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

K.D.,

Petitioner,

v.

THE SUPERIOR COURT OF SOLANO
COUNTY,

Respondent;

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Real Party in Interest.

A145513

(Solano County
Super. Ct. Nos. J42764, J42765)

MEMORANDUM OPINION¹

The two children of petitioner K.D. (Mother), A.Y., then two years old, and An.Y., six years old, were the subject of amended dependency petitions, filed January 15, 2015. The petitions alleged A.Y. was seriously injured as a result of abuse by Mother or her live-in boyfriend, G.W., and Mother knew or reasonably should have known of the abuse and failed to protect A.Y. (Welf. & Inst. Code,² § 300, subds. (a), (b), (e), (g), (j).) After an extended contested jurisdictional and dispositional hearing, the juvenile court, by order of June 10, 2015, found both boys to be dependents of the court, concluding the

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1(1), (3).

² All statutory references are to the Welfare and Institutions Code.

allegations under section 300, subdivisions (b), (e), (g), and (j) were supported by clear and convincing evidence. Mother was denied reunification services under section 361.5, subdivision (b)(5) and (7), and the court scheduled a permanency planning hearing pursuant to section 366.26.

On July 23, 2015, Mother filed a petition for an extraordinary writ in this court, seeking an order directing the juvenile court to vacate the portions of its order finding jurisdiction over A.Y. under section 300, subdivision (e), denying reunification services, and scheduling the section 366.26 hearing. As to A.Y., Mother contends there was insufficient evidence to find he was a child described by section 300, subdivision (e) and bypass reunification services, and the court abused its discretion in concluding reunification services would not prevent further abuse. As to An.Y., Mother contends services should not have been denied.

The factual circumstances underlying Mother's claims of error are known to the parties and are summarized in the "Response to Petition for Extraordinary Writ," filed in this matter by the Solano County Department of Health and Social Services (Agency) on August 10, 2015.

A. *Dependency Jurisdiction Under Section 300, Subdivision (e)*

The juvenile court can assert jurisdiction under section 300, subdivision (e), if it finds, by a preponderance of the evidence, "(1) there is a minor under the age of five; (2) who has suffered severe physical abuse . . . ; (3) by a parent or any person known to the parent if the parent knew or reasonably should have known that the person was physically abusing the minor." (*In re E. H.* (2003) 108 Cal.App.4th 659, 668 (*E.H.*); see *K.F. v. Superior Court* (2014) 224 Cal.App.4th 1369, 1381–1382 (*K.F.*.) A finding of jurisdiction under subdivision (e) may be based on circumstantial evidence. (*K.F.*, at p. 1382.) So long as the child suffered an injury the parent knew or should have known was the product of abuse, the parent need not have known the severity of the abuse. (*E.H.*, at p. 668; compare *L.Z. v. Superior Court* (2010) 188 Cal.App.4th 1285, 1292 (*L.Z.*) [to support inference, nature of injuries must reasonably suggest abuse].) We

review the juvenile court's jurisdictional finding for substantial evidence. (*K.F.*, at p. 1381.)

There is no question the first two elements of section 300, subdivision (e) were satisfied here. A.Y., a two year old, suffered a brain injury that, even with intense and extended medical care, will likely leave him with permanent impairments. (§ 300, subd. (e).)

Mother contends there is no substantial evidence she personally inflicted the abuse or should have known it was occurring. The evidence of abuse, however, was unmistakable. Early in November, A.Y. was taken to the hospital suffering from a swollen and badly bruised scrotum. The injury was clearly the result of trauma, and while it could, in theory, have been the result of an accident, there was no explanation for it in the medical records. By the time A.Y. was taken to the hospital in late November for treatment of a severe head injury caused by multiple blows, he had swelling and abrasions on his face, a visible trauma injury on his abdomen that was likely associated with his ruptured spleen, four distinctively shaped burn scars on his foot, left outer thigh, and inner thighs caused by a BIC cigarette lighter, and healing scars from injuries on his arms that were more difficult to identify. While the injuries to A.Y.'s head and face could have occurred shortly before the hospitalization, the burns had occurred over a period of time, since many were in the process of healing. The lighter burn on the bottom of his foot, in particular, had been present for some time and would have caused him apparent discomfort when fresh. The lighter burns on his thighs were estimated to have occurred within a week of the hospitalization. Although Mother left A.Y. with G.W. while she worked during the day, she was with A.Y. in the evenings.

The juvenile court could readily have concluded Mother saw the injuries soon after they occurred, when they still could be recognized as fresh burns. Given the unlikelihood of a series of accidental cigarette lighter burns on so young a child, these scars should have raised the possibility of abuse. In fact, Mother admitted being aware of most of the injuries, and she knew how the lighter burns had occurred, since she demonstrated the method to the detective. As the juvenile court noted, A.Y.'s injuries

were “so apparent that I don’t know how anyone could miss them. [¶] . . . I cannot imagine how [Mother] would not notice them on her children, even after she returned home from work or was with them on the weekends.” Even assuming Mother had nothing to do with the infliction of the injuries, substantial evidence supports the juvenile court’s conclusion she reasonably should have known that abuse was occurring.³

Mother argues the injuries she admitted knowing about could be innocently explained and there was no evidence presented that she was aware of the most recent injuries, such as the distinctive burns. Jurisdiction under section 300, subdivision (e) is based on what a parent should reasonably have known, not actual or admitted knowledge. A.Y. presented visible injuries that strongly suggested abuse, and the juvenile court could have inferred that Mother was aware of them and should have suspected A.Y. was being abused, or, indeed, was aware of the abuse. (*E.H.*, *supra*, 108 Cal.App.4th at pp. 667–668.)

