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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.M. and J.M., Persons Coming
Under the Juvenile Court Law.

B256420 consolidated with B256425
(Los Angeles County
Super. Ct. No. DK03339)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIANA P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard D. Weiss, Acting County Counsel, Dawyn R. Harrison, Assistant County Counsel and Peter Ferrera, Deputy County Counsel for Plaintiff and Respondent.

In this consolidated appeal, Juliana P. (“mother”) challenges the juvenile court’s dispositional orders made on May 12, 2014, ordering that two minors, six-year-old R.M. and one-month-old J.M., be suitably placed rather than returned to her care.¹ Mother does not appeal from the juvenile court’s finding of jurisdiction over the children pursuant to Welfare and Institutions Code² section 300, subdivision (b). We affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

On January 30, 2014, deputies with the Los Angeles County Sheriff’s Department Gang Unit executed five search warrants, including one at the family home, as part of an ongoing criminal investigation involving the children’s family members. Mother, R.M. and J.M. were identified as being residents of the family home and were present at the time of the execution of the search warrant; the children’s father, Guillermo M. (“father”) was not present. During the search, the deputies recovered a loaded Glock nine-millimeter handgun hidden between the bed frame and the mattress of R.M.’s bed. The handgun was loaded with live ammunition and was in good working order. A large quantity of marijuana, found under the kitchen sink, was also recovered.

The Department of Children and Family Services (DCFS) was contacted by the Sheriff’s Department to conduct a child abuse/ neglect investigation based on the aforesaid recoveries made in the family home by the deputies. A Children’s Social Worker (“CSW”) went to the location and met with Detective Poindexter of the Sheriff’s Department, who stated that mother was going to be arrested and charged with child endangerment and sale of marijuana.

¹ Mother is not R.M.’s biological mother, though the juvenile court deemed her to be his presumed parent.

² All statutory references in this opinion refer to the Welfare and Institutions Code unless otherwise indicated.

The search warrants had been granted for various residences located in the City of Commerce, including the family home, after law enforcement obtained credible information that weapons and narcotics were being stored in and sold from the residences subject to the warrants. Each of the residences searched was known to belong to members of the “Latin Kings” gang. This gang was associated with various crimes occurring in the neighborhoods in which the searched houses were located.

R.M., who was in the first grade, identified Juliana P. as his mother, and was said to have no knowledge that she was not his biological mother. The child was asked about smoking in the house and he described how father took green stuff out of little plastic bags, put it in a small pipe, lit it, and smoked it. R.M. said he had seen father do this many times at the house. “Uncle Frankie” and other friends would come over to their house to smoke in the backyard. He said this did not happen every day, but it happened a lot. He had never seen mother smoke.

R.M. also stated that he had seen a “shotgun” at his Uncle Frankie’s house. He and his cousins had been playing in each other’s residences and he saw the shotgun on the couch in their house. Uncle Frankie’s house was also the subject of a search warrant and was searched by the deputies as well.

The DCFS also interviewed the children’s paternal aunt, Natalie M., whose home had also been searched by law enforcement. She confirmed that father had been arrested in Kansas and charged with drug trafficking. She acknowledged that father was a member of the Latin Kings gang, but maintained that he was no longer active with the gang. She opined that father and mother properly cared for the children.

Mother said the gun recovered by the deputies in the family residence was not hers and must belong to father. She claimed that she found the gun in a dresser drawer, coincidentally, the evening before the day of the search. Since she did not know what to do with it she placed it under the mattress in R.M.’s bedroom. She later modified her

statement to clarify that she did not put the gun under R.M.'s mattress until the deputies arrived at the family home in the early morning as she was scared that they would think it was her gun. Father confirmed that it was his gun and said that he left it in the house without mother's knowledge. R.M. stated, however, that father told him that mother could get the gun if someone tried to sneak into the house.

Mother claimed that the bag of marijuana found by the deputies under the sink must have belonged to father and she had no idea that it was there. Father said that the marijuana under the sink was "trash" and not "smokeable."

Another paternal aunt, Reina R., confirmed father's arrest for drug trafficking and his gang membership, but believed that he was no longer involved with the gang. She said that mother knew what was going on with father and did not understand why she had not disclosed that information to the DCFS.

