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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.V., a Person Coming Under the
Juvenile Court Law.

B268013

(Los Angeles County
Super. Ct. No. DK12147)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Annabelle G. Cortez, Judge. Affirmed.

Michelle Ben-Hur, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Liana Serobian, under appointment by the Court of Appeal, for Minor.

I. INTRODUCTION

The father, Manuel V., appeals from the September 28, 2015 dispositional order. The father contends removal of the child, Valerie V., from his physical custody pursuant to Welfare and Institutions Code¹ section 361, subdivision (c)(1) was in excess of the juvenile court's jurisdiction. We conclude the father forfeited this issue by failing to object to the removal order in juvenile court. We affirm the removal order.

II. PROCEDURAL HISTORY

On July 9, 2015, the Los Angeles County Department of Children and Family Services (the department) filed a petition pursuant to section 300, subdivisions (a) and (b). The petition alleges the child's mother, Valerie H., and the father have a history of violent altercations. On June 21, 2015, the father allegedly grabbed the mother's arm while driving erratically in a vehicle. On a prior occasion, the father pushed the mother, causing her to fall down. In addition, the father kicked the mother in the buttocks. On prior occasions, the father threatened to harm the mother. Also, on a prior occasion, the mother pushed the father off his motorcycle, causing a mark and bruise to his arm. Further, the petition alleges the father currently abuses alcohol, which renders him incapable of providing the child with regular care and supervision. The petition alleges the mother's failure to protect the child endangers the youngster's physical health and safety. Also, the petition alleges the father's conduct places the child at risk of serious physical harm, damage and danger.

At the July 9, 2015 detention hearing, the juvenile court found the father was the child's presumed father. The child was released to the mother's custody but was detained from the father. The juvenile court issued an order requiring the father to stay away from the mother's home. The father was granted monitored visits, which could not be in the

¹ Further statutory references are to the Welfare and Institutions Code.

mother's home. Also, the mother could not monitor the father's visits. The department was ordered to provide no cost or low cost referrals for random drug and alcohol testing.

At the September 28, 2015 jurisdiction and disposition hearing, the juvenile court sustained the allegations in counts (a)(1), (b)(1) and (b)(2) of the section 300 petition. The child was declared a dependent of the court under section 300, subdivisions (a) and (b). The child was placed in the mother's home under the department's supervision. The juvenile court found by clear and convincing evidence pursuant to section 361, subdivision (c)(1) that there was: substantial danger if the child was returned home to the father; no reasonable means by which to protect the child without removing her; and reasonable efforts made to prevent or eliminate the need for removal. The juvenile court ordered enhancement services for the father. In addition, the father was granted monitored visits for a minimum of two to three times a week for two to three hours per visit. The mother was not to monitor or be present at the father's visits. The father was ordered to participate in parenting and anger management counseling. The father was ordered to stay away from the mother's home. The parents were ordered to abide by the stay away order. However, the department could move to lift the order if the therapist recommended conjoint counseling with the mother. Also, the father was ordered to participate in a full alcohol and drug program with weekly random or on demand alcohol and drug testing.

The father opposed participation in a full drug and alcohol program at the September 28, 2015 dispositional hearing. The father requested that he be required to participate in a full drug and alcohol program only if he missed or had a positive test. The father did not object to the section 361, subdivision (c)(1) removal order.

III. EVIDENCE

A. Detention Report

On June 22, 2015, children's social worker Megan Ngo received a referral alleging the father emotionally abused the child. The caller reported the parents were arguing and the father grabbed and shook the mother's arm causing her pain. Ms. Ngo interviewed the mother at her home. The mother lived with her ex-husband, the maternal grandfather, and her four children.

The mother had been in a relationship with the father for the past two years. The mother and father have one child together. The mother reported the father needed help for his drinking problem. The father was fine when not drinking but turned into another person when he drank alcohol. The mother stated she and the father planned to get married and live together but he first needed to address his problems.

The mother stated she and the father went out to dinner without the children on Father's Day on June 21, 2015. When they got to the restaurant, they saw the maternal aunt with some of her male friends. According to the mother, the father is extremely jealous. According to the detention report, "After they left the restaurant father questioned mother if she went out with maternal aunt and her friends a few weekends ago." The mother answered, "[Y]es, a few times." The father then accused the mother of cheating on him. The mother stated the father was drunk and drove the car fast and recklessly. When they got to the father's house, the mother went inside the house and he followed her into the hallway. The mother reported the father was upset because she did not want to argue with him anymore. She told the father they would talk in the morning. The father refused and grabbed the mother by the arm. The mother told the father to release her. The mother also told the father she would leave if he did not stop yelling. Then the mother called the police because she was afraid for herself and the child. Sheriff's deputies arrived and arrested the father because he had a weapon. The mother stated she knew the father had a gun but she had never seen it.

The mother reported the father has pushed and kicked her in the past. In 2014, the parents got into an argument and the father yelled and pushed her to the ground several times. The mother stated she wanted to give the father another chance. This was because the mother wanted them to remain a family for the child's sake.

