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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.G., et al.,

Persons Coming Under the Juvenile Court Law.

B248660

(Los Angeles County
Super. Ct. No. CK97204)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

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

M. Elizabeth Handy, under appointment by the Court of Appeal, for
Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County
Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Mother, S.B., appeals from a dependency court order pursuant to Welfare and Institutions Code section 361,¹ ordering the removal of Mother's infant son, C.G., from her physical custody, instead of allowing him to remain in her care while she received in-patient treatment for her drug addiction. Mother contends there was no substantial evidence that C.G. would be in substantial danger if he remained in her custody, and that there were reasonable alternatives to his removal. We conclude that substantial evidence supported the dependency court's order removing C.G. from Mother's custody, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Detention Report*

Mother and Father (who is not a party to this appeal; the parents are unmarried) have three children: eight-year old D.G., six-year old I.G., and six-month old C.G. Mother's appeal relates only to custody of C.G.

The family initially came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) as a result of substantiated allegations of general neglect in January 2012, including allegations that Father and Mother, who was then four months pregnant with C.G., were using methamphetamines, that a foul chemical smell and smoke was seen coming out of the parents' room, that the children were dirty, that I.G. wet her bed and the parents did not wash the linens, and that their home was filthy, with moldy dishes and soiled clothes piled up. Mother had a 10-year criminal history that included several arrests for possession of a controlled substance. The most recent arrest

¹ Subsequent undesignated references are to the Welfare and Institutions Code.

occurred in January 2012, resulting in a felony conviction that carried a sentence of three years probation, with a drug treatment placement condition.

DCFS entered into a voluntary family maintenance contract (VFM) with the parents providing family maintenance services and drug treatment for the parents while D.G. and I.G. lived with the paternal grandparents. The family participated in services from January 26, 2012 to August 1, 2012, and tested negative for drugs. When C.G. was born and no child safety concerns were noted, the VFM was closed and the older children were returned to their parents.

In August 2012, another referral alleged Mother emotionally abused the older children, but the referral was closed in September 2012 when no threat to the safety of the children was identified, and it appeared that the parents were attending their drug treatment program. However, in November 2012, a third referral alleged (among other things) that on several occasions Mother was seen smoking marijuana in the children's presence, that the unsupervised children had almost been hit by a car while playing in the street, and that the children, their clothes, and the home were always dirty. Visits to the one-bedroom home by two separate caseworkers on successive days in November 2012 revealed the following. I.G. had a urinary problem, and the children were observed on the second visit to be using urine-soaked sheets. Mother said the family was behind in rent (though Father worked full-time). The water in the shower had been turned off, and Mother could not afford to do laundry. None of the children attended school. The second caseworker to visit observed that Mother exhibited signs of current drug use: pale, clammy skin, fresh red marks on her face and neck, and pressured speech. When asked if she was currently using drugs, Mother stated, "Only marijuana." She agreed to take a drug test. Father was in a drug diversion

program following an arrest for drug possession. There was no evidence of physical abuse.

Although Mother agreed with the second caseworker to take the children to their paternal grandparents' home so they could take a shower and wash their clothes, she instead took the children to Mexico, where the maternal grandmother lived. Mother later explained that she left because she was afraid DCFS would take her children, and she stated she would not drug-test because she was tired of proving to DCFS that she was sober. She said she would come back to Los Angeles on the weekends to keep her eligibility for aid from the state.

In December 2012, the caseworker met Father at the paternal grandparents' home. He stated he was unaware that the children had not been attending school, because Mother handled their education and everything to do with the home and the children. Although Father worked full-time, he could not explain why they had money to buy marijuana but did not have money for pull-up diapers for I.G.

Later in December 2012, the caseworker spoke to Mother, who said Father had met her in Mexico and was going to bring the children to the paternal grandparents' home and enroll them in school. Mother said Father would pick her up the next weekend and bring her to Los Angeles, and they could hold a team decision-making meeting (TDM) on December 17, 2012.

On December 17, 2012, a TDM was held with Father, the paternal grandparents, and the maternal aunt, Amanda, but Mother did not attend because she had been arrested at the border on an outstanding warrant. Although I.G. had missed her appointment with the urologist, Father reported that she had seen a doctor and had an X-ray, which showed she suffered from severe constipation, which was putting pressure on her bladder and causing the frequent and uncontrollable urination. Father stated the children would be enrolled in school on

January 7, 2013. He admitted he had stopped attending his drug classes and drug testing in October 2012, and Mother had as well. He stated that Mother was being treated with Zoloft for post-partum depression. Although he stated he was only using marijuana, Father agreed drug treatment was necessary for him and Mother. The maternal aunt stated she had been looking for inpatient drug treatment programs for the parents because she too believed they had been using. (Later the paternal grandmother advised DCFS that this aunt also had a long history of substance abuse and had lost her children and failed to reunify with them.)

