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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re SELENE B. et al., Persons Coming  
Under the Juvenile Court Law.

B238140  
(Los Angeles County  
Super. Ct. No. CK88280)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MONIQUE B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Commissioner. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

Mother Monique B. (Mother) appeals the dependency court's order declaring her minor children Mariah B., Jasmine B., Nathan F., Christin L., and Selene B. dependents, removing them from her custody, and ordering her to comply with reunification services. We affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Mother is the mother of five children: Selene, born 1996; Christin, born 1999, Nathan, born 2005, Jasmine, born 2007, and Mariah, born 2008. The children have four different fathers: Selene's father is Victor R., who is deceased; Mariah's father is Victor T., who is deceased; Christin's father is Christian L.; and Nathan and Jasmine's father is Francisco F., who is incarcerated.

On June 10, 2011, the Montebello police responded to a hit-and-run accident. Mother had run a red light, and she was traced to a parking lot. There was significant damage to the front of the car, the airbags had deployed, and the car had no backseats. Mariah, who was three years old and weighed 28 pounds, was seated in the front seat in a booster chair, although she should have been in a rear seat in a child safety chair. Mother had not been drinking and did not appear to be under the influence of illicit drugs. Police arrested Mother for felony hit and run (Veh. Code, § 20001, subd. (a)) and child endangerment (Pen. Code, § 273a, subd. (a).) Mariah was detained and released to the Department of Children and Family Services (DCFS).

Mother had a prior felony hit and run stemming from a February 15, 2011 incident, and had been placed on probation. Mother claimed to have left the scene of the current accident because she had to return home to get her driver's license, which was a condition of probation. Mother admitted to police that she had transported Selene and Nathan in the vehicle without safe seating or restraints, and that Selene had been in the vehicle at the time of the current accident.

The social worker visited the children, and found all were healthy, clean, and generally happy. Selene, Nathan and Mariah resided with Mother. Christin had been living in the home of her maternal aunt Nora P. for the past two years, while Jasmine had

been residing with her maternal relative Esmeralda S. for the past two years. Mother visited with both children on a consistent basis. Christin told the social worker that Mother had transported her in the vehicle without a seat or safety restraints. Christin did not want to be placed with her father Christian L., and was placed with her grandmother due to the lack of space in Nora P.'s home.

Mother was incarcerated.

DCFS filed a petition June 15, 2011 with respect to all five children, alleging counts under Welfare and Institutions Code section 300, subdivision (b) and (j).<sup>1</sup>

At the detention hearing June 15, 2011, Mother was not present due to her incarceration. The court found Christian L. nonoffending, ordered further assessment of his home, and monitored visits between Christin and her father. The court detained the children, and ordered them placed with their maternal grandmother, with the exception of Mariah, who was placed with her paternal aunt. The court denied Mother visitation while in custody, but held that Mother would be permitted monitored visitation when released from custody.

DCFS's prerelease investigation report stated that Christin was placed with her maternal grandmother, along with Selene and Nathan. Mother had enrolled in a parenting program while incarcerated, and was attending AA/NA classes. She had one counseling session, was prescribed some medication for her depression, and signed up to see a psychiatrist.

DCFS summarized, "[t]here is no doubt that [Mother] has placed her children in an endangering situation by transporting them in a vehicle that does not have seats or proper restraints. Mother has been involved in at least two 'hit and run' accidents within the last year and a driving under the influence arrest in 2010. Mother indicated that on [June 10,] 2011 she left the scene of the accident because she went home to obtain her driver's license and insurance information. She indicated that she knew she would be in more

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

trouble because she didn't have them with her. As to the previous 'hit and run' she didn't have a reason for leaving the scene. In 2009 she stated she was involved in a 'hit and run' at City Walk and left because her daughter was sick. . . . [¶] [Mother] indicated that after the death of Victor [T.] in 2009 she had difficulty functioning.”

On June 30, 2011, the court held a hearing to address the pre-release investigation. Christin's father's home was appropriate and did not have any safety risks, and he was willing to take custody of Christin. Christin did not want to go with him, but counsel suggested she spend weekends with him with the goal of releasing her to him. The court continued the matter to August 2, 2011.

DCFS's jurisdictional report for the August 2, 2011 hearing stated that Selene, Christin and Nathan were placed with their maternal grandmother. Jasmine was placed with a maternal relative, Esmeralda S., and Mariah was placed with a paternal aunt, Veronica S. Mother had told DCFS her two older children, Ernie S. and Vivian S., whose dates of birth Mother did not provide, had been adopted by their paternal grandparents in 1999 through dependency court proceedings. However, DCFS's search of the records could not conclusively establish the identities of the children.