Ms. Ngo, the social worker who prepared the detention report, also interviewed the father about the incident. The father reported his 20-year-old daughter, Amber V., looked after 14-year-old Katelyn V. and the child, when he and the mother went out to a Father's Day dinner. The father and mother saw the maternal aunt. The maternal aunt was with some of her friends. The father felt uncomfortable because the maternal aunt was not with her husband. The father did not want to have anything to do with the maternal aunt and her friends. At dinner, the parents drank a few beers. The father stated he had three or four beers during dinner but denied being drunk. While driving home, the father questioned the mother about a text message he saw on the her phone a few weeks before. The maternal aunt had sent the mother a text message. The message asked the mother to go out with the maternal aunt's boyfriend and his friends. The father asked the mother if the meeting had occurred. The mother admitted meeting some of the maternal aunt's friends. When the father and mother arrived home, he said he stayed in the garage. The father stated the mother continued to argue with him before going inside the house. The mother later went inside the garage to argue with the father. The father reported he held the mother's arms but denied using any force. He denied any domestic violence with the mother. The father had proposed, presumably marriage, to the mother three weeks before and she had accepted the proposal. They were planning to buy a house and move in together.

The father stated he had a gun that was "registered" to him. The father indicated he placed the unloaded gun in between his mattress. The father stated he never touched the gun and had no intention of hurting anyone with it. The father admitted to a past criminal history including past domestic violence with his ex-girlfriend. The father reported he had never hurt the mother or his four children.

The attached March 16, 2014 incident report indicated Los Angeles County sheriff Deputies Rodriguez and Lomeli responded to a spousal assault call on that day. None of the reports prepared by the sheriff's deputies contain indications as to their gender or first names. The sheriff deputies saw the mother was emotionally distraught. The mother stated she and father went for drinks at an Applebees restaurant. They argued after the father's credit card was declined and he did not have money to pay the bill. The father's brother drove to the restaurant and paid the bill. After the mother and father left the restaurant, they rode to his residence on his motorcycle. When the mother and father arrived at the house, they continued to argue. As the mother got off the motorcycle, the father became angry and yelled profanities at her. When she began walking towards the garage, the father got off his motorcycle. She reported the father pushed her four times using both arms. He also kicked the mother once in the buttocks when she walked away from him. The father then got on his motorcycle and drove away but returned 20 minutes later. While in his home, he continued to yell profanities at the mother. The mother told the father she would call the police if he did not leave her alone. The father cursed at the mother and threatened her. The mother told the sheriff deputies she was afraid of the father and believed he was capable of carrying out his threats. The mother stated the father is a member of the outlaw motorcycle gang called the "Mongols," and goes by the moniker of "Kojack." Deputy Rodriguez observed the mother's chest was scratched. But the mother refused medical attention.

Deputy Rodriguez reported the father was extremely uncooperative when they first met. Once the father realized the mother wanted to press charges, he alleged she hit him. The father stated the mother pushed him off his motorcycle, causing him to drop it and break the mirror. The father got back on the motorcycle. The mother pushed the father off of the motorcycle again, causing him to drop it and break the gauge. Deputy Rodriguez observed the father's right forearm was scratched.

The attached June 21, 2015 incident report stated Los Angeles County sheriff Deputies Vaca and Waites responded to a call from the mother. The mother reported the father was drunk and inside the garage. The mother, the child and the father's daughter,

Katelyn, met the deputies outside the his house. The mother told the deputies the father drove dangerously fast while drunk. The mother spoke with the father and he became angry, yelling at her. Using his right arm, the father grabbed the mother's left upper arm with a firm grip and squeezed it tightly. The father then released his grip and walked outside into the garage. The mother reported feeling pain in her arm where the father had grabbed her.

While interviewing the mother, Deputy Vaca reported hearing a male voice coming from inside the house. The deputies saw the father walk into the threshold of the opened front door. The father threw his hands in the air and appeared angry. From about 30 feet, the deputies told the father to come outside so they could speak with him. The father replied, "For what, I didn't do anything!" The deputies again requested the father come outside the home but he refused and shut the front door. After the father closed the front door, the deputies heard the manipulation of a pump action firearm near the front door. Believing the father was arming himself, the deputies and assisting units took cover. About a minute later, Deputy Vaca saw the father walk outside the house towards the deputies. The father had his hands up. Subsequently, the sheriff deputies detained the father.

Later, Deputy Vaca and the assisting units entered the home to retrieve the weapon. Deputy Vaca saw the stock of a shotgun below a bed in the northwest bedroom of the house. They lifted the bed and saw a black shotgun placed between the mattress and bedframe. Deputy Vaca reported the forestock was locked forward as if a round had been chambered and the safety was in the off position. Six buck shot rounds were attached in a fixed sidesaddle on the stock of the firearm. Deputy Vaca rendered the firearm safe. Deputy Vaca observed the shotgun appeared to be in good working order. Deputy Vaca reported, "A check of the firearm in SVS revealed it was not registered."

