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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JOSE S. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Appellant,

v.

VANESSA S.,

Defendant and Appellant.

B261000
(Los Angeles County
Super. Ct. No. DK04517)

APPEAL from an order of the Superior Court of Los Angeles County,
Anthony Trendacosta, Judge. Affirmed.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for
Defendant and Appellant.

Office of the County Counsel, Mark J. Saladino, County Counsel, Dawyn R.
Harrison, Assistant County Counsel and Sarah Vesecky, Deputy County Counsel,
for Plaintiff and Appellant.

Appellant Vanessa S. (Mother) is the mother of five boys: Jose (age 9), Tony (age 8), Frankie (age 6), Alberto (age 3), and T.G. (almost 2). The children were detained in April 2014 after Mother was arrested while driving under the influence of drugs with four of the children in the car. Mother's visitation has been monitored since that time. Mother stipulated to jurisdiction and was instructed to participate in a reunification plan that included substance abuse treatment; individual counseling to address substance abuse, appropriate discipline and anger management; and joint counseling with her male companion, Francisco G.¹ She appeals the December 11, 2014 order of the juvenile court, made after the six-month review hearing, maintaining all prior orders in full force and effect, including the custody order and the monitored visitation order. She contends the evidence that she had made progress in the substance abuse portion of the plan established that she was no longer a threat to the children, and that the court was required either to return her children to her or to permit unmonitored visitation. We conclude the evidence supported the court's decision and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Department of Children and Family Services (DCFS) in April 2014, when Mother was stopped by police while driving under the influence of drugs, speeding and running a red light.² Four of her children were in the car at the time (Tony, Frankie, Alberto and T.G.), and only one was properly restrained. A drug pipe, which appeared to have been recently

¹ Francisco is the presumed father of T.G. Jose M. is the presumed father of Jose, Tony, Frankie and Alberto. Neither father is a party to this appeal.

² There had been past referrals to DCFS that had not led to initiation of a proceeding, including a January 2014 incident when Tony was observed at school with a bruise and bump on his forehead and a May 2013 incident when Mother was arrested for attacking Francisco with a key.

used, was found in the car. Mother admitted she had used methamphetamine, blaming it on stress caused by an argument she had had with Francisco and on her children's disobedience. She had a baggie of the drug concealed in her vagina.

Mother was arrested and the boys were taken into protective custody. They were said to be "filthy" at the time. The youngest two had feces and urine on them. The three older boys were interviewed and reported that Francisco hit all the boys with a belt, except T.G., and that this abuse occurred in Mother's presence, with her encouragement.³

A Welfare and Institutions Code section 300 petition was filed. As amended on the day of the jurisdictional hearing, it alleged that: (1) Francisco struck Jose, Tony, Frankie and Alberto with belts, causing unreasonable pain and suffering, and that Mother knew what he had done and failed to protect the children; (2) Mother established a "detrimental and endangering situation . . . for the children" by driving while under the influence of a controlled substance, in possession of methamphetamine and a drug pipe, with four of her children in the car, three of whom were not in child safety restraints; and (3) Mother had a history of substance abuse and was a recent user of prescription medication, methamphetamine, marijuana and cocaine.⁴

Mother and Francisco submitted to jurisdiction. The court ordered Mother to enroll in a substance abuse program with aftercare; to submit to random testing; to attend a parenting class; to undergo individual counseling to address substance abuse, appropriate discipline and anger management; and to participate in joint

³ All the boys except Alberto suffer from hemophilia. The caseworker confirmed that Mother had been trained in caring for children with this diagnosis, but the record reflects instances when Mother failed to follow up with recommended medical treatment for the boys or ran out of the medication required to control their condition.

⁴ The court struck allegations of domestic violence between Mother and Francisco. Undesignated statutory references are the Welfare and Institutions Code.

counseling with Francisco. Francisco was provided a similar reunification program.⁵

From May 15 to September 4, 2014, Mother participated in outpatient substance abuse treatment at the South Bay Center for Recovery. The program included drug testing. Initial progress reports from the program stated Mother had been “doing what is required of her” and had “shown improvement,” but the July 19 report said she had missed group sessions and 12-step meetings and displayed manipulative behavior and a lack of honesty. The August 2 report documented Mother’s continuing struggles, and stated that an intervention had taken place to make her aware that her behavior carried a risk of termination from the program. During the reporting periods that followed, Mother continued to skip group sessions and 12-step meetings, and also missed an August 28 drug test.⁶ The counselor proposed that she be enrolled in a residential treatment facility. Mother did not agree with the proposal, and left the program.

