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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DANIEL E. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

B.C.,

Defendant and Appellant.

D062295

(Super. Ct. No. SJ12766A-C)

APPEAL from findings and orders of the Superior Court of San Diego County, Garry  
G. Haehnle, Judge. Affirmed.

B.C. appeals orders removing her children from her care under Welfare and Institutions  
Code section 361, subdivision (c)(1).<sup>1</sup> We affirm the orders.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless  
otherwise indicated.

## FACTUAL AND PROCEDURAL BACKGROUND

B.C. is the mother of three children, Daniel E., Diego E. and Daniela E. (collectively, the children). The children are now ages seven, four and two years old, respectively. The children's father lives in Mexico.<sup>2</sup>

On May 4, 2012, Daniel, then six years old, arrived at school with a split upper lip and redness and swelling to both sides of his face. Daniel said he had received a yellow card for talking during class on May 3. When he showed it to his mother, she slapped him twice and then removed her sandal and hit him with it on his mouth and head. B.C. admitted she hit Daniel on May 3 and had been hitting him every other day for two weeks because of his bad behavior at school. Daniel reported that his mother hit his three-year-brother Diego on the head.

B.C. admitted hitting Daniel. She was reprimanding Daniel for his poor school behavior when he started laughing. She "lost it" and began hitting him with her sandal. B.C. denied Diego's report she had burned Daniel's face with a hot spoon, stating that she only threatened to put a hot spoon in Daniel's mouth. She placed a spoon on Daniel's cheek but it was not hot.

The San Diego County Health and Human Services Agency (Agency) detained the children in protective custody and filed petitions under section 300 on behalf of the children. The Agency placed the children with Diego and Daniela's daycare provider (caregiver). The children reacted poorly to being separated from their mother. Daniel said he loved his mother and wanted to live with her. He was only afraid of her when she hit him. Diego wanted to live

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<sup>2</sup> The children's father did not request custody.

with his mother and cried throughout an interview with the social worker. His behavior regressed and he began acting out. Although he had been potty-trained for almost a year, he began having toileting accidents. Diego hit Daniel and the caregiver, and slapped and bit Daniela.

B.C. expressed remorse for her actions. She said she was ready to do whatever was needed to become a better parent and regain custody of her children.

The jurisdictional and dispositional hearing was held on June 28, 2012. The court admitted the Agency's reports in evidence and heard testimony from the children's caregiver, B.C. and the social worker.

The caregiver supervised B.C.'s visits with the children. The visits went well. B.C. talked and played with the children and they made drawings for her. Diego exhibited behavior problems and said he was angry. On one occasion, Diego appeared to be afraid when the caregiver took off her sandals.

B.C. testified that she completed six of 12 parenting education classes, four therapy sessions and one anger management class in a program that had just started. She learned how to control stress and how to reprimand her children without being aggressive. B.C. said she would never hit Daniel again. Physical discipline was not appropriate.

The social worker acknowledged B.C. was remorseful and was working to better her parenting skills. It was too early to safely return the children to her care. B.C. needed to learn to control her temper through better anger management techniques. B.C. said the children's father would calm her down when she disciplined the children. That suggested B.C. required external factors to control her anger. In addition, B.C. needed to show she could manage

Diego's behavioral problems. The social worker was trying to secure therapy or an appropriate alternative service for Daniel and Diego.

The juvenile court sustained the petitions under section 300. The court commended B.C. for starting services but found it would be premature to return the children to her care. The court was not persuaded that returning Daniel and Diego home would alleviate their behavioral issues. The court found there was a substantial danger to the children's physical and emotional health, safety and well-being, and there were no alternatives to protect the children's physical health without removing them from parental custody, and removed the children from B.C.'s care.

## DISCUSSION

B.C. contends the court erred when it removed the children from her custody. She argues she mitigated the risk of further harm to the children by participating in services and there were alternatives to protect the children without removing them from her care. B.C. asserts the facts of this case parallel those in *In re Jasmine G.* (2000) 82 Cal.App.4th 282 (*Jasmine G.*), in which a division of this court reversed an order removing a child from her parents, who had hit her with a switch and a belt on the buttocks and upper back thighs for disobeying family rules. (*Id.* at p. 285.)

### A

#### *Legal Principles and Standard of Review*

A dependent child may not be taken from the physical custody of his or her parent unless the court finds there is clear and convincing evidence that there is, or would be, a substantial danger to the child's physical health, safety, protection, or physical or emotional

well-being if the child were returned home, and there are no reasonable means to protect the child's physical health without removing the child. (§ 361, subd. (c)(1); *In re Henry V.* (2004) 119 Cal.App.4th 522, 528; *Jasmine G., supra*, 82 Cal.App.4th at p. 288.) In determining whether a child may be safely maintained in the parent's physical custody, the court may consider the parent's past conduct and current circumstances, and the parent's response to the conditions that gave rise to juvenile court intervention. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*.) The court also considers whether there are any reasonable protective measures and services that can be put into place to prevent the child's removal from the parent's physical custody. (§ 361, subd. (c)(1); see §§ 202, subd. (a), 16500.5, 16501, 16501.1; 42 U.S.C. §§ 629, 629a.)

