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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JULIO G., Person Coming Under the
Juvenile Court Law.

B234144

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK84620)

Plaintiff and Respondent,

v.

S.V.,

Defendant and Appellant.

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

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Mother, S.V., appeals from the disposition order of the juvenile court. (Welf. & Inst. Code, § 361.)¹ She contends the record does not contain evidence to support the juvenile court's order removing her infant son Julio G. from her custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Viewing the record according to the rules (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193), Julio's older half siblings, Angel V., Abraham V., and Sergio H., were already dependents of the juvenile court when Julio was born in February 2011 based on allegations of mother's long history of unresolved substance abuse and domestic violence between mother and father Julio G., Sr.² These half siblings were removed from mother's care in October 2010 and mother was receiving reunification services. Julio's other half siblings, Marco P. and Steven P., were residing with their father.

Mother has arrests dating back to 2006. Mother tested positive for amphetamine, methamphetamine, and marijuana while she was pregnant with Julio. Mother's cousin Janet C. informed the social worker that when the parties were in court on October 14, 2010, mother was five months pregnant with Julio and smelled of alcohol and smoke. Janet had reported that mother would disappear for weeks at a time and could not take care of herself, let alone her children. Mother admitted testing positive for drug use, but explained that the positive result did not mean she was using drugs. Rather, she recalled walking where people were using.

As for the family's history of domestic violence, in September 2010, father struck mother in the face, causing bruising and a swollen eye. Mother minimizes the violence by asserting that father hit her only once. However, mother also told the social worker that father has assaulted her on prior occasions. At times, she has had to grab objects to protect herself from father. Mother reported that when she told father she wanted to leave, he kept her in the house against her will. Father has been convicted of inflicting

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

² Julio G., Sr., is not a party to this appeal.

corporal injury on a spouse/cohabitant. Father has also been arrested for domestic violence but mother did not want to press charges. Some of the violence occurred while mother was pregnant with Julio, which placed the fetus at risk of serious injury.

When Julio was born, the Department of Children and Family Services (the Department) assessed the family and decided to leave the baby in mother's custody with reunification services, because mother was enrolled in a substance abuse program. However, in March 2011, the Department learned that Julio's half siblings, Angel V. and Abraham V., had the characteristics of possible Fetal Alcohol Syndrome and Angel had symptoms of failure to thrive. Determining the risk to Julio to be high, the Department could no longer assure Julio's safety with mother. Hence, the Department removed Julio from mother's care and the juvenile court ordered Julio detained.

Although mother was receiving reunification services as of October 2010, she only enrolled in a drug program at Shields for Families two months later, on December 14, 2010. Mother then left the program and did not return until February 1, 2011. Mother's first drug test was on February 23, 2011, shortly after Julio's birth. Thereafter, she tested negative, twice in March 2011, and twice in April 2011.

The juvenile court sustained a petition as to Julio that alleged mother has a history of substance abuse and had a positive toxicology screen for amphetamine, methamphetamine, and marijuana in October 2010 while pregnant; mother and Julio's father have a history of engaging in violent altercations; father has a criminal history of conviction for inflicting corporal injury on a spouse; and that Julio's siblings are dependents of the juvenile court because of mother's substance abuse and father's violent conduct.

Mother's therapist at Shields for Families reported that mother had been participating in therapy since December 2010. According to the social worker, mother had made improvements in maintaining sobriety based on her toxicology results and her consistent attendance in therapy. According to the social worker, mother's overall appearance and attitude had improved greatly since her initial interview.

At the contested disposition hearing on May 4, 2011, the Department and Julio's attorney argued that mother had only recently begun to make progress in her case plan. Given the seriousness of mother's substance abuse problem, they argued, it was too soon to return Julio to her custody. The juvenile court commended mother for her progress, but found that she had not progressed enough to be ready for the full responsibility of child care. The court ordered reunification services for mother to include drug rehabilitation with random testing, participation in parent education, counseling and individual counseling to address case issues including domestic violence, and to participate in Alcoholic Anonymous after care with a sponsor. The court awarded mother unmonitored day visits. The court set the six-month review hearing for November 2, 2011. Mother's appeal ensued.

CONTENTIONS

Mother contends there is no clear and convincing evidence to justify removal of Julio from her custody.

DISCUSSION

To remove children from their parents' custody, the juvenile court must find clear and convincing evidence that there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the children if they were returned home, *and* there are no reasonable means by which the children's physical health can be protected without removal. (§ 361, subd. (c)(1).) “ ‘A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent.

