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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re IRENE O. et al., Persons Coming
Under the Juvenile Court Law.

B233287
(Los Angeles County
Super. Ct. No. CK86415)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VANESSA P. et al.,

Defendants and Appellants.

APPEAL from findings and an order of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed.

Donna Balderston Kaiser, under appointment by the Court of Appeal, for Defendant and Appellant Vanessa P.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant Luis O.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

Vanessa P. (mother) and Luis O. (father) appeal from the juvenile court's jurisdictional and dispositional findings and orders pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ They contend that substantial evidence does not support the juvenile court's jurisdictional findings that the children, Irene O. (Irene, born Sept. 1999), Luis O., Jr. (Luis, born Aug. 2000), B. O. (B., born July 2002), Joseph O. (Joseph, born July 2005), and Michael O. (Michael, born Apr. 2008), were at substantial risk of harm in a home in which a firearm with a silencer was found or from the parents' failure to make an appropriate plan for the children's ongoing care and supervision after they were arrested and detained on federal charges. Mother and father also challenge the juvenile court's dispositional order requiring them to participate in random drug testing as part of the family reunification plan.

We conclude that mother and father's arguments are unavailing. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Detention

On February 1, 2011, the Los Angeles Police Department (police) requested assistance of the Los Angeles County Department of Children and Family Services (DCFS) Multi-Agency Response Team (MART) to conduct an independent investigation and assess the safety and well-being of the children whose parents were believed to be involved with the 38th Street Gang and alleged to have committed violations of the Federal Racketeer Influenced Corrupt Organizations (RICO) statutes.

That afternoon, a DCFS social worker from MART responded to the family home. There, she spoke with Special Agent Hugee from the Drug Enforcement Agency (DEA). Agent Hugee told the social worker that federal law enforcement was targeting the 38th Street gang and its members due to the gang's involvement in drug trafficking, crime, racketeering, and conspiracy to distribute narcotics. Agent Hugee revealed that the police

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

SWAT (special weapons and tactics) team raided the home that morning pursuant to arrest warrants for father and mother. Father was a documented member of the 38th Street Gang. During the search, the police retrieved a Mack 11 handgun with a silencer. Agent Huges reported that both father and mother had been transported to a police station for questioning. He also stated that although the children appeared healthy, he had requested an independent investigation into child abuse and that DCFS locate an appropriate placement for the children.

The social worker then spoke with the children. Irene, B., Luis, and Joseph all denied any knowledge of drugs in their home; they denied that anyone in their home used drugs; and they denied knowing that there was a gun in the home. They said that they felt safe with their parents.

Next the social worker spoke with Police Detective Evans, who reported that mother and father were being interviewed by police and unavailable to be interviewed by the social worker. Detective Evans indicated that the parents would be arrested under federal indictment charges related to RICO. He further stated that mother wanted the children's maternal aunt, Cynthia P. (Cynthia), to care for the children.

DCFS determined that the children were at immediate risk in the parents' care and would be detained on the grounds that parents were set to be arrested and indicted on federal RICO violations, their failure to make an appropriate living arrangement for the children, and the living conditions in the family home were unsafe and unsanitary.

DCFS reported that the police, DEA, and the Bureau of Alcohol, Tobacco, and Firearms (ATF) had served federal warrants on the 38th Street Gang members. The charges ranged from the sales and use of narcotics, the possession and sales of illegal firearms, violent murders, robberies, extortion, and witness intimidation.

Also on February 1, 2011, a DCFS social worker interviewed Cynthia. Cynthia stated that she was interested in caring for the children. She was informed that all of the adults in her home needed to complete and clear a criminal background check prior to the placement of the children in her home. Cynthia stated that she resided in a two-bedroom

home with her husband and three children. The social worker informed Cynthia that her home would not be an appropriate placement due to lack of space.

Irene and B. were placed in a licensed foster home together; Luis, Joseph, and Michael were placed together in a separate foster home.

Section 300 Petition and Detention Hearing

On February 4, 2011, DCFS filed a section 300 petition on behalf of the children, pursuant to subdivision (b). The petition alleged that the parents established a detrimental and endangering home environment for the children in that a firearm was found in the home. DCFS further alleged that the parents were arrested for gang-related federal racketeering charges and that the parents failed to make an appropriate plan for the children's ongoing care and supervision.

At the hearing, the juvenile court found a prima facie case for detaining the children from the parents. It ordered DCFS to investigate possible placement of the children with Cynthia and their paternal grandfather, Eduardo O. (Eduardo).

