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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

R.S.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E054969

(Super.Ct.No. RIJ111306)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Gary Vincent,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Pauline Obata-Hirose for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel, Katherine A. Lind, Assistant County Counsel,
and Anna M. Deckert, Deputy County Counsel, for Real Party in Interest.

Petitioner R.S. (Mother) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order removing her three children from her custody and setting a Welfare and Institutions Code section 366.26 hearing.¹ Mother contends that the juvenile court erred in removing her children from her custody because it did not have clear and convincing evidence there was a substantial danger to the children if they were returned home. Mother requests that the children be returned to her care under family maintenance services. We reject this contention and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

This dependency proceeding began in January 2006, when Mother's youngest daughter, M.M., was taken to an emergency room where she showed signs of being physically abused. At the time, Mother and her two daughters, A.M. and M.M.,² were living with Mother's boyfriend, J.T.³ Subsequently, A.M. disclosed that she had been sexually abused by J.T. Mother did not believe A.M.'s allegations. At the insistence of

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

² At the time, A.M. was four years old and is now 12. M.M. was two and is now nine.

³ J.T. is the biological father of Mother's youngest child, E.T., who was born in February 2006. E.T. was detained immediately and added as a sibling to the original section 300 petition.

the Riverside County Department of Public Social Services (DPSS), Mother separated from J.T., and he moved out of the family home.

The allegations in the petition were found true and Mother was provided with reunification services from early 2006 through June 2008. In June 2008, the juvenile court gave Mother sole custody of the children and terminated jurisdiction.

The children were again detained in July 2009, when the daughter of a family friend reported that, during a party at Mother's home, J.T. had been present and had molested her. Once again, Mother refused to believe the allegation. However, she admitted that she had let J.T. move back in with her and her children. DPSS thereafter filed a petition, which was sustained, on behalf of the children.

Mother subsequently received reunification services from November 2009 through April 14, 2011. Mother's case plan required her to participate in general counseling, sexual abuse counseling, and parental education services to address the issues of general neglect and sexual abuse. The juvenile court also ordered Mother to undergo a psychological evaluation to determine appropriate services. Mother was diagnosed with "Dysthymic Disorder," and "Generalized Anxiety." Her doctor recommended that Mother participate in psychological counseling or family therapy to address her emotional and interpersonal issues. By September 2010, Mother's therapist reported that Mother had come to accept that her daughter had been victimized by sexual abuse. Due to Mother's realizations and ability to process her feelings, the therapist believed that Mother would be able to protect her children from further abuse.

Mother continued to make significant progress in her case plan and appeared to benefit from the services provided to her. Mother had stated that she would not allow J.T. to have contact with her or her children, and that she was ready to file a restraining order against him. Furthermore, the children had a bond with Mother, and Mother appeared to be positively interacting with them.

On April 14, 2011, the children were returned to Mother's care and custody under family maintenance status. Thereafter, Mother received family maintenance services from April 14 through October 18, 2011. During that time period, as explained below, Mother placed the children at risk.

On May 2, 2011, Mother informed the social worker that she was not having any contact with J.T. Yet, on July 25, 2011, as the social worker was conducting a visit with the children at Mother's home, J.T. arrived and requested to speak with the social worker. Mother told J.T. to leave because the social worker was there; however, because the social worker desired to speak with J.T., J.T. agreed to wait outside until the social worker concluded the visit. Mother subsequently indicated that J.T. had come to the home once before to see E.T., and that he had repeatedly tried to call her. The social worker encouraged Mother to obtain a restraining order against J.T. On September 1, 2011, A.M. disclosed that J.T. had come to the family home "five or seven times maybe more" to see E.T., and that he would ask her for a hug. On September 6, 2011, Mother's younger daughter and her son each reported that J.T. had been to their home "many times." J.T. was arrested in August 2011.

Additionally, in April 2011, the children disclosed that Mother had been allowing other men to sleep in the home. The girls reported that these men sometimes slept with them on the living room floor and, on one occasion, one of these male friends “spooned” A.M. A.M. stated that the male did not touch her, but she felt uncomfortable and moved next to her mother.

On April 18, 2011, and again on September 26, 2011, Mother executed a safety plan and agreed to abide by it.

On July 7 and August 24, 2011, DPSS received two anonymous referrals that the children were at risk of neglect and sexual abuse. The social worker believed that the children were withholding information and not disclosing the circumstances of their home life to DPSS because they feared being returned to foster care.

On October 18, 2011, at a family maintenance review hearing, the juvenile court detained the children from Mother’s care and custody, due to many incidents placing the children at risk. The children were formally detained on October 21, 2011, and Mother was provided with supervised visitation.

On October 20, 2011, a supplemental petition for a more restrictive placement pursuant to section 387 was filed on behalf of the children.

