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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re N.R., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. ALEXANDER R. et al., Defendants and Respondents.	D065532 (Super. Ct. No. NJ14851)

APPEALS from a judgment of the Superior Court of San Diego County, Michael J. Imhoff, Commissioner. Affirmed.

Kathleen Murphy Mallinger, under appointment by the Court of Appeal, for Defendant and Appellant Alexander R.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant and Appellant L.J.

Thomas E. Montgomery, County Counsel, John E. Phillips, Chief Deputy County Counsel, and Dana C. Shoffner, Deputy County Counsel, for Plaintiff and Respondent.

Terence M. Chucas, under appointment of the Court of Appeal, for Minor.

Alexander R. and L.J. appeal the juvenile court's dispositional judgment removing their daughter, N.R., from their custody. Alexander challenges the sufficiency of the evidence to support the court's denial of his request for placement of N.R. with him in Connecticut on the ground it would be detrimental to her emotional well-being. L.J. challenges the sufficiency of the evidence to support the court's authorization of psychotropic medication for N.R. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

N.R. was born to L.J. and Alexander in 2001. The parents lived together after the birth for about a year and then separated. Alexander saw N.R. every weekend and on holidays, an informal arrangement that continued after he got married and had two more daughters. In 2011, Alexander moved to Connecticut to find work, and N.R. stayed in San Diego County with L.J. He gave N.R. a cell phone and they spoke at least once a week. Further, she visited him for six weeks during the summer of 2012. L.J. refused to allow N.R. to visit him during the summer of 2013.

In September 2013, the San Diego County Health and Human Services Agency (the Agency) received a report that N.R. sustained multiple bruises when her stepfather struck her with a wooden spoon and a belt. N.R. reported that L.J. also physically abused her and "Last year they hit me so much that I wanted to die." The examining physician reported "the multiple inflicted injuries on this child are the result of severe, and vicious

and repeated incidents of inflicted trauma." The physician also suspected N.R. suffered from depression and an eating disorder.

L.J. denied any knowledge of N.R.'s bruises. She told the social worker that N.R. lies and she probably harmed herself by bumping into a wall. N.R. responded, "She is lying to you and I am not going home with her I'm going with you."

The Agency removed N.R. from L.J.'s custody and filed a petition under Welfare and Institutions Code section 300, subdivisions (a) and (b).[1] The petition alleged L.J. and the stepfather inflicted serious physical harm on N.R., and when the stepfather repeatedly struck N.R., L.J. "told the stepfather to continue hitting the child and to hit her even harder."

The Agency located Alexander after the detention hearing. He advised the social worker he wanted to take custody of N.R. and he would be "able to keep her safe." N.R. said she had a close relationship with him and wanted to live with him. He denied any domestic violence or alcohol issues, but he admitted he had a "DUI in California, but completed the DUI program." L.J. was open to having Alexander take custody of N.R., but she was "worried about his drinking." The Agency initiated an evaluation under the Interstate Compact on the Placement of Children (ICPC; Fam. Code, § 7900 et seq.) to assess Alexander's home in Connecticut.

Initially, N.R. appeared to do well in foster care. In October 2013, however, she went through the foster home and "took some belongings from different rooms, such

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

as . . . earrings, arts and crafts supplies, and makeup." N.R. reported she did this to anger the foster mother because she was unhappy in the home. The Agency provided services to the foster mother to preserve the placement and a list of therapists for N.R.

At the November 2013 settlement conference, the petition was amended to add a second count under section 300, subdivision (b), alleging L.J.'s failure to protect N.R. L.J. pleaded nolo contendere to the new count and the court dismissed the counts of the original petition.

The Agency's December 2013 report for the disposition hearing states the previous month the foster mother gave a seven-day notice because of N.R.'s anger, poor attitude, verbal abuse, yelling, and hoarding of food in her room, which caused an ant infestation. Before the notice period expired, N.R. had a "blow out" after the foster mother put her on time out. The foster mother was afraid of N.R. and dropped her off at an emergency shelter for children.

The report states N.R. was placed in another foster home. She also toured San Pasqual Academy, a residential facility, and said she wanted to be placed there if she could not be placed with her father. After a few days the foster mother reported N.R. was adjusting well, but she was not "keeping up with her hygiene and cleanliness," and she was hiding food in her room.