Prerelease Investigation

In its March 2, 2011, report, DCFS reported that Eduardo lived in a one-bedroom, one-bathroom apartment in a senior citizen complex. DCFS found that it did not have sufficient space for the five children.

Regarding Cynthia, she lived in a one-bedroom, one-bathroom with her companion, Freddy A. (Freddy), and her three children. Cynthia and Freddy slept in the bedroom; her children slept in the living room on bunk beds. If the subject children came to live with her, she proposed that the children sleep in the living room or share the one bedroom. She also said that all of the children (the five detained and her three children) could share the one bedroom and she and Freddy would sleep in the living room. DCFS noted that ASFA (Adoption and Safe Families Act of 1997) prohibited children over five years of age of different genders sharing one bedroom.

DCFS was unable to approve Cynthia's home for placement because the children would be sharing one bedroom. Further, Freddy was currently on probation.² Moreover, neither she nor Freddy had submitted to a criminal background check. DCFS noted that her home could be reassessed once Freddy completed probation and he and Cynthia submitted for live scans.

Jurisdiction/Disposition Reports and Hearing

In its March 2, 2011, report, DCFS reported that on February 1, 2011, mother was arrested for racketeer influenced and corrupt organization conspiracy. On that same date, father was arrested for racketeer influenced and corrupt organization conspiracy, violent crime in aid of racketeering, and conspiracy to distribute methamphetamine, cocaine and cocaine base in the form of crack cocaine.

In their interviews with DCFS, the children continued to deny that they saw a gun or had any knowledge of a gun being in their home.

Detective Trujillo, with the Department of Justice, informed DCFS that the gun found in the family home was dangerous, with a silencer. He stated that it was rare to have a silencer. According to the detective, "That means that you basically don't want people to know you just shot someone." He recounted that the gun was found wrapped in a red bandana above the attic space in the hallway off the kitchen. The detective did not think that the gun was in reach of the children, but it was in easy reach of the adults.

Detective Trujillo further stated that law enforcement had decided that rather than target individual gang members, they targeted the gang as a whole as part of a racketeering enterprise. He claimed that father would "not see the light of day for a long time. He was one of the gang leaders."

Detective Evans confirmed that the recovered gun, which was found in the attic, had a sophisticated silencer. Father apparently told Detective Evans that he was holding

² A preliminary background check revealed that he had a 2010 conviction for driving under the influence for which he received 36 months probation.

the gun for another man who was the “top defendant” in the case. Detective Evans stated that law enforcement believed that the gun had been used in a violent crime.

Detective Evans noted that mother did not “say anything. [The police] got her on wiring calls where she facilitated a narcotics transaction. She is much more minimal. She is [in] the narcotics side of the indictment. [Father] is the number one guy indicted. He is reporting to the Mexican Mafia. . . . He’s from 38th [Street] Gang. . . . He’s involved in the inner workings, facilitating the kidnapping of one of the top guys’ son, knew the kids who got kidnapped, knew about the murders. He was the right hand to the top guy. They were basically vying for the top position. . . . He’s looking at all sorts of violent crimes.” Detective Evans opined that mother would probably face a prison sentence of several years and that father was likely facing a life prison sentence.

Furthermore, Detective Evans stated that on one occasion, a car containing a shipment of drugs from Mexico drove up to the family home. He did not know if the driver or the drugs actually went into the family home. He stated that because father was a high ranking member of the gang, people knew where he lived and if they wanted to “come after him,” they knew where to find him.

DCFS assessed that due to the parents’ involvement with dangerous people and activities, the presence of a firearm and silencer in the home, and the fact that a shipment of narcotics was brought to the home, the parents had placed the children in harm’s way at their home.

March 15, 2011, Multidisciplinary Assessment Team (MAT) Report

In the MAT report, DCFS reported that the family lived in a one-bedroom home at the time of detention. The children stated that the family had experienced difficult financial times and that the parents struggled to provide for their food and clothing. Irene and B. provided vivid descriptions of their home’s conditions, detailing rodent and insect infestation, the absence of beds, bedding, blankets, and sheets. There was no working stove. Irene and B. believed that loans from extended family members helped the family “get by” month to month.

Eduardo and Cynthia confirmed the children's accounts and described similar conditions to those described by the children. They reported that mother received government benefits and assistance, but the account was insufficient to adequately provide for a family of seven. Eduardo and Cynthia denied that the parents abused the children and emphasized that they did everything possible to ensure that their needs were met and to give love and care to each child. Eduardo confirmed that father had a history of gang involvement; he also confirmed father's active membership. However, he denied that father was involved in or used drugs.