DPSS recommended that the allegations in the section 387 petition be found true; that the children remain in out-of-home care; that Mother’s services be terminated; and that a section 366.26 hearing be set for the children to be freed for adoption. The social worker noted that Mother continued to surround her children with inappropriate adult males, as well as allowing J.T. to have contact with her daughters in person and by

telephone, even though Mother knew such contact was not permitted. Mother denied the allegations, and claimed that A.M. was lying to get attention and was going through a defiant teenage phase. The social worker believed that Mother had failed to benefit from the numerous services provided to her in the past and continued to make poor choices. In addition, Mother admitted that she had not been participating in her counseling sessions as required by her case plan.

A hearing on the section 387 petition was held on November 15, 2011. At that time, in pertinent part, Mother testified that J.T. had contact with the children only two times; that she had asked him to leave when he came to her home; and that she had obtained a restraining order against him. She denied having contact with J.T. on a regular basis, maintaining a relationship with him, or setting up visits between J.T. and her son. She acknowledged that her girls may have had contact with J.T. over the telephone, but claimed that she did not allow such contact and that the contact occurred when they answered her cellular telephone without knowing who the call was from. Mother further maintained that she had abided by the terms of her safety plan, even though she had continued to allow her new boyfriend access to her home and contact with the children. Following argument, the juvenile court sustained the allegations of the section 387 petition and denied Mother further reunification services. The juvenile court noted, “it’s a clear-cut case of a lack of benefit of services,” and observed that Mother’s “demeanor and comportment would indicate that she basically still does not get it.” The juvenile court gave credence to the children’s prior reports that J.T. had contact with them on numerous occasions, rather than twice as stipulated by A.M.

II

DISCUSSION

Mother contends that the order removing the children from her care was not supported by substantial evidence and, under the circumstances, removal of the children was inappropriate. We disagree.

A. *Removal Was Proper*

Section 361, subdivision (c)(1), provides that before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that the child would be at a substantial risk of harm if returned home, and there are no reasonable means by which the child can be protected without removal.

The decision to remove a child pursuant to section 361 is reviewed on appeal under the substantial evidence test. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) In resolving this question, we view the evidence in the light most favorable to the juvenile court's determination, drawing all reasonable inferences in favor of the determination and affirm the order even if there is other evidence supporting a contrary conclusion. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Mother has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

The parent's level of denial is an appropriate factor to consider when determining the risk to the child if placed with that parent. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial is a factor often relevant to determining whether persons are likely to

modify their behavior in the future without court supervision].) The parent need not be dangerous, and the child need not have been actually harmed before removal is appropriate; the focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

Substantial evidence supports the juvenile court's decision to remove the children from Mother's custody. DPSS identified several risk factors for the children: (1) Mother had the opportunity to follow through with the safety plan to protect the children but failed to do so by allowing her current boyfriend access to her home and children; (2) Mother allowed J.T. to have multiple contacts with the children, despite being well aware that such contact was prohibited; (3) Mother's failure to understand her need to protect her children from adult males; and (4) Mother's minimization of allowing the children to have contact with J.T. and other men. By allowing J.T. and other men to have contact with the children, especially her daughters, and minimizing her actions, she failed to protect her children and created a substantial risk of future harm to the children. Mother did not demonstrate that she appreciated the severity of the sexual abuse findings and its potential risk to her daughters' well-being. Therefore, we agree that removal from Mother's custody is supported by substantial evidence, which indicated the children were at a substantial risk of harm if returned to her care and custody.

B. *There Were No Reasonable Alternatives to Removal Available*

Mother also contends that removal of the children was erroneous because reasonable means were available to protect the children at the time. We disagree.

A court may only remove a child from the physical custody of a parent if there are no reasonable alternatives, short of removal, available. (§ 361, subd. (c)(1).) The fact that a minor has been adjudicated a dependent child of the court constitutes prima facie evidence that the minor cannot be safely left in the custody of the parent with whom the minor resided at the time of the injury. (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) The court must consider, as a reasonable means to protect the minor, allowing a nonoffending parent to retain physical custody as long as that parent can demonstrate that he or she can protect the child from future harm. (*Ibid.*)

Mother claims that there is no further risk of harm to the children because J.T. is incarcerated, and she had substantially complied with all aspects of her case plan. However, it is unknown as to the length of time J.T. would be incarcerated, since his criminal proceedings had not been adjudicated. Moreover, the record shows Mother still did not have a clear understanding that she should protect her children from other men, even though she had substantially complied with her case plan. (See, e.g., *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806.) As the juvenile court noted, “. . . this is the third go round. . . . It has been pretty much a revolving door with mother and other people, mostly men. And it’s a clear-cut case of a lack of benefit of services. I don’t think if we had another 18 months there would be any real difference. [¶] The testimony from the mother, her demeanor and comportment would indicate that she basically still does not

get it.” The record is clear that Mother had repeatedly allowed J.T. and other men access to her home and children. Given Mother’s noncompliance with the safety plan restricting her boyfriend’s access to the home, her failure to benefit from services provided to her for many years, and the fact that the children were at a substantial risk of harm by remaining in Mother’s custody, we agree with the juvenile court’s decision that the only safe alternative for the children was their removal from Mother’s care and custody.

III

DISPOSITION

The petition is denied.

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RICHLI
J.

We concur:

McKINSTER
Acting P. J.

KING
J.