Father later informed DCFS that he did not drug test because he was “dirty”; he had not wanted to admit that in front of his parents. He admitted that he had last used methamphetamines on December 14, 2012, just before driving his children in the car. Father also reluctantly stated that he believed Mother was using, and he admitted they had relapsed together in October 2012 and had used together in their apartment. He stated they were not using every day, but he believed he needed an in-house treatment program to get better. Father consented to the two older children being detained and placed with his parents, but he wanted C.G. placed with Mother in a residential program.

On December 19, 2012, Mother called DCFS and stated she had been released from jail and the court had reinstated her probation and drug program. After initial denials, she admitted using methamphetamine and agreed to enter a treatment program. Mother also consented to the detention of the two older children but asked to keep C.G. with her in an inpatient program. The two older children were brought to their paternal grandparents’ home that day. The next day, all three children were observed with their grandparents and they appeared comfortable and happy to be with them, with C.G. smiling and reacting to their presence. The grandparents were attentive and appropriate during the visit.

On December 27, 2012, Mother was accepted at the inpatient program at the Tarzana Treatment Center, and checked in December 31, 2012. Father was admitted to another program in early January. The caseworker reported that Father was beginning to gain insight that Mother was keeping him from being sober and successful. The children were interviewed. I.G. stated it was much better at her paternal grandparents' home. At night she wore pull ups and got up to use the bathroom; she stated she had not done so at her parents' home because it was "scary" to walk to the bathroom since it was down the hall and shared by many other residents. I.G. and D.G. said that now they were able to take showers and wear clean clothes.

At the detention hearing held on January 7, 2013, the court detained I.G. and D.G. from both parents and placed them with their paternal grandparents. C.G. was detained from Father, but placed in Mother's custody, contingent on her remaining in the residential treatment program. The court ordered the parents to drug test weekly and ordered unmonitored visits with I.G. and D.G. at the Tarzana Treatment Center and monitored visits outside the treatment center.

B. Jurisdiction/Disposition Report

I.G., interviewed on January 28, 2013, denied knowing what drugs were, but stated that when they lived in their old house, her parents would go outside to give "white tiny squares" to people who would give them money. Interviewed on January 24, 2013, Father stated that he and Mother had some periods where they used drugs together every day, and some periods where they did so three or four times a week. They would smoke marijuana outside but would smoke methamphetamines in the bathroom, while the children were at school, in the living room, or playing outside. They had been arrested together on January 24,

2012 for possession of methamphetamine. Father stated that Mother had not wanted to enter a program, but felt she had no choice if she wanted to keep C.G. from being taken from her.

Mother was also interviewed on January 24, 2013. She admitted that her marijuana and methamphetamine use negatively affected her parenting because she would not take the children to school when she was using. She indicated that she was taking Zoloft for post-partum depression, but sometimes she used methamphetamine or marijuana instead of taking the Zoloft. She admitted that she was smoking marijuana while she was pregnant with C.G., but stopped when she was three months pregnant because a genetic counselor warned her of the risks. She stated that she had breastfed C.G. since he was born and continued to do so; when she would use methamphetamine or marijuana, she would wait a week before breastfeeding him again, and give him formula instead.

She indicated that she was discharged from her Proposition 36 drug treatment program in 2012 because she missed too many classes. However, when she appeared in court in December 2012, the court permitted her to re-enroll in treatment. She planned to stay at the Tarzana Treatment Center for six months or longer if she needed it. Mother stated that having C.G. with her in treatment motivated her to continue in the program and reminded her that she had two other children for whom she needed to stay sober.

Mother admitted that she had “deviated” from her new treatment program on January 11, 2013, when she got a pass to go to the welfare office, and instead went to say goodbye to Father, who was entering his own inpatient program. She got into an argument with the paternal grandfather and cursed at him. She was placed on a “no movement” restriction and lost her phone and other privileges until February 11, 2013. When DCFS told Mother that they had information that she

was involved in an incident with the maternal aunt when she went out on her pass, Mother appeared upset and did not want to talk about it. However, she admitted that she had gone to McDonalds with C.G. in the car and a drug deal involving her sister took place there. She denied being part of the deal, but admitted she did not try to stop it. She also admitted, “I know I put my baby in danger [because] it could have gone bad.”

C.G., then seven months old, was observed to be smiling and comfortable in Mother’s presence and appeared to be soothed by her carrying him. Mother’s response to his occasional fussing was appropriate, as she was patient and receptive to the child.