During an interview on March 3, 2011, B. disclosed that she felt anxious, worried, and fearful in her home of origin. She specifically stated that she "did not feel safe" in the family home, but she did not elaborate on this issue. DCFS also documented that Joseph presented as fearful anxious, and tentative. He was bothered by vivid recollections related to the manner in which he was detained. And, he had a poor appetite and was thin, while in comparison, his siblings were all obese. Cynthia and Eduardo believed that he was traumatized by his separation from his parents, sisters, and other family members, and that the separation had contributed to Joseph's sadness and confusion.

Regarding Luis, he was misbehaving at school. He was hitting and kicking fellow students, he was defiant, and he was bullying other students. However, his foster mother denied the presence of this behavior in the foster home. Michael's foster mother reported that he was having difficulty adjusting to the foster home. She described him as aggressive and as a bully; he had to be closely monitored to ensure that he did not injure other children. The foster mother noted that Michael was very bonded to his siblings, Eduardo and Cynthia.

May 12, 2011, Report

In its May 12, 2011, report, DCFS documented the efforts made to find an appropriate relative placement. On March 24, 2011, a criminal waiver for Freddy was submitted for approval. However, on April 18, 2011, a response was received stating that a court docket was needed regarding his DUI and program participation. DCFS had also contacted the paternal aunt that father suggested as a placement source, leaving several

messages for her and asking her to live scan. The paternal aunt had not returned any of DCFS's calls. Further, DCFS had not been provided any contact information for Mr. and Mrs. P., other relatives identified by mother who would care for the children.

DCFS documented that Eduardo still did not have an approved criminal waiver. Furthermore, DCFS had additional concerns regarding the placement of the children with Eduardo. Specifically, he had an extensive criminal history that continued until he was over 60 years of age. Second, during a monitored visit on March 24, 2011, he threatened the foster mother after she redirected him from going out of hearing range with Luis. When the foster mother reminded Eduardo that the visits were monitored, he asked her if she was scared that the children's relatives might turn against her and shoot her for being "malosa" (mean). He also made a reference to father's "people." His statements were inappropriate and implied that he was well aware of the illegal activities in which his son was involved. DCFS surmised that Eduardo was an inappropriate primary caregiver for the children due to his criminal history, his awareness of father's criminal activities, and his inappropriate behavior. Eduardo later apologized and informed the social worker that he did not make the statement as a threat.

Adjudication

On May 12, 2011, the juvenile court received various reports into evidence. It then proceeded to hear argument on the jurisdiction allegations. First, DCFS argued that the parents were arrested with a firearm with a silencer found in the home. Detectives had explained that the gun was believed to have been used in murders. The parents were arrested, leaving the children with no plan for care for them. DCFS further argued that the parents' criminal activities placed all the children at risk.

Counsel for the children joined in DCFS's position entirely.

Father argued that DCFS had failed to prove a nexus between the gun being in the house and the risk of physical abuse to the children. After all, the gun was never in reach of the children and father denied that the gun was his. Regarding the allegation that the parents had failed to make an appropriate plan for the children's care, father asserted that his arrest bore no nexus to the children's harm. Regardless, many relatives had come

forward and the mere fact that the relatives did not meet ASFA requirements was irrelevant. The relatives would have taken the children into their care and that would have been appropriate.

Mother joined in father's arguments. Additionally, if the allegation regarding the gun being in the home were sustained, she asked that she be stricken from that count as it was identified as belonging to father and mother's involvement in the alleged crimes was minimal. Mother also stated that ASFA regulations did not apply when a parent is making an appropriate plan. Thus, it was not necessary for relatives to submit to live scan procedures and it was irrelevant that Freddy was on probation.

In rebuttal, DCFS noted that the parents had not made an appropriate plan for the care of their children prior to DCFS involvement. Once the children were detained, it was DCFS's obligation to find placement for the children, and DCFS was bound by ASFA requirements.

Following oral argument, the juvenile court sustained the section 300 petition, pursuant to subdivision (b). Specifically, the juvenile court found that mother and father "established a detrimental and endangering home environment for the children in that a firearm was found in the children's home. Such a detrimental and endangering home environment established for the children by the mother and the father endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm and damage."

In count b-2, the juvenile court found that father had been "arrested for Gang Related Federal Racketeering Chargers. The parents failed to make an appropriate plan for the children's ongoing care and supervision. The [parents'] inappropriate plan for the children's care and supervision endangers the children's physical and emotional health and safety and places the children at risk of physical and emotional harm and damage."

In making its findings, the juvenile court remarked that considering the total circumstances of the matter, the parents were involved in a serious criminal enterprise and subjected the children to a very significant amount of risk. It noted: "[T]he mere fact an unlawful weapon . . . was on the premises further supports the concern that these

folks are ready to engage in serious violent confrontation if the circumstances are appropriate or should arise.”

