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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.H., et al., Persons Coming Under the
Juvenile Court Law.

D060688

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

(San Diego County
Super. Ct. No. SJ12573AB)

Plaintiff and Respondent,

v.

FLORENCE H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of San Diego County, Garry G. Haehnle, Judge. Affirmed.

Florence H. appeals a juvenile court order removing her twin sons, J.Q. and J.Z. (collectively, "the twins"), from her custody pursuant to Welfare and Institutions Code¹ section 361, subdivision (c)(1). Florence does not contest jurisdiction under section 300, but does assert that the court lacked sufficient evidence to justify removing the twins

¹ All further statutory references are to the Welfare and Institutions Code.

from her custody. She also asserts that the juvenile court failed to consider reasonable alternatives to removal, such as conjoint therapy. We affirm the order.

FACTS

The San Diego County Health and Human Services Agency (Agency) removed the twins from the care of their mother after the twins reported to their school counselor that their mother beat them with a belt and other objects.

Florence gave birth to the twins in 2002. She did not know the identity of their father, since at the time of conception she was in relationships with four different men. Despite due diligence efforts, the whereabouts of the potential fathers remain unknown. None of the potential fathers are parties to this appeal.

Because Florence's pregnancy was considered high risk, she stayed with a friend, A.C. The twins were born prematurely at 28 weeks. Florence spent six months in the hospital after giving birth, and asked A.C. to take care of the twins "until [she] got on [her] feet." A.C., in turn, made a mutual friend, P.C., the twins' godmother.

Florence was "mostly out" of the twins' lives for the first few years. P.C. was the primary caregiver during that time, though Florence asserts she acted as primary caregiver at times. In 2005, when the twins were three, Florence became employed and attempted to get her children back. P.C. resisted this. The twins were removed from P.C.'s home and later released into Florence's custody, after she proved that she had sole legal custody over them. Florence allowed the children to stay with P.C. on weekends. J.Q. often referred to P.C. as "my other mom." The twins expressed their desire to live with P.C. instead of their mother.

In 2006 and 2007, the Agency received several referrals alleging general neglect, burns from a curling iron, and that Florence was striking the twins with a belt. No action resulted from these referrals.

In May 2011, J.Q. asked his school counselor if he could talk to her about his feelings. The counselor told him to come to her office the following morning. When he arrived, J.Q. told her that he was being hit at home by Florence, sometimes with a cell phone charging cord, other times with a belt and buckle. He showed the counselor a bruise on his right hip. He said he got the bruise when Florence hit him with the belt and a buckle after he played with his puppy and a ball in the house. He said Florence hit him with the phone charger cord for going into the kitchen without permission.

J.Z. confirmed that Florence hit J.Q. with a belt after J.Q. accidentally dropped their puppy, and that she has hit J.Q. with the phone charger for going into the kitchen without permission. He said that Florence hit J.Q. almost every day but never hit him, saying, "I am the good child and [J.Q.] is the bad child." J.Z., like J.Q., did not want to return to Florence's home, but asked to live with P.C.

The counselor called law enforcement officers, who interviewed the twins and took photographs of their injuries. The officer then took the twins into protective custody.

Both J.Q. and J.Z. underwent a physical examination. J.Q. had a large, square-shaped bruise on his hip. J.Q. told the physician examining him that Florence was "dangerous" and "whoop[ed]" him with a belt. The physician noted that J.Q.'s injury was "very typical of belt marks" and concluded that J.Q. had inflicted injuries on his body.

J.Z. reported that his mother "whooped" him with an open hand, but that his brother received worse punishments.

Florence adamantly denied committing any physical abuse against the twins. She told a social worker that J.Q. received the bruises on his legs after wrestling with his brother, but said this before the social worker informed her that bruises had been found on his legs. She maintained that she was strict with the twins, but never abusive.

PROCEDURAL HISTORY

A. Detention Hearing

The court held a detention hearing in May 2011. It found that a prima facie showing had been made that J.Q. and J.Z. were persons described by section 300, subdivisions (a) and (j),² respectively, and that facts had been presented to show why removal was necessary. The court also found that reasonable efforts had been made to prevent or eliminate the need for removal, and that no available services would prevent the need for detention. They were allowed supervised visitation with both Florence and P.C.

