Filed 4/16/12 In re C.U. CA3

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re C.U. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. A.U., Defendant and Appellant.	C067096 (Super. Ct. Nos. JD230977, JD230978)

Appellant, A.U., mother of the minor C.U. and C.U.'s older sibling K.U., appeals from juvenile court orders declaring the minor to be a dependent of the court and removing the minor from her physical custody.[1] (Welf. & Inst. Code, §§ 360, 361, 395.)[2]

---

[1] According to mother's opening brief, K.U. "is not a subject of this appeal."

[2] Undesignated section references are to the Welfare and Institutions Code.

Mother contends (1) the jurisdictional findings and removal orders were not supported by substantial evidence, and (2) there is insufficient evidence to support the juvenile court's finding that reasonable efforts were made to prevent the need for removal. We conclude that there is substantial evidence to support the juvenile court's findings and orders. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother was arrested and the then one-year-old minor, C.U., and her 15-year-old sibling, K.U., were placed into protective custody after mother grabbed K.U.'s hair and hit her multiple times with a cellular telephone battery charger, leaving visible welts and bruises on K.U.'s chest and arms. K.U. reported that mother had similarly abused her on prior occasions, hitting her with any available instrument (e.g., belts and sticks) and leaving marks and bruises on her body. K.U. also reported that mother verbally abuses the minor, is easily irritated when the minor is wet or hungry or will not sleep, and has screamed at the minor, "stupid kid, if you don't shut up, I am going [to] bust or break you[r] mouth."

Prior to removal, K.U. reported to social workers that she had been molested numerous times by mother's ex-boyfriend, A.J., both in Mexico and again after the family moved to Sacramento. K.U. reported the sexual abuse to mother, but mother did not believe her. Later, when mother brought a new boyfriend into the home, K.U. began having flashbacks of the prior abuse and, one month prior to removal, attempted suicide by ingesting an

unknown amount of aspirin. When K.U. told mother what she had done, mother refused to get K.U. medical or mental health assistance. According to K.U., mother said she would not stop K.U. if K.U. attempted suicide again. K.U. told social workers she feared mother and was afraid to go home.

K.U. told authorities that mother had a history of bringing different men into the home and having sex in the same room where K.U. was sleeping. Despite mother's insistence that K.U. be nice to her boyfriends, K.U. feared either she or the minor would suffer sexual abuse at the hands of those men.

The Sacramento County Department of Health and Human Services (Department) filed juvenile dependency petitions on behalf of both children. The petition filed on behalf of C.U. alleged serious physical harm, failure to protect, failure to provide support, and abuse of sibling (§ 300, subds. (a), (b), (g) and (j)).

Following a contested jurisdictional hearing, the juvenile court sustained the allegations in the petitions, adjudged the minor and K.U. dependents of the juvenile court pursuant to section 300, subdivisions (a), (b)(1), (b)(2), (g), and (j), continued out-of-home placement in foster care, and ordered reunification services for mother. The court ordered a 60-day progress report to address the issue of the appropriateness of the minor's return to mother. The court also set a six-month review hearing pursuant to section 366.21, subdivision (e).

DISCUSSION

I

Jurisdiction

Mother claims the order adjudging the minor a dependent of the juvenile court must be set aside because the juvenile court's jurisdictional findings were not supported by substantial evidence. We disagree.

"[B]efore courts may exercise jurisdiction under section 300, subdivision (b) there must be evidence 'indicating the [minor] is exposed to a substantial risk of serious physical harm or illness.'" (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388, quoting *In re Rocco M.* (1991) 1 Cal.App.4th 814, 823, italics omitted.)

The purpose of section 300 is to protect children from parental acts or omissions that place them at a substantial risk of suffering serious physical harm or illness. (§§ 300, subd. (b), 300.2.) Although there must be a present risk of harm to the minor, the juvenile court may consider past events to determine whether the child is presently in need of juvenile court protection. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169.) The California Supreme Court has observed that, depending upon the circumstances, a "past failure [can be] predictive of the future." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 424.)

Our review of the sufficiency of the evidence is limited to whether the judgment or order is supported by substantial evidence. "Issues of fact and credibility are questions for the

trial court and not the reviewing court. The power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." (*In re Christina T.* (1986) 184 Cal.App.3d 630, 638-639.)

Here, there is substantial evidence to support the juvenile court's findings. The petition alleged the minor was at substantial risk of suffering serious physical harm as a result of the physical abuse inflicted by mother on K.U.; that mother failed to protect the minor as a result of the physical abuse on K.U. and mother's failure to obtain medical and mental health services for K.U. after K.U. attempted suicide; that as a result of mother's incarceration on September 9, 2009, due to the injuries she inflicted on K.U., she failed to provide support for the minor; and that the minor was at substantial risk of physical harm, abuse and/or neglect as a result of the physical abuse inflicted by mother on K.U. Those allegations are supported by the fact that mother has reportedly been hitting K.U. since she was "little" and often disciplined K.U. by hitting her with whatever instrument was handy, including sticks and belts. Mother brought men into the home and had sexual intercourse with them while K.U. was in the room. When K.U. reported she had been sexually molested by one of mother's boyfriends, mother first disbelieved K.U. and then blamed her for provoking the sexual assault. Although mother eventually left the boyfriend, she took him back three months later

"because [she] loved him" despite that she "never felt comfortable leaving her daughter alone with the boyfriend, and she always had a feeling that the boyfriend was touching her daughter, [K.U.], again." Unfortunately, the sexual abuse continued until mother, after witnessing the boyfriend touching K.U., kicked him out of her home. Nonetheless, the emotional damage to K.U. was done, culminating in a suicide attempt after which mother failed to obtain either medical or mental health services for K.U., telling social workers she could not do so because she had no money or medical insurance. However, mother told K.U. she would not try to stop her if K.U. made another attempt on her own life.

