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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.P. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.P. et al.,

Defendants and Appellants.

D059965

(Super. Ct. No. J517470A, C)

APPEAL from orders of the Superior Court of San Diego County, Carol Isackson,
Judge. Affirmed in part; reversed in part.

Minors M.P. and C.T. (together, the minors) appeal juvenile court orders
terminating dependency jurisdiction of them under Welfare and Institutions Code¹
section 364, subdivision (c), and placing them with their parents, Ron T. and S.P.
(together, the parents). The minors contend the parents failed to participate in their court-

¹ Statutory references are to the Welfare and Institutions Code.

ordered treatment programs, and thus, the conditions that led to the initial assumption of jurisdiction are likely to exist without court supervision. Although we conclude substantial evidence supports the court's order terminating jurisdiction of C.T., we further conclude the court erred by terminating its jurisdiction of M.P.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2009, the San Diego County Health and Human Services Agency (Agency) filed petitions in the juvenile court under section 300, subdivision (j), alleging 11-year-old M.P. and six-year-old C.T. were at substantial risk of harm because Ron used excessive physical discipline on the minors' sibling, nine-year-old Maurice P.,² leaving marks and bruises; Ron had physically abused Maurice in the past; and S.P. was present but failed to intervene on Maurice's behalf.³ The court detained the minors in out-of-home care.

Maurice told the social worker that Ron hit him with a belt because he had stolen a check from the school principal. Maurice sustained multiple injuries, and Ron was arrested for child abuse. Maurice said he had been stealing things, such as candy, jewelry and toys, since he was in the first or second grade. Even after participating in counseling for this behavior, he continued to steal. Maurice said S.P. "whooped" him once, but did not injure him or leave marks. M.P. and C.T. denied any physical abuse by Ron or S.P.

² Ron is the biological father of C.T. and the presumed father of M.P. and Maurice.

³ A petition was also filed on behalf of Maurice, but he is not a party to this appeal.

S.P. said she and Ron used several approaches to help Maurice stop stealing, but were unsuccessful. School officials noted the parents were actively involved in their children's education, and had sought help and guidance in dealing with Maurice's behavior. S.P. did not approve of Ron hitting Maurice when he stole something, but she believed there were no other options. She did not consider Ron to be abusive because he was using physical discipline for Maurice's wrong-doing.

Ron admitted he hit Maurice with a belt for habitually stealing because other methods of discipline were not effective. Ron has a criminal history dating to 2004, including arrests for selling and possessing drugs, theft, and battery on a spouse. The family had 12 prior referrals to child protective services, but only one—for domestic violence—was substantiated. Although the parents were married, Ron's status as a felon prohibited him from living in the family home under Section 8 housing regulations.

The social worker noted the family was "very bonded." The parents consistently visited the minors and appeared concerned about their needs. The parents were participating in individual therapy and had enrolled in a parenting skills class. After participating in services for several months, S.P. appeared to be benefiting from therapy and was learning alternative methods of discipline. Although she believed Ron had "gone a little too far" with disciplining Maurice, she still did not believe it constituted abuse. S.P. was having unsupervised visits with the minors.

At a jurisdiction and disposition hearing in June 2009, the court sustained the allegations of the petitions, declared the minors dependents and removed them from parental custody. The court ordered the parents to participate in reunification services.

S.P. completed a parenting class and was making progress in therapy. In November 2009, the court granted her section 388 modification petition and permitted her to have overnight visits with the minors.

At the time of the six-month review hearing in March 2010, M.P. was living in a group home and C.T. was living in a foster home. The parents were actively participating in services. S.P.'s therapist reported S.P. understood and practiced alternative methods of discipline, and was able to identify abuse and practice safe parenting. Ron's therapist reported Ron appeared to understand the need to provide a safe environment for the children, and he presented a minimal risk of further physical abuse. The court found the parents had made substantive progress with their case plans, and placed the minors with them. The court continued its jurisdiction and ordered family maintenance services.