Mother said that although father was not an active member of his gang, he would get involved with them when they called him. She also reported that father smoked but did not sell marijuana, and that when he smoked, he would go outside and she would take care of the kids. Mother also stated that her relationship with father had been "rocky." In the beginning, there had been an incident of domestic violence. She stated that father was controlling and did not let her go out.

On February 4, 2014, the DCFS filed two petitions in the juvenile court under section 300, subdivision (b). The petition filed on behalf of R.M. [no. CK82924] alleged that on January 30, 2014 (1) father had established an unsafe environment for the child, because marijuana and a loaded firearm had been found in the family home within reach of the child; (2) father had exposed R.M. to illicit drug trafficking; (3) father had a history of substance abuse and was a current user of marijuana and used marijuana while caring for the child; (4) father had left R.M. in the care of mother, whom he knew possessed marijuana and kept a loaded handgun in the family home; and (5) father allowed the children's "Uncle Frankie" and others to abuse marijuana in the family home in the

child's presence. The petition in J.M.'s case alleged that (1) mother and father had created a detrimental home environment by keeping marijuana and a loaded handgun within the reach of the child; (2) the parents exposed the child to drug trafficking; (3) mother was arrested for possession for sale of marijuana; (4) father had a history of substance abuse and was a current user of marijuana; (5) mother knew that father used marijuana and failed to protect the child; and (6) father allowed "Uncle Frankie" and other to use marijuana in the family home in the child's presence.

The detention hearings in both cases took place on February 4, 2014. Mother was present and was arraigned on the petition for J.M. Counsel was tentatively appointed for father, who was then incarcerated in Kansas on drug trafficking charges. R.M.'s biological mother failed to appear.

The court found a prima facie case for detaining both children, and they were ordered detained with mother's mother ("grandmother"). The court found that the Indian Child Welfare Act did not apply as to both children. Mother was granted reunification services with J.M., and the DCFS was ordered to give mother appropriate referrals for parenting classes, counseling, and random drug testing. The court ordered that if mother tested clean, this would satisfy her testing requirement, but if she tested dirty or had an unexcused missed random drug test, then the court would further address her testing requirements and her possible referral to a drug program. Mother was granted monitored visits with J.M., and the DCFS was granted the discretion to liberalize those visits and to allow mother to move into the home of grandmother. Mother was also granted the same visitation rights as to R.M.

On April 21, 2014, the matter came on calendar for the jurisdiction/disposition hearing. The court confirmed the appointment of counsel for father, whose counsel had made telephone contact with him. The case was trailed in anticipation of settlement. The DCFS was ordered to file a supplemental report with updated information and recommendations.

On May 12, 2014, mother appeared at the hearing, while father was still incarcerated. The court found that notice had been given as required by law. The court

received in evidence the social worker's reports and granted mother's motion to find her to be R.M.'s "presumed mother." The court then sustained the section 300, subdivision (b) petition and declared R.M. to be a dependent of the court.

The court found, under section 361, subdivision (c)(1), that there was clear and convincing evidence of (a) substantial risk to R.M. if he were returned to his parents, (b) that there were no reasonable means to protect him without removal, and (c) that reasonable efforts had been made to prevent removal. R.M. was suitably placed in the home of grandmother. The court granted mother reunification services and permission to live in the home with R.M. with unmonitored visitation. The court also ordered mother to attend parenting classes, and to participate in counseling to address all case issues including substance abuse awareness. The court also granted reunification services to father (once he was released from custody), to consist of drug treatment with random testing, counseling and parenting classes. Father's visits were to be monitored and mother could not be the monitor.

As to J.M., the court also sustained the petition under section 300, subdivision (b). The court declared J.M. to be a dependent of the court, and made removal orders pursuant to section 361, subdivision (c)(1), and suitable placement of her in the home of grandmother. Mother was granted permission to live in the home with the child and was allowed unmonitored contact with her. She was ordered to participate in the same parenting classes and counseling referred to above with regard to R.M. Father was granted reunification services (once he was released from custody), the same as those set forth above with regard to R.M. Father was granted monitored visits with J.M. two times per week in a DCFS-approved setting, monitored by a DCFS-approved monitor. His visits were not to be monitored by mother.

