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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re LILY V., et al, Persons Coming
Under the Juvenile Court Law.

B250793
(Los Angeles County
Super. Ct. No. CK95328)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARTHA S. et al.,

Defendants and Appellants.

APPEALS from an order of the Superior Court of Los Angeles County. Amy Pellman, Judge. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and Appellant Martha S.

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

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

Appellants Martha S. (mother) and Albert V. (father) separately appeal from the juvenile court's jurisdiction/disposition order under Welfare and Institutions Code section 387¹ regarding two of their children, three-year-old Lily V. (Lily) and two-year-old Daisy V. (Daisy). The parents contend there was no substantial evidence to support the court's jurisdictional findings and removal order. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have seven children.² On August 24, 2012, the Los Angeles County Department of Children and Family Services (Department) received a referral from a hospital about mother's and father's second youngest child, Abraham V. (Abraham), who was born prematurely the prior month and admitted to the neonatal intensive care unit. (Abraham is not a subject of this appeal.) Mother had first appeared at the hospital when her water broke, but left against medical advice, returning either one to four days later in labor. She had not received prenatal care. Abraham remained in the hospital for 42 days, during which mother visited him only 11 times and father only once.

The hospital staff informed the Department's social worker that they were extremely concerned about the parents' inability to properly care for Abraham upon his scheduled discharge because the parents had not appeared for any training or education on how to feed him or administer medication, despite the hospital's transportation arrangements. When the social worker interviewed the parents, who were staying at a hotel in Whittier, California with Lily and Daisy, mother reported that she was never told to visit Abraham every day and father claimed that they did visit every day. Father also stated that they planned to return to Arkansas when Abraham was discharged. Abraham's doctor advised against flying because of the stress it would put on Abraham's

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

² Their three oldest children live with relatives in Arkansas and their youngest child was born shortly before the July 10, 2013 order in this case that is the subject of this appeal.

lungs. The doctor also indicated that Abraham would require follow-up care with a urologist because he had a dilated kidney as well as in-home nurse visits.

The social worker also interviewed the paternal uncle, Steven A., who was staying in the hotel room next to the parents and occasionally babysat Lily and Daisy. The social worker smelled a strong odor of alcohol on him. When she asked if he drank while babysitting, he stated, "I do like sipping on my beer."

On the day of Abraham's scheduled discharge, the parents failed to appear at the hospital. The Department obtained a warrant for Abraham's removal, and he was placed in protective custody.

The Original Petition

On September 5, 2012, the Department filed a petition on behalf of Abraham, Lily and Daisy, under section 300, subdivisions (b) and (j). The petition alleged that the parents' failure to receive medical training and to obtain Medi-Cal, a pediatrician and urologist for Abraham placed him at risk of harm, and that Lily and Daisy were placed at risk of harm when left in the care of the paternal uncle while he was under the influence of alcohol.

The juvenile court sustained the petition, declared the children to be dependents of the court under section 300, subdivision (b), ordered that Abraham be placed with his paternal grandmother, and that Lily and Daisy remain with the parents under the Department's supervision. The court ordered the Department to provide family reunification services with regard to Abraham, and family maintenance services with regard to Lily and Daisy. The court also granted the parents unmonitored visits with Abraham three times a week and ordered the Department to make unannounced visits to the parents' home. The court ordered the parents to participate in parent education classes.

Progress Reports

On October 15, 2012, the social worker referred the parents to family preservation services in Whittier, which terminated their case a week later because the family had moved out of the area to Long Beach. The social worker made unannounced visits to the

family's one-bedroom home, which appeared to be adequately furnished. The social worker provided the parents with a list of community resources, but as of January 2013, the parents had not provided proof of any enrollment.

The paternal grandmother reported that the parents visited Abraham three times a week and were engaged during the visits, but had not attended any medical appointments. By April 2013, their visits had become less frequent and they often failed to return the paternal grandmother's phone calls.

The family moved back to Whittier in December 2012, but refused to meet with family preservation services, stating they were moving to Long Beach into a mobile home in February 2013. On March 19, 2013, the parents attended a Team Decision Making meeting to discuss concerns that the parents had not made Lily and Daisy available for sibling visits with Abraham. During the meeting, the team expressed concern that the parents' constant moving created a challenge for the Department to make contact and provide them with services. The parents denied moving around.

The following day, the social worker observed that mother appeared to be pregnant. The parents denied a pregnancy, but several days later mother admitted that she was six months pregnant.