During the next six months, the parents continued to live apart but were working on their marriage and coparenting skills. They were receptive to in-home services and were receiving wraparound services.⁴ Maurice had been placed back in the home. At a 12-month review hearing, the court continued the minors placed with S.P., with the understanding Ron could not live in the family home.

In October 2010, minors' counsel and Agency filed section 388 petitions, seeking to have the minors removed from Ron's custody and placed only with S.P. The petitions

⁴ The family was receiving wraparound services from the Fred Finch Youth Center, which provides programs for the care and treatment of children and their families whose changing needs can best be met by a variety of mental health and social services. The goal is for clients to be professionally served in the least restrictive environment. (<http://www.fredfinch.org/aboutus/mission_and_history.shtml> [as of Feb. 21, 2012].)

alleged: (1) the parents had been involved in a domestic violence incident in June 2010, during which Ron used physical force against S.P., flattened the tires on her car and broke her car window; (2) Ron was arrested for possessing cocaine base for sale in July 2010; and (3) Ron tested positive for marijuana in October 2010. The court granted the requested modifications, removed the minors from Ron's custody and ordered supervised visits between Ron and the minors, which were not to be supervised by S.P. The court amended Ron's case plan to require domestic violence treatment, drug testing and an assessment for substance abuse services,⁵ and ordered S.P. to receive domestic violence counseling through an Agency approved provider.

In April 2011, Agency recommended the court terminate jurisdiction as to the minors, and retain jurisdiction as to Maurice with family maintenance services. Neither M.P. nor C.T. had any concerning behaviors and neither child was currently in therapy. The minors and Maurice were doing well in S.P.'s care. Ron refrained from using physical discipline on Maurice when he stole a neighbor's cellular telephone. The wraparound team was in the transition and closing phase of its services because the family had met all goals. However, Ron had not complied with the court's order to provide information regarding his medical marijuana card, submit to on-demand drug tests or participate in domestic violence treatment. Further, because Ron wanted unsupervised visits with the minors, he stopped attending supervised visits.

⁵ Because Ron had a medical marijuana card, the court ordered him not to be under the influence of marijuana to the extent it hindered his judgment when visiting the minors.

Two months later, Agency changed its recommendation as to M.P., asking the court to continue its jurisdiction and order family maintenance services because M.P. had recently used a piece of metal to cut herself. M.P. explained she felt bad because her parents were upset about her failing grades in math and science.

At S.P.'s request, the court approved an arrangement whereby Ron would help with childcare in the home while S.P. was at work. Agency arranged for Ron to be in the home from 10:00 p.m. to 6:30 a.m. Saturday through Wednesday, and to be there around 3:30 p.m. two days a week to help the minors with homework and prepare dinner.

At a contested family maintenance hearing in June 2011, Agency presented evidence in support of its position the court should retain jurisdiction as to M.P. Social worker Myra Burnett testified there was ongoing risk to M.P. because of her cutting behavior. Burnett continued to recommend Ron provide childcare for the minors if the case remained open. She believed the minors were not at any immediate risk of physical abuse by Ron because there had been no new reports of abuse, and Ron said he would use alternative forms of discipline. Burnett also noted the parents had not engaged in domestic violence in the past year. However, even though Ron had complied with the conditions of his probation and had completed wraparound services, he had not complied with the requirements of his case plan, which included domestic violence treatment. S.P. was not willing to continue with any services. She refused to participate in an Agency approved domestic violence treatment program, but instead participated in a support group. S.P. continued to minimize the domestic violence in her relationship with Ron, stating he did not "beat [her] up and put [her] in the hospital . . ." According to

Burnett, there was a low probability the parents or children would report an incident of domestic violence, especially because S.P. discouraged the children from disclosing abuse to anyone.

