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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JAMIE G. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JESSICA G.,

Defendant and Appellant.

D067044

(Super. Ct. No. NJ14962A-C)

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

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Lisa M. Maldonado, Deputy County Counsel, for Plaintiff and Respondent.

Jessica G. appeals from dispositional orders of the juvenile court declaring her children, Jamie (who is now six years old), Joy (now four) and Moises (now two),

dependents of the court and removing them from her care. She contends there was insufficient evidence to support the children's removal because there was no showing that leaving them in her custody would create a substantial danger to them and there were reasonable ways to protect the children without removal. We disagree and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2014,¹ Jessica and her children came to the attention of the San Diego County Health and Human Services Agency (the Agency) based on a report that Jessica's boyfriend, M.B.,² had physically punished Jamie in a manner that bruised her bicep. In mid-July, the Agency opened an investigation relating to the family after receiving a report of domestic violence between the parents. At that time, the social worker observed that the family's apartment had deteriorated, with carpet blackened by dirt, spots and stains and a strong odor emanating from it. Jessica indicated that the father had left for Mexico and that, although she did not want to seek a temporary restraining order against him, she would not let him have unsupervised visits with the children if he returned. The Agency referred Jessica to Community Services for Families as it investigated the incident, although Jessica never utilized its services.

¹ All dates referred to in this opinion are in 2014 except as otherwise noted.

² M.B. is Moise's biological father and was found by the juvenile court to be the presumed father for the other two children. In this opinion, M.B. is referred to as the children's father, and he and Jessica are identified collectively as the children's parents.

In August, the family came to the Agency's attention again after the father was arrested for committing battery on Jessica in front of the children. Later that month, a social worker came to check on the family and found Jessica, who was six months' pregnant, sitting on the front steps of the family's apartment, incoherent and lethargic, as Jamie and Joy ran around the complex unsupervised.

Jessica refused to allow the social worker into the apartment and the Oceanside police arrived to assist in making a welfare check on the family. They found a baggie with a substance that appeared to be marijuana or synthetic marijuana known as "spice" in the apartment, which was filthy. When they came out of the apartment, Jessica was holding Moises by his head and one arm, causing him to fuss. Concerned about Jessica's demeanor and behavior and that Jessica might drop Moises, the social worker asked her to submit to a drug test and let the children stay with her parents while she did so. Jessica refused, saying that she did not want to and "you can't take my kids"; she giggled when the social worker told her that the Agency would remove the children if she did not voluntarily drug test.

Jessica also interfered with the social worker's attempts to talk to Jamie and Joy and, after a police officer asked her to move away, she tried to hit him in the face but struck him in the chest instead. The officers arrested Jessica for public intoxication,

assault on a police officer and resisting arrest and the children were detained at the Polinsky Children's Center (Polinsky).³

The social worker spoke with the maternal grandparents, each of whom expressed concern about the parents' drug usage and domestic violence, and Jamie told the social worker that her parents smoked "weed." Shortly thereafter, Jessica was diagnosed as suffering from "classic schizophrenia" and prescribed antipsychotic medication.

In late August, the Agency filed dependency petitions on behalf of the children, alleging that they were at risk of harm as a result of the parents' failure to supervise or protect them. At the detention hearing, Jessica's counsel represented that although the father had visited her client's apartment, he did not live there and Jessica planned to seek a restraining order against him. Jessica denied being under the influence of illegal substances at the time of her arrest and indicated that she wanted the children back in her care and was willing to participate in services. Counsel for the children asked the court to detain them outside of the home based on concerns about the parents' domestic violence and substance abuse issues. The juvenile court found that the Agency had made a prima facie showing in support of the petitions' allegations and ordered the children detained at Polinsky or an approved home.

At the contested disposition hearing in October, Jessica testified that she had been seeing a psychiatrist and taking psychotropic medication, had begun to participate in domestic violence prevention classes and would be starting general therapy and parenting

³ Although the father was at the apartment when the social worker arrived, he had been smoking spice and consumed a substantial quantity of beer with friends, so he left to avoid being rearrested by the police.

classes in mid-November.⁴ Jessica admitted that the father continued to live with her, but reported that he had not used drugs since the children's removal and that there had been no further incidents of domestic violence between them.