On May 12, 2014, mother appealed the court's disposition orders suitably placing the children with grandmother.

DISCUSSION

A dependency court's dispositional orders are reviewed for substantial evidence. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) Substantial evidence is evidence that is "reasonable, credible and of solid value" such that a reasonable trier of fact could make such findings. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.) The juvenile court's ruling should not be disturbed on appeal unless the trial court has made an arbitrary, capricious, or patently absurd determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Further, when two or more inferences can be reasonably deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. (*Id.*, at p. 319, citing *Walker v. Superior Court* (1991) 53 Cal.3d 257, 272.)

Whether the conditions in the home present a risk of harm to the children, and if so, whether action may be taken by the DCFS short of detaining the children to avert such risk, are factual issues for the juvenile court's determinations and are also reviewed for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635.) Under this standard an appellate court must affirm the juvenile court's order if there is evidence that is reasonable, credible, and of solid value to support the order. (*In re Christina A.*, *supra*, 213 Cal.App.3d at p. 1080.) "In making this determination, 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.* (1996) 52 Cal.App.4th 183, 193, citing *In re Tania S.* (1992) 5 Cal.App.4th 728, 733.)

We begin by noting that mother does not challenge the juvenile court's findings at the adjudication hearing – that both parents were neglectful as the result of a loaded firearm and marijuana being accessible to the children in the home, and marijuana being smoked by father, Uncle Frankie, and others in and about the family home in the presence of the children with mother's knowledge. Mother's sole argument on appeal is that there was no substantial evidence to support the juvenile court's dispositional order to remove the children from her custody, since there were reasonable means to protect them short of removal.

After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60.) ““A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.] The court may consider a parent's past conduct as well as present circumstances.” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247, quoting *In re N.M.* (2011) 197 Cal.App.4th 159, 169.) A finding of detriment to the child may be based on conditions likely to be present in the future. (*In re Brian R.* (1991) 2 Cal.App.4th 904, 913.)

Section 361, subdivision (c)(1), however, provides in pertinent part that “[a] dependent child may not be taken away from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5) inclusive. . . . (1) There 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.”

With these propositions in mind, let us consider what evidence was presented which supports the juvenile court's dispositional findings.

Mother submits that even before the jurisdictional/disposition hearing, she had substantially complied with the DCFS social worker's requirements. She had faithfully attended parenting classes which she described as useful, taken and tested negative for drugs on four occasions, attended nine sessions of individual counseling, and acknowledged her responsibility for the children's detention. She had also expressed her remorse for her actions, never denied what happened in her home and had visited the children almost daily; her visits had been appropriate. She had allowed R.M. to discuss with her the day of her arrest and to pour out his feelings. She therefore contends that the conditions ordered by the court made to remedy the underlying problems were being complied with by mother, and therefore there was not substantial evidence to support the juvenile court's order removing the children from the home.

Mother initially indicated that she had not known a loaded gun was present in the family home and claimed to have discovered the evening before the search in a drawer she rarely opened. She later stated that she hid it in under R.M.'s mattress to avoid discovery by the sheriff deputies who were initiating their search of the family home. R.M. said father had told him the gun was for mother to use if someone tried to sneak into the house.

In addition to the loaded gun, the children were exposed to father and father's friends and relatives smoking marijuana in the family home. R.M. was able to describe how father took something green out of little plastic bags, put it in a small pipe and smoked it. R.M. said he had seen father do this many times at the family home. Father admitted he had not been adhering to the guidelines for medical marijuana use and smoked while R.M. was present. He said mother was aware of his drug use in the presence of R.M. Mother did not approve of it but took no steps to stop it. A grocery bag full of marijuana was discovered by the deputies under the sink in their home.

R.M. was also permitted to frequent the adjacent residence of his Uncle Frankie, who kept a loaded shotgun on or around his couch, which R.M. had seen while he was

playing with his cousins. R.M. also reported that Frankie would smoke marijuana inside their house while he and his cousins were present.

