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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JADEN R. et al., Persons Coming
Under the Juvenile Court Law.

B240569
(Los Angeles County
Super. Ct. No. CK89216)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARILYNN C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Donna Levin, Juvenile Court Referee. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant
and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County
Counsel, and Kimberly A. Roura, Associate County Counsel, for Plaintiff and
Respondent.

Marilynn C. (“Mother”) appeals the juvenile dependency court’s orders removing her two children from her custody under Welfare and Institutions Code¹ section 361, subdivision (c). Before this court, Mother claims insufficient evidence supported the court’s dispositional orders. For the reasons stated herein, we conclude that sufficient evidence supported the orders. Accordingly we affirm.

FACTUAL AND PROCEDURAL HISTORY

The Parties

The family in this matter consists of Mother (age 17 at the time the proceedings began in 2011) minors Jaden R. (born 2010), minor Ian L. (born October 2011), the presumed father of Jaden R., Bryan R. (18 years old in 2011), and the presumed father of Ian L., Samuel L.²

At the time these proceedings began, Mother was on probation for assaulting one of her brothers in 2009. In her juvenile delinquency case, it was alleged that Mother had committed assault with a deadly weapon and two counts of battery. She served 25 days in juvenile detention for the assault. After her release, Mother had been offered Full Service Partnership (FSP) services from November 2009 to March 2010. Services were terminated, however, because Mother failed to maintain contact with the therapist. The court had also ordered Mother to attend school, but the probation officer reported that Mother had not complied with the order.

The maternal grandmother stated that she no longer attempted to discipline Mother because Mother had previously attempted to attack her. Mother conceded that she had been aggressive to maternal grandmother, and had engaged in a physical altercation with her prior to becoming pregnant with Jaden R. Mother said the physical altercation

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

² The fathers are parties in the dependency proceedings, but are not parties to this appeal.

occurred because her mother was telling her to “do this, do that,” and telling her she was “doing no good” in school.

In April 2011, Mother reported an incident to police of domestic violence by Bryan R. According to Mother, an altercation ensued at Bryan R.’s house during which Bryan R. hit her arms with his fists, and had to be restrained by his family. An officer observed that Mother had slight bruising on both her arms. Mother told officers that in the past Bryan R. had grabbed her by the arms and yelled at her. Mother said that she would seek a restraining order.

Child Welfare Involvement with the Family

In July 2011, Mother, Bryan R. and Jaden R. came to the attention of the Department of Children and Family Services (the “Department”). At the time, Mother and Jaden R. lived with the maternal grandfather and Bryan R. lived with his parents. Mother revealed to the social worker an incident of domestic violence between Mother and the Bryan R. just before the 4th of July 2011. Mother told the Department that Jaden R. had suffered an accidental burn on his leg, which Mother claimed happened as she and the toddler were walking by people lighting fireworks. Mother reported that Bryan R. started taking pictures of the burn with his cell phone because he did not believe the burn was accidental. He threatened to call “social workers” so that the Jaden R. would be taken away from Mother. Bryan R. and Mother got into a scuffle over the cell phone and Mother began hitting him while he was holding Jaden R. in his arms. Mother claims that Bryan R. kicked her in the stomach during the incident and Jaden R. started crying.

Bryan R. stated that to avoid any problems, he gave Jaden R. to Mother and left; he denied that he kicked Mother. Police later came to Bryan R.’s house and told him Mother had reported he kicked her in the stomach. The police took Bryan R. to the hospital where Mother, then pregnant with Ian L., was being examined, but then police released him.

Bryan R. reported that Mother had a history of lying. Instead he claimed Mother was violent and aggressive with him, and he had received scratches to his face in altercations with Mother. Bryan R.’s mother (“paternal grandmother”) said she had

observed Mother to be aggressive with Bryan R. One of Bryan R.'s brothers told the social worker he had seen Mother hit Bryan R. while Bryan R. was holding Jaden R., and had seen scratches that Bryan R. told him Mother had caused. Another paternal family friend said that once after Mother and Bryan R. were arguing, Mother grabbed Jaden R. out of the friend's arms, scratching the friend. The friend said both Mother and Bryan R. have tempers. Bryan R.'s father ("paternal grandfather") related an incident in which Mother started to get physical during an argument with Bryan R., and R. grandfather stepped in between them.

