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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re DELILAH C. et al., Persons Coming  
Under the Juvenile Court Law.

B253787

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK97548)

Plaintiff and Respondent,

v.

RAYMOND C., JR.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,  
Annabelle Cortez, Judge. Affirmed in part, reversed in part.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant  
and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,  
and Tracey Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Raymond C., Jr. challenges the sufficiency of the evidence to support the orders of the juvenile court declaring his daughters, six-year-old Delilah, and three-year-old Hailey, dependents of the juvenile court and removing them from his custody. (Welf. & Inst. Code, §§ 300, subd. (b) & 361, subd. (c)(1).)<sup>1</sup> We affirm the order sustaining the petition and reverse the portion of the reunification plan requiring father to undergo individual counseling.

## FACTUAL AND PROCEDURAL BACKGROUND

Viewing the evidence according to the usual rules (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649), it shows that on January 15, 2013, an unknown man dropped Delilah and Hailey off at the home of their maternal grandmother, Patricia U. The parents, who were under investigation for murder, had gone missing.

An investigating social worker from the Department of Children and Family Services (the Department) and sheriff's deputies spoke to Patricia who reported she had not seen or heard from either parent since January 7, 2013. Since the children arrived on her doorstep, she had questioned many paternal relatives but no one in the paternal family knew where to find mother, who is not a party to this appeal, and father. The man who dropped the children off reported that the parents had left the children with him. He had not heard from the parents and could no longer care for the girls. Patricia's husband did not want the children in his house, believing that until the parents turned themselves in, it would be unsafe for them to remain there. This family has been the subject of earlier dependency petitions. The Department detained the children.

The paternal great-grandmother knew nothing about the parents' whereabouts. Paternal aunt Renee had not spoken with either parent in over a year.

The Department filed a petition pursuant to section 300, subdivision (b) alleging that in January of 2013, the parents "failed to make an appropriate plan for the children's

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

care and supervision, in that the parents left the children in the care and supervision of an unrelated adult male, who is unwilling and unable to provide ongoing care and supervision of the children.” The parents’ “failure to make an appropriate plan for the children’s care and supervision” endangers the children’s physical health and safety and places them at risk of physical harm. The juvenile court ordered the children detained.

The parents’ whereabouts were still unknown when the Department filed the petition and detention report. However, mother appeared at the detention hearing. Father was in jail awaiting trial for murder, second-degree robbery, murder in the commission of a robbery with a gang enhancement, and an enhancement for intentional discharge of a firearm. The Department was able to interview the parents in advance of the jurisdiction hearing.

a. *Mother’s statement*

Mother explained that she and father were going to Las Vegas to get married. They left the children with the paternal grandmother, Rona C. and said they would return in “a couple of days.” Upon arriving and checking into a Las Vegas motel, father learned that the police were looking for them on suspicion of murder. They remained at the motel for two weeks. Eventually, mother made father call Rona because she was worried about the children. That is when they learned that a social worker had taken the children and so mother insisted they return home.

Mother reported that father and paternal grandfather had been part of the North Side Pasadena gang for a few months but that the murder charge was unrelated to the gang activity.

b. *Father’s statement*

On January 17, 2013, father and mother went to Las Vegas to get married. He asked Rona to watch the children. They had only been driving for an hour when they stopped to call Rona who told him that he and mother were wanted by the police for questioning. He told Rona he was going to the police. He and mother turned around to go home. Father said he went straight to the sheriff’s department. Mother called Patricia

and learned that the children had been taken by the Department. On the advice of counsel, father would not discuss the criminal charges.

*c. Maternal grandmother Patricia's statement*

In her second interview, Patricia stated she did not know where father and mother had gone. She and her husband checked Rona's house. Rona promised Patricia she would call Renee to find out where the children were because the children had been with Rona for several days and then Renee took them. Patricia went to Renee's house, but the children were not there. Rona insisted Renee " 'was hiding' " them. A few hours later, a man came by and dropped off the children; Patricia believed the man was Renee's boyfriend.

Immediately after the children arrived at her house, Patricia took them to the emergency room because they were congested. However, as she did not have their medical card or authorization, medical attention was delayed.

After Patricia returned from the hospital, a detective from the Pasadena Police Department came to her house looking for mother. He reported that father was wanted for questioning about a murder and the police believed mother had left with father. Patricia explained she had not seen or heard from the parents. The officer indicated he would call the Department. The children could not remain in Patricia's care because both she and her husband had criminal records. Patricia believed the children were not safe with father's family.

*d. Paternal aunt Renee's statement*

Renee stated that the children were with Rona and she did not know anything about the parents or where father was. Rona let the children go with Patricia.

*e. Paternal grandmother Rona's report*

The first thing Rona said was "I can't remember everything." She was asked to take care of the children because the parents were going to Las Vegas. She did not know how long they would be gone. She stated Renee took care of the children for a day or two, but she did not actually remember. The children went back and forth between her

and Renee all the time, she reported. She did not remember how the children ended up with Patricia.

*f. Paternal aunt Ruby*

The crime report from January 15, 2013 reveals that the police responded to a call from the Department of Motor Vehicles (DMV) that paternal aunt Ruby was attempting to register father's car, which had been used in a recent murder. Renee was with Ruby and told the police that Ruby had brought the children to her that day. Renee stated she rarely spoke to her brother and had not seen him in several weeks. She did not know where he could be found.

Ruby told the police that father had sold his car to her in December 2012 and she was just getting around to registering it. Ruby stated that father had not used the car or had the keys to it for weeks. Ruby also claimed she watches the children periodically. She had picked them up that morning. She claimed father had not asked her to get the children; she just showed up to see where they were. Father was home at the time and there was no agreement about when she would return the children. Concluding that Ruby was lying, the police arrested her for aiding father by hiding father's vehicle and watching his children.

At the adjudication hearing, the Department introduced into evidence the reports and attachments. The juvenile court sustained the petition. Turning to the disposition, the court declared the children dependents under section 300, subdivision (b). The court ordered family preservation services for mother, transportation assistance, and parenting classes. The court removed the children from father's custody (§ 361, subd. (c)(1)) and placed them with mother. As a case plan, the court ordered father to participate in developmentally appropriate parenting classes and to undergo individual counseling to address case issues. The court awarded father monitored visits, two to three times per week, and did not exclude mother from acting as a monitor for father's visits. Father's appeal ensued.

## CONTENTIONS

Father contends that the jurisdiction and disposition orders are not supported by substantial evidence.

## DISCUSSION

1. *The jurisdictional order is supported by substantial evidence.*

The order sustaining a petition must be supported by a preponderance of the evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) On appeal, we are guided by the substantial-evidence standard: “We review the record to determine whether there is any substantial evidence, contradicted or not, which supports the court’s conclusions.” (*In re Kristin H., supra*, 46 Cal.App.4th at p. 1649.)

There are three elements to the definition under subdivision (b) of section 300: “ ‘(1) neglectful conduct by the parent in one of the specified forms [in subdivision (b), such as a parent’s failure to adequately supervise or protect a minor]; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.’ [Citation.]” (*In re Heather A., supra*, 52 Cal.App.4th at p. 194.)<sup>2</sup>

Father contends the allegations of the petition that the parents left their children with an unrelated adult male who was unwilling and unable to care for the children are “simply false.” He posits instead that it is clear that the parents left the children with Rona, who had regularly cared for her grandchildren, and who told father, “ ‘not to worry.’ ” Father recites evidence that supports his position.

However, “[i]t is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences

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<sup>2</sup> Section 300, subdivision (b) 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 . . . .”

which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

Looking at the record here as we are required (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1649), the juvenile court could very reasonably conclude that, as the petition alleges, the parents left the children in the care of an unrelated adult male who was unwilling and unable to provide care and supervision for the children. The man who dropped the children off reported that the parents had left Delilah and Hailey with him, that he could no longer care for them, and that he had not heard from the parents. Although the evidence is conflicting about when the parents returned home, the record supports the reasonable inference that they left town on January 7, 2013, and did not return for two weeks because the police were looking for them. Even were the court to credit the various statements that the parents left the children in Rona’s care, everyone in that family, from Rona to Renee and Ruby, presented conflicting stories about who had custody of the children, and they all appeared to have reasons for lying to the Department and the police. As the Department observes, given the discrepancies in the paternal relatives’ statements, at best, the evidence supports the conclusion that no one in the paternal family knew who was caring for Delilah and Hailey, and no arrangements had actually been made for their care.

Furthermore, the court could also reasonably conclude from this record that the children were at substantial risk of serious harm because the parents left town suddenly to evade the police, without arranging for the children’s care. Delilah and Hailey were sick and needed medical attention, but the parents had left neither medical cards nor authorization for a relative to obtain medical care for them. No one knew where the parents were or how to contact them and the parents appeared insufficiently concerned to check in on the children for two weeks. That Patricia was ultimately successful in obtaining medical care for the children does not render the parents’ conduct less

neglectful. Thus, the record supports the reasonable conclusion that the parents' failure to protect or supervise the children left them at risk of serious harm.

Father argues, citing *In re J.O.* (2009) 178 Cal.App.4th 139, that at the time of the adjudication hearing, there was no risk of harm to the children as they had been placed with Patricia, with the result the petition was moot. Not so. First, the children are only safe because father's neglectful conduct caused the Department to intervene to protect them. The Department's intervention does not negate father's neglectful conduct. More important, subdivision (b) of section 300 is written in the disjunctive: It authorizes dependency jurisdiction if "[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 or guardian to *adequately supervise or protect* the child, or the willful or negligent failure of the child's parent or guardian *to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left . . .*" (Italics added.) A showing of prior abuse and harm may be sufficient, standing alone, to establish dependency jurisdiction. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1434-1435.) However, here we have a showing of both prior neglect and a substantial risk of future harm. Father placed the children at risk in January 2013, and there is an ongoing risk to the children as father continues to misunderstand that his conduct was negligent and endangered the children. He insists the arrangements he made were appropriate when they were not.

Finally, citing *In re A.G.* (2013) 220 Cal.App.4th 675, father argues the petition should be dismissed because, even if he were offending, mother has not been charged with a criminal offense, and the children had been placed with her at the Department's recommendation. *A.G.* is distinguished. Dependency jurisdiction in that case was based on the mother's conduct only. (*Id.* at p. 682.) The father had reportedly always been capable of caring for the children. (*Id.* at p. 677.) Here, by contrast, *both* parents are offending. The only difference is that mother is complying with her case plan and so the Department concluded the children could safely be placed in her care, provided they live with Patricia.

2. *The juvenile court's order that father undergo individual counseling as part of his case plan was an abuse of discretion.*

Father contends that the order that he undergo individual counseling to address case issues was not reasonable or specifically tailored to meet his needs. We agree.

“ ‘Reunification services implement “the law’s strong preference for maintaining the family relationships if at all possible.” [Citation.]’ [Citations.] . . . The reunification plan is ‘a crucial part of a dispositional order.’ [Citations.] . . . ‘[T]he plan must be specifically tailored to fit the circumstances of each family [citation], and must be designed to eliminate those conditions which led to the juvenile court’s jurisdictional finding. [Citation.]’ ” (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010-1011.) 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 accord with this discretion. [Citations.] We cannot reverse that court’s determination in this regard absent a clear abuse of discretion.” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

Here, there is no showing that the conditions which led to the jurisdictional finding had anything to do with father’s mental health. Psychological counseling does not fit the circumstances of this family. Accordingly, the juvenile court abused its discretion. The portion of the reunification plan requiring father to undergo individual counseling to address case issues must be reversed.

DISPOSITION

The order sustaining the petition and taking jurisdiction over Delilah C. and Hailey C. is affirmed. The order requiring father Raymond C. to undergo individual counseling to address case issues is reversed.

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ALDRICH, J.

We concur:

KITCHING, Acting P. J.

EDMON, J.\*

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