The juvenile court declared the children dependents under section 300.

Then the juvenile court proceeded to disposition. After argument, the juvenile court ordered the parents to participate in random drug testing. In so doing, the juvenile court noted that father was arrested for conspiracy to distribute methamphetamine, cocaine, and cocaine base. It further noted that father was high ranking in the criminal enterprise and mother’s relationship with father was long-term and intimate. Moreover, one of the 38th Street Gang’s and Mexican Mafia’s primary criminal enterprises was drug trafficking and there was significant drug activity. The drug testing requirement would be deferred until their release from custody.

By the end of the hearing, the juvenile court found that there was clear and convincing evidence that there was a substantial danger if the children were returned home to the physical health, safety, protection or physical or emotional well-being of the children. There were no reasonable means by which the children’s physical health could be protected without removing them from the custody of their parents, and it ordered them removed from the parents.

Appeal

Mother and father’s timely appeals ensued.

DISCUSSION

I. Substantial Evidence Supports the Juvenile Court’s Order Sustaining the Allegations Against Mother and Father

A. Standard of Review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

B. Analysis

“The purpose of section 300 ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.’ [Citation.]” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.)

With that in mind, section 300 provides, in relevant part: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a *substantial risk* that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b), italics added.)

To find a minor a person described in section 300, subdivision (b), there must be proof of neglectful conduct, causation, and a substantial risk of serious physical harm. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Here, there is ample evidence of a substantial risk to the children as a result of the firearm and silencer in light of the parents’ criminal lifestyle. The parents participated in criminal activity inside the home, as evidenced by mother’s facilitation of a narcotics transaction from the home, the transportation of narcotics to the home, and father’s well-known status as a gang member. The presence of the firearm with the silencer demonstrated that the parents were ready to engage in a serious violent confrontation in the home should the circumstances arise. This detrimental home environment placed the children at risk of serious physical harm.

In urging us to reverse, the parents assert that there is no basis for jurisdiction simply because a firearm, which was hidden and out of the children’s reach, was found in the home. This is not a substantial evidence claim; rather, it is a claim of failure to state a cause of action. (See, e.g., *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1133.) As this actually is a facial challenge to the section 300 petition, we apply the rules akin to a demurrer. “We construe the well-pleaded facts in favor of the petition in order to determine whether” DCFS met its burden within the meaning of section 300, subdivision (b). (*In re Nicholas B.*, *supra*, at p. 1133.) And, we conclude that DCFS met its burden.

The petition alleges that the children were at a substantial risk of harm as a result of the firearm and silencer. The petition also alleges the parents were arrested for “Gang Related Federal Racketeering Charges,” as detailed in the detention report. The parents’ active participation in gang activities, coupled with the dangerous firearm and silencer found in the home, created the detrimental home environment that placed the children at risk. These allegations are sufficient and are supported by the evidence.

The parents’ remaining arguments are moot. An appellate court can affirm a juvenile court’s jurisdictional order if the evidence supports the decision on any one of the enumerated statutory bases which, if supported by the evidence, can suffice to establish jurisdiction. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–876; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.) In light of our conclusion that there was substantial evidence supporting the juvenile court’s findings pursuant to count b-1, there is no basis to reverse.

II. *The Juvenile Court Did Not Abuse Its Discretion in Ordering Mother and Father to Participate in Random Drug Testing*

A. Standard of Review

We review the juvenile court’s dispositional orders for an abuse of discretion. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 652.) ““The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion. [Citations.]”” (*In re Corrine W.* (2009) 45 Cal.4th 522, 532.) We review for substantial evidence the findings

of fact on which dispositional orders are based. (*In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180.)

B. Analysis

Mother and father argue that there was insufficient evidence to support the juvenile court's order for them to submit to drug testing; they base their argument on the fact that the juvenile court did not sustain an allegation in the petition relating to the parents' drug use.

At disposition, the juvenile court is not limited to the content of the sustained petition when it considers what disposition would be best for the child. (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.) Additional social study reports, special evaluations, and "other relevant and material evidence" may be considered. (§ 358, subd. (b).)

Here, there was evidence of the parents' involvement in drug trafficking. Moreover, father had several arrests involving the use, possession, and purchase of controlled substances. Mother had a long and intimate relationship with father and joined him in his drug trafficking enterprise. Under these circumstances, we conclude that the juvenile court acted within its discretion in ordering the parents to drug test upon their release from prison as part of their family reunification plan.

DISPOSITION

The juvenile court's findings and order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD