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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re TYRONE W. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

D070326

(Super. Ct. No. J519333A-B)

APPEAL from orders of the Superior Court of San Diego County, Sharon L.

Kalemkiarian, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel and Patricia Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

T.B. appeals an order declaring her minor children, Tyrone W. and Isaiah. B., dependents of the juvenile court and removing them from her custody under Welfare and Institutions Code section 361, subdivision (c)(1).¹ T.B. challenges the sufficiency of the evidence to support the juvenile court's finding that reasonable efforts were made by the San Diego County Health and Human Services Agency (Agency) to prevent the need for removal of the minors from her care. T.B. also contends the juvenile court's failure to state the basis for its reasonable efforts finding was error. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

The family has a long history of involvement with the Agency, which since Tyrone's birth had received more than 10 referrals about T.B. involving violence, drug use, mental health concerns, prostitution and housing stability. T.B. had been offered voluntary services twice in the past, but she failed to maintain contact with the Agency. On March 16, 2016, when Tyrone and Isaiah were one and two years old, the Agency filed petitions on their behalf under section 300, subdivision (b). The petitions

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

alleged the minors were at substantial risk of serious physical harm due to T.B.'s inability to provide care because of her mental illness.²

Before the petitions were filed, the Agency received a report that the minors were in the care of their maternal grandmother because T.B. had been hospitalized after making suicidal threats. The referral also indicated that the grandmother did not have the ability to care for the minors. When the Agency's social workers visited the grandmother's apartment it was dirty and littered with trash, and the grandmother exhibited signs of mental illness. The social workers discovered Isaiah sitting in a stroller with a bottle of spoiled milk and Tyrone hiding under a wagon.

The grandmother confirmed that T.B. was hospitalized due to mental illness. She also stated she was not able to care for the minors at her apartment because the property manager would not allow it. The grandmother stated there were no other family members or friends that could care for the minors. Thereafter, the Agency's social worker contacted the San Diego Regional Center (Regional Center), where T.B. was a client. The Regional Center informed the social worker that T.B. had been placed on a mental health hold at a hospital and had a history of homelessness and mental illness, including "bipolar disorder, anxiety, seizures which are caused by stress, schizophrenia and mild retardation that has gone untreated." T.B.'s case manager at the Regional Center

² The petitions list Donell H. as the alleged father of Tyrone and Willie J. as the alleged father of Isaiah. The Agency was continuing ongoing efforts to locate the minors' fathers at the time of the jurisdiction and disposition hearing at issue.

indicated T.B. had not received any treatment since she gave birth to Tyrone.³ The Regional Center was unaware of any other potential caregivers for the minors.

The social worker attempted without success to contact relatives who were mentioned in earlier Agency reports, then took the minors into protective custody. At the March 21, 2016 hearing on the petition, the juvenile court found a prima facie showing was made that the minors were described by section 300, subdivision (b). By the time the Agency filed its report for the jurisdiction and disposition hearing on April 7, 2016, the minors had been placed together in a licensed foster home. Isaiah was doing well and the caregiver reported he was a happy child. Tyrone was acting out and the caregiver had difficulty dealing with his behavior. The minors were seen by a pediatrician, who was concerned that Tyrone had not met several developmental milestones and noted that Isaiah was behind on his immunizations. Both minors were referred to the Developmental Screening and Enhancement Program and to the Regional Center for evaluation.

The social worker assigned to the family, Mieshya Taylor, tried to meet with T.B. to discuss the case, but T.B. missed two scheduled appointments. T.B. did attend supervised visits with the minors once each week, and the Agency reported T.B. was appropriate during the visits. During a telephone call with Taylor, T.B. stated that the minors were taken into protective custody "for no reason" and she only acted crazy to obtain government benefits. T.B. told Taylor "I been doing this. I learned from my

³ Documentation attached to the Agency's report for the detention hearing indicated that T.B. had been hospitalized several times in 2012 as a result of suicide threats.

mother to play crazy, she taught me how to do it. I'm not really crazy. . . . I don't need medication. I am not depressed. I lost my [Social Security Insurance] because they believe there is nothing wrong with me."