As to M.P. and Maurice, Burnett lowered her risk assessment from "very high" to "high." She recommended the court retain jurisdiction of them but not C.T. Burnett stated M.P.'s cutting behavior and Maurice's compulsive stealing were highly stressful to the family. As stress builds in a relationship where domestic violence is untreated, the risk for a future incident increases. In Burnett's opinion, M.P.'s cutting behavior was a sign of depression and a "cry for help." The risk to C.T. was lower because she was doing well in S.P.'s care, there were no new incidents of physical abuse or domestic violence, and C.T. wants to see her father and is not afraid of him.

The court accepted the stipulated testimony of the minors as follows: Maurice would like his case closed; C.T. would like her case, and the cases of her siblings, closed; and M.P. agreed to keep her case open for the purpose of receiving individual therapy.

The court qualified Christine Merritt, an investigator for minors' counsel, as an expert in risk assessment. Merritt testified about the cycle of domestic violence and its various stages. She noted children affected by domestic violence internalize it by displaying depression, anxiety, withdrawal and self-harm. Children externalize domestic violence by aggressive or disruptive behaviors. They have a 50 percent increased risk of being physically abused when there is domestic violence in the home.

Merritt had visited the minors twice in their home. In her opinion, the type of cutting behavior engaged in by M.P. is usually an expression of difficult and strong

emotions such as feeling alone, fearful, overwhelmed or a loss of control. This behavior occurs when a person is not able or does not feel safe to verbalize those feelings.

Individual therapy is the recommended treatment. Merritt testified that when children have a history of cutting or stealing, there is increased stress on the family, which then creates risk to the children.

Merritt further testified the level of risk appropriate for closing a case is low to moderate. In this case, the risk level should be adjusted to "very high" because Ron was spending a significant amount of time in the home providing childcare. In making her risk assessment, Merritt also considered the history of physical abuse, M.P.'s cutting behavior, Maurice's compulsive stealing, the parents' untreated domestic violence, the minimal compliance with services by at least one parent, the lack of visitation by one parent and the fact the parents minimized the violence in the home. Because of the very high level of risk, Merritt recommended continued services for the family.

After considering the evidence and arguments of counsel, the court terminated its jurisdiction as to both minors and placed them with the parents. The court permitted Ron to have contact with the minors as agreed to by the parents. The court continued jurisdiction as to Maurice with family maintenance services.

DISCUSSION

The minors contend the court erred by terminating its jurisdiction over them. They assert they remained at risk without court supervision because the parents had not participated regularly in their court-ordered treatment programs, and there was continuing stress at home caused by Maurice's stealing and M.P.'s cutting behavior.

A

Section 364 provides for review hearings every six months where a child has been removed from parental custody but is later placed back in the home under court supervision. (§ 364, subd. (a); *In re N.S.* (2002) 97 Cal.App.4th 167, 172.) At those hearings, the court must terminate jurisdiction unless Agency establishes "that the conditions still exist which would justify initial assumption of jurisdiction under [s]ection 300, or that those conditions are likely to exist if supervision is withdrawn." (§ 364, subd. (c).) Failure of the parent to participate regularly in any court-ordered treatment program constitutes "prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary." (*Ibid.*; Cal. Rules of Court, rule 5.706(e)(1).)

We review the juvenile court's decision whether to continue supervision for substantial evidence. (*In re N.S.*, *supra*, 97 Cal.App.4th at p. 172.) In this regard, we do not determine the credibility of witnesses, attempt to resolve conflicts in the evidence or reweigh the evidence. Instead, we draw all reasonable inferences in support of the findings and view the record favorably to the court's order. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) However, substantial evidence is not synonymous with *any* evidence. A decision supported by a mere scintilla of evidence need not be affirmed on appeal. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) Although substantial evidence may consist of inferences, they must be based on the evidence and not on mere speculation or conjecture. (*In re James B.* (1986) 184 Cal.App.3d 524, 530.) Evidence

sufficient to support the court's findings "must actually be substantial proof of the essentials that the law requires in a particular case." (*In re N.S.*, *supra*, at p. 172.)

