew she had a drinking problem when she drank on the day of the altercation. Mother admitted she started attending AA meetings as a teenager but had not attended meetings consistently despite knowing she had a drinking problem. She acknowledged a 2012 DUI arrest for driving under the influence of pain medication with Hayden in the car.

At the conclusion of the jurisdictional hearing, the court adjudged Hayden a dependent of the court (§ 300, subd. (b)). It determined “not only that [Hayden] suffered but that there is a substantial risk that he will continue to suffer” because “mother’s admitted long-standing substance abuse issues [have] spanned a number of years. She has admitted that she has been in and out of AA and outpatient programs, none of which seem to have addressed her substance abuse issues and she continues to drink. . . . [¶] [S]he has a track record of failing to address those issues” The court was “troubled by what appears to be mother’s continued minimization of her mental health issues” and noted it was clear “mother suffers from a mental disorder that impairs her ability to adequately . . . ‘and safely parent and protect’” Hayden. The court later authorized the Bureau to release Hayden to father.

Disposition

In its disposition report, the Bureau urged the court to dismiss the dependency petition and grant father sole legal and physical custody of Hayden. Although the Bureau noted mother loved Hayden and was “trying to maintain a sober lifestyle” it requested Hayden remain in father’s care because mother’s “mental health issues are not yet treated, her sobriety is extremely short lived, and historically her episodes of sober living are not long lived. Her family . . . [has] declared that she is ‘dangerous if she is not under treatment’ and they have experienced . . . her rages and alcoholic behaviors.”

The Bureau noted mother had been arrested in: (1) 2005 for assault, criminal mischief, and intoxication; (2) 2010 for domestic violence and public intoxication; and (3) 2012 for driving with a blood alcohol level of .21 while Hayden was in the car. Mother also had a Utah child welfare referral arising out of her 2010 arrest. During an interview with a social worker in connection with that referral, mother admitted being bipolar. She claimed she attended AA meetings and denied drinking (despite having recently been arrested for public intoxication). The Utah DCFS offered mother parenting classes and counseling and made a finding of “[d]omestic [v]iolence related child abuse.”

The Bureau reported father loved Hayden, wanted “to protect him from harm[,]” and would “do whatever is necessary to maintain and ensure Hayden’s safety.” Hayden — who the Bureau described as “bright and articulate” — was “happy to go to school” in Utah and had “made friends.” The Bureau noted it had made reasonable efforts to prevent removal by: (1) giving mother referrals for drug testing, “parenting[,]” and a mental health provider list; (2) providing mother with bus tickets; and (3) communicating with father and the Utah DCFS “for assessment of [father’s] home.”

At the dispositional hearing, Hayden’s social worker testified it was appropriate to place Hayden with father. The social worker interviewed father, reviewed documents from the Utah DCFS, and had father’s home inspected twice. In addition, the social worker spent time with Hayden and described him as happy, inquisitive, and progressing well in school. The social worker explained that neither father’s distant issue with body dysmorphia nor the claim that father threw Hayden to the ground in 2008 changed her opinion that it was appropriate to place Hayden with father.⁴ The social worker opined placing Hayden with mother was not safe because mother had a “lengthy background

⁴ “Body dysmorphic disorder is characterized by preoccupation with one or more perceived defects or flaws in physical appearance that are not observable or appear only slight to others, and by repetitive behaviors . . . or mental acts . . . in response to the appearance concerns.” (American Psychiatric Assn. Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) p. 236 (DSM-5).) In 2003, father was diagnosed with body dysmorphia arising out of “botched” jaw surgery. A 2013 mental health evaluation indicated father “ha[d] not fit the criteria (of body dysmorphia) for several years.” Hayden told the social worker he and his father were wrestling.

with mental health issues[,] . . . [was] not on medication” and claimed she had not been diagnosed with a mental health disorder.

Mother testified she had completed a 120-day outpatient drug program, was attending a parenting course, and saw a therapist weekly. She had also seen a psychiatrist.⁵ Mother consistently attended AA meetings, submitted to random drug tests, and lived in a sober household. Mother acknowledged she had been in alcohol treatment in 1996 and 2000 and had relapsed both times. She claimed, however, that her current approach to sobriety would be more successful because she had a support system. She conceded she had been placed on an involuntary psychiatric hold (§ 5150) in 1996 and evaluated pursuant to section 5150 in 2013. Mother described her concerns about placing Hayden with father.

At the conclusion of the dispositional hearing, the court removed Hayden from mother’s physical custody, transferred custody to father, and vacated the dependency and dismissed the section 300 petition (§§ 361, subd. (c)(1), 361.2, subd. (c)(1)). The court found by clear and convincing evidence mother posed a substantial risk to Hayden’s safety and well-being if he were returned to her custody. It noted mother had a “longstanding substance abuse problem” and had “not fully addressed her longstanding mental health issues.” According to the court, mother seemed to be in “denial that she has any sort of mental health disorder” and had failed to seek proper treatment. The court further determined father was a “safe, caring and appropriate caregiver to [Hayden]. There’s no evidence . . . that [f]ather presents any sort of risk to the well-being of this child[.]” The court also concluded father made Hayden “readily available to Mother so

⁵ Psychiatrist Steven Balt, M.D., testified for mother as an expert on mental health disorders and substance abuse treatment. He examined mother three times beginning in September 2013 and opined mother suffered from “substance abuse in remission” and “alcohol use [] in remission.” Dr. Balt questioned the accuracy of mother’s diagnosis of bipolar disorder because he did not know the evidence on which it was based. Dr. Balt conceded mother’s behavior was consistent with a diagnosis of bipolar disorder but believed she did not require medication. Dr. Balt disagreed with the DSM-5, a handbook used by mental health professionals to define and categorize mental health disorders.

