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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JEANIE R.,

Defendant and Appellant.

D060568

(Super. Ct. No. EJ2565E)

APPEAL from a judgment of the Superior Court of San Diego County, Robert J. Trentacosta, Judge. Affirmed.

Jeanie R. appeals a juvenile court judgment removing her minor daughter, Emily O., from her custody following true findings made on a supplemental petition under Welfare and Institutions Code¹ section 387. Jeanie challenges the sufficiency of the

¹ Statutory references are to the Welfare and Institutions Code.

evidence to support the court's findings the previous placement with her was ineffective in protecting Emily and removal from parental custody was necessary to prevent substantial danger to her. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Emily has congenital abnormalities and developmental delays. She is largely nonverbal, has difficulty walking without assistance and requires catheterization to help her urinate. When Emily was 18 months old, she was hospitalized for 10 days because of severe failure to thrive and anemia caused by an iron deficiency from a poor diet. While in the hospital, she gained more than two pounds. After Emily was discharged, Jeanie did not take her to medical appointments or occupational therapy.

Eight months later, Emily was again hospitalized for severe failure to thrive, anemia and a urinary tract infection. She had not gained weight since her earlier hospitalization. Several doctors determined Emily's failure to thrive was caused by inadequate calorie intake, and her chronic anemia was caused by not taking prescribed iron supplements. Emily needed occupational and physical therapy. She was at risk of heart failure from anemia and malnutrition. Emily had not been given her prescribed medications and she missed many medical appointments. Because of her poor weight gain and concerns of neglect, she was referred to a failure to thrive clinic. Jeanie brought Emily to only two of 24 occupational therapy sessions and was slow to take her to specialty clinic appointments.

In March 2011, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (b), alleging

three-year-old Emily was at substantial risk of harm because she had a detrimental condition that included nonorganic failure to thrive and severe anemia, and this condition was the result of the unreasonable or neglectful acts or omissions of her parents.² The petition also alleged Emily had medical conditions that required care and treatment, which the parents did not provide. The court detained Emily in out-of-home care.

After Emily was taken into protective custody, the parents began bringing her to various medical appointments. She was responding well to her medical care and had gained weight. The parents were receiving help with coordinating medical and other therapeutic services. Agency believed the parents had made Emily's needs a priority and, consequently, it recommended placing Emily with Jeanie.

At a contested jurisdiction and disposition hearing, the court sustained the allegations of the petition, declared Emily a dependent and placed her with Jeanie. The court ordered the parents to participate in reunification services.

Two weeks later, Emily was taken to Urgent Care for a head injury caused by a dishwasher falling on her. Doctors closed a head laceration with a single staple. The parents were told to meet with Emily's primary care physician in four or five days to have the staple removed. However, according to the parents, Justin removed the staple with a tool provide by someone at Urgent Care. Emily's follow-up appointment for her head injury was rescheduled for the next month. The parents had not scheduled any clinic appointments for Emily.

² Emily's father, Justin O., has not appealed.

In June 2011, Agency received a referral that Justin had been arrested for possessing methamphetamine, he had a loaded weapon in the home, and Jeanie was pregnant and using methamphetamine. The parents denied these allegations.

Megan Foley, medical services coordinator, visited the parents' home and learned that Emily had been vomiting for the past 24 hours, and had also vomited earlier in the week. Justin attributed this to the medication Emily was taking. Foley encouraged the parents to take Emily to Urgent Care that day, but they did not. The parents ignored the social worker's advice to schedule clinic appointments and to contact the doctor for guidance on how to address Emily's symptoms.

On June 20, 2011, Emily was seen by her pediatrician, who recommended she be admitted to the hospital based on a diagnosis of failure to thrive and to treat her gastrointestinal symptoms. The parents waited six to 10 hours before taking Emily to the hospital. According to a hospital admissions report, Jeanie had not taken Emily to her medical appointments for the past two months. The hospital social worker noted Jeanie had been at Emily's bedside only a few hours the entire weekend. During that time, Jeanie appeared to be "out of it" after spending an hour in the bathroom.

On July 6, 2011, Agency filed a supplemental petition under section 387, alleging Jeanie was no longer able to provide adequate care and supervision for Emily because she did not seek medical attention for her until instructed to do so twice by the medical services coordinator. Also, Jeanie had not followed medical instructions regarding Emily's care, including making follow-up medical appointments for her and properly

treating her symptoms. The court detained Emily in foster care and ordered liberal supervised visits for the parents.