Further, the report states the social worker had spoken with Patrick Raymond, a supervisor with the Department of Children and Families in Hartford, Connecticut. Raymond had completed the ICPC evaluation and submitted his report for his manager's review. Raymond recommended that placement with Alexander be denied because he

was arrested on November 21, 2012, for assaulting his wife while he was intoxicated. Alexander reported to Raymond that "he drinks alcohol and goes out with his friends after work." Alexander was referred for a substance abuse assessment and he did not follow through with it. Further, he was minimally compliant with a mandated domestic violence program. Raymond believed Alexander's explanation of the domestic incident "did not coincide with what was stated in the police report," and he was rearrested "after he failed to appear in court regarding the incident." Additionally, Raymond knew N.R. was having emotional difficulties and he was unsure Alexander "would be able to meet, or even understand his daughter's needs."

In mid-December 2013, Alexander set the disposition hearing for trial. On December 26, 2013, the Oceanside Police Department's Psychiatric Emergency Response Team responded to the foster home after N.R. attempted to choke herself with her hands. She was taken to a hospital and transferred the next day to a psychiatric hospital for a three-day hold under section 5150, where the diagnosis was "severe depression and auditory hallucinations." On her discharge she was placed at Polinsky Children's Center (Polinsky). At Polinsky, she explained she was unhappy in the foster home, and thus she locked herself in her bedroom, threatened to hurt herself with a kitchen knife, and "attempted to choke herself and make a video of this."

While she was on the section 5150 hold, N.R.'s psychiatrist, Ivan Baroya, recommended that she be treated with Zoloft for depression and Abilify for "voices." In the application for psychotropic medications, Dr. Baroya explained N.R. made multiple suicide attempts by strangulation with the use of her hands and a "belt noose," and

"[t]here is no other less intrusive treatment that will be an alternative to medications to decrease voices and commanding her to kill self." Nicodemus Watts, M.D., and Marc Gotbaum, the director of the Vista Hill Juvenile Court Clinic, reviewed the request and determined the medications met community standards.

On January 14, 2014, the court issued an interim order authorizing the medications. In February 2014, the court held a hearing on L.J.'s objections. She was opposed to the medications because N.R. was not previously diagnosed with a condition requiring them, she had moral and religious objections to the use of such medications, she was concerned about side effects, she was opposed to widespread use of such medications on institutionalized persons, and N.R. told her she was concerned about taking the medications and she was not taking them as prescribed. Sometimes N.R. "keeps the pill under her tongue and spits it out later." Minor's counsel asked the court to make a final order, explaining N.R.'s and L.J.'s positions were not aligned, and N.R. was not opposed to taking the medications. The court made the order final, subject to change if circumstances warranted.

In an addendum report, the Agency noted it had received the ICPC final report from Connecticut "indicating that the father's home study was denied." Alexander denied any physical violence with his wife. He conceded he was ordered to attend an educational class to have the charge expunged, and he agreed to send paperwork to his attorney to confirm this. He also said he had an appointment for a drug and alcohol assessment.

At the disposition hearing in February 2014, the social worker, Jason Pasco, recommended against placing N.R. with Alexander because of Connecticut's ICPC evaluation. Connecticut was concerned about Alexander's alcohol use, and that he was under the influence when the domestic incident occurred, and it wanted him to undergo a "toxicology screen and substance abuse evaluation with MCCA," a substance abuse treatment center. Alexander, however, did not undergo an evaluation in time. After Connecticut closed the case, the social worker there gave him a referral for the screening, but advised it would not affect the ICPC evaluation.

Pasco believed a placement of N.R. with Alexander should be supervised, but Connecticut would not supervise because it denied the ICPC. Pasco did not believe the Agency could "legally monitor that placement," and in any event he had difficulty communicating with Alexander. Alexander neither telephoned Pasco frequently nor returned Pasco's calls in a timely manner. If Alexander supplied Pasco with documentation showing he participated in domestic violence or substance abuse classes, he would consider submitting another ICPC request to Connecticut.

N.R.'s doctor had advised Pasco that N.R. took the psychotropic medications for a month and refused to take them any longer. The doctor was no longer prescribing the medications because N.R. could not be forced to take them. N.R. had not reported any auditory hallucinations since she discontinued the medications, but Pasco knew she was currently "unhappy." He explained, "I definitely have noticed a change in her behavior since [I] began meeting with [her] back in September." He elaborated: "She's been . . . a lot more upset. And I think it's just due to circumstances and the uncertainty as to what's

going to happen with her. But . . . there definitely has been a change. There's been some anger." N.R. had a therapist at Polinsky, but there had been "very few" sessions.

