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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.C. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

KELLY S.,

Defendant and Appellant.

D061948

(Super. Ct. No. 517515A-B)

APPEAL from orders of the Superior Court of San Diego County, Peter Fagan,
Juvenile Court Referee. Affirmed.

Kelly S. appeals juvenile court jurisdictional and dispositional orders concerning her children A.C. and Richard S. She contends because she had executed a temporary guardianship to the maternal grandmother (the grandmother) and great-grandmother, the court erred by finding her use of illicit drugs caused her to be unable to provide regular

care of A.C. She also asserts the finding that reasonable efforts were made to prevent A.C.'s removal from her custody is not supported by substantial evidence.

FACTUAL AND PROCEDURAL BACKGROUND

A.C. first became a dependent child of the juvenile court when she was six years old in June 2009 because of Kelly's drug use. The petition also alleged A.C.'s father, who had custody of A.C., had not provided a safe home in that methamphetamine, packaged for sale, and rock cocaine were found in the home within A.C.'s reach. Kelly participated in reunification services and successfully reunified with A.C. In February 2011, the court granted custody of A.C. to her.

On March 9, 2012, A.C. and her 14-year-old brother, Richard, were taken into protective custody after police found methamphetamine, two ecstasy pills, two glass pipes with white residue, a police scanner, surveillance cameras and a scale in the home. Police also found a locked safe containing four guns and ammunition. A camera in the home contained digital photos of mother's boyfriend, a convicted felon, carrying a handgun. A camera in the boyfriend's car revealed a digital photo of the mother holding a handgun.

On March 13, 2012, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of A.C. and Richard under Welfare and Institutions Code section 300, subdivision (b)¹ based on Kelly's drug use as evidenced by drugs and drug paraphernalia found in the home.

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

Richard was present in the home at the time the items were found; A.C. was not there. A.C. said she lived with Kelly, but stayed with the grandmother a lot. She said she had been with the grandmother for the past month, but saw Kelly almost every day. Richard said A.C. was staying with the grandmother, but came over to Kelly's home several times each week. The grandmother said Kelly is A.C.'s primary caregiver, but she (the grandmother) had been caring for her for a month or longer. She said she began taking A.C. to school after Kelly's car was stolen, and A.C. went to Kelly's home about once every three to four weeks. Kelly said A.C. had lived with the grandmother since January, but Richard lived with her.

Kelly denied selling drugs, but admitted she had relapsed into methamphetamine use. She said she used the drug every couple of days, but never around the children. In a later interview, she denied relapsing and said she felt pressured to say that she had. She said she was guilty only of making a bad choice and that she had stored the safe containing guns for her boyfriend. Kelly's drug tests on March 21 and April 9, 2012, were negative for illegal drugs. The family expressed surprise that Kelly had relapsed.

Kelly provided a notarized "Temporary Guardianship" agreement, dated January 1, 2012, naming the grandmother and the great-grandmother as temporary guardians of A.C. and Richard. The form stated it was effective "[f]or as long as necessary, beginning on [January 1], 2012."

On March 14, 2012, the court ordered the children detained. A.C. was detained with a paternal aunt.

At the jurisdictional and dispositional hearing on May 9, 2012, the court considered the evidence presented and argument by counsel. It found the petitions true as amended, declared A.C. and Richard dependents of the court and ordered reunification services.

DISCUSSION

I

Kelly contends because she had executed a temporary guardianship of A.C. to the grandmother and great-grandmother, the allegations that she was possessing and abusing drugs were insufficient to support a finding she was unable to provide regular care of A.C.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) Determinations of credibility of witnesses and resolutions of conflicts in the evidence are for the trier of fact. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226-1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' [Citation.]" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The focus of the dependency statutes is to prevent harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) "The provision of a home environment free

from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.)

Substantial evidence supports the court's finding of jurisdiction. The petitions alleged the children were at risk under section 300, subdivision (b) in that

"COUNT 1: On or about March 9, 2012 . . . law enforcement officers discovered a baggie of methamphetamine, two ecstasy pills, and two glass pipes in [Kelly's] home accessible to the children, and [Kelly] admitted using methamphetamine every few days in the home, including on [March 8, 2012], but later denied. [Kelly] has a history of substance abuse including methamphetamine use since age 14 despite participation in drug treatment programs, all of which rendered her unable to provide regular care for said child and said child is in need of the protection of the Juvenile Court."