Events in May 2013

The parents told the social worker they would stop by her office on May 9, 2013, but failed to appear and did not return her calls. The parents were scheduled to meet with family preservation services at their home on May 16, 2013. Just before the scheduled meeting, mother called to cancel, stating they would not be home in time. On May 16, 2013, mother called the social worker to say that her phone had been damaged, and that the Department was "stressing her out." The social worker made an appointment to meet with the family at their home in Long Beach on May 17, 2013. When the social worker went to the home that day, no one was there. Mother left a message for the social worker saying that she and father would go to the social worker's office later that day, but they failed to show.

On May 16, 2013, the instructor for a parenting class in which the parents had enrolled in December 2012, told the social worker that their attendance had been inconsistent. The social worker was also concerned that the parents had failed to provide requested medical records and updated immunization records regarding Lily and Daisy, including the name of a pediatrician.

On May 23, 2013, the parents had a scheduled meeting with family preservation services at their home in Long Beach. The paternal great grandmother, who owned the home, told the social workers who arrived that the parents and children had not been there since May 20, 2013, and that she did not know their whereabouts. When the social worker contacted mother to ask about the missed appointment, mother responded that she was unaware of the appointment, accused the Department of being unfair, and became upset and hung up. When the social worker later contacted father and informed him that the Department would be filing a request to have Lily and Daisy removed from the parents' care, father became angry and also accused the Department of being unfair. The social worker asked father to come to her office to talk in person. Father responded, "I am very busy. I have very important things to do." Father then stated that he and mother would stop by that afternoon, but they failed to show.

On May 24, 2013, the juvenile court granted the Department's request for a warrant to remove Lily and Daisy. The Department detained the girls after the status review hearing that took place that day and placed them in separate foster care homes.

On May 29, 2013, the parents met with the social worker at her office. They stated that they were unable to meet sooner because they were trying to obtain Lily's and Daisy's medical records from Arkansas. They presented records which indicated that the girls had been vaccinated on May 21, 2013. Father stated that he and mother did not have stable housing and that mother was due to give birth on June 6, 2013. Mother refused to sign a release of information letter for her obstetrician, making it impossible for the social worker to confirm if mother had received prenatal care.

Section 387 Petition

On May 30, 2013, the Department filed a section 387 supplemental petition on behalf of Lily and Daisy, alleging that mother and father had failed to: maintain contact with the Department, provide their address, and regularly participate in court-ordered parenting classes, placing the girls at risk of harm.

At the detention hearing on the petition, the girls' attorney informed the juvenile court that her office had not had any trouble reaching mother and requested that the girls be released to their parents to give the parents a "second chance." The court expressed dismay that mother was pregnant with a seventh child and wondered why the parents would choose to bring more children into the world when they showed no interest in caring for them. The court noted that the parents had abandoned Abraham and their three children in Arkansas, and was concerned that they would abandon Lily and Daisy as well. The court stated that it did not want to take Lily and Daisy away from the parents, but did not have enough evidence to support their return. The court stated: "I am here to help you. But I can't help you if you are not helping yourselves to some extent. If you can't get a hold of the social worker, then you go plant yourself in their office. If they're not calling you on time, you call them. You call their supervisor. You've got attorneys. You have been around this system long enough that you should know. [¶] If you think I don't know that this is hurting your two little girls, it breaks my heart."

The court ordered the girls detained and ordered the Department to provide the parents with referrals for individual counseling. The court granted the parents unmonitored visits if the girls were placed with the paternal aunt.

Jurisdiction/Disposition Report

The Department reported that the parents had multiple referrals regarding their three older children and also had criminal and drug histories, which they lied about. When the parents were at the Department's office on June 25, 2013, they were asked to live scan. They declined, and father lied about already having live scanned. While the parents admitted they had missed some appointments with the Department, they essentially blamed the Department for having the wrong phone number for them, and

father admitted that he had not taken the Department seriously. They also blamed their inconsistent attendance in parenting classes on transportation issues. The Department made arrangements for Lily and Daisy to be placed together with father's aunt.

Adjudication/Disposition Hearing

The juvenile court held the adjudication/disposition hearing on the section 387 petition on July 10, 2013. Mother and father were present. The girls' attorney informed the court that mother had given birth to her seventh child, the parents had not informed the Department of the birth, and the parents had made arrangements for the baby to reside with another family member who was going to take legal guardianship.

The juvenile court sustained the section 387 petition. It ordered the girls to be placed with father's aunt, the parents to participate in parenting classes and individual counseling, and granted them unmonitored visits if made in placement. The court addressed the parents: "This is not an isolated incident. . . . You have a lot of children and they are [scattered] in a lot of different places. . . . [¶] Now you have another child. You lied about it. You kept it a secret . . . you have now given that child to another family member. You're not taking care of that child either. . . . [¶] I'm giving you a big chance here by allowing you to go to the caregiver's home, as much as you want to be with your kids. . . . [¶] . . . [¶] You can get your kids back, but you're going to have to communicate with the Department, with your lawyers and participate in these programs and deal with whatever issues you have. We are here to help you, but if you keep avoiding, keep running away, keep not showing up, okay, that's not the answer here. Okay. If it happens one more time, we are going to have a problem."