Pasco conceded that Connecticut found Alexander's home to be suitable, with a spare bedroom for N.R. Further, there was no child protective services involvement with the family. Alexander had not told Pasco how he intended to cope with N.R.'s mental health issues or what type of services he would obtain for her, but he was agreeable to having her in counseling.

Alexander provided evidence that he submitted to drug testing in December 2013 and the result was negative. He denied having an alcohol problem and said he drank infrequently on holidays or "super bowl events." He conceded he served 90 days after a 2008 DUI conviction in San Diego.

Alexander referred to the domestic violence incident as a "[b]reach of peace." He denied any physical violence, but conceded the police report stated there was physical violence. He also conceded the incident was caused by his alcohol use. He explained he and his supervisor had just finished a lucrative job and "we stopped and we had a couple of beers." He later clarified he had three beers. His wife was upset because he was late, "we got loud, and the neighbor overheard and . . . called the police." He completed a "Family Violence Education Program" in November 2013, and his next court date was in July 2014.

Additionally, Alexander testified he was concerned about N.R.'s behavioral problems. When asked whether he had a plan should the court place N.R. with him, he said he would try to "seek professional help like a one on one." He explained he is a

building superintendant, some of the tenants are therapists, and "I have been asking questions, talking to them to see what they can offer," and, "I have been trying to see . . . how to go about acquiring her help." He added that his wife worked part time and she "would be able to assist with everything." He was aware that Connecticut "is not going to have an open case" and would provide no supervision.

N.R. asked the court to follow the Agency's recommendation for placement at San Pasqual Academy. She had "a great deal of apprehension . . . about . . . moving to Connecticut and . . . leaving what she has here at this point."

The court rejected the argument there was detriment based on alcohol or domestic violence, noting Alexander had complied with the requirements Connecticut imposed to clear the domestic charge and his two younger daughters remained in the home without any child protective services oversight. The court nonetheless found by clear and convincing evidence that placement with Alexander at that time would be detriment to N.R.'s emotional well-being.

The court explained that N.R.'s psychiatric hospitalization in December 2013 "was not just a small occurrence," and while her mood had improved the previous few weeks the court was unaware of whether the auditory hallucinations were "a transient issue" or "something significant." The court was concerned it was "being asked to make a significant decision regarding a major transition in [N.R.'s] life without the benefit of therapeutic input." Further, since Connecticut would not supervise a placement "we lose a very crucial set of eyes and support." The court believed Alexander "would do everything in his power to do what's best for his daughter," but observed that "things

could go . . . south very quickly because we don't know what the underlying factors are." The court added: "[W]hen there is therapeutic input, it would be appropriate for her therapeutically to be placed with her father, then she is to be placed with her father in Connecticut. In the meantime, I'm going to order that she be placed at San Pasqual Academy."

The court authorized individual therapy for N.R. by a credentialed licensed therapist, and medication and a psychological evaluation if the therapist deemed them appropriate. The court ordered liberal unsupervised visitation for Alexander and visitation in Connecticut during school breaks.

DISCUSSION[2]

I

Placement with Alexander

A

"After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision." (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) "Section 361.2, subdivision (a) evinces the legislative preference for placement with the noncustodial parent when safe for the child." (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1262 (*Patrick S.*).) The statute provides that if the noncustodial parent requests custody, "the court shall place the child with the parent

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2 N.R. joins in the Agency's position and contends we should affirm the judgment.

unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).)

"A court's ruling under section 361.2, subdivision (a) that a child should not be placed with a noncustodial, nonoffending parent requires a finding of detriment by clear and convincing evidence." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426 (*Luke M.*) "Clear and convincing evidence requires a high probability, such that evidence is so clear as to leave no substantial doubt." (*Patrick S., supra,* 218 Cal.App.4th 1262.)

" '[O]n appeal from a judgment required to be based upon clear and convincing evidence, "the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong." [Citation.]' [Citations.] 'We have no power to judge the effect or value of the evidence, to weigh the evidence [or] to consider the credibility of witnesses . . . .' " (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581, fn. omitted.) " 'We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses.' " (*Luke M., supra,* 107 Cal.App.4th at p. 1427.)

B

Alexander challenges the sufficiency of the evidence to support the court's detriment finding. He asserts this case is analogous to *Patrick S.* in which this court reversed a dispositional order.

