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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.R., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

E058918

(Super.Ct.No. RIJ1300297)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Alice C. Shotton, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, and Anna M. Marchand, Deputy County
Counsel, for Plaintiff and Respondent.

R.R. (Father) appeals from the dispositional order removing his eight-year-old daughter, K.R., from his custody.¹ On appeal, Father argues that there was insufficient evidence to support the removal order and that the juvenile court failed to ensure reasonable alternatives had been made prior to her removal. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Riverside County Department of Public Social Services (DPSS) on February 28, 2013, when a referral by a passerby was received alleging domestic violence between the parents. The passerby observed Father get out of a vehicle and argue with Mother. The passerby also saw Father use his chest to push Mother, causing her to almost fall, and throw his and Mother's cellular telephone. Police were dispatched to the location. Mother was very emotional and hysterical but refused to prosecute Father, stating "'it wouldn't matter; it's not like it's going to help.'" The child was already at school and did not witness the incident.

On March 11, 2013, DPSS received a second referral alleging general neglect of the child. It was reported that the child was upset and crying due to her parents' fighting. The child observed Father push Mother against a refrigerator. Mother subsequently left the home. The child reported that she did not feel safe in the home with Father. It was also reported that Father appeared to be volatile; that he had incidents at school where he

¹ B.B. (Mother) is not a party to this appeal.

had cursed at staff; and that the police had to be called to assist. The last incident occurred in January 2013.

The social worker interviewed the child on March 15, 2013. The child stated that she did not feel safe in her home ““because my father has been hitting my mother.”” The child also noted that Father continues to hit Mother even after Mother tells him to stop; that she has to tell Dad to stop hitting Mother; that the domestic violence occurs ““almost”” every day; and that Father yells at her, causing her to be afraid. The child described the fighting to include saying ““mean things to each other,”” pushing, hitting, and hurting each other. The child also noted that the parents smoked a pipe containing ““brown leafy stuff”” and ““something white”” in the trailer. The parents believed that the child could not see them, but the child noted that she did and that the smell caused her to feel sick. The parents told her that the substance in the pipe was medicine that made them feel better. The child also stated that when the parents smoked the brown leafy substance, they ““act[ed] funny,”” and when they smoked the white substance, they were ““mean.””

The parents confirmed the domestic abuse and substance abuse allegations. Mother admitted to last using drugs about a week ago and reported that she has an over 20-year addiction to methamphetamine. Father stated that he had used drugs about a month ago with Mother, but did not know if it was methamphetamine. Mother also noted that she has had three strokes; that her right arm was paralyzed; that she has been having a tough time; and that the February 28, 2013 incident occurred as she was walking to her

doctor's appointment because Father would not take her. The child was taken into protective custody and placed in her paternal grandparents' home.

On March 19, 2013, a petition was filed on behalf of the child pursuant to Welfare and Institutions Code² section 300, subdivision (b) (failure to protect).³ At the detention hearing, the child was formally removed from parental custody and maintained in her paternal grandparents' home. The parents were provided with services pending further proceedings.

On March 20, 2013, the parents each filed notifications of their addresses that showed that the parents were no longer residing together. Mother was in fear of Father. Father had attempted to locate Mother and had left multiple messages on her cellular telephone. He had also arrived two hours early at visits in hopes of seeing Mother. As a result, DPSS had moved Mother's visits to a different location.

Father claimed several times that there were discrepancies in the detention report and that the child was coerced to make the statements involving his drug use. He denied that the child had ever seen him do "anything." He had asked for the audio recording of the child's statements; and when the social worker informed him that DPSS does not record interviews with children, Father claimed the child's statements were all hearsay and asked that another social worker be assigned to the case. Father then asked that

² All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

³ The petition was later amended on April 11, 2013, deleting notations that Father had a history with child protective services. The record shows that only Mother had prior interventions with child protective services.

DPSS assist him in paying for his rent, food, gas, car insurance, and other expenses, since Mother had moved out of the home and he no longer had a source of income. The social worker informed Father that DPSS does not provide monetary assistance, but that a bus pass could be issued to assist Father to attend visits. Father refused the bus pass, noting he did not have the patience to wait for a bus. Father made several unannounced visits to the DPSS office, demanding to speak to the social worker and repeating his request for monetary assistance. Father admitted that Mother abused controlled substances, but denied personal drug use, and claimed that he had tried to stop Mother from abusing drugs. Father also stated that he felt unsafe in his home because he had seen the silhouette of a person holding a pistol pass by his window. He also stated that he knew of the upcoming court proceeding and that he would be having his confiscated shotgun returned to him that day.

The social worker provided Father with the telephone number of an outpatient substance abuse treatment program and a parenting program on March 29, 2013. The social worker explained that Father needed to make this contact to initiate counseling referrals. Father believed that the child's detention was a mistake and that he did not require any services. On April 5, 2013, Father reported that he did not call the substance abuse program because nothing was wrong with him, and that he "wanted his daughter back so he could make rent."⁴ He also informed the social worker that his shotgun had been returned to him. Five days later, Father informed the social worker again that he did

⁴ Father's source of income was through "Cal-Works" because of the child.

not contact the substance abuse program because the child would be returned to him at the next court hearing, and that he would make rent once he got the child back.