[Citation.] 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. [Citation.]’ [Citations.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

While the juvenile court must find clear and convincing evidence, we review the court's ruling for sufficiency of the evidence to support its conclusion. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881.) Toward that end, “we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court;

we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]" (*In re Heather A., supra*, 52 Cal.App.4th at p. 193.) The record here supports the juvenile court's findings.

Julio was not detained "only because Mother had an open case with her older children" as mother puts it. Rather, mother has a long history of unresolved substance abuse that has had a seriously destructive impact on her children. At least two of her children are suffering from failure to thrive and Fetal Alcohol Syndrome because of mother's substance abuse. Not only did mother test positive for drug use during her pregnancy with Julio, but her cousin smelled alcohol and smoke on mother's breath when she was in court in October 2010, while pregnant with Julio, and described mother as disappearing for weeks at a time. Mother never challenged the order removing Abraham, Angel, or Sergio. Mother is unable to safely care for her children which has left a trail of children in the custody of others. Given her long history of multiple substance abuse, there is a substantial danger to Julio's physical or emotional safety and well-being if he were returned to mother's care. (Cf. § 300.2 ["The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child."].)

Moreover, serious substance abuse is not the only danger to this family. The juvenile court had evidence of domestic violence between mother and father. "[S]pousal abuse is detrimental to children." [Citations.]" (*In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562), which can sow in children seeds of psychological predisposition to be victims of domestic violence. (*In re Heather A., supra*, 52 Cal.App.4th at p. 195.) " "Studies show that violence by one parent against another harms children *even if they do not witness it.* " (*In re Sylvia R., supra*, at p. 562, italics added, quoting Fields, *The Impact of Spouse Abuse on Children and Its Relevance In Custody and Visitation Decisions in New York State* (1994) 3 Cornell J.L. & Pub. Pol'y 221, 228.) The danger to Julio is all the more clear and convincing here because mother minimizes the violence, stating it happened once and was not serious, despite the fact she had also admitted the

violence was ongoing. More than once, mother had to protect herself with objects when father became aggressive. The documented violence occurred while mother was pregnant with Julio placing the unborn baby at risk of serious physical injury. While she did testify she has ended her relationship with father, the juvenile court was entitled to disbelieve that testimony and we may not reweigh that determination. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.) The evidence supports the juvenile court's order removing Julio from mother's care (§ 361, subd. (c)).

Mother argues that there is no longer a danger to Julio. She points to her active participation at Shields for Families and her negative drug tests, along with the fact that she is breast feeding the baby, which means she is not using drugs. However, mother did not enter this rehabilitation program until two months after her older children were removed from her care, and then she left, only resuming participation after Julio's birth. Despite a long history of substance abuse, mother has only participated in four months of rehabilitation. Mother's participation in Shields for Families and five negative drug tests, while a laudable beginning, is simply not enough to overcome the overwhelming evidence that Julio is at serious risk of harm if left in her care.

Mother contends that the juvenile court failed to make the necessary finding of the second portion of the test under section 361, subdivision (c)(1), namely, that "there are no reasonable means by which the minor's physical health can be protected without remov[al.]" (See also § 361, subd. (d).) To the contrary, immediately before ordering Julio removed from mother's custody, the juvenile court stated "There is no reasonable means by which the child's physical health can be protected without removing the child from mom." Immediately after ordering the child removed, the court stated, "[R]easonable efforts have been made to prevent or eliminate the need of the child's removal from the home" The court made the necessary finding. Moreover, the record supports the court's finding. Upon Julio's birth, the Department decided to leave him with mother. It only removed the child when it learned of the serious effects of mother's substance abuse on his older siblings. Furthermore, mother delayed in commencing rehabilitation.

“[O]ut-of-home placement is . . . a last resort, to be considered only when the child would be in danger if allowed to reside with the parent. The law requires that a child remain in parental custody pending the resolution of dependency proceedings, despite the problems that led the court to take jurisdiction over the child, unless the court is clearly convinced that such a disposition would harm the child. The high standard of proof by which this finding must be made is an essential aspect of the presumptive, constitutional right of parents to care for their children. [Citations.]” (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.) That high standard has more than adequately been met here. Julio is endangered by his mother’s substance abuse and his parents’ domestic violence. Mother has made earnest first steps at conquering her addiction and her psychological issues, but a few months of sobriety is simply not enough. Mother’s problems expose the baby to substantial danger of harm to his physical health, safety, protection, and his physical or emotional well-being if he is returned to his mother’s custody. The record supports the juvenile court’s finding, by clear and convincing evidence, that removal was necessary and that a longer period of sobriety, rehabilitation, and domestic violence counseling, along with more clean drug tests were required before Julio could be safely returned to mother’s custody.

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.