A Tarzana Treatment Center supervisor reported that Mother was on restriction due to leaving the premises and drug dealing. Mother and her sister were supposed to go to the welfare office and come back immediately afterwards. Instead, Mother had gone to the paternal grandparents’ home and argued with them. A few days later, another patient reported that she had been out with Mother and her sister, and that the sister made two drug transactions. The supervisor reported that Mother was remorseful, admitted that her sister sold drugs, and said, “I didn’t think she would ever do anything like that.” The supervisor stated that the maternal aunt was no longer permitted to visit, and going forward, anytime Mother left the center’s premises she would be under staff supervision. Mother was reported to have tested negative for drugs since she enrolled in treatment. The supervisor also opined that Mother would be too afraid to walk out of the program, and that Mother wanted to address her problems. She believed that if Mother was unstable, she would have already left with C.G.

The DCFS caseworker reported that after the detention hearing, Mother admitted that she was trying to stop Father from entering his treatment program,

because she worried he would leave her if he got sober. The caseworker learned from the paternal grandparents that Mother had obtained the day pass so that she could try to stop Father from entering his program. Mother was cursing at the grandfather and threatening him, with C.G. in her arms. When the grandfather took Father to the treatment program office to complete his intake process, Mother also appeared there and told Father they were “finished” if he entered treatment.

Mother also told the caseworker on one occasion that she was going to leave the treatment center. Further, the case manager at the center reported that Mother often missed classes because she said C.G. was fussy or hungry. She had not yet completed the paperwork needed to take advantage of free childcare. In addition, Mother had frequently missed classes she was supposed to attend while out on day passes. On January 14, 2013, Mother told the caseworker that she had several upcoming appointments in the community, in connection with her welfare benefits, C.G.’s doctor’s appointments, and a criminal court date. During this meeting, Mother admitted that she last used methamphetamine and marijuana on December 30, 2012.

DCFS filed a last minute information regarding Mother’s progress at the Tarzana Treatment Center, which reported that Mother had been satisfactorily followed her treatment plan recommendations and was in the second phase of five phases of the program. She had been attending group sessions and weekly meetings with her assigned counselor, had obtained a sponsor, tested negative for drugs and alcohol, and had monitored visits with her children.

Ex Parte Application and Order Pursuant to Section 385

In late January 2013, at DCFS request, the court issued a warrant to remove C.G. from Mother, due to her participation illegal drug transactions with her sister.

C.G. was placed with the paternal grandparents. On February 1, 2013, the court detained C.G. from Mother and ordered that her visits with all three children be monitored.

C. Jurisdiction/Disposition Hearing

The court conducted the jurisdictional and dispositional hearing on February 13, 2013. Mother and Father pled no contest to an amended section 300 petition which documented their use of methamphetamine and marijuana that periodically rendered them incapable of caring for their children, as well as Father's driving under the influence of methamphetamine with the children in the car.

The court then conducted a contested hearing regarding Mother's request to have C.G. released to her custody.

1. Documentary Evidence

In addition to the DCFS detention and jurisdiction/disposition reports and last minute information, the court admitted into evidence a February 12, 2013 letter from the Tarzana Treatment Center stating that when C.G. was removed from her care, Mother "had a humbling, eye opening experience that taught her a life changing lesson. She now realizes she needs to completely change the manner in which she parents her children and the way she views the world. She is now careful and cautious with whom she engages and she will carry this lesson with her. . . . [Mother] is willing to comply with all the rules and regulations of Tarzana Treatment Center and the mandates of the [DCFS and] has expressed the desire for her child to return to her care."

2. Mother's Testimony

Mother testified that she had not used any illegal drugs since December 31, 2012. She planned to stay at the treatment center for six months to a year, had a sponsor, attended meetings, and tested randomly about once a week.

She denied that she was involved in the drug transactions that occurred when she left the treatment center on a day pass with her sister, and stated that if she had known it was going to happen, she would not have been there. In the future, she would avoid the wrong areas and the wrong people, and would go out only if she had to attend court or a medical appointment.

She further stated that since C.G. had been moved to the paternal grandparents' home, he was not sleeping or eating well, was not happy, and cried a lot. She noted that he did not really know how to drink out of a bottle because she had been breastfeeding him.

3. Closing Arguments

DCFS argued that C.G. should not be released to Mother at the treatment program, noting Mother's inappropriate use of the program's day pass, her attempt to stop Father from entering a program, and the fact that she was not able to focus on her program when C.G. was with her. The minors' counsel joined this position, noting that the incident involving the day pass, in which she engaged in illegal activity with C.G. present, put her judgment in question.

Mother's counsel conceded that Mother exercised poor judgment, but argued that her sobriety had remained intact, and there were less restrictive alternatives than removal of C.G. from her care, such as placing C.G. in daycare at the program. Father joined in the request to have C.G. released to Mother's custody.