The Agency's report for the jurisdictional and dispositional hearing on April 11, 2016, recommended that the court declare the minors dependents, place them in a licensed foster home, and order the Agency to provide T.B. with reunification services. At the hearing, T.B. requested a trial on the truth of the allegations in the Agency's petitions and the juvenile court set a settlement conference for April 28, 2016, and an evidentiary hearing for May 13, 2016.

On April 20, 2016, T.B. finally met with Taylor to discuss the case. T.B. apologized for leaving verbally aggressive voice mail messages for Taylor, but accused Taylor of not working with her. T.B. told Taylor she did not have a place to live and had been sleeping in a friend's car parked in an alley. T.B. blamed her mother for the situation she was in, and told Taylor the maternal grandmother was using drugs and trying to sabotage T.B. T.B. continued to have regular visits with the minors in April, and the Agency reported that the visits were going well. The Agency also provided T.B. with a referral for parenting classes and requested a psychological evaluation for her. Also in April, both minors completed development assessments. Tyrone's assessment identified several developmental deficiencies and raised concerns about his emotional well-being. Isaiah's assessment also found developmental delays.

The Agency's report for the settlement conference continued to recommend that the court take jurisdiction of the minors and place them in a licensed foster home, and

that reunification services be provided to T.B. At the settlement conference the parties confirmed the trial date of May 13, 2016. On April 29, 2016, a new social worker, Van Nguyen, was assigned to the family after Taylor took a medical leave of absence. Nguyen was out of the office on vacation from May 2 to May 10, 2016. On May 12, 2016, Nguyen contacted the psychologist that had been assigned to conduct T.B.'s evaluation to check on the status. The psychologist told Nguyen that she had tried to contact T.B. to schedule the evaluation, but had trouble reaching her. The psychologist also indicated that she needed additional documentation from the Agency to schedule the evaluation. Nguyen confirmed he would provide the documentation as soon as possible and the psychologist agreed to contact T.B. to schedule the evaluation.

Nguyen also spoke with T.B. on May 12, 2016. T.B. stated she had tried to schedule the psychological evaluation but needed the Agency to provide documentation to the psychologist. Staff at the Family Visitation Center where T.B.'s visitation was scheduled to occur reported that T.B. had missed several visits with the minors and that the Family Visitation Center had closed the case because of three consecutive missed visits. The parenting class facilitator reported that T.B. had attended three sessions of her parenting class.

At the May 13, 2016 contested jurisdiction and disposition hearing, the court received the Agency's reports into evidence. No witnesses were called. After argument by counsel and its review of the documentary evidence, the juvenile court found by clear and convincing evidence that the allegations in the petitions were true. The court declared the minors dependents, removed physical custody from T.B. and placed the

minors in the licensed foster home where they were residing. The court did not state explicitly at the hearing that reasonable efforts had been made to prevent removal, but the minute orders entered by the court included findings that reasonable efforts were "made to prevent or eliminate the need for removal" of the minors "from the mother's home" T.B. timely appealed the orders.

DISCUSSION

T.B. asserts that the court's failure to state the basis for its finding that the Agency had made reasonable efforts to prevent the removal of the minors from her custody was error. She also contends that even if such an explicit statement was not required, insufficient evidence supported the finding.

I

After the juvenile court makes a true finding at the jurisdictional phase of a dependency case, the court must then consider whether a minor should be declared a dependent and whether he or she would be at substantial risk of harm if not removed from the parent's care. (§§ 358, subd. (a), 360, 361; see *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1129.) Here, the court removed physical custody of the minors under section 361, subdivision (c)(1), finding there was clear and convincing evidence the minors should be removed because "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor[s] if the minor[s] were returned home, and there are no reasonable means by which the minor[s]' physical health can be protected without removing the minor[s] from" T.B.'s custody.