Mother's prior child welfare history indicated that in March 2000, DCFS received an allegation of the sexual abuse of Selene by an unknown perpetrator. DCFS determined the allegation to be inconclusive, and no further services were provided. In October 2004, DCFS received an allegation of emotional abuse of Selene and Christin by Mother's boyfriend. Mother admitted an isolated incident of domestic violence, and reported the boyfriend had moved to Mexico. DCFS determined the allegation to be unfounded, and no further services were provided. In May 2006, DCFS received a referral of emotional abuse by Mother's boyfriend and general neglect by Mother; the referral alleged ongoing domestic violence between Mother and her boyfriend, but the allegations were determined to be unfounded, and no further services were provided. In June 2011, DCFS received a referral with allegations of emotional abuse by Mother and the maternal aunt. Mother and the aunt were involved in a verbal altercation that

escalated to mutual physical combat. The incident appeared to be isolated, Nathan and Selene were present but appeared to be unaffected by the incident. DCFS determined the allegation to be inconclusive.

On June 24, 2011, DCFS interviewed Selene. Selene stated that Mother treated her well, but admitted that in 2009 after the death of Mariah's father Victor T., Mother began to suffer from migraines. Around that time, Jasmine moved to live with Esmeralda S., and Christin moved to live with Nora P. Mother told the social worker that she fled the scene of the June 2011 accident because she did not have her identification or insurance card. She admitted the vehicle did not have proper restraints.

Mother was born in 1979 in Bellflower. Her father was sentenced to prison when she was five and served 15 years. Mother had a healthy and happy childhood, and went to a private Christian school until the 8th grade. Mother became rebellious at age 14, and had her daughter Selene when she was 15. Selene's father was murdered in 2008. She met Christian L. in 1997 and they lived together, but he had several driving under the influence (DUI) violations and was incarcerated. There was domestic violence in the relationship, and Mother left. In 2004, she became involved with Francisco F., who is the father of Nathan and Jasmine. There was domestic violence and drug use in the relationship. Francisco F. is incarcerated but she does not know the reason. In 2007, Mother met Victor T. and Mariah was born in 2008. Victor T. was very good to her and treated her very well. Victor T. was killed in 2009 in a gang-related shooting, and Mother believes his family blamed her for the shooting because Mother had relocated them to Los Angeles. However, Mother has made amends with Victor T.'s sister Veronica S., with whom Mariah is currently placed. Mother has had a difficult time dealing with Victor T.'s death.

DCFS noted that "Mother . . . has admitted to making mistakes and making poor choices with the men in her life. She minimizes her alcohol abuse despite the fact she was arrested in 2010 for being under the influence. At this time, [DCFS] is respectfully recommending the petition be sustained and Mother receive family reunification services

with her children . . . .” DCFS recommended parenting, individual counseling to address domestic violence and case issues, drug and alcohol counseling with random testing, and monitored visitation.

At the August 2, 2011 hearing, the court granted Mother visitation while in custody if the maternal grandmother took the children to visitation. Mother requested that Mariah be placed with the other children, and the court stated that DCFS should assess the matter. The court continued the matter to September 14, 2011.

DCFS’s addendum report for the September 14, 2011 hearing stated that Christin continued to have overnight visits with Christian L. Both the homes of Veronica S. and Esmeralda S. were Adoption and Safe Family Act (ASFA) approved. DCFS recommended that the children remain with their current placements because they were bonded and secure with their caregivers. At the hearing, the court continued the matter to November 15, 2011.

DCFS’s addendum report for the November 15, 2011 hearing stated that Mother had been released from prison and was residing in Lemoore, approximately three hours from Los Angeles. Mother was residing with a friend and wanted to be away from the influences of Los Angeles so she could complete her court-ordered programs and reunify with the children. Mother had completed a parenting class while incarcerated. In August 2011, Mother was convicted of felony hit and run and misdemeanor cruelty to a child, and was placed on 36 months’ probation. In November 2011, Mother indicated her probation would be transferred to the East Los Angeles office. Mother stated she suffered from anxiety and depression following the death of Victor T., and had been prescribed medication. Mother told the social worker she would drug test, but while the social worker prepared the paperwork, Mother told the social worker she had to leave immediately. Mother denied using illegal substances, but refused to take a subsequent drug test because she was not aware it was going to be witnessed. DCFS recommended reunification services, including psychological evaluation, parenting program, individual

counseling to address domestic violence and case issues, random alcohol and drug testing, with Mother to complete a drug/alcohol program if she tested dirty.

At the November 15, 2011 hearing, Mother admitted that she had been involved in a series of hit-and-run accidents. The first was at Universal City Walk in October 2009. She hit a car when she was backing out of a parking space, grazing the bumper. In January 2011, she side-swiped a parked car. The most recent incident in June 2011 occurred when she struck a car. Her car was in the shop and the car repair shop had loaned her a truck with only two seats. She admitted she fled the scene, and that Mariah was in the car in a booster seat. She was tested for substances after the collision: her tests were negative. She denied using alcohol or drugs.

Mother asked the court to dismiss the petition. Mother admitted a DUI arrest in 2007, and stated she completed an alcohol program in July 2008. Mother argued that there was no evidence the children were at future risk due to her conduct because no children were in the car except for the third incident (when Mother was with Mariah), and she left the scene of that incident to go home and get her identification cards. She pointed out there was no evidence she was under the influence.