Mother enrolled in Tarzana Treatment Center’s outpatient substance abuse program on September 26, 2014. In October, Tarzana reported that Mother was actively participating in the program, and had tested negative eight times with no missed tests. She had obtained a sponsor and was attending 12-step meetings. In December, the program reported that Mother continued to test negative and to

⁵ After the initial detention, Tony, Frankie, Alberto and T.G. were placed in foster homes; Jose was placed in a group home. Jose and Tony were subsequently placed with their father, Jose M., but he lost custody after his arrest for possession of a controlled substance. A section 342 subsequent petition was filed, alleging that Jose’s use of methamphetamine and marijuana endangered the children. The court found the allegations of the petition true. All the children were placed with foster parents at the time of the six-month review hearing.

⁶ Documentation showed that she also missed tests on July 23, 24, 25 and 26. Mother also had 27 negative drug tests during the period of her treatment at South Bay Center for Recovery.

attend 12-step meetings, that she “understood the seriousness and possibility of consequences in her life [of] not complying with Treatment requirements and DCFS mandates,” that she “agreed to continue attending treatment 5 days a week,” and that she was “strengthening her understanding of the disease model of addiction and relapse prevention skills”⁷

During the initial six-month period, Mother completed the required parenting classes. She visited the children regularly, but was sometimes distracted by her cell phone. She discussed case issues with the foster parents in front of the children and, on occasion, improperly attempted to bring Francisco to visits with the older boys. In November, Mother reported to the caseworker that she was enrolled in therapy, but could not provide the name or address of her therapist. She further reported that the therapist would not prepare a letter for the court unless Mother paid \$150. She was still romantically involved with Francisco, who was reportedly in and out of her home.⁸

In the status reports prepared for the six-month review hearing, DCFS recommended continuation of reunification services for Mother and continued monitored visitation, with DCFS discretion to liberalize.⁹

At the contested six-month review hearing, the maternal grandmother testified that she and Mother lived together, and that she had last seen Mother under the influence in April 2014. She confirmed Mother was still involved with

⁷ The December report also stated services were put in hold due to “medical.” This may have been a reference to a problem with insurance or “Medi-Cal.”

⁸ Francisco participated in a substance abuse program for about ten days, from June 26 to July 5, 2014. He did not enroll in a parent education program. He began participating in individual counseling in September 2014 and enrolled in a domestic violence and anger management classes at approximately the same time.

⁹ DCFS recommended the same for Francisco. Francisco submitted on the recommendation.

Francisco, that he came over two or three times per week, and that he spent the night on weekends.

Mother testified she had not used any illicit substances since her arrest in April 2014, after having used drugs for two or three years prior to that date. She described having put her fist through a window a few months earlier, leaving cuts on her arm, due to anger and frustration over “false allegations.” She claimed she left the South Bay Center for Recovery because they made “false reports” and were not concerned about her treatment. She said she missed tests because she had suffered a miscarriage. She claimed to have participated in six individual therapy sessions, but could not recall the therapist’s name. She confirmed she was still involved with Francisco. Asked why the two of them were not in joint therapy, she said that his counselor was not ready for them to begin. Mother was asked about the allegations of the petition. She denied ever having seen Francisco hit the boys, and said she believed the children made up the charges “to get attention.” She denied speeding or running a red light when arrested in April 2014, and claimed the boys had let themselves out of their seatbelts and restraints. Asked about her 2013 arrest for domestic violence, she said she had been arrested because Francisco was bleeding from a fall when police arrived, and “the law is to arrest the person if there are injuries on the other person.”

In closing, counsel for Mother asked that the children be returned to her custody or that she be permitted unmonitored visitation. She contended DCFS had not met its burden of proving detriment. Counsel for DCFS argued that Mother had not made sufficient progress in her drug program and was in denial about the issues that led to DCFS intervention. She argued the court’s orders regarding custody and visitation should remain unchanged while Mother participated in further services. Counsel for the children joined in the recommendation of DCFS. Counsel observed that Mother had been consistent with treatment for only a short

period. He expressed concern over Mother's denial that Francisco had hit the children with a belt and questioned her ability to protect them from him. The children's counsel argued that until Mother dealt with the issue of Francisco's abuse, the children could not safely be left in her care.

After taking the matter under submission, the court prepared a written order denying Mother's request for return of the children and unmonitored visitation. In its order, the court commended Mother for her progress in completing the requirements of the Tarzana Treatment Center and "her ability to remain sober, as evidenced by her clean tests." However, the court determined that Mother had made "little or no" progress in other aspects of the reunification program, including the therapy needed to gain insight into the stresses and triggers that caused her to abuse drugs in the first place.¹⁰ The court further found Mother had also made little or no progress in addressing her child protection and anger management issues. The court was particularly concerned that she continued her relationship with Francisco, allowing him to spend time in her home, although his compliance with the components of his reunification plan had been "marginal," and the two of them were not participating in joint therapy.