Agency was gravely concerned about the parents' failure to cooperate with medical professionals and to properly address Emily's medical issues. Jeanie ignored instructions to seek medical attention for Emily if she vomited after her head injury. The risk to Emily was increased because of the parents' documented drug histories.³ The parents did not drug test on at least four occasions as requested by the social worker or as ordered by the court. At the court's direction, Jeanie met with a substance abuse specialist for a screening and referral for treatment, but she did not attend the recommended outpatient treatment program.

After the detention hearing, the parents visited Emily only sporadically. Jeanie was often late for visits. The parents missed several of Emily's medical appointments, including occupational and physical therapy, and did not accompany Emily to her dental surgery.

At a contested jurisdiction and disposition hearing, the court sustained the allegations of the supplemental petition by clear and convincing evidence, finding Emily was a medically fragile child and the parents were unable to provide her with adequate care and supervision. The court further found continued custody with Jeanie would be detrimental to Emily. The court placed Emily in out-of-home care and ordered

³ Both parents acknowledged they had been addicted to methamphetamine. They had two prior dependency cases based on their substance abuse.

reunification services for the parents, including supervised visits and substance abuse treatment.

DISCUSSION

Jeanie challenges the sufficiency of the evidence to support the court's order removing Emily from her custody. Jeanie asserts she was attentive to Emily's medical needs, and thus it was not necessary for the court to intervene again in the life of this family or to place Emily in foster care.

A

Before the juvenile court can change or modify a previous order by removing a minor from the physical custody of a parent and directing foster care placement, there must be a hearing on a supplemental petition. (§ 387, subd. (a).) A petition under section 387 need not allege any new jurisdictional facts, or urge different or additional grounds for dependency because there already exists a basis for juvenile court jurisdiction. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1211; *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1200.) The only fact necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child. (§ 387, subd. (b); *In re Joel H.*, *supra*, at p.1200.)

In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been ineffective in protecting the child. (Cal. Rules of Court, rule 5.565(e)(1).) If the court finds the allegations are true, it conducts a dispositional

phase to determine whether removing custody is appropriate. (Cal. Rules of Court, rule 5.565(e)(2).)

When a section 387 petition seeks to remove a minor from parental custody, the court must apply the procedures and protections of section 361. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1001-1003.) Before a minor can be removed from the parent's custody, the court must find, by 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); *In re Javier G.* (2006) 137 Cal.App.4th 453, 462.)

A removal order is proper if it is based on proof of: (1) parental inability to provide proper care for the minor; and (2) potential detriment to the minor if he or she remains with the parent. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60.) The parent need not be dangerous and the minor need not have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) We review the court's jurisdictional and dispositional findings for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529; *In re A.O.* (2004) 120 Cal.App.4th 1054, 1061.)

B

The record supports a finding Jeanie was unable to provide proper care for Emily, and Emily would be at risk of harm if she remained in Jeanie's custody. (§ 361, subd.

(c)(1.) After Emily was returned to Jeanie's care in May 2011, her health was again compromised. Emily sustained a head injury and was intermittently vomiting for the next two and a half weeks. The parents did not take her to Urgent Care as instructed. Jeanie did not schedule clinic appointments critical to Emily's health and she delayed seeking medical attention for Emily when she complained of abdominal pain and had a distended abdomen. The social worker and medical services coordinator had to remind Jeanie about medical appointments for Emily's follow-up care. After missing one month of medical appointments, Emily was examined by the pediatrician and admitted to the hospital for failure to thrive and to address her gastrointestinal symptoms. A reasonable inference could be drawn that Emily would be at risk in Jeanie's custody because Jeanie was not meeting her nutritional or medical needs.

Jeanie spent little time at Emily's bedside during her hospital stay and appeared to be under the influence of drugs during a visit. After Emily was released from the hospital, Jeanie visited her infrequently, was late to visits she attended and did not call to cancel visits she could not attend. She was not present for Emily's dental surgery, and she missed Emily's medical appointments during the next two months. After considering all the evidence, including Emily's medical records, the court could reasonably find its previous disposition had not been effective in protecting this medically fragile child.

Further, Jeanie's inability to provide adequate care for Emily is attributable, at least in part, to her substance abuse. Jeanie acknowledged she had previously been addicted to methamphetamine. Her other children had been dependents based on her drug abuse and neglect. Although Jeanie denied currently using drugs, she declined to

drug test when required by Agency and the court, and her behavior and appearance at the hospital indicated she was under the influence of drugs. At the time of trial, Jeanie had not yet attended the recommended drug treatment program. Substantial evidence supports the court's finding there would be a substantial danger to Emily's physical health and safety if she were returned to Jeanie's custody, and there were no reasonable means to protect Emily without removing her from Jeanie's custody. (§ 361, subd. (c)(1); *In re Javier G.*, *supra*, 137 Cal.App.4th at p. 462.)

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.