4. *Trial Court's Ruling*

The court found by clear and convincing evidence that there would be a substantial danger to all three children's physical health, safety, protection, physical and emotional well-being if they were returned to their parents' custody, and that there was no reasonable means to protect them short of removing them from their custody. The court noted that Mother had continued to use drugs while on a VFM, and that she had violated the new treatment program's rules and exhibited a lack of concern for C.G.'s well-being by permitting him to be present during drug transactions. The court further noted that she had been off drugs for only six weeks. The court did not believe Mother's testimony that C.G. was not doing well in the grandparents' home.

Reunification services were ordered, including unmonitored visits for Mother at the DCFS office and monitored visits elsewhere, at least three times a week. Mother was ordered to do a full drug program with weekly drug testing, a 12-step program with a sponsor, parenting classes, and counseling to address case issues. The court set a six-month review hearing pursuant to section 366.21, subdivision (e), for August 13, 2013.

Mother timely appealed from the jurisdictional and dispositional order.

DISCUSSION

Mother contends that the evidence did not support a finding that returning C.G. to her would present a substantial danger to his physical or emotional health or safety. We disagree.

At the disposition hearing, a child may not be removed from the custody of the parents with whom he or she resided at the time the petition was initiated unless the court finds, by clear and convincing evidence, at least one of the matters

set out in subdivision (c) of section 361. (§ 361, subd. (c); see *In re Isayah C.* (2004) 118 Cal.App.4th 684, 695.) This includes the finding made by the trial court in this case pursuant to section 361, subdivision (c)(1), that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of C.G. if he were returned to Mother's custody, and there are no reasonable means by which C.G. can be protected without his removal from her custody.

“Although the court must consider alternatives to removal, it has broad discretion in making a dispositional order.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.) “The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]” (*Id.* at p. 917.)

In reviewing a dispositional order removing a child from his parent, we employ the substantial evidence test, bearing in mind the heightened burden of proof involved. (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) We conclude that substantial evidence supported the court's determination here that removal of C.G. was required.

First, Mother's long history of significant drug use both before and after she had her children, and the obvious negative effects of her drug abuse on her parenting, support C.G.'s removal from her custody. Mother failed to take her older children to school, did not wash the urine-soaked linens on which her children slept, and spent money on drugs instead of pull-ups for her incontinent daughter. Mother had already participated in a VFM that she failed to complete, and failed to comply with her Proposition 36 drug program, risking a possible jail

sentence as a result. The record demonstrates that her drug dependency was severe enough that getting high routinely took precedence over her children's well-being.

Second, at the time of the disposition hearing, the risk that Mother would relapse was still significant. At that time, Mother had been testing negative for drugs for only six weeks – a very short period of time for an addict who had abused methamphetamines and marijuana for over 10 years. (See *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9 [“It is the nature of addiction that one must be ‘clean’ for a much longer period than 120 days to show real reform.”].) While Mother contends that C.G. should be placed with her because of his young age, the fact that he was a breastfeeding infant actually heightened the risks to his health and safety from remaining with her. Mother continued to breastfeed C.G. after she relapsed with methamphetamines and marijuana, and although Mother asserted that she did not breastfeed him for five days after she used drugs, this assertion is incompatible with her testimony at the detention hearing that C.G. did not know how to take a bottle, as well as the evidence that Mother was taking drugs at least three or four times a week. It is reasonable to deduce that if Mother were to use drugs, C.G.'s health was at direct, immediate risk because she was still breastfeeding him.

Third, within two weeks of her admittance to the residential treatment program, Mother had already abused a day pass meant for a quick visit to the welfare office and instead taken C.G. along during a confrontation with the paternal grandfather as well as a drug transaction. Either Mother herself took part in the transaction, or she did not try to stop her sister from dealing drugs from the window of the car in which C.G. was present. Mother acknowledged that she placed C.G. at risk because the transaction could have gone bad. Mother argues that safeguards were in place, because she was being closely monitored after the

incident and was placed on restriction. However, that restriction was for only one month, and Mother acknowledged she would have to leave the treatment center for various appointments. Moreover, Mother was free to leave the treatment program at any time, and it was not inconceivable that she would flee to Mexico with C.G., as she did in November 2012 when she was worried that DCFS would take her children from her because of her drug habit. The risks were still high that Mother would violate the rules of the treatment program in a way that would endanger C.G.

We thus conclude that the evidence was sufficient to demonstrate that there existed a substantial danger to C.G.'s physical health, safety, protection, or physical or emotional well-being if he remained in Mother's custody, and there were no reasonable means of protecting C.G. short of removing him from Mother.

DISPOSITION

The jurisdictional and disposition orders are affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.