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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

In re NATHANIEL M. et al., Persons Coming Under the Juvenile Court Law.	
SISKIYOU COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. MICHAEL M., Defendant and Appellant.	C068548 (Super. Ct. Nos. SCSCJVSQ115111601, SCSCJVSQ115111701)

Michael M., father of the minors, appeals from the judgment of the juvenile court removing the minors from his custody and ordering reunification services. (Welf. & Inst. Code, §§ 300, 358, 361, 395.[1]) Father contends the court erred in removing the minors from his custody because there was insufficient evidence of detriment to the minors if returned to him. We affirm.

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

FACTS

Responding to concerns from Nathaniel's school about excessive absences, social workers, with help from police, gained entrance to father's apartment to check on the welfare of the minors, Nathaniel, age five, and S.M., age three. There was a foul odor in the apartment that was strongest in the minors' bedroom. In general, the condition of the apartment was marginally adequate, however, the walls, floors, closet, ceiling, and mattresses in the minors' bedroom were smeared with feces, the mattresses were wet with urine and the minors smelled of urine and feces. Father told the social worker and officers he had just gotten cleaning products to clean the room and the minors had slept with him the night before. However, the claims of attempts to clean the room were questionable and father's room did not smell of urine although he said the minors were sleeping with him. It appeared to the social worker and officers that the minors were living in the filthy room. Father told officers the minors were out of control and like two feral cats in the wild.

The Siskiyou Human Services Department (Department) had received multiple substantiated referrals regarding the family for neglect and inadequate caretaking and had been working with father for three years to try to improve his ability to care for the minors. Most recently, the Department's assistance took the form of a voluntary maintenance plan. Father did not maintain contact with the social worker or most of the service providers but did schedule a drug assessment, enroll S.M. in pre-school

and follow through with Nathaniel's Individual Education Plan. However, father had made no meaningful progress in other aspects of the plan.

The juvenile court ordered the minors detained in April 2011.

The jurisdiction/disposition report filed in June 2011 stated father had made minimal progress. The report contrasted the minors' current circumstances with their condition on entering foster care. Nathaniel had made great progress. He was now toilet trained, rarely had tantrums and, although he was nearly non-verbal when detained, now used language. At school, his teacher said the transformation was unlike any she had seen before. Nathaniel was now well groomed, taller, had a healthy color, and his language was clearer. He was eligible for services from Far Northern Regional Center[2] and also needed play therapy. S.M. was making good progress in toilet training and beginning to develop language, although he had been non-verbal when detained, and was responding to boundaries. S.M. was in a special day class and his teacher said his progress since being detained was amazing. S.M. was now able to focus on work instead of food. He now responded to directions and sought out adults to name objects for him. Previously, he seemed unaware of the others in his class but now mimicked activities of the others and was able to participate in activities. Although

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[2] Far Northern Regional Center provides services to developmentally disabled individuals and their families.

evaluated for autism, the evaluator attributed many of S.M.'s delays to environmental deprivation, intellectual disability, and speech issues.

The Department had contacted the mother who lived in Wyoming. She was out of work, did not have housing, had not seen the minors for two years, and was unable to care for them. She was currently talking to them daily by telephone.

Father had been evicted from his apartment, having lost financial assistance when the minors were detained, and was living in the paternal grandmother's one-bedroom apartment. He had been referred to services and had completed the substance abuse assessment, which indicated substance abuse services were not required. He had not begun counseling. Father had attended only 4 of 16 possible classes at the Bridge program, and none since early May.[3] He was minimally engaged when he did attend and had been dropped from the program. Father said he had been participating in the program.

Visitation had proved problematic for father and unsafe for the minors. The ongoing issues of lack of supervision were so serious that the staff had to continually prompt father to respond to the minors or engage in parental activities. Father was resistant to assisting the minors in toileting and hygiene even with staff encouragement and seemed to expect the minors to be able to care for themselves. Early visits had been very

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[3] The "Bridge" program provides mental health services to residents of Siskiyou County.

chaotic due to lack of supervision and father's inability to calm the minors. The staff began to engage in intensive coaching and provide structure at visits, which resulted in some improvement, although father still struggled to respond to the minors' cues. The social worker had observed some visits and noted that father seemed to lack the motivation to actively parent the minors even with prompts from staff and intensive coaching.