When mother first spoke with the DCFS, she claimed that she did not know why father was arrested in Kansas. But the children's paternal aunt, Reina R., told the CSW that father was arrested for drug trafficking. She advised the CSW that mother knew what was going on with father and did not understand why mother had not disclosed that information to the DCFS. A detective with the Sheriff's department told the CSW that gang members were known to frequent all of the residences they had searched, including the family home, and expressed concern for the children who resided in them. Mother, however, diminished the significance of father's gang involvement claiming that he was no longer an active gang member. She conceded, however, that he would get involved when the gang called upon him.

The evidence shows that mother repeatedly did little or nothing to shield the children from father's dangerously poor choices, made her own failed decisions, and at times acted protectively towards father to the detriment of the children. Mother admitted that she made a poor choice in placing a loaded hand gun under the mattress of six-year-old R.M.'s bed in a failed attempt to hide it from the Sheriff's Deputies. The evidence also reflected that the children were exposed by father and father's relatives and friends to marijuana smoke in the family home and in the home of Uncle Frankie. Father admitted that he had not been adhering to the guidelines for medical marijuana use and smoked while the children were present. Mother was aware of his use of the drug in front of R.M. R.M. was also permitted to frequent the adjacent residence of Uncle Frankie, who kept a loaded shotgun on the couch, which R.M. reported having seen, and who smoked marijuana in his house while R.M. and his cousins were present. Finally, evidence was introduced that gang members of the Latin Kings gang were known to frequent all of the residences that had been searched and that the deputies were concerned for the well-being of the children residing therein.

While mother made a good start in accepting responsibility for her actions, and was attending individual counseling and otherwise complying with the orders of the

juvenile court, the court found that mother was still in the process of learning pro-social behavior. The juvenile court's decision to remove the children from mother's custody reflected its ongoing concern about her present ability to make proper choices in her children's best interests. In recognition of mother's positive steps, she was allowed to live with the children in grandmother's home, and to have unmonitored visitation with them, while she continued her counseling and parenting classes.

Mother argues that there were reasonable means of protecting the children short of their removal from her custody and thus the dispositional order of the juvenile court should be reversed. She cites in support of her contention the case of *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*In re Ashly F.*). In that case, Division One of this District reversed the juvenile court's findings removing children from a mother's custody at disposition. There the appellate court was concerned that the record did not include any discussion of the reasonable efforts taken to possibly prevent the need for the children's removal. The mother in *In re Ashly F.* had physically abused her children, but then moved out of the family home where the father remained with the children after juvenile court proceedings were initiated. (*Id.*, at pp. 806-807.) The DCFS's report for disposition also did not explain why the agency felt there were no reasonable means by which the children could remain at home. (*Ibid.*) The DCFS also failed to conduct a "prerelease investigation" report regarding father as it had been ordered to do by the court. (*Ibid.*) The appellate court concluded that the juvenile court failed to consider alternate means to protect the children short of detaining them, and thus its dispositional orders should be reversed with the matter remanded for a new hearing and proper consideration of whether removal was required. (*Id.*, at p. 811.)

In the present case, unlike the situation in *In re Ashly F.*, *supra*, 225 Cal.App.4th 803, the DCFS recommended that in an effort to avoid removal it provide mother with various services, including family reunification services and referrals, individual counseling, parenting classes, monthly visits, and case management services. The DCFS opined that despite these services, which were provided to mother, the children's safety still required their removal from her custody considering the conditions which prevailed

in the family home at the time of the search by law enforcement. The DCFS expressed its opinion that mother “would continue to benefit from parenting [classes] as well as individual counseling to address the case issues and dynamics of her relationship [with father].” The juvenile court agreed and ordered the continuation of these services while the children were detained with grandmother. The present case also differs from *In re Ashly F.* in that here, there is not an appropriate father in the home as a potential caretaker.

In short, the juvenile court did not abuse its discretion in ordering that the children be detained with grandmother, while allowing mother to reside in the home and enjoy unmonitored visitation with the children while she participates in her parenting classes and individual counseling

DISPOSITION

The findings and orders of the juvenile court are affirmed.

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MINK, J.*

We concur:

TURNER, P. J.

MOSK, J.

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