The court further stated that Mother's testimony at the hearing confirmed her lack of insight into the issues that led to DCFS intervention: she accused the South Bay Center for Recovery and the caseworker of misrepresenting her progress and failing to provide assistance; she "inexplicably blamed the police officer for the traffic stop that resulted in her arrest"; she "denied the information in the report that she was speeding, . . . denied the reasons she was arrested, and tried to deflect . . . all of the reasons for her arrest"; she "blamed the children for not being

¹⁰ Acknowledging Mother's claim to have seen a therapist for several sessions, the court found that her inability to provide the name or obtain a progress report left the record devoid of evidence of any progress in this area.

properly secured in car seats”; and “[f]inally and most importantly, she blamed the children for the allegation of physical abuse by [Francisco], stating that they just ‘made up that claim for ‘attention.’” Concluding that “[Mother] has not made substantive progress in her case plan and has not accepted responsibility for her actions,” the court continued all prior orders in full force and effect, including the custody order and the order for monitored visitation only. Mother appealed.

DISCUSSION

A. Continued Detention of the Children

At the six-month review hearing, “the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.21, subd. (e).) The agency has the burden of establishing detriment. (*Ibid.*) Mother contends the court’s finding after the December 2014 six-month review hearing that returning the boys to her custody posed a risk of detriment was not supported by substantial evidence. We disagree.

“The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs” constitutes “prima facie evidence that return would be detrimental.” (§ 366.21, subd. (e).) In determining whether return would be detrimental, the court “shall consider the efforts or progress, . . . demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself [of] services provided” (*Ibid.*) Here, there were two distinct bases for assertion of jurisdiction to which Mother and Francisco acceded: (1) Mother’s substance abuse problem and (2) Mother’s failure to protect the boys from Francisco’s physical abuse. Mother had participated in

two substance abuse programs. She had terminated the first prematurely, after being notified that she was not complying with the program or making sufficient progress. Although she was participating in and making progress in the second program as acknowledged by the court, she had been involved with the program for just two months by the time of the review hearing. This was an insufficient period of treatment to support a conclusion that there was no danger of relapse, and that the children would be safe in her custody.

Moreover, the court found she had not made substantial progress in other areas of the reunification plan. The plan required individual therapy to address substance abuse, appropriate discipline and anger management. Such therapy was an important component of the plan, enabling her to obtain strategies to prevent relapse and to address her failure to protect her medically fragile children from physical abuse. The court reasonably placed little weight on her claim to have undergone six sessions with an anonymous therapist, who prepared no report. During this period, Mother put her fist through a window out of anger and frustration, leaving cuts on her arm, supporting that she had not adequately addressed her anger management issues. She downplayed the seriousness of the incident that led to the boys' detention, and blamed them for travelling unrestrained. Most important, the evidence supported not only that she had neglected to address her failure to protect the boys from Francisco, but that she was in denial about the need for such protection -- despite having agreed that this was one of the bases supporting the assertion of jurisdiction. Indeed, she continued her relationship with Francisco without participating in joint counseling with him. On this record, the court's conclusion that Mother had not made substantive progress in her reunification plan and that the children would be at risk of harm in her custody was supported by substantial evidence.

B. *Continued Monitored Visitation*

“There is no question but that the power to regulate visitation between minors determined to be dependent children [citation] and their parents rests in the judiciary.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756.) Defining the boundaries of the parent’s visitation “necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child.” (*Id.* at 757.) “In balancing these interests, . . . [t]he court may, of course, impose any . . . conditions or requirements to further define the right to visitation in light of the particular circumstances of the case before it.” (*Ibid.*) “[D]ependency law affords the juvenile court great discretion in deciding issues relating to parent-child visitation, which discretion we will not disturb on appeal unless the juvenile court has exceeded the bounds of reason. [Citation.]” (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557-1558.)

Support for an order restricting a parent’s visitation does not require proof of actual harm to the child by the parent; the standard is substantial risk or danger of harm. (See *In re Marriage of Birdsall* (1988) 197 Cal.App.3d 1024, 1030; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1656-1658.) In determining the need for such an order, “the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; see also *In re Y.G.* (2009) 175 Cal.App.4th 109, 116 [juvenile court may “consider a broad class of relevant evidence in deciding whether a child is at substantial risk from a parent’s failure or inability to adequately protect or supervise the child.”].)

Four of Mother’s children are medically fragile, suffering from hemophilia, which creates a serious risk of harm from physical abuse of any kind. The fact that she is in denial about the need to protect them from physical abuse from Francisco while she maintains her relationship with him would, standing alone, support the visitation order. The fact that Mother had been participating in and making

progress in her current substance abuse treatment program for only a short period, and had provided no substantiated evidence of having undergone therapy to address substance abuse, anger management, or the need to protect her children from physical abuse provided additional support. The court did not abuse its discretion in maintaining monitored visitation for an additional review period.

DISPOSITION

The court's December 11, 2014 order is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.