In *Patrick S.,* a teenage boy, Patrick, was removed from the mother's custody. The father requested custody and the court ordered the Agency to submit an expedited ICPC

to his home state of Washington. Washington denied the ICPC because the father, who was deployed at sea with the United States Navy, failed to fingerprint and missed an appointment with the social worker. Further, he would have to complete a psychosexual evaluation ordered by Hawaii before Washington would approve unsupervised contact. (*Patrick S., supra,* 218 Cal.App.4th at p. 1258.) During the marriage, the mother had accused the father of sexually abusing Patrick, and as part of a divorce settlement he agreed to undergo the evaluation before having unsupervised visitation. The mother had moved away with Patrick and did not maintain contact with the father. (*Id.* at pp. 1256-1257.)

Further, the Agency was concerned about the affect of an upcoming deployment. The Agency argued deployment was stressful for families, and the father's wife "would have primary responsibility for two young children and would have to manage a bored, homesick adolescent who did not want to live with her." (*Patrick S., supra,* 218 Cal.App.4th at p. 1259.) If Patrick moved to Washington "he could get frustrated, run away and get lost or hurt." (*Ibid.*) Patrick reported that during a summer visit to his father's home "he was bored and his younger siblings sometimes irritated him. He spent a lot of time on his computer." (*Id.* at p. 1258.) "He told [the social worker] he did not want to live with his father. He loved high school and was excited about his classes." (*Id.* at p. 1259.) The Agency was also concerned because the father intended to homeschool Patrick, who "had been isolated by a mentally ill mother and needed greater socialization." (*Id.* at p. 1259.)

Additionally, Patrick "was diagnosed with adjustment disorder, unspecified, and was in need of continued therapeutic support. He had major anxiety about living with his father." (*Patrick S., supra,* 218 Cal.App.4th at p. 1261.) After an incident in school in 2011, the Agency referred Patrick "to a clinical program run for psychotic youths," but he "did not qualify for the program." (*Id.* at p. 1260.) The foster father testified Patrick did not need any extra attention and he was not worried about Patrick running away. When frustrated, Patrick went on walks and would return after 15 to 20 minutes. (*Ibid.*)

The court determined the Agency met its burden of showing detriment to Patrick's emotional well-being if placed with his father. (*Patrick S., supra,* 218 Cal.App.4th at pp. 1260-1261.) We reversed the order, stating Patrick's "anxiety and diagnosis of adjustment disorder, unspecified, does not support a detriment finding without a showing that his father would not be willing or able to obtain recommended therapeutic services for him. . . . [Patrick] was described as polite, quiet, intelligent and well behaved. [The father] contacted Fleet and Family Services to arrange therapeutic services for [Patrick] and informed the court that a wide variety of social services from different sources was readily available to the family." (*Id.* at pp. 1263-1264.) We rejected the notion that the father's deployment was an impediment to placement. (*Id.* at p. 1264.)

Further, we noted that compliance with the ICPC is not required for placement with an out-of-state parent, and the court is required to consider alternative means of providing services in such placements. (*Patrick S., supra,* 218 Cal.App.4th at p. 1264.) We explained: "In view of [the father]'s exemplary service in the Navy, his long history of compliance with child support orders, [Patrick]'s age and abilities, and the lack of any

risk to his physical health or safety, the court could have, but did not, consider whether ordering [the father] to comply with services, regularly communicate with the Agency and make [Patrick] available to the social worker was a reasonable alternative to ICPC monitoring." (*Ibid.*)

This case is distinguishable from *Patrick S.*, because just two months before the disposition hearing N.R. attempted suicide and spent several days in a psychiatric hospital on a hold under section 5150. She was diagnosed with severe depression with psychotic features and auditory hallucinations commanding her to kill herself. After speaking with N.R. and reviewing records from the previous hospital stay, her treating psychiatrist, Dr. Baroya, advised that she had made "multiple suicide attempts by strangulation and use of hands and a belt noose." She was prescribed psychotropic medications, but abruptly stopped taking them after a month without any medical input. While she had not experienced additional hallucinations, the social worker observed that her mood had become worse before the disposition hearing. Additionally, by the time of the hearing N.R. did not want to go to Connecticut, and her December 2013 suicide attempt and psychiatric hospitalization stemmed from unhappiness in her foster home. She was entitled to have her preference considered. (*Patrick S., supra*, 218 Cal.App.4th at p. 1265.)