The social worker asked Mother if she had taken Jaden R. to the doctor to look at the burn as she had been instructed.³ Mother responded, "well no because [Jaden R.]'s burn looked better." The maternal grandparents told the social worker the July 2011 incident was the second time Mother had reported that the Bryan R. hit her.

Mother told the social worker that she understood she needed help, because she had a temper, and she was willing to comply with all required programs. The Department recommended that Jaden R. remain with Mother as long as Mother enrolled in parenting, anger management, and domestic violence classes, and followed through with placing Jaden R. in a licensed day care. Mother was given a referral for a Department child care program, and also provided a form to allow the family to re-apply for the FSP services they had been offered. The parents were instructed to exchange Jaden R. for visits at the police station.

Initial Dependency Proceedings

On August 5, 2011, the Department filed a petition pursuant to section 300, subdivisions (a) and (b), alleging that Mother and Bryan R. had a history of violent

³ The public health nurse had looked at Jaden R.'s burn when Mother called the police to report the domestic violence incident. Mother stated she had treated the burn; she said she did not take the child to the doctor because she thought it was just a minor burn. The public health nurse told Mother to take the minor to the doctor immediately to check the wound. Mother agreed to do so, but never followed through.

altercations in the child's presence. The petition also alleged Mother failed to obtain necessary medical treatment for Jaden R.'s burn.

At the detention hearing on August 9, 2011, the Department recommended that the child be released to Mother, but only on the conditions that Mother reside with her family and enroll in anger management and domestic violence classes. The juvenile court informed Mother that she needed to remain in her parent's home, needed to enroll in domestic violence classes and needed to allow the social worker to come to her home and see the child. The court ordered the Department to provide Mother with family maintenance services, including counseling referrals, and to "look into all available settlement options" for the case.

When interviewed for the Jurisdiction/Disposition Report, in September 2011, Mother stated she and Bryan R. started arguing after she gave birth to Jaden R. Mother said there had been pushing and shoving between them before and after Jaden R.'s birth. She described the incident in April 2011, when she had called police and had suffered bruises on her arms⁴ and the incident in July of 2011. With respect to her failure to take the child to the doctor to examine the burn, Mother claimed that the social worker said she was going to make an appointment for her. Mother said that she had yet to enroll in domestic violence, anger management, and parenting programs.

Mother was living with a friend, and stated she planned to move in soon with her boyfriend, Samuel L. Mother also said she would start looking for counseling, and was in the process of seeking anger management counseling and parenting classes.

Bryan R. was also interviewed for the Jurisdiction/Disposition Report. Bryan R. complained that Mother had not shown up for two of his visits with Jaden R. He also

⁴ Regarding the April 2011 incident, Bryan R. said it was Mother who scratched and pushed him at a family party when Mother wanted to go somewhere with another male. Bryan R. said Mother started swinging her hands and fists, striking him, and scratching him in the face.

said Mother's new boyfriend, Samuel L. was a gang member, and he heard some gang members were planning on "doing something" to Mother.

Both parents complained about the other parent not showing up for visits. Mother and Bryan R. signed a visitation schedule agreement on September 19, 2011. The investigating social worker concluded that physical altercations took place between Mother and Bryan R., and that the altercations were mutual. The social worker recommended that Jaden R. remain released to Mother, that she participate in family maintenance services, including individual counseling to address all issues including anger management, and parenting classes.⁵

In October 2011, the Department received a referral that Jaden R. had sustained a burn on his thumb. The burn was the size of a pencil eraser and had scabbed over and did not appear infected. Mother told the social worker Jaden R.'s burn came from touching a barbeque.

The juvenile court set a mediation for December 2011. Mother and Bryan R. signed a mediation agreement, resolving the allegations against them, and agreeing on the disposition as well. The parties agreed to, and the juvenile court sustained, the following language for count a-1: "The child [Jaden R.]'s parents, [Mother] and [Bryan R.], have engaged in verbal and physical altercations, including in the child's presence. Such verbal and physical conflict by the child's parents places the child at risk of harm." The court dismissed the remaining counts. The parties agreed that Jaden R. would be placed with Mother with family maintenance services. The parties further agreed Mother would complete a parenting class, participate in individual counseling to address case issues including anger management, conflict with Bryan R., co-parenting, and child

⁵ Mother reported that she had tried to enroll in a domestic violence program, but the program would not accept her because she was under 18 years old. Mother would turn 18 in December of 2011. The juvenile court directed the Department to look into programs that would accept Mother.

protectiveness, and participate in family preservation services.⁶ The juvenile court accepted the agreement, and ordered Mother to participate in the services. The juvenile court set a progress hearing for March 2012, to “make sure” the parents were enrolled in their respective programs, and for an update on the parents’ progress.