Mother and father filed separate appeals.

DISCUSSION

Applicable Law and Standard of Review

A section 387 supplemental petition is used to change the placement of a dependent child from the physical custody of a parent to a more restrictive level of care. (§ 387; Cal. Rules of Court, rule 5.560(c).) At a jurisdictional hearing on a section 387 petition, the juvenile court determines if the factual allegations in the petition are true,

and whether the previous disposition has not adequately protected the children. (§ 387, subd. (b); Cal. Rules of Court, rule 5.565(e)(1).) If the court finds that the factual allegations are true, it holds a dispositional hearing to determine whether removing the child from parental custody is necessary. (Cal. Rules of Court, rule 5.565(e)(2); *In re H.G.* (2006) 146 Cal.App.4th 1, 11.) A section 387 petition need not allege new jurisdictional facts because a basis for juvenile court jurisdiction already exists. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1200.) “The ‘jurisdictional fact’ necessary to modify a previous placement is that the previous disposition has not been effective in the rehabilitation or protection of the minor.” (*Ibid.*)

Before removing a child from parental custody, the juvenile court must apply the procedures and protections of section 361. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 999.) Under section 361, a court 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.” (§ 361, subd. (c)(1).)

“‘The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).)’ [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.]” [Citation.]” The court may consider a parent’s past conduct as well as present circumstances. [Citation.]” (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126; *In re Joel H., supra*, 19 Cal.App.4th at p. 1200 [“Neither is physical or emotional abuse the test under section 387 for modifying a previous placement”].)

The juvenile court’s findings at a jurisdiction or disposition hearing are reviewed for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 524; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193; *In re John M., supra*, 212 Cal.App.4th at p. 1126.) We therefore draw all reasonable inferences in support of the juvenile court’s

findings, view the record favorably to its order, and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.)

A. Jurisdictional Findings

Mother contends there was no substantial evidence to support the juvenile court's jurisdictional findings. Father joins in this contention. Mother argues that the filing of the section 387 petition and the court's jurisdictional findings were made to secure her and father's continuing compliance with the case plan and cooperation with the Department and not because there was any evidence of actual risk or danger to the girls while in the parents' custody.

The section 387 supplemental petition alleged that mother and father had failed to maintain contact with the Department, provide their address to the Department, and regularly attend parenting classes, which placed Lily and Daisy at risk of physical harm and damage.

The record contains substantial evidence that the parents repeatedly missed scheduled appointments with both the Department and with family preservation services; lacked stable housing by moving several times without providing new addresses to the Department, thus preventing the social worker from making court-ordered unannounced home visits; and did not consistently attend parenting classes. These failures by the parents placed Lily and Daisy at risk of harm because the Department could not determine if the children were safe and free from neglect. For example, despite the social worker's repeated requests for Lily's and Daisy's medical records and vaccination reports, the parents did not provide this information until *after* the girls had been removed from the parents' custody. Thus, the social worker could not determine if they were healthy and current on their vaccinations. Additionally, seven months after the initial disposition hearing, there were no family preservation services in place despite numerous attempts by the family preservation services workers to interview the parents to best determine the family's needs. Even after the girls were removed, the parents continued to blame the Department and failed to take responsibility for their actions, including repeatedly lying to the Department.

Substantial evidence supports the juvenile court's jurisdictional findings that the parents' actions placed Lily and Daisy at substantial risk of harm and that the previous disposition had not been effective in protecting the minors.

B. Disposition Order

Father contends there was no substantial evidence to support the juvenile court's disposition order removing Lily and Daisy from the parents' custody. Mother joins in this contention.

As the juvenile court noted, it was not required to consider the family's present circumstances in isolation. (*In re John M., supra*, 212 Cal.App.4th at p. 1126 [“The court may consider a parent's past conduct as well as present circumstances”].) The parents have a history and pattern of leaving their children with relatives and failing to care for them. Not only did they leave their three oldest children with relatives in Arkansas, but they left their two youngest children with relatives. As noted above, a 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 minor. (*Ibid.*) The parents evaded the Department and hindered its ability to ensure that Lily and Daisy were free from harm. The previous disposition order that Lily and Daisy remain with the parents was ineffective in protecting the minors. Substantial evidence therefore supports the disposition order as well.

DISPOSITION

The jurisdiction/disposition order of the juvenile court is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.*
FERNS

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.