Section 361 requires that the juvenile court also "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for the removal of the minor from his or her home" (§ 361, subd. (d).) "The adequacy of reunification plans and the reasonableness of [the welfare agency's] efforts are judged according to the circumstances of each case." (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 (*Amanda H.*)). The juvenile court has broad discretion in crafting a disposition pursuant to a child's best interests. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)

When the court removes a child from parental custody at disposition, the substantial evidence standard of review is used to determine whether the court's decision should be upheld. (*In re T.V.* (2013) 217 Cal.App.4th 126, 136.) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) When a parent challenges an order on the grounds of insufficient evidence, the appellate court reviews the evidence in the light most favorable to the juvenile court's order, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. (*In re D.M.* (2012) 205 Cal.App.4th 283, 291.) The parent has the burden to demonstrate there is no evidence of a sufficiently substantial character to support the juvenile court's order. (*Ibid.*)

II

As stated, T.B. challenges both the court's failure to state the basis for its reasonable efforts finding, and the sufficiency of the evidence to support such a finding. The Agency concedes that the "better practice at the trial court level is to express each and every finding, and to explain the basis for such findings on the record," but that "this may not always occur given the large volume of dependency cases which must be heard and resolved on a daily basis." The Agency asserts that this court may imply the reasonable efforts finding in this case because the record establishes sufficient evidence to support it and T.B. failed to request a statement of decision or a finding of fact. We agree.

While the juvenile court should have stated the basis for its finding that the Agency undertook reasonable efforts to prevent the removal of the minors from T.B.'s custody, the error in this case was harmless. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218 ["cases involving a court's obligation to make findings regarding a minor's change of custody or commitment have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.' "].) Sufficient evidence supported the juvenile court's finding that reasonable efforts were made by the Agency. T.B. was offered voluntary services by the Agency twice before the present dependency proceeding, but she failed to maintain contact with the Agency to access those services. Further, from the outset of the present case she was provided with assistance including transportation, parenting courses, supervised visitation and services through the Regional Center.

Given this assistance, and particularly in light of the fact that T.B. did not yet have housing at the time of the disposition order, we do not agree that insufficient evidence supported the courts' reasonable efforts finding. Indeed, T.B. acknowledges "the record shows [she] was struggling with" even "straightforward tasks such as controlling her medications, finding temporary housing, getting her son, Tyrone, enrolled in early education programs, getting the children and herself medical care and testing for drug use." These circumstantial facts were highly relevant to the juvenile court's conclusion that T.B. could not at that time safely retain custody of the minors. (*Amanda H.*, *supra*, 166 Cal.App.4th at 1345.)

In support of her assertion, T.B. points to the fact that she was without an assigned social worker for a period of time because Taylor went on medical leave and Nguyen was on vacation the subsequent week. T.B. contends that "in the two months from the filing of the petition to the dispositional hearing, [she] had not had a functioning social worker to assist her for half of that time." As the juvenile court acknowledged, this gap was a difficulty for T.B. and the psychologist assigned to conduct T.B.'s evaluation was waiting on documentation from the Agency while the case was transitioned from Taylor to Nguyen.

The Agency, however, is not held to a standard of perfection. "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

The delay of the psychological evaluation for a period of a few weeks does not amount to a lack of reasonable efforts to prevent removal of the minors from T.B. There is no assertion that had T.B. been provided with the evaluation sooner, removal could have been avoided. Under the circumstances of this case, where the Agency had undertaken efforts to stabilize the family even before the minors were taken into protective custody and continued to provide services thereafter, there was sufficient evidence to support the juvenile court's finding that the Agency's efforts were reasonable.⁴ Although the juvenile court erred by not stating the basis for that finding, the error was harmless.

⁴ T.B. relies heavily on *In re Ashley F.* (2014) 225 Cal.App.4th 803 (*Ashley F.*) to support her assertion that there was insufficient evidence to show the Agency undertook reasonable efforts to prevent removal of the minors. In *Ashley F.*, the Court of Appeal concluded that the juvenile court had relied improperly solely on its finding that the mother had physically abused her daughter, and had not considered alternatives to removing the minors from the family home. (*Id.* at p. 811.) Importantly, the two minor children lived with both parents at the time of the incident that precipitated the dependency proceeding and by the time of the disposition hearing the mother had moved out of the family's home and was attending parenting classes to learn other ways of disciplining her daughters, and the father had completed parenting courses. (*Id.* at p. 810.) The child welfare agency had not considered any alternate means of protecting the two minors, such as unannounced visits by the agency and in-home counseling services for the father who continued to live in the family home. (*Ibid.*) The circumstances before the juvenile court in this case were far different from those in *Ashley F.* As discussed, at the time of the dispositional decision T.B. was homeless and no other family members or friends had the ability to care for the minors.

DISPOSITION

The orders are affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

PRAGER, J.*

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.