In reviewing the court's findings and orders under section 361, subdivision (c)(1), we employ the substantial evidence test, keeping in mind the heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

## B

### *There Is Substantial Evidence to Support the Child's Removal from Parental Custody Under Section 361, Subdivision (c)(1)*

We are not persuaded by B.C.'s argument the juvenile court erred when it removed the children from her custody. The record shows that B.C. hit six-year-old Daniel multiple times in the face and head with her hand and sandal, splitting his lip and causing both sides of his face to swell. His face was red and swollen the morning after the incident. He had bruises on his face. Daniel also suffered a bruised fingernail when he put his hands in front of his face to protect himself. According to Diego, who witnessed the May 3 incident, B.C. told Daniel, "I'm going to fuck up your mouth." Daniel cried when B.C. hit him. He was afraid of her. In late

April 2012, B.C. hit Daniel every other day for two weeks after receiving notices that he was acting out at school. She threatened to put a hot spoon in his mouth and then placed a spoon on his cheek. B.C. said she did it as a "joke." According to Daniel, B.C. often hit him and Diego on the head when they misbehaved. Daniel said, "she hits hard." B.C. hit three-year-old Diego on the head after he spilled his cereal. Diego then ran to his bedroom. Not content with hitting Diego on the head, B.C. followed him to his bedroom and spanked him. These facts constitute ample evidence of a substantial danger to the children's health, safety and well-being if they were returned home. (§ 361, subd. (c)(1).)

B.C.'s reliance on *Jasmine G.* does not assist her. *Jasmine G.* involved a 15-year-old girl whose parents hit her with a switch and a thin leather belt on the buttocks and upper back thighs after she invited a boy into her home in violation of her parents' strict rules. Two days later, the mother hit Jasmine with a switch when she did not wash the dishes. (*Jasmine G.*, *supra*, 82 Cal.App.4th at p. 285.) The parents initially believed corporal punishment for teenagers was justified. After completing a parenting course, they no longer believed corporal punishment was appropriate and expressed remorse for hitting their daughter. (*Id.* at pp. 285-286.)

The circumstances in this case are dramatically different from the circumstances in *Jasmine G.* Jasmine's parents hit her on the buttocks in a misguided but measured approach to discipline. (*Jasmine G.*, *supra*, 82 Cal.App.4th at pp. 285-286; see § 300, subd. (a) [serious physical harm does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury].) Here, in contrast, Daniel, Diego and Daniela are young children. B.C. had a pattern of hitting Daniel and Diego "hard" on the head. She hit

Daniel in the face with her hand and sandal. Hitting a child's face with an object unquestionably places the child at substantial risk of serious physical harm. Daniel had a split lip and swelling to both sides of his face. He could have just as easily suffered an eye injury. The circumstances here present far more danger to the children's physical and emotional health and safety than those that led to Jasmine's removal from parental custody.

In determining whether there were any reasonable means to protect the child's physical health without removing the child from parental custody, the court could consider the severity of Daniel's injuries, the children's ages and B.C.'s pattern of hitting Daniel and Diego in the head, as discussed *ante*, as well as B.C.'s past and current circumstances and her response to services. (*Cole C.*, *supra*, 174 Cal.App.4th at p. 917.)

B.C. angered easily and required outside intervention to calm down. She acknowledged she was not very patient and needed services to learn to talk to her children and use appropriate methods of discipline. It did not take much to trigger B.C.'s assaultive temper—a bowl of cereal and milk spilt by a three year old, a report that a six year old was talking in class—not unusual experiences for parents of young children. B.C.'s response to those incidents demonstrated a lack of anger control and poor parenting skills. To her credit, B.C. recognized her shortcomings, immediately started services and focused on becoming a better parent. At the time of the dispositional hearing, she had not completed any of the services. The social worker believed it was too early to safely return the children to her care. The juvenile court reasonably determined there were no reasonable protective measures to protect the children's physical health without removing them from B.C.'s physical custody. (§ 361, subd. (c)(1).)

We conclude there is substantial evidence to support the findings that there was, or would be, a substantial danger to the children's health, safety and well-being if they were returned home, and that there were no reasonable means at the time of the dispositional hearing to protect the children's physical health without removing them from parental custody. (§ 361, subd. (c)(1).)

#### DISPOSITION

The findings and orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

HALLER, J.