The court obviously grappled with its decision under section 361, subdivision (a), and the Agency concedes this is a close case. Given these difficult and unique circumstances, however, we do not fault the court for determining it would be detrimental to N.R.'s emotional well-being to place her with Alexander in Connecticut without any

therapeutic input on the issue. Preferably, the Agency would have arranged for an evaluation and provided that information at the hearing, but it did not do so and any shortcoming on its part should not adversely affect N.R. As this court has observed, "the underlying purpose of dependency law is to protect the welfare and best interests of the dependent child. [Citations.] Accordingly, the purpose of any dependency hearing is to determine and protect the child's best interests." (*Luke M., supra,* 107 Cal.App.4th at pp. 1424-1425.) "A detriment evaluation [under section 361.2] requires that the court weigh all relevant factors to determine if the child will suffer net harm." (*Id.* at p. 1425.) While we do not doubt Alexander's sincerity and desire to care for N.R., we conclude substantial evidence, that is evidence of " 'ponderable legal significance,' " supports the court's ruling. (*County of Santa Cruz v. City of Watsonville* (1985) 177 Cal.App.3d 831, 845.)[3]

III

Psychotropic Medications

The juvenile court is statutorily authorized to approve psychotropic medications for dependent children when appropriate. (§ 369.5, subd. (a).) L.J. challenges the sufficiency of the evidence to support the court's order authorizing psychotropic medications for N.R.

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3 Because of N.R.'s suicide attempt and psychiatric hospitalization, this case is also distinguishable from this court's opinion in *In re John M.* (2006) 141 Cal.App.4th 1564, on which Alexander also relies.

Pursuant to California Rules of Court, rule 5.640,[4] the application was submitted on Judicial Council form JV-220 (Application Regarding Psychotropic Medication). As required, the statement prepared by the prescribing psychiatrist, Dr. Bayora, included the "diagnosis of the child's condition that the physician asserts can be treated through the administration of the medication"; the "specific medication recommended, with the recommended maximum daily dosage and length of time this course of treatment will continue"; the "anticipated benefits to the child of the use of the medication"; a "description of possible side effects of the medication"; a "list of any other medications, prescription or otherwise, that the child is currently taking"; a "description of any other therapeutic services related to the child's mental health status"; and a "statement that the child has been informed in an age-appropriate manner of the recommended course of treatment, the basis for it, and its possible results," and the child's response. (Rule 5.640(6)(A) - (G).)

L.J. concedes the statement met the statutory requirements. She complains, however, that the form states Dr. Baroya obtained his information only from N.R. and "Tri-Care medical records." L.J. asserts Dr. Baroya would not have known whether N.R. was an accurate reporter, and without speaking to L.J., the foster mother and the social worker, he had insufficient information on her physical and mental health to prescribe the medications. However, neither section 369.5, subdivision (a) nor rule 5.640 required Dr. Baroya to interview additional parties. Further, L.J. merely speculates that Dr. Baroya

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4 All further rule references are to the California Rules of Court.

did not have the relevant history. She does not know what N.R. revealed to him, or what was in the Tri-City records. Further, as to the state of N.R.'s physical health, the form states Dr. Baroya ordered numerous laboratory tests before prescribing the medications.

Additionally, the application was reviewed by an independent physician through the Vista Hill Juvenile Court Clinic, and he determined the prescribed medications met community standards. He did not find that the physician's statement should include additional information.

L.J. also asserts the "information before the court did not mention any self-injurious behavior which would justify psychotropic intervention." To the contrary, the JV-220 form states: "Patient with multiple suicide attempts by strangulation and use of hands and a belt noose. Patient with severe depression and auditory hallucinations. There is no other less intrusive treatment that will be an alternative to medications to decrease voices and commanding her to kill self." The application was made when N.R. was on a three-day hold under section 5150 after she attempted to choke herself.

We conclude substantial evidence supports the order.[5] In any event, there is no possible prejudice because the evidence showed N.R. stopped taking the medications after a month, and the order expired by operation of law on August 11, 2014. "If the court grants the request . . . , the order for authorization is effective until terminated or

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[5] The Agency asserts an abuse of discretion standard of review applies rather than the substantial evidence standard L.J. asserts applies. We are not required to resolve the matter because the result is the same under either standard.

modified by court order or until 180 days from the order, whichever is earlier." (Rule 5.640(f).)

DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

MCINTYRE, J.