The evidence of mother's abuse and neglect of the minor's sibling, K.U., is sufficient to substantiate the abuse of sibling allegation pursuant to section 300, subdivision (j). Furthermore, while mother argues the minor showed no signs of having suffered physical harm, it is clear that she was at risk of physical abuse based on K.U.'s reports that, when the minor cries, mother screams at her and threatens to hit her in the mouth. The fact that mother failed to protect K.U. from being sexually molested, disciplined K.U. by hitting her, and regularly yelled at and threatened the minor demonstrates the likelihood that the minor will suffer serious physical harm in the future.

There was evidence, based on mother's past and ongoing behavior, for the juvenile court to find by clear and convincing evidence that the minor was at risk as a result of mother's

failure or inability to adequately supervise or protect her and mother's abuse of the minor's sibling, K.U. (§ 300, subds. (b), (j).)

II

Substantial Risk of Detriment to Minor

Mother contends there is insufficient evidence that the minor would be at substantial risk of detriment if returned to mother's care. Again, we disagree.

To support an order removing a child from parental custody, the court must find clear and convincing evidence "[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 . . . physical custody." (§ 361, subd. (c)(1); see *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The court also must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor" and "state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).)

Removal findings are reviewed under the substantial evidence test set forth above, drawing all reasonable inferences to support the findings and noting that issues of credibility are matters for the trial court. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.) Further, evidence of past conduct may be probative of current conditions, particularly where there

is reason to believe the conduct will continue in the future. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.)

Here, substantial evidence supports the juvenile court's order for continued removal of the minor. The court had before it evidence that mother yells at and threatens to "bust" or "break" the minor's mouth when she cries; has a history of hitting K.U. with sticks, belts and anything readily available; brings different men into the home and has sexual relations with them while K.U. is present in the room, and allows those boyfriends access to K.U. despite knowledge of prior molesting of K.U. by a prior boyfriend; and failed or refused to obtain medical or psychological help for K.U. following her suicide attempt.

Based on evidence of mother's past and recent conduct, there is sufficient evidence of substantial danger to the minor's physical and emotional health, safety, and well-being.

The court also had evidence before it that there was no reasonable means by which to protect the minor's physical and emotional health without removing her from mother's physical custody. At the time of trial, mother had, for the previous six months, been living with her boyfriend who had just been released from custody in county jail. She was also living with the boyfriend's two children and "a lady" whose name she did not know. Mother's home had not been evaluated and it was unknown whether her boyfriend had any criminal or Child Protective Services (CPS) history.

Moreover, while mother steadfastly denied ever losing her temper with K.U. or striking K.U. prior to the incident prompting removal, and denied hitting, yelling at or losing her temper with the minor, she nonetheless admitted that counseling, anger management, and parenting classes would be beneficial before returning the minor to her custody. However, she had yet to avail herself of any of those services at the time of trial, and denied the minor and K.U. would be at risk if returned to her care prior to obtaining those services.

On this record, the juvenile court removed the minor from parental custody for the minor's protection. We conclude that substantial evidence supports the dispositional order of removal.

III

Efforts to Prevent Removal of Minor

The juvenile court found that "[r]easonable efforts were made to prevent or eliminate the need for removal [of the minor] from the home" based on the fact that the Department "has complied with the case plan by making reasonable efforts to return [the minor] to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child." In the order, the court found that services to eliminate the need for removal had been assessed and/or provided, and that mother's progress toward alleviating or mitigating the causes necessitating removal of the minor was "minimal."

Mother claims there was insufficient evidence to support the court's findings. The Department argues the issue has been

forfeited for failure to raise it at trial. "Generally, points not urged in the trial court cannot be raised on appeal. [Citation.] The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule." (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623.) Mother's claim comes within that exception and we thus consider it on the merits.

Appellate courts presume the trial court's order is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Its duty is not to weigh the evidence, but rather to determine whether there is any substantial evidence, contradicted or uncontradicted, to support the trial court's findings of fact. (*Browning v. King* (1958) 159 Cal.App.2d 326, 328; *Estate of Harvey* (1958) 143 Cal.App.2d 368, 370.)

Here, there is substantial evidence to support the juvenile court's findings. A social worker spoke with mother two weeks prior to removal of the minor and her sibling. The social worker suggested alternative methods of discipline, encouraged mother not to use physical discipline, completed a referral to counseling and established a safety plan regarding appropriate discipline. Just two weeks later, mother was reported for physically and verbally abusing K.U., which led to K.U.'s disclosure to authorities of mother's history of verbal and physical abuse of K.U. and verbal abuse and threats of physical harm to the minor.

Moreover, at the time of removal, mother was being held at county jail pending criminal charges and was being held by

Immigration and Naturalization Services "with a 'No Bail' status." Although no longer in custody at the time of the contested pre-jurisdictional status hearing three months later, mother was then living with a man who had just been released from custody and whose criminal background and CPS history were unknown.

Based on the record, we conclude there is substantial evidence to sustain the juvenile court's finding that reasonable efforts were made to prevent such removal.

DISPOSITION

The juvenile court's orders are affirmed.

HOCH, J.

We concur:

HULL, Acting P. J.

BUTZ, J.