B. Denial of Reunification Services Regarding A.Y.

The purpose of reunification services is to place the parent in a position to gain custody of the child. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244.) Under section 361.5, subdivision (b), the juvenile court is permitted to deny reunification services to a parent or guardian under certain specified circumstances. One of those circumstances is a jurisdictional finding of abuse by clear and convincing evidence under section 300, subdivision (e). (§ 361.5, subd. (b)(5).) “[O]nce [an agency] proves by clear and convincing evidence that a dependent minor falls under subdivision (e) of section 300, the general rule favoring reunification services no longer applies; it is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.” (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 164.) In that case, the juvenile court is prohibited from ordering reunification services “unless it finds that, based on competent testimony, those services are likely to prevent

³ The social worker in charge of the case suspected Mother might have inflicted some of A.Y.’s injuries, given her volatile temper.

reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent.” (§ 361.5, subd. (c), 3d par.)

Mother first argues the juvenile court erred in denying services under section 361.5, subdivision (b)(5) because the jurisdictional finding under section 300, subdivision (e) was not supported by clear and convincing evidence. The appellate standard of review applicable to jurisdictional findings made by clear and convincing evidence, however, is the same standard applicable to ordinary jurisdictional findings, which must be supported by a preponderance of the evidence—substantial evidence. (*L.Z., supra*, 188 Cal.App.4th at p. 1292.) In other words, although the juvenile court was required to apply the elevated clear and convincing evidentiary standard to the jurisdictional findings in order to deny services under section 361.5, subdivision (b)(5), we do not apply a similarly elevated standard when reviewing the court’s decision. Whether jurisdictional findings are made by clear and convincing evidence or merely a preponderance, we apply the same standard of review. Accordingly, our conclusion in section A, *ante*, that substantial evidence supports the juvenile court’s section 300, subdivision (e) findings requires us to affirm the juvenile court’s conclusion that those findings were supported by clear and convincing evidence. Yet even if we applied a stricter standard of review to findings by clear and convincing evidence, we would affirm the juvenile court’s findings.

Mother next argues the juvenile court erroneously required her to prove that reunification services were likely to prevent reabuse or continued neglect under section 361.5, subdivision (c) by clear and convincing evidence. Mother appears to be correct as to the proper evidentiary standard. While clear and convincing evidence is expressly required to overcome findings under several of the subparts of section 361.5, subdivision (b), subpart (5) is not one of those listed. (§ 361.5, subd. (c).) Rather, the juvenile court need only find that services are “likely” to prevent reabuse to overcome the section 361.5, subdivision (b)(5) presumption, a standard satisfied by a preponderance of the evidence. (§ 361.5, subd. (c).) Nonetheless, we may reverse the juvenile court’s

order for procedural error only if the error was prejudicial, that is, if it is reasonably probable that a result more favorable to Mother would have been reached in the absence of the error. (Cal. Const., art. VI, § 13; *In re Celine R.* (2003) 31 Cal.4th 45, 59–60; *In re D’Anthony D.* (2014) 230 Cal.App.4th 292, 303.) We conclude that it is not reasonably probable the juvenile court would have ordered reunification services under a preponderance of the evidence standard.

As the responsible social worker testified, Mother consistently failed to demonstrate insight into the cause and prevention of A.Y.’s injuries. Mother not only refused to acknowledge that she might have been able to prevent the injuries by acting differently, but she also became irritated when the topic arose and avoided discussing it. Rather than face the nature of A.Y.’s very serious injuries, Mother accused the Agency of exaggerating them. Throughout the proceedings and continuing to the dispositional hearing, Mother refused to recognize G.W.’s apparent role in causing those injuries and postulated innocent explanations for them—for example, that A.Y.’s brain injury was the result of falling and hitting his head repeatedly. Although she claimed to have terminated her relationship with G.W., she maintained the relationship long after the discovery of A.Y.’s serious injuries, and there was evidence the relationship continued, notwithstanding her denials.

As we noted under similar circumstances in *In re A.M.* (2013) 217 Cal.App.4th 1067, “there are no services that will prevent reabuse by a parent who refuses to acknowledge the abuse in the first place. Despite overwhelming evidence that [her child] had been brutally treated on more than one occasion and that either she or Father had inflicted the injuries, Mother was unwilling to acknowledge any source for [the child’s] injuries. Since Mother knows which of the two of them must have inflicted the injuries, her refusal amounts to a willful denial of the injuries themselves. In those circumstances, there is no reason to believe further services will prevent her from inflicting or ignoring the infliction of similar injuries in the future.” (*Id.* at pp. 1077–1078.) Given Mother’s similar denial of the abuse, it is unlikely the juvenile court would have reached a different

conclusion regarding the possible effectiveness of reunification services had it applied a more relaxed evidentiary standard.

Mother contends psychiatric testimony at the dispositional hearing provided evidence to support a finding that reunification services would prevent reabuse, but the psychiatrist testified only that Mother's depression could be alleviated by therapy. He offered no opinion about the effectiveness of reunification services in preventing reabuse. In any event, as the juvenile court noted, Mother was resistant to participating in therapy, which reduced the likelihood such services would be effective.

C. Denial of Reunification Services Regarding An.Y.

Under section 361.5, subdivision (b)(7), reunification services can be denied with respect to a child if “the parent is not receiving reunification services for a sibling or a half sibling of the child pursuant to paragraph (3), (5), or (6).” Because the juvenile court denied reunification services to Mother with respect to A.Y. under subdivision (b)(5), the juvenile court was permitted to deny them with respect to his older brother, An.Y. under subdivision (b)(7). Mother argues that if we reverse the denial of services with respect to A.Y., we should also reverse as to An.Y. Given our affirmance of the court's ruling regarding A.Y., there is no basis for reversing the denial of services with respect to An.Y.

Mother's petition for an extraordinary writ is denied on the merits. (See *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.

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