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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re AIDEN H., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ERIKA C.,

Defendant and Appellant.

D061006

(Super. Ct. No. SJ12660A)

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

Erika C. appeals a judgment declaring her minor son, Aiden H., a dependent of the juvenile court under Welfare and Institutions Code section 300, subdivision (a)¹ and removing Aiden from parental custody. Erika challenges the sufficiency of the evidence

¹ Statutory references are to the Welfare and Institutions Code.

to support the court's dispositional finding there were no reasonable means to protect Aiden without removing him from her custody. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2011, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court alleging four-year-old Aiden had been subjected to serious physical harm because Erika used excessive discipline by hitting him with a belt, causing a purple welt and a bruise. Agency had been contacted by the paternal grandmother, who noticed the large bruise on Aiden's hip. Aiden told the social worker Erika hit him with a belt five times because she was mad when he wet the bed. Erika denied hitting Aiden with a belt or any other object. She was not concerned about the bruise, and believed it happened when Aiden was engaged in rough play with a relative. The social worker detected the smell of alcohol on Erika's breath during the interview. Erika failed to take a drug test when asked to do so by the social worker. The court made a prima facie finding on the petition and detained Aiden in out-of-home care.

In a report prepared for the jurisdiction and disposition hearing, Aiden's father, Justin H.,² told the social worker Erika had a drinking problem and used physical discipline on Aiden. Justin observed Erika hit Aiden with a belt when Aiden was two years old. He also saw bruises in the shape of fingers on Aiden's legs, but did not report the abuse. Erika admitted Aiden sometimes wet his bed, but she continued to deny spanking him. Instead, she gave him time-outs or restricted his use of toys or television

² Justin, who has a substance abuse problem, has not appealed.

viewing. Erika maintained Aiden sustained his recent bruise during play. She denied abusing alcohol, but recently tested positive. Erika said she did not need services to help her reunify with Aiden, improve her parenting or address protective issues. She did not visit Aiden.

According to an addendum report, Erika continued to test positive for alcohol. She was not regularly attending her substance abuse treatment program, and her progress was deemed unsatisfactory. The substance abuse counselor recommended Erika enroll in a residential treatment program.

At the contested jurisdiction and disposition hearing, Erika testified she had not used alcohol in more than a month. She asserted her Fifth Amendment privilege when asked if she ever spanked Aiden for wetting his bed. She further testified she never noticed any welts or bruises on Aiden's hip.

Social worker Jennifer Olson testified she assessed the risk level in this case to be moderate, but nevertheless recommended court intervention because Aiden said his mother hit him for wetting the bed, and Erika could not otherwise explain how Aiden's injury occurred. Also, Erika was unable to provide any specific information about how Aiden was possibly injured during play.

The maternal grandmother, Angela C., testified Aiden had lived with her since his birth. Erika was the primary caregiver and disciplinarian. Angela never saw Erika physically discipline Aiden. On the day Aiden was removed, Angela had bathed him before he left for school and did not see any bruises. She knew Aiden wet his bed almost every night, but she never saw Erika hit or scold him for it.

Erika's friend, Jacquelynn R., testified she had lived with Erika for about a year and never saw Erika use physical discipline on Aiden. Instead, Erika disciplined Aiden with time-outs and taking toys away. Around the time Aiden was removed from the home, Jacquelynn saw him and another child engage in rough play. She never saw Aiden's bruise and did not hear him complain of any pain. Jacquelynn knew Aiden sometimes wet his bed.

After considering the evidence and arguments of counsel, the court sustained the allegations of the petition. The court found the sole explanation for Aiden's very serious injury was his statement Erika hit him when she became angry because he had wet the bed. The court noted there was no evidence Aiden had a motive to lie. Further, Justin's testimony that he had previously seen Erika spank Aiden for wetting the bed corroborated Aiden's statement. The court found Erika's testimony, in contrast, was inconsistent and vague.

At the dispositional phase, the court declared Aiden a dependent, removed him from parental custody and placed him in licensed foster care. The court found there would be a substantial danger to Aiden's physical health if he were returned home and there were no reasonable means by which Aiden could be protected without removing him from Erika's custody. The court expressed its concern with Erika's belief that she did not need any services to reunify with Aiden, improve her parenting or address the protective issues. Further, Erika had unexcused absences from her substance abuse program and was testing positive for alcohol, which showed her lack of compliance with treatment.

DISCUSSION

Erika contends the evidence was insufficient to support the court's finding there were no reasonable means to protect Aiden without removing him from her custody. She asserts there were alternatives to removal such as in-home services to assist her in improving her parenting skills, unannounced visits by the social worker and public health nursing services to supervise in-home placement.

A

Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings constitute prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) "The court shall state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).)

We review the court's dispositional findings for substantial evidence. (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1654.) In this regard, we do not consider the credibility of witnesses, resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently

substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the court found there would be a substantial danger to Aiden's physical well-being if he were returned home and there were no reasonable means by which he could be protected without removal. The court's dispositional order was based on findings, supported by substantial evidence, that Aiden sustained a serious injury when Erika became angry and hit him with a belt because he wet the bed. Erika refused to accept any responsibility for the injury, and continued to deny ever using any form of physical discipline on Aiden. The court expressly disbelieved Erika's vague and confusing explanation of how Aiden's injury could have occurred, and instead, found Aiden's statements to be credible.

Moreover, Aiden had a history of bed-wetting, and Justin had witnessed Erika use a belt to punish him when this occurred in the past. Erika was in denial about the excessive and inappropriate discipline she used that resulted in Aiden's injury. She lacked insight, and she did not believe she needed services to improve her parenting skills. Erika continued to abuse alcohol and had not made progress with treatment. Thus, Aiden remained at risk if placed with Erika.

C

Erika suggests there were reasonable alternatives to removal. However, seven months before the petition in this case was filed, Agency received a child welfare referral involving Erika's use of physical discipline on Aiden. Although the case was eventually

closed, Agency advised Erika about its position with respect to corporal punishment, substance abuse and proper supervision of minors. Nevertheless, Erika disregarded that advice and hit Aiden with a belt when he wet the bed, resulting in his serious injury.

Even when Aiden was removed from Erika's custody, Erika denied inflicting his injury and denied needing services to reunify with him. At the time of the jurisdiction and disposition hearing, Erika was in poor compliance with her substance abuse treatment and continued to test positive for alcohol. Her counselor recommended residential treatment. Thus, the court could reasonably find it would be highly unlikely that Erika would cooperate with the type of in-home services she claims would be a reasonable alternative to removal. The absence of reasonable alternatives to removal, coupled with the identified risk Erika posed to Aiden, supported a finding there were no reasonable means of protecting Aiden without removing him from Erika's custody.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

McINTYRE, J.

AARON, J.