Kelly's argument that the petitions do not show a substantial risk of harm because she had executed a form giving temporary guardianship to the grandmother and great-grandmother is without merit. The notarized "Temporary Guardianship" agreement was an informal agreement that the grandmother and great-grandmother would provide care for A.C. and Richard "for as long as necessary, beginning on [January 1], 2012" and allowed them to authorize medical treatment "until such time as [Kelly] can be contacted." Through this agreement, Kelly retained legal custody and had the authority to resume caring for A.C. at any time she wished. Kelly could decide when it was necessary for the grandmother and great-grandmother to care for A.C. and when she would take her back. The agreement had not been issued by a court and was not enforceable. It did not protect A.C.

The grandmother told the social worker she had been caring for A.C. for about one month or longer and A.C. went to Kelly's home only once every three to four weeks. She

said Kelly was A.C.'s primary caregiver and Kelly also cared for Richard. A.C. said she lived with Kelly, but often went to the grandmother's home and spent the night there, helping the grandmother care for the great-grandmother. She said she saw Kelly almost every day. She said when the grandmother could not pick her up, she slept at Kelly's home, and the last time she slept there was on March 7, just two days before she was taken into protective custody. Richard said he lived with Kelly and A.C. He said he had seen A.C. the day before the social worker interviewed him, and A.C. had been staying with the grandmother for three or four weeks, but was at Kelly's home regularly, "like [three] times a week." On the basis of these statements, the court could conclude A.C. was often in Kelly's home.

Kelly had said to police officers and to the social worker that she had relapsed into methamphetamine use a few months earlier and admitted the methamphetamine, ecstasy and drug paraphernalia belonged to her. She told the social worker this was the reason A.C. was staying with the grandmother. Then she contradicted herself and said she had not used drugs since December 2009, and A.C. was staying with the grandmother because her (Kelly's) car had been stolen and the grandmother had been transporting A.C. to school.

There had been a complaint that drug sales were taking place in the home and a search revealed drugs, drug paraphernalia, guns, ammunition, a police scanner, surveillance cameras and a scale, items consistent with drug trafficking. Kelly's boyfriend, who was carrying more than \$1,800 in cash, was in the home. The court reasonably found Kelly's initial admissions of her relapse into drug use were credible,

that the home was not safe for A.C. and Richard, that the children were in the home on a regular basis, and that the temporary guardianship arrangement Kelly had executed did not provide protection for A.C. Substantial evidence supports the court's jurisdictional orders.

II

Kelly asserts substantial evidence does not support the court's finding that reasonable efforts were made to prevent A.C.'s removal from her custody because she had made proper arrangements to protect her by granting temporary guardianship to the grandmother.

Section 361, subdivision (c)(1) provides a child may not be taken from the custody of his or her parents unless the juvenile court finds by clear and convincing evidence:

"There 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."

"The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) The focus of the dependency statutes is to prevent harm to the child. (*In re Jamie M., supra*, 134 Cal.App.3d at p. 536.)

Assuming that Kelly has preserved this issue for appeal, she has not shown error. Since the court had found the allegations of the petition true and declared A.C. a dependent child of the court, it then was required to either remove her from Kelly's care

or return her to Kelly's custody. (§ 361, subds. (a) & (c).) If A.C. were to be placed with the grandmother, the court would first be required to consider the statutory requirements and determine whether this placement would be suitable, a highly unlikely determination given grandmother's criminal record and her history of drug use. (§§ 361.3, 361.4.) Also, after A.C. was taken into protective custody, the Agency held a meeting with her family. At the meeting, the grandmother requested placement, but Kelly did not recommend the children be placed with the grandmother, saying instead that if A.C. could not be returned to her care, she wanted her to live with the paternal aunt, and she wanted Richard to live with his uncle or his adult sibling.

Substantial evidence supports the orders removing A.C. and Richard from Kelly's custody.

DISPOSITION

The orders are affirmed.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

McDONALD, J.