Subsequent Petitions

A new referral in late 2011, alleged that Jaden R. sustained a third burn while in Mother’s care. Mother claimed the burn occurred when Jaden R. was in Bryan R.’s care. Mother and Bryan R. each blamed the other for the burn. The social worker referred Jaden R. and Ian L. for medical examinations, but Mother failed to take the children to the appointment. The social worker had referred Jaden R. to the medical exam to determine how long ago the burn had occurred, to see if it could be determined which parent had Jaden R. at the time of the burn. A social worker had also referred Jaden R. for mental health services. Mother failed to take Jaden R. to appointments set up with a therapist to assess Jaden R. for mental health services.

In early January 2012, the social worker asked Mother if she had enrolled in any of the court-ordered programs. Mother said that she had not enrolled in any of the programs because she did not have childcare, and had no money to pay for programs. In mid-February 2012, Mother again stated she had not enrolled in programs, and again claiming she had child care issues and no money to pay for programs.

In February 2012, Bryan R. alleged Mother was using marijuana, saying his suspicions were based on Mother’s Facebook posts and seeing Mother with a friend who had a reputation for using drugs. The social worker asked Mother to drug test on February 21, 2011, and Mother agreed to do so, but did not do the testing.

⁶ In December 2011, Mother told the Department she did not have money to pay for the programs. The Department provided Mother with referrals for free parenting and domestic violence classes through the Montebello School District, and also provided Mother with monthly transportation funds.

The social worker informed Mother and Bryan R. that a team decision making meeting would be held on February 23, 2012, to address case issues, visitation issues, and Mother's on-demand drug test. Neither parent came to the meeting, and neither called to cancel. Mother said attending the meeting was a waste of time and that she did not want to show up if Bryan R. did not show up.

On February 29, 2012, the children were detained. At that time, Mother could not give any reasons for why she failed to take Jaden R. to the scheduled medical appointment regarding his burn, or why she did not drug test on the day she agreed to, even though she had told a family member that she had gone to the drug test. The maternal grandfather indicated that removal of the children might be for the best because Mother needed to mature and take responsibility for her actions. He stated he did not want Mother to reside in his home due to Mother's aggressive nature.

The Department's report expressed concern that Mother did not follow through with taking Jaden R. to scheduled appointments and would not take responsibility for the latest burn. The Department was also concerned about the Samuel L.'s criminal history, with whom Mother had been living.⁷

On March 5, 2012, the Department filed a section 387 supplemental petition for Jaden R., alleging as to Mother that Mother failed to comply with the juvenile court's orders that she participate in parenting classes and individual counseling to address anger management, conflict with the child's father, co-parenting and child protectiveness. The Department also filed an original petition for Ian L., alleging domestic violence between

⁷ Sheriff deputies indicated that Samuel L.'s home was a known gang hangout. Samuel L.'s criminal record showed he had been arrested several times and in 2011 on drug possession and weapons offenses. In addition, a deputy knew Mother from making prior calls to Samuel L.'s home when Mother was "out of hand."

Mother and Bryan R., and Mother's failure to participate in services ordered for Jaden R.⁸

At the detention hearing on March 5, 2012, the juvenile court ordered both children detained from the parents. The juvenile court ordered a mental health and/or developmental assessment and a medical examination of the children. The court also ordered drug testing for Mother.

A March 2012 Jurisdiction/Disposition Report indicated that Mother stated she did not enroll in counseling of any kind because she had no one to watch the children while she attended counseling, and she could not afford counseling. Mother claimed that the free counseling programs were too far from her home, and she had been turned away from some counseling programs because she was 17.⁹

Mother stated she had been attending anger management and domestic violence counseling and parenting classes for the past three weeks, but she could not provide the name or phone number of the program. Mother claimed she did not take Jaden R. for a mental health evaluation arranged through the Department of Mental Health because she could not afford the evaluation. Mother now claimed there had only been one physical altercation between herself and Bryan R., when Jaden R. was five months old.