Due to concerns about father's ability to participate in services, the social worker reviewed father's own educational records and found that, at that time, he had a diagnosis of severe emotional disturbance and a processing deficiency, but had normal intelligence.[4] From the information in his records, the social worker concluded father lacked the motivation necessary to parent two high needs minors. In the social worker's opinion, father was unable to provide a safe, clean environment, follow through with services, recognize and meet the minors' special needs, and stay focused on taking care of normal everyday life situations. She concluded that father's inability to follow through with participating in services continued to jeopardize the well-being and development of the minors.

Father testified at the jurisdiction/disposition hearing, explaining the conditions of the apartment from where the minors

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[4] It was not clear from the report what, if any, effect these earlier diagnoses had on father's current functioning.

were removed, minimizing prior referrals and his conduct during visits. The juvenile court adopted the recommended findings and orders, removing the minors from father's custody and ordering reunification services.

DISCUSSION

Father argues the juvenile court erred in removing the minors from his custody because there was insufficient evidence that there would be a substantial danger to their health, safety, or well-being if returned to his care.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence -- that is, evidence that is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. (*In re Angelia P*. (1981) 28 Cal.3d 908, 924; *In re Jason L*. (1990) 222 Cal.App.3d 1206, 1214.) In making this determination we recognize that all conflicts are to be resolved in favor of the prevailing party and issues of fact and credibility are questions for the trier of fact. (*Id*. at p. 214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

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 parent's . . . physical custody." (§ 361, subd. (c)(1).)

Father, focusing on minimal facts, argues that this is little more than a "dirty home" case that does not justify removal of the minors. He argues there was no risk of physical harm to the minors and voluntary support services would have been adequate to address the issues that led to removal. Father's argument fails to encompass the full extent of the circumstances of the case.

Father himself viewed his children as feral and lacked the motivation needed to meet the basic needs of the minors. The minors were filthy and consigned to live in unspeakable conditions. They were essentially non-verbal and unable to communicate or interact with others. The younger minor was so obsessed with food and water he could not engage in any other activity than securing nourishment, if either were available, and had been so neglected that his behavior justified an evaluation for autism. Father's inability to interact in a parental fashion was exposed in the early visits when he could not set limits, respond to the minors' needs, or calm the minors when they became overwhelmed.

Within a few weeks after removal, the minors were both significantly improved as a result of care from foster parents who understood the need to teach, guide, and help these very young children, and who made efforts to meet their needs. The

minors both increased their ability to communicate verbally, made progress in toilet training, were able to interact with others and make their needs known. The fact that this transformation could occur not only meant that the minors were capable of learning and growing but that they had caretakers who made an effort, paid attention to them, and encouraged growth.

There is no question that the circumstances in which the minors were living prior to removal placed them at risk of serious physical harm due to neglect. This case is far beyond a "dirty home" case. The young minors were unable to meet their own needs and, due to parental neglect, were unable to communicate their needs to anyone else. Until father became capable of parenting them adequately, there would be a substantial danger to their physical health, safety, protection, or physical or emotional well-being if returned to his care.

It is clear from the visit records that father loves the minors but he has virtually no skills or tools to enable him to care for them. Before the minors can be safe in his care, he must engage in services to understand the limitations of very young children, the impacts of their special needs, and how to parent them. Substantial evidence supports the juvenile court's order and the court did not err in removing the minors from father's care.

In his reply brief, father raises, for the first time, the reasonableness of the services offered to him prior to the minors' removal. Although this issue is related to the argument raised in the opening brief, it is nonetheless distinct. We

need not respond to arguments raised for the first time in a reply brief. (*People v. Taylor* (2004) 119 Cal.App.4th 628, 642; *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830.) To the extent that father's criticism of the social workers' opinions in the opening brief can be said to raise this issue, we observe only that father's failure to benefit from pre-removal services was due more to his failure to attend them and make an effort to participate than to any failure to tailor services to his presumed special needs.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

NICHOLSON, Acting P. J.

DUARTE, J.