[they] can continue their relationship and their bond.” The court ordered visitation for mother.

DISCUSSION

I.

Substantial Evidence Supports the Dispositional Order Removing Hayden from Mother’s Custody

Mother challenges the dispositional order removing Hayden from her custody. At the time of the dispositional hearing, section 361, subdivision (c)(1) provided a dependent child may not be removed from the custodial parent unless the juvenile court finds by 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 . . . physical custody.”⁶ (Former § 361, subd. (c)(1).) “[J]urisdictional findings are prima facie evidence the child cannot safely remain in the home.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 849.) “A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.)

Here, the court concluded by clear and convincing evidence mother posed a substantial risk to Hayden’s safety and well-being if he were returned to her custody because mother had a “longstanding substance abuse problem” and had “not fully addressed her longstanding mental health issues.” According to the court, mother denied “she has any sort of mental health disorder” and failed to seek proper mental health treatment. Substantial evidence supports this conclusion. (*In re R.V.*, *supra*, 208 Cal.App.4th at p. 849; *In re T.W.*, *supra*, 214 Cal.App.4th at p. 1163.) At the jurisdictional hearing, the court determined mother’s substance abuse and mental health

⁶ After the court entered judgment, the Legislature amended section 361, subdivision (c) in a manner not relevant to the issues on appeal. (Stats. 2014, ch. 763, § 16.5.)

issues impaired her ability to adequately parent and protect Hayden. At the dispositional hearing, there was evidence mother had previously sought treatment for alcohol abuse and had relapsed several times despite attending AA meetings. There was also evidence mother was in denial about her mental health, refused to take prescribed medication to treat her mental health condition, and was ““dangerous if she is not under treatment.”” Under the circumstances, we cannot fault the court for concluding removal was necessary to protect Hayden.

We reject mother’s suggestion the dispositional order is invalid because the Bureau did not consider “lesser alternative[s]” to removal and because the court did not explicitly state the reasonable means it considered before removing Hayden from her custody. In its dispositional report, the Bureau noted the reasonable efforts it made to prevent Hayden’s removal from mother’s custody. At the dispositional hearing, the court explained why it removed Hayden from mother’s custody. Accordingly, substantial evidence supports a finding the Bureau made reasonable efforts to prevent or eliminate the need for Hayden’s removal from mother’s custody (*In re T.W.*, *supra*, 214 Cal.App.4th at pp. 1163-1164) and the court offered a factual basis for its removal order. (§ 361, subd. (d).)

Mother’s reliance on *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*) does not alter our conclusion. There, the Department of Children and Family Service’s (Department) report stated in conclusory fashion there were no reasonable means to prevent the removal of the children and did not offer supporting evidence or describe the means the Department considered and rejected. (*Id.* at p. 809.) The appellate court concluded the Department should have considered, among other things, removing the mother from the home. (*Id.* at p. 810.) *Ashly F.* is distinguishable. Unlike *Ashly F.*, the Bureau described the reasonable efforts it made to avoid removal. Second — and in contrast to *Ashly F.* — the court did not have the option of removing the custodial parent from the home.

We commend mother for addressing her alcohol abuse issues but we conclude substantial evidence supports the court’s finding that Hayden would be at substantial risk

of harm if returned to mother's custody and there were no reasonable means by which he could be protected without removal. (§ 361, subd. (c)(1); *In re R.V.*, *supra*, 208 Cal.App.4th at p. 849; *In re A.S.* (2011) 202 Cal.App.4th 237, 248.)

II.

Substantial Evidence Supports the Dispositional Order Granting Physical Custody of Hayden to Father and Terminating Dependency Jurisdiction

Mother claims the court erred by placing Hayden with father and terminating dependency jurisdiction pursuant to section 361.2. If the juvenile court orders a minor removed from the custodial parent's home, and there is a noncustodial parent who desires to assume custody of the minor, the court must place the minor with the noncustodial parent unless doing so would be detrimental to the minor's safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a); *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1132.) Here, the court found father was a noncustodial parent who desired to assume custody of Hayden and determined placing Hayden with father would not be detrimental to Hayden. Pursuant to section 361.2, subdivision (b)(1), the court ordered father, the noncustodial parent, to become Hayden's physical custodian and terminated dependency jurisdiction. We review the court's ruling under section 361.2 for substantial evidence. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426-1427.)

Mother challenges the court's findings on various grounds, none of which have merit. First, she claims the Bureau failed to investigate whether placing Hayden with father would be detrimental to Hayden. We disagree. The social worker interviewed father and had his home inspected twice. She also spent time with Hayden and reviewed documents from the Utah DCFS. Mother has not demonstrated the Bureau's investigation was insufficient. Next, mother suggests insufficient evidence supports the court's conclusion that placing Hayden with father would not be detrimental to Hayden. We are not persuaded. In its dispositional report, the Bureau recommended placing Hayden with father and explained its reasoning; at the dispositional hearing, the social worker testified why it was appropriate to place Hayden with father. Substantial evidence supports the court's conclusion father was a "safe, caring and appropriate

caregiver to [Hayden].” (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614 [testimony of one witness may constitute substantial evidence].)

Mother also reprises her claim that the court failed to determine whether Hayden should be removed from her care. We have already rejected this argument for the reasons discussed above. Finally, we reject mother’s claim that the court did not provide her with reasonable visitation. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1345, fn. 17 [declining to address points not made under separate heading].)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.