B. Jurisdiction and Disposition Reports

In its July jurisdiction and deposition report, the Agency recommended that the twins be placed with a nonrelated extended family member, Candice, and that Florence

² Section 300, subdivision (a), states, in relevant part: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." Section 300, subdivision (j), states, in relevant part: "The child's sibling has been abused or neglected, as defined in subdivision (a) . . . , and there is a substantial risk that the child will be abused or neglected"

receive reunification services. A social worker interviewed J.Q., who reiterated his claim that Florence hit both him and his brother with a belt. Florence continued to deny that she abused the twins, and said they were coached to say that she did by P.C. She did admit to hitting them with an open hand, but not with a belt or any other object. According to the twins, interviews with P.C. and another adult living with P.C., other adults associated with P.C. had hit the twins on several occasions.

The social worker raised concerns regarding the ability of Florence, P.C., and other adults to be truthful about her treatment of the twins: "It is very concerning that with so many caregivers, no one can admit how [J.Q.] received such an inflicted injury to his hip." The social worker recommended that the twins remain in their placement with Candice, and that they continue to have supervised visitation with both Florence and P.C. In an addendum to the report filed three weeks later, the social worker again recommended that the twins remain in their placement and that Florence receive reunification services. The Agency reiterated these recommendations in a second addendum report prepared several weeks later.

C. Contested Jurisdiction and Disposition Hearing

The court held a contested hearing in August 2011. At the hearing, the social worker testified that while Florence had successfully completed her parenting class and made some progress toward reunification, she needed to make more progress toward her treatment goals in individual therapy. Specifically, the social worker recommended that Florence recognize that she had not been the twins' primary caregiver for half of their lives, and to develop insight as to how it affected them before returning the twins to her

custody. The social worker also said that Florence needed to accept the twins' statements about her hitting them and to take responsibility for the harm she caused. She also raised her concern that Florence had been untruthful concerning how long she had been the children's primary caregiver and whether she had ever hit them. All of this indicated to the social worker that Florence needed to complete more individual therapy before she could be reunited with the twins.

During her testimony, Florence denied striking J.Q. with a belt and leaving a mark on him. She maintained that he received the injury from falling off a skateboard at P.C.'s house two years earlier. She did acknowledge "tapp[ing]" the twins only once, in April 2011. Despite the fact that her therapist reported that Florence always checked the twins for bruises after hitting them with a belt, and that she had done so multiple times, Florence stated that her therapist was confused. She admitted that she did not pay close enough attention to the twins after they visited P.C. and believed they were abused in that home.

In her parenting classes, Florence learned how to discipline a child without resorting to corporal punishment, the value of taking a cooling off period for herself, providing a child with options, and giving them more attention. She said she was willing to ensure that the twins attended therapy and was willing to engage in conjoint therapy. She also said that the twins were comfortable with her during their supervised visits.

The juvenile court made a true finding on both jurisdiction and disposition by clear and convincing evidence. The court noted the multiple consistent statements made by both twins regarding the circumstances under which Florence hit J.Q. with a belt on

his hip. The court denied Florence's request for placement, noting, "There's just a lot of work that needs to be done, I think, at this point before they can be placed back," and that, "where the boys have claimed to be whooped in the past and abused with the belt. This all shows me that at this point in time it's not safe to put the children back with their mother." The court also noted the children's fear of their mother and lack of attachment, as well as the fact that they had been passed among multiple caregivers, and said that the children needed a caregiver who did not make them afraid.

Both twins were removed from Florence's custody and placed with a nonrelative extended family member pursuant to section 361, subdivision (c). Florence was given 12 months to participate in reunification services and was ordered to comply with her case plan. She appeals.

DISCUSSION

Florence does not challenge the juvenile court's jurisdiction over this matter, but does allege that the juvenile court lacked sufficient evidence to support removal of the twins from her care. Specifically, she alleges that the court improperly relied on the subjective impressions of the social worker, rather than on objective criteria, in making its determination.