The court stated that Mother was on probation for the a hit-and-run offense when in June 2011 she fled the scene; because of Mother's probation, she knew what she needed to do in an accident, which was to remain at the scene and exchange information. The court stated that Mother "chose to flee the scene, go home, and take your [child] with you. You violated probation. You violated—you admitted to those charges and it's the cumulative effect of your inability to appropriately care for these children. It's an issue of being in a hit-and-run accident with your child, knowing all of the facts about what hit-and-run is about, being on probation at that time put the children at risk and that's the problem." The court sustained count (b)(1) of the petition, dismissed the other counts under section 300, subdivision (b), and (g) and sustained the allegations of count (j)(1) as being under the first count.

Mother asked that the children not be removed from her because there was not clear and convincing evidence they were at risk. The court found there was no reasonable means to protect the children without removing them from Mother's care. The court placed Christin with her father Christian L. Mother was ordered to attend and completing parenting classes, and take all medications she was currently prescribed.

## **DISCUSSION**

### **I. JURISDICTIONAL FINDINGS**

Mother contends jurisdiction in this matter is not supported by sufficient evidence of risk of future harm to the children: None of the children was involved in any of the accidents, except for the June 2011 incident, and in that case, there was no evidence Mariah was injured; the family had no prior substantiated referrals; the children were clean, healthy, and happy; and there was no evidence of Mother's substance abuse. For this reason, Mother requests that the court's order of reunification services also be reversed.

"[A] finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) [W]e must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]" (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

At a jurisdictional hearing, the juvenile court determines whether the allegations in the petition that the child comes within section 300 are true, and thus the child is within the juvenile court's jurisdiction. (§ 355; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) The purpose of the dependency statutes "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." (§ 300.2.)

The circumstances under which the juvenile court may take jurisdiction of a child are narrowly defined. Subdivision (b) of section 300 authorizes dependency jurisdiction when “[t]he 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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . . .” (§ 300, subd. (b), italics added.) “[T]he use of the disjunctive ‘or’ demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction under these subdivisions.” (*In re J.K.*, *supra*, 174 Cal.App.4th at pp. 1434–1435, fn. omitted.)

Here, although each incident of hit-and-run standing alone might not support jurisdiction, when Mother’s three hit-and-runs are viewed together, they demonstrate a consistent pattern of behavior that has jeopardized the children’s safety; further, such behavior will likely continue in the future, as one of the older children told DCFS the children often rode in the car with improper restraints. In addition, Mother had a DUI and refused to drug test for DCFS on two occasions, which indicates she has a substance problem that has not been addressed. These facts support a finding that Mother’s conduct poses a future risk of harm to her children.

For that reason, we do not find the court’s disposition order requiring Mother to participate in reunification services to be in error. A family reunification plan must be part of any dispositional order removing a child from his or her home, and suitable services must be provided despite the difficulty or prospects of success. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1776–1777.) The plan must be tailored to meet the needs of each individual family. (*Id.* at p. 1777.) Here, based upon the reasons the court sustained the petition, the court specified the terms of Mother’s reunification plan to address these problems; thus, the plan included parenting classes, random drug/alcohol testing; counseling, and monitored visitation. Mother’s participation in this plan is appropriate given the circumstances of her case.

## II. REMOVAL ORDER

Mother argues that the court erred in removing the children from her custody because the court must consider a less drastic alternative, and in this case, the children's safety could have been insured by leaving them in Mother's care and ordering intensive in-home services, including requiring Mother to abstain from driving her vehicle. We disagree.

Section 361, subdivision (c)(1), provides children shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being and there are no reasonable means by which the children can be protected without removal. (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.) "After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing" and "decide where the child will live while under the court's supervision." (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) "A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child 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.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*Id.* at pp. 169–170.) If the court finds by clear and convincing evidence that the child's welfare requires removal due to a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child, the court may issue a removal order. (§ 361, subd. (c)(1).) "Whether the conditions in the home present a risk of harm to the child is a factual issue. Again, we apply the substantial evidence test." (*In re N.M.*, at p. 170.)

Here, leaving the children in Mother's care would not serve the statutory aim of averting future harm to them. Mother had repeatedly demonstrated her unwillingness to

operate her vehicle in a manner that ensured the safety of her children as well as others on the road. She was unable to follow the terms of a criminal probationary order, and it is thus highly unlikely Mother would follow the directive of the dependency court to abstain from driving. Therefore, the dependency court did not err in ordering the children's removal from her care.

### **III. REUNIFICATION SERVICES**

Mother contends the dependency court erred in ordering monitored visitation because DCFS did not demonstrate any reason why visitation should be monitored.

We disagree. Mother recognizes that no visitation order shall jeopardize the safety of the child. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1005.) Here, Mother displayed a consistent inability to drive safely, provide for the safety of her children in her vehicle, and to follow the law concerning behavior at the scene of an accident. Instead, Mother had *three* separate hit and runs; although substance and alcohol abuse was denied, the children told DCFS that on several occasions, Mother did not use proper restraints in the car; and at every single accident, Mother fled the scene rather than observe her responsibilities under the law. These factors support the court's concern that Mother would once again jeopardize the safety of the children if left on her own during visitation.

### **DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.