The social worker believed that Mother might not actually be participating in services as Mother had claimed, because Mother had not been able to provide contact information for the service providers. The social worker further stated Mother's failure to appear for a large number of appointments, and failure to enroll in services when free classes and bus passes were offered suggested Mother was not motivated to reunify, and

⁸ A last minute information report stated Ian L. was detained from Samuel L. because of the Samuel L.'s possible drug use, arrest history for drug sales and carrying a loaded firearm, reported gang activity in his home, and Mother residing in his home.

⁹ Mother turned 18 at the end of 2011.

pointed out that Mother's problems included past altercations with family members, concluding that Mother "requires individual counseling" or she would "keep struggling to lead a normal and productive life." The social worker also indicated that Mother had changed her story about Jaden R.'s latest burn in December 2011, and expressed a concern about the inconsistency between Mother's initial statement that Jaden R.'s latest burn occurred when the child was in the Bryan R.'s care, and her later statement that he was burned while in her care.

Mother told the social worker she wanted Jaden to be placed with the maternal grandmother, and wanted Ian L. to remain with his foster parent who was providing excellent care for him.¹⁰ Jaden R. was placed with the maternal grandmother.

Adjudication and Disposition Hearing

At the disposition hearing on April 10, 2012, Mother's counsel claimed Mother had brought information on her enrollment in programs. Counsel for the Department objected, and the juvenile court indicated it also did not have the information, and it was inappropriate for Mother to present it at that time. Mother's counsel also argued the domestic violence had occurred before Ian L. was born. Counsel for the children argued that Mother had failed to comply with programs, and had not provided any proof of enrollment or other information. Counsel for the Department argued that Mother only claimed to have enrolled in programs in the last few weeks, after the children had been detained from her.

The court sustained count j-1 as to Ian L., amending the count to conform to the language previously agreed upon by all parties and sustained as to Jaden R. The sustained count stated: "The child [Ian L.]'s mother Marilyn [C.] and his sibling's father Brian [R.], have engaged in verbal and physical altercations, including in the child [Jaden R.]'s presence. Such verbal and physical conflict by the Mother and the sibling[']s father and the mother's lack of participation in the court ordered programs, places the child [Ian L.] at risk of physical harm, damage and danger." The juvenile court sustained count s-1

¹⁰ Ian L. suffered from a medical condition and was developmentally delayed.

as to Jaden R., which stated Mother had failed to comply with court-ordered programs, placing Jaden R. at risk. The court then found that previous disposition did not provide enough safety for Jaden R. The juvenile court ordered both children removed from Mother and the two fathers, finding clear and convincing evidence the children would face substantial danger if they were returned home, and there were no reasonable means to protect the children without removal.

Mother filed the instant appeal.

DISCUSSION

On appeal, Mother argues that the evidence before the lower court was insufficient to support the juvenile court's dispositional order¹¹ removing the children from her custody.

After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. At the dispositional hearing, the court must decide where the child will live while under the court's supervision. Before the juvenile court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that "[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 or guardian's physical custody. . . ." (Welf. & Inst. Code, § 361, subd. (c)(1); see *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

"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." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136 [disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6].) "In this regard, the court may consider the parent's past conduct as well as present

¹¹ Mother does not claim that that dependency court erred in making its jurisdictional findings.

circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*)) “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.” (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

“Whether the conditions in the home present a risk of harm to the child is a factual issue.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 170.) The court’s dispositional finding is also subject to a sufficiency of the evidence standard of review. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.) That is, “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.” (*In re Heather A., supra*, 52 Cal.App.4th at p. 193.) Evidence of past conduct may be probative of current conditions, particularly where there is reason to believe the conduct will continue in the future. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Here, Mother claims that the dispositional order was infirm because there was only one incident of domestic violence—the July 2011 altercation between Mother and Bryan R. which gave rise to the proceedings—and no other instances of domestic violence during the proceedings. Furthermore, she asserts that her admitted failure to participate in court ordered services, standing alone is not substantial evidence to support the court’s finding that the children could not safely remain in her care. We do not agree with Mother’s narrow view of the evidence the court had before it.