The juvenile court found by clear and convincing evidence that the allegations of the petitions were true and reasonable efforts had been made to prevent or eliminate the need for the children's removal. It ordered the children placed with their maternal grandparents.

Jessica appeals.

DISCUSSION

1. *Sufficiency of the Evidence to Support the Finding of Substantial Danger*

The court may remove a child from his or her parent's custody only if there is clear and convincing evidence that leaving the child with the parent would create a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and that there are no reasonable means for protecting the child without removal. (Welf. & Inst. Code, § 361, subd. (c).) A juvenile court's jurisdictional findings constitute prima facie evidence that the children cannot safely remain in the home (*id.*, subd. (c)(1)) and a removal order is proper if it is based on proof of parental inability to provide proper care and proof of potential detriment to the children of remaining in the parent's care. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on

⁴ Although Jessica had agreed in September to submit to drug testing, as of the time of this hearing, she had not done so.

other grounds by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The focus is on averting harm to the children and thus it is not necessary to establish that a parent is dangerous or that one or more of the children have already been harmed. (*Ibid.*) In determining whether removal is warranted, the court may consider the parent's past conduct as well as present circumstances. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.)

On appeal, we review the court's dispositional findings for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) That there is evidence from which the juvenile court could have drawn a different conclusion is not enough; if substantial evidence exists to support the juvenile court's determination, we must affirm it. (See, e.g., *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) We conclude that there is sufficient evidence in the record here to support the juvenile court's removal order.

The evidence was undisputed that the father bruised Jamie's bicep as punishment for disobeying him and that the following month he slapped Jessica in the shoulder during a dispute between them. Jessica was aware that the father had substance abuse problems and admitted that his drinking had led to domestic violence with the family in the past. Despite this, Jessica declined to get a restraining order against the father and in fact allowed him to continue to live with her.

Further, although Jessica testified that she was willing to undertake services, she had done little in that regard despite having been referred to services even before the incident that led to the children's removal. The father was still living in the family home, but the record is devoid of evidence that he had started participating in any of the

components of his case plan, thus leaving the safety issues that led to the children's removal unresolved.

The juvenile court opined that the parents might be able to succeed in reunifying with the children, but also said:

"[W]e will need feedback from the professionals . . . that you are not just parents parenting, but really gaining an understanding and insight to alcohol use and to the disagreements, that you come up with another way of resolving your differences without resorting to the yelling or hitting. The children will be very fortunate to be returned to your care with that being resolved. Right now the children have been affected by what they have witnessed, and they will need to see their parents working hard and making improvements."

The evidence presented to the court is sufficient to support its conclusion that removal of the children was necessary to protect the children as the parents began to engage in reunification efforts.

2. *Efforts to Prevent the Need for Removal*

Jessica also contends that the Agency failed to make reasonable efforts to prevent the need for removal of the children from her care and that less drastic means would have sufficed to alleviate the risk of danger to the children of being left in her care. She suggests that, because she was engaged in services and complying with her medication regimen, the juvenile court could have safely returned the children to her "under stringent conditions assuring [that] their physical environment would be properly maintained," such as ordering the father to stay out of the home and the Agency to make unannounced visits to the family home. However, the evidence showed that although Jessica had started to participate in some of the recommended services, she was not fully engaged in

the requirements of her case plan as of the time of the disposition hearing. Moreover, Jessica had repeatedly resisted seeking a restraining order to keep the father away from the children and out of the family home, despite the complete absence of evidence that his abuse of alcohol had subsided.

In light of the evidence in the record establishing the past incidents of the parents' substance abuse and domestic violence and Jessica's unwillingness to keep the father out of the family home, the juvenile court could properly find that there were no reasonable means, short of removal, to protect the children's physical and emotional well-being.

DISPOSITION

The orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

AARON, J.