

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ELIJAH M. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ADAM B.,

Defendant and Appellant.

D062771

(Super. Ct. No. NJ13565A-B)

APPEAL from orders of the Superior Court of San Diego County, Michael J. Imhoff,
Commissioner. Affirmed.

Adam B. appeals juvenile court jurisdictional and dispositional orders concerning his children, Elijah M. and Kaiya M. He contends substantial evidence does not support the court's jurisdictional orders because he has shown he can protect the children and keep them safe from harm. He also asserts substantial evidence does not support the order removing them from his care. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

First Dependency Proceedings—January 2007-April 2009

In January 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of then five-year-old Elijah and four-year-old Kaiya and their younger brother, S.M., under Welfare and Institutions Code section 300, subdivision (b),¹ alleging they were at substantial risk of harm because their mother, Noelle M., abused alcohol and she and Adam were not able to provide adequate supervision. The petitions claimed firearms and drug paraphernalia were accessible to the children; Noelle was arrested for spousal abuse while under the influence of alcohol; and the children were exposed to violent confrontations in the family home between Noelle and Adam and between Noelle and the paternal uncle, Joshua B.

Noelle is a registered member of the Barona Band of Mission Indians and Adam is registered with the Chickasaw Tribe. Adam admitted he and Joshua smoked marijuana in the home. His criminal history includes arrests for domestic violence and for driving while under the influence. Noelle admitted she drank alcohol frequently and had been arrested for domestic violence. Adam is Elijah, Kaiya and S.M.'s biological father. Noelle began an intimate relationship with Joshua after Kaiya's birth. Joshua is the father of her two youngest children.²

In April 2007, the court found the allegations of the petitions to be true, declared the children dependents of the court and ordered them placed in relative care. Adam participated

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

² S.M. and the two youngest siblings are not subjects of this appeal.

in substance abuse treatment, but did not complete the requirements of his service plan, including parenting classes, therapy and domestic violence treatment. Then, he tested positive for marijuana and for a pain medication. Noelle participated in services. At the 12-month review hearing, the court terminated Adam's reunification services, but continued services for Noelle. Subsequently, the court ordered Elijah and Kaiya placed with Noelle and in April 2009, it awarded physical custody to Noelle and terminated dependency jurisdiction.

Second Dependency Proceedings—January 2012-April 2012

In January 2012, the Agency petitioned on behalf of the children, alleging Noelle was not adequately protecting them because she had allowed Joshua into the family home despite his substance abuse and violent behavior. In April, the court dismissed the petitions and the children were returned to Noelle's care.

Third Dependency Proceedings—July 2012-Present

In July 2012, the Agency again petitioned on behalf of the children, alleging they were at substantial risk because of domestic violence in that Noelle had struck Adam on the back of his head with her fist and/or another object, and Adam had threatened to kill her. The court ordered the children detained.

There had been reports that the children were being neglected and not picked up from school and that the home was dirty, the children were dirty and hungry, Noelle was abusing prescription drugs and there was domestic violence in the home. Adam and Noelle had not been taking advantage of the various services that were offered to them. The maternal aunt described an angry outburst by Noelle; the paternal aunt reported Adam was using drugs; and Elijah and Kaiya said Noelle and Adam were arguing and yelling a lot. Adam said he wanted

the children placed with him, but he did not comply with an on-demand drug test. Elijah and Kaiya were detained out of the home.

At the jurisdictional/dispositional hearing in September 2012, the social worker testified that since the children's removal in July, Adam had maintained regular supervised contact with them, and one week before the hearing he had begun domestic violence counseling and a parenting class. Noelle testified that she had not hit Adam on the head, but agreed she had argued with him and he had threatened to kill her.

After considering the evidence and argument by counsel, the court found the allegations of the petitions to be true.

The court then heard testimony from an Indian expert, who stated that, considering the parents' lack of participation in services and the continuing domestic violence, the children would be at substantial danger if placed with Adam even if they all lived with the paternal grandparents. After hearing additional argument by counsel, the court found active efforts had been made to prevent the breakup of this Indian family, but the efforts had been unsuccessful. It removed the children from parental custody and ordered them placed in out-of-home care. It ordered the parents to comply with their case plans.

DISCUSSION

I. Jurisdictional Orders

Adam contends no substantial evidence supports the court's jurisdictional orders under section 300, subdivision (b) because he showed he can protect Elijah and Kaiya and keep them safe from harm.

A. *Legal Principles*

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.) " ' ' ' "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." [Citation.]' " ' ' " (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 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.' " (*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 purpose of dependency law is to:

"provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, [or] neglected . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.)

A petition is brought on behalf of the child, not to punish the parents. (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.) In deciding whether a child is at risk under section 300, subdivision (b), the court determines whether the totality of the circumstances requires juvenile court jurisdiction over the child. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1440.)

B. *Application*

Substantial evidence supports the jurisdictional orders. The petitions alleged Elijah and Kaiya were at substantial risk because of domestic violence. Adam had been banned from the Barona Reservation because of past family violence, but he had been staying with Noelle in her

house on the Reservation from April to June 23, 2012, when tribal police were called. Adam said Noelle had hit him on the back of his head with a fist or hammer-like object. Noelle and her roommate said he had threatened Noelle by saying he would kill her. During the months leading up to this incident, there had been allegations the children were being neglected. Elijah and Kaiya described being afraid when Adam and Noelle fought and argued. Adam had been offered domestic violence treatment during the children's first dependency in 2007-2009, but he did not take advantage of the services offered to him. He minimized the issues the family was facing and did not enroll in domestic violence treatment until just before the jurisdictional/dispositional hearing. Substantial evidence supports the jurisdictional findings and orders under section 300, subdivision (b).

II. Dispositional Orders

Adam also asserts no substantial evidence supports the orders removing Elijah and Kaiya from his care because between the time the dependency petitions were filed until the court ordered the children detained he had shown he could keep them safe. He argues with the help of the paternal grandparents he can provide a safe home, and he has enrolled in services including parenting education, domestic violence prevention treatment and therapy and he has visited and telephoned the children regularly.

A. *Legal Principles*

Section 361, subdivision (c) provides in part:

"A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of . . . :

"(1) 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.* (1982) 134 Cal.App.3d 530, 536.) The court is required to consider the parent's past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900.) The court's dispositional order is reviewed to determine whether it is supported by substantial evidence. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 105.)

B. *Application*

Many risk factors supported Elijah and Kaiya's removal from Adam's care. The children had been dependents of the court in the past and had been returned to Noelle, but problems persisted. Elijah and Kaiya were detained after Noelle hit Adam and he threatened to kill her. The children described being afraid when Adam and Noelle fought and argued. Adam has a long history of abusing drugs. He said he first used marijuana when he was 13 and, during the first dependency case, admitted he was high most of the time. At the time of the children's third dependency, the paternal aunt said Adam had been abusing drugs. He did not comply with the social worker's request that he drug test. Substantial evidence supports the order of removal and supports the finding there were no reasonable means to protect Elijah and Kaiya without removing them from parental custody.

DISPOSITION

The orders are affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.