In determining whether removal of a minor is appropriate because the parent poses a substantial risk of harm if the child were to be returned home, the court is entitled to consider all of the evidence in the record. Here there was substantial evidence in addition to the incident of domestic violence in July 2011 to support the court’s determination. Indeed it appears that Mother had a significant problem with aggression and her temper, which manifest itself in physical and verbal confrontations with her family members before the proceedings began, and that her challenges continued throughout the pendency of the proceedings. Mother’s father, with whom the court had ordered Mother

to reside, indicated that he did not want her in his home because she was too aggressive. Moreover, Bryan R. and Mother had altercations—pushing and shoving and verbal arguments since Jaden R. was born. The parents continued to have significant problems parenting together and arranging visitation; they were instructed to exchange the child for visits at the police station. The record also contained evidence that law enforcement reported they had been called to Samuel L.’s house when Mother lived there because she was “out of hand.”

In addition to Mother’s difficulties with aggression, Mother failed to comply with court orders, including the order that she reside with her father during the proceedings. She also failed to satisfy Department directives that she drug test, or take the children to appointments. She admittedly did not participate in court ordered services for parenting classes and individual counseling to address anger management, conflict with Jaden R.’s father, co-parenting and child protectiveness, even when those services were offered to her free of charge and she was provided with transportation funds. Instead, she offered excuses for her lack of compliance. Furthermore, Jaden R. suffered two burns, in addition to the incident in which he was burned in July 2011. Mother offered inconsistent stories about his injuries and did not obtain follow-up medical care for him as she had been directed to do. All of these circumstances when viewed together support the court’s disposition orders.

In reaching this conclusion we reject Mother’s effort to compare her case to *In re Basilio T.* (1992) 4 Cal.App.4th 155. In *Basilio T.*, the appellate court reversed the removal order because it appeared to be based in part on incompetent evidence which should not have been considered by the dependency court. (*Id.* at pp. 167-168.) In addition, the court found that the only admissible evidence in the record that could have supported the dispositional order concerned two domestic violence incidents that did not involve the children and did not directly affect them. (*Id.* at p. 171.) In contrast to the parents in *Basilio*, Mother’s past conduct in this case and conduct while these proceedings were pending suggests that, without intervention, her aggressive behavior will continue unabated in the future. This is particularly so given that her past conduct so

closely resembles the current allegations, and reveals repeated refusals to address these ongoing issues. Accordingly, the court did not err in finding substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minors if they were returned home.

Mother also argues, however, the juvenile court failed to consider less drastic measures than removal. Mother maintains that the juvenile court did not adequately consider alternative, reasonable means by which the children could be protected without removing them from her home. “Before the court removes a child from parental custody, it must find there are no reasonable means by which the child’s physical health can be protected without removal. [Citation.] Although the court must consider alternatives to removal, it has broad discretion in making a dispositional order. [Citation.]” (*Cole C.*, *supra*, 174 Cal.App.4th at p. 918; Welf. & Inst. Code, § 361, subd. (d).)

Substantial evidence supports the juvenile court’s finding that there were no reasonable means to protect the children other than removal. As summarized above, Mother could not control her temper and her problems with aggression had not abated. Between the time of detention and the time of the dispositional hearing, Mother did not participate in any counseling or other services to address her anger management issues.

The record reflects, and the court found, the Department had made reasonable efforts to eliminate the need for removal of the minors from parental custody. From the outset of the proceedings in the summer of 2011, the court and the Department made efforts to assist Mother in retaining custody. Jaden R. was released to Mother conditioned on Mother residing with her father and participating in classes and programs designed to assist her with her parenting skills and to address the issues which gave rise to the Department’s involvement with the family. She was offered free programs and transportation funds. The Department facilitated a meditation between Mother and Bryan R. to assist them to resolve their on-going parenting and visitation conflicts. As late as February 2012, prior to the children being detained from her custody, the Department scheduled a team decision making meeting with Mother to address the case issues. Mother did not attend that meeting because she considered it a waste of time, nor did she

make any effort to participate in services or court ordered programs until after the children were detained from her. Sufficient measures, less drastic than removal, were tried in this case. Those actions were unsuccessful, not because of the Department's failures but because of Mother's lack of effort.

In sum, no reasonable means short of removal of the minors would be adequate to protect the minors' well being, given the risk of harm.

DISPOSITION

The orders of the juvenile dependency court are affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.