B

Here, the minors became dependents under section 300, subdivision (j), because Ron used excessive discipline on Maurice as a means of controlling his habitual stealing, and S.P. failed to protect Maurice. The court ordered the parents to address the protective issues through individual therapy, parenting classes and in-home services. This included developing conflict resolution skills, addressing anger management concerns and developing a safety plan at home. Although Ron spent a year addressing his anger issues through services and the service providers gave positive reports,⁶ the parents had not benefitted from their court-ordered treatment programs as shown by Ron's uncontrolled rage toward S.P. during the June 2010 domestic violence incident, which necessitated removing the minors from his custody. Despite the "great need" for Ron to participate in further domestic violence treatment, he refused to comply with the court's order. The risk of further violence was increased by S.P.'s refusal to participate in additional counseling and her continued belief that Ron's acts of slapping her in the face and severely damaging her car did not constitute abuse because she did not get "beat [] up" or end up in the hospital. Although there had been no further altercations reported, the parents' domestic

⁶ These service providers were apparently unaware that Ron had been arrested for possessing a controlled substance for sale in July 2010.

violence remained untreated, creating an ongoing risk, especially because the parents were now spending extended periods of time together at home and were no longer being monitored by the wraparound service providers. Moreover, it was unlikely any domestic violence would be reported because S.P. discouraged the minors from telling anyone. The undisputed evidence showed the risk to the minors in this case was either "high" or "very high." Thus, there was prima facie evidence the conditions justifying the initial assumption of jurisdiction—Ron's inability to manage his intense anger, and S.P.'s inappropriate response to this problem—still exist and continued court supervision was necessary to protect the minors.⁷ (§ 364, subd. (c); cf. *In re N.S.*, *supra*, 97 Cal.App.4th at pp. 172-173 [no evidence supported continued juvenile court jurisdiction where father was in total compliance with case plan, remained open to services, had addressed anger management techniques and was able to apply information he learned in therapy so that minor was no longer at risk in his care].)

A prima facie showing is not, however, the end of the inquiry under section 364. The juvenile court was entitled to consider the totality of the circumstances in deciding whether to retain jurisdiction. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 201 [in making decisions regarding a dependent child, juvenile court must look to

⁷ In deciding to retain jurisdiction as to Maurice, the court found Ron did not have the skills to deal with intense anger, which is "what brought the case into the system in the first place." The court later stated it strongly believed that Ron "needs help dealing with his own anger." The finding that Ron continues to have problems with anger management also applies to the ongoing risk to M.P. and C.T., who became dependents under section 300, subdivision (j), because their sibling had been subjected to Ron's uncontrolled anger in the form of physical abuse.

totality of child's circumstances].) In this regard, the record supports a finding that continued jurisdiction was not necessary as to C.T. because there was no evidence of current risk to her as a result of the parents' conduct. C.T. was doing well in S.P.'s care, and had none of the negative behaviors of her siblings. The evidence, however, paints a different picture for M.P.

Notably, after the in-home service providers were no longer involved with the family and Ron began spending a significant amount of time in the home providing childcare, M.P. began to exhibit self-destructive behaviors. M.P. attributed this behavior to feeling "bad" because her parents were "upset" about her failing grades in school. M.P.'s cutting behavior is extremely concerning and, according to the risk assessment experts, is a cry for help. Although there is no *direct* evidence the parents caused M.P. to cut herself, expert testimony explained that children affected by domestic violence tend to internalize it and can become depressed, anxious or overwhelmed, leading to self-harm. Moreover, the experts agreed M.P.'s cutting behavior, as well as Maurice's ongoing stealing, caused stress on the family, thereby increasing the likelihood of another episode of violence in the home, especially where domestic violence remains untreated. This was evidence, not speculation, that M.P. would be at risk if the court terminated its jurisdiction. Under these circumstances, continued court intervention is necessary to monitor the parents' progress with domestic violence treatment and to ensure M.P. gets the help she needs.

DISPOSITION

The order terminating jurisdiction of C.T. is affirmed; the order terminating jurisdiction of M.P. is reversed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.