The father agreed to speak with Deputy Vaca about the incident. The father indicated he owned the firearm inside his house. While being interviewed the father said he moved the shotgun earlier in the day from one room to another to safely store it. According to the detention and sheriff's report, "I asked [the father] if he touched the

firearm while we were standing in front of his home. He said, 'Well, I wanted to let you guys know that I had it.' I asked him how he intended to make us aware that he had the firearm. [The father] said he did not do anything wrong and was upset about [the mother] calling the police."

Deputy Waites interviewed the father's daughter, Katelyn. While inside the home, Katelyn heard the father and mother arguing in the hallway. Katelyn walked into the hallway and saw the father grab the mother's right arm. Then the father released his grip and walked away from the mother.

B. Jurisdiction/Disposition Report

The September 28, 2015 jurisdiction and disposition report was prepared by dependency investigator Traci Stokes-Martinez. She interviewed the parents about the allegations in the petition. The mother stated: "[The father] was drinking that day on Father's [D]ay 6/21/15. He is [a] very jealous person. He got mad because my sister was at a restaurant with some guys that [were] not her husband. He had a couple of beers and started driving crazy. I told him to slow down. When I got back to my home he grabbed my arm real hard. He does not have an anger problem until he has had too much to drink. [The father] was drinking[;] he was driving too fast. I called the cops because I was afraid. He was drunk. He was cursing at me. Our baby (Valerie V.) and his daughters were there at the house ([father's] house)." The mother reported the first domestic violence incident occurred in 2014. The mother stated, "[The father] has a drinking problem. He gets out of control and he started pushing and shoving me."

The father told Ms. Stokes-Martinez: "I had [a] couple of beers when we are [at] this restaurant, bar called City Lights. We ran into her sister who was with a couple of fellas that were not her husband. I asked [the mother] if she had gone out with them before. [The mother] said yeah. I got jealous. I started driving my car fast. When we got back to her place[,] I grabbed her arm but I didn't hurt her. Next thing I know the police came and they told me to come outside and I got arrested." The father was

arrested in 2000 and 2010 for driving under the influence of alcohol. On July 6, 2000, the father was convicted of a misdemeanor for driving under the influence of alcohol and placed on three years of probation.

Ms. Stokes-Martinez reported the mother recently relocated to a new two bedroom, one bathroom apartment in West Covina on September 16, 2015. The mother resides with her four children, which includes the child. Ms. Stokes-Martinez reported the house was very clean but was not fully furnished because the living and dining room furniture had not been moved in yet. The mother reported she visited the father's house on some weekends but never lived with the father.

The father stated he purchased the rifle because he lives alone in Los Angeles. The father said he kept the rifle in his attic and the ammunition in his closet. The father stated on June 21, 2015 he removed his rifle from the attic and placed it underneath a futon because he was doing construction on his house.

Ms. Stokes-Martinez recommended the child remain in the mother's home. She recommended the mother receive family maintenance services, domestic violence counseling for victims and parenting classes. Ms. Stokes-Martinez recommended the father receive enhancement services, substance abuse and anger management counseling, random drug testing and parenting classes. She also recommended the father have monitored visits with a department-approved monitor. In addition, Ms. Stock-Martinez recommended the father be ordered to stay away from the mother's home.

IV. DISCUSSION

The father challenges the trial court's dispositional order removing the child from his physical custody pursuant to section 361, subdivision (c)(1). When the petition was filed the mother and father lived in separate homes and shared physical custody. He contends the trial court acted in excess of jurisdiction when it removed the child from his custody. The father asserts a dispositional order that removes the child from one

custodial parent while leaving her in the custody of another custodial parent is an act in excess of the juvenile court's jurisdiction.

Section 361, subdivision (c)(1) provides: "A dependent child shall not be taken 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 [¶] (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. . . . The court shall consider, as a reasonable means to protect the minor, each of the following: [¶] (A) The option of removing an offending parent or guardian from the home. [¶] (B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm."

The juvenile court found by clear and convincing evidence pursuant to section 361, subdivision (c)(1) that there was: substantial danger if the child was returned home to the father; no reasonable means by which to protect the child without removing her; and reasonable efforts made to prevent or eliminate the need for removal. The father did not raise any objection to the findings and removal order made by the juvenile court at the September 28, 2015 jurisdiction and disposition hearing. He forfeits the right to challenge the juvenile court's jurisdiction to remove the child from his physical custody by failing to object to the removal order at the dispositional hearing. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293 ["[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been made but was not made in trial court."]; *In re Aaron S.* (2015) 235 Cal.App.4th 507, 521; *In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1346.) On appeal, the father cannot challenge the juvenile court's authority to remove the child from his physical custody because he failed to raise this issue below.

V. DISPOSITION

The removal order is affirmed.

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TURNER, P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

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