Even though children may be dependents of the juvenile court, they shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and there are no "reasonable means" by which the child can be protected without removal. (*In re Jasmine G.* (2000))

82 Cal.App.4th 282, 288 (*Jasmine G.*) We review a decision to remove a child pursuant to section 361 under the substantial evidence standard. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

When a parent challenges the order on the grounds of insufficient evidence, we review the evidence in the light most favorable to the juvenile court's order, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Under this standard, a judgment will be upheld if it is supported by substantial evidence, even if substantial evidence to the contrary also exists and the court might have reached a different result had it believed the other evidence. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 230.)

In this case, we find that substantial evidence exists to both support removal and demonstrate that no reasonable alternatives to removal were available.

I

SUBSTANTIAL EVIDENCE SUPPORTED REMOVAL

The juvenile court has broad discretion in crafting dispositional orders to protect a child's best interest. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) Actual physical danger is not a requirement, nor is it required that the child actually be harmed while in the home. There is no requirement that the custodial parent be dangerous or that the child suffer actual harm prior to removal; the focus is on averting future harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) The inability to acknowledge, take responsibility for, or forswear corporal punishment is a significant roadblock to reunification. (*Jasmine G.*, 82 Cal.App.4th at p. 288 [parents forswearing corporal

punishment indicated that it was safe for the child to return home because there was no risk of future harm].)

Substantial evidence supports the Agency's decision to remove the twins from Florence's custody. At the hearing, she denied hitting J.Q. with a belt so hard that it left a mark. She blamed all physical abuse on P.C., despite the fact that the twins gave multiple consistent statements that the abuse was caused by Florence. The twins still feared for their safety around her. It was clear from the testimony of both Florence and the social worker that she still had more progress to make with regard to disavowing corporal punishment, understanding its impact on the welfare of the twins, and understanding how her absence from their early lives impacted them. In her testimony and in the reports, Florence consistently did not acknowledge or take responsibility for what she had done, instead blaming J.Q.'s injuries on P.C. The court acknowledged the progress Florence had made, but in weighing the evidence, that a substantial risk of harm continued to exist. It found most significant that Florence had yet to accept responsibility for her past actions, and until she does, the twins remain at risk of future harm.

Florence has begun work toward completing her case plan, and is to be commended for the progress she has made. But, construing the decision in the light most favorable to the juvenile court, we find that substantial evidence supports its conclusion that "there's just a lot of work that needs to be done" before the twins can safely be placed back with Florence.

II

NO REASONABLE ALTERNATIVES TO REMOVAL EXISTED

Florence also argues that reasonable alternatives, such as conjoint therapy, existed and should have been ordered instead of removal. We disagree.

A court may only remove a child from the physical custody of a parent if there are no reasonable alternatives available. (§ 361, subd. (c)(1).) The fact that a minor has been adjudicated a dependent child of the court constitutes prima facie evidence that the minor cannot be safely left in the custody of the parent with whom the minor resided at the time of the injury. (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

Florence argues that the twins could have been placed with her and conjoint therapy could have been ordered. Again, construing the evidence presented at the hearing in the light most favorable to the juvenile court's order, we agree with its conclusion that such a course of action was inappropriate.

According to the social worker, conjoint therapy was not appropriate at the time because of "the relationship between the mother and the boys, and their . . . initial statement of how they didn't want to go home and they were afraid of her. I would rather a therapist decide whether it's appropriate for them to start conjoint." The juvenile court agreed with this assessment. Florence had only attended eight individual therapy sessions by the time of the hearing, and the twins had only been in therapy for about a month. Both the twins and Florence were in the early stages of completing the case plan, with much left to do. The twins still had attachment issues, and Florence still denied abusing the twins, all of which led the court to conclude that she still had not accepted

responsibility or made significant progress toward her treatment goals at that point in time.

The court had substantial evidence before it to support removal: a history of abuse going back to at least 2006; the consistent testimony of the twins regarding the pattern of abuse; and Florence's inability to tell the truth about her actions and her refusal to disavow corporal punishment. All of this supports the juvenile court's conclusion that removal was appropriate, and we will not disturb that decision.

DISPOSITION

The order is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

O'ROURKE, J.