On April 9, 2013, the child confirmed that Father had pushed Mother and that Father lost his temper easily. She felt safe in her paternal grandparents' home and loved living with them. The paternal grandparents reported that the child was doing well in their home. The child refused to talk about Father's drug use because Father was "mad" at her and recanted her prior statement that she had observed Father using a pipe. Mother, however, confirmed that she and Father had abused drugs in the child's presence.

Despite believing that he did not need services and that his child was removed by mistake, Father said that he was willing to participate in all the services asked of him to get his child back. The social worker recommended that the allegations in the amended petition be found true; that the child remain in the care of her paternal grandparents; and that the parents be offered reunification services. The social worker also recommended that a restraining order be granted for Mother.⁵

As of May 15, 2013, Father was homeless, had not enrolled in any services, and had refused to communicate with DPSS. He continued to resist services and minimized any need for them. He was residing in his car and failed to properly care for his diabetes by not taking his insulin. In addition, Father's weekly supervised two-hour visits with the child had caused concerns. Father had brought his dog, and when told he could not bring the dog into the office, he left the dog in his car while he visited with the child; he had

⁵ A temporary restraining order was issued on April 19, 2013, and a permanent one on May 21, 2013.

cancelled a visit because he had a stomach ache; he had continued to talk about the case with the child despite being told on several occasions not to talk about the case with the child; he had talked about his medical needs and business plan with the child; and he had used the child as a messenger to send letters to Mother.

A contested jurisdictional/dispositional hearing was held on May 21, 2013.

Mother and the social worker testified. In pertinent part, Mother testified that the child saw both her and Father smoking out of a pipe on more than one occasion. Father did not testify, but made a statement to the court indicating the reports and testimonies were inaccurate. The child's attorney introduced the child's stipulated testimony. The stipulated testimony showed that the child did not feel scared to return home and only felt scared when the parents fought; that the child did not fear Father; that the child had seen Father push Mother into the refrigerator; and that the child had seen both Mother and Father using pipes.

Father's counsel argued the allegation that Father abused controlled substances in the presence of the child be found not true, noting the social worker's testimony was not compelling. Counsel also argued that the allegation stems from Mother's substance abuse and prior child protective services history; that the investigation was flawed; and that Father was very frustrated with the dependency proceeding. Counsel further asserted that the child loved both her parents and was not afraid to be in the home.

The juvenile court found the allegations in the amended petition true and declared the child a dependent of the court. The court found that DPSS had made reasonable efforts to avoid removing the child from parental custody and removed the child from

parental custody. The parents were offered reunification services and ordered to participate. This appeal followed.

II

DISCUSSION

Father argues that the juvenile court erred in removing the child from his custody because there was insufficient evidence to support removal and the court failed to ensure DPSS had pursued reasonable alternatives to removal. DPSS responds that Father forfeited these issues; and in the alternative, DPSS argues that substantial evidence supports the juvenile court's dispositional order.

Initially, we note that Father has forfeited his claims. Father did not object to the juvenile court's dispositional findings or argue that DPSS failed to pursue reasonable alternatives to removal. The forfeiture doctrine (previously described as a waiver) has been repeatedly and consistently applied in dependency cases. (E.g., *In re G.M.* (2010) 181 Cal.App.4th 552, 563-564 [mother forfeited argument regarding legal impediment to adoption]; *In re A.E.* (2008) 168 Cal.App.4th 1, 5 [father failed to object to order directing him to participate in counseling session]; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1207-1210 [father forfeited right to contest denial of reunification services]; *In re Wilford J.* (2005) 131 Cal.App.4th 742, 754 [father forfeited right to challenge jurisdictional order]; *In re S.O.* (2002) 103 Cal.App.4th 453, 459-460 [failure to raise issue of sufficiency of dependency petition]; *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886 [mother waived objection to Department of Children and Family Services report]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 328 [mother waived insufficiency of

dependency petition allegations], superseded by statute on another ground as stated in *In re Christopher C.* (2010) 182 Cal.App.4th 73, 82; *In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1484, fn. 5 [objection to removal order waived by failure to challenge below]; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1831 [by only seeking placement with herself in superior court, mother waived right on appeal to contend child should be placed with grandmother]; *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038 [no objection to inadequacy of social study]; see also *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [dependency matters are not exempt from forfeiture rule], superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 961-962.)

Even if Father had not forfeited his issues on appeal, we find Father's claims unmeritorious. To remove children from a parent's custody, the juvenile court must find by clear and convincing evidence that (1) there is a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if the child is returned home, and (2) there is no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361., subd. (c)(1); *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) "The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations]." (*Id.* at p. 917.) We review a juvenile court's dispositional findings for substantial evidence even where the burden of proof in the lower court is by clear and convincing evidence. (*Id.* at p. 916; see also *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880 ["[C]lear and convincing'

standard . . . is for the edification and guidance of the trial court and not a standard for appellate review.”].)

In the present case, there was substantial evidence to support the juvenile court’s finding that removal of the child from Father’s custody was the only reasonable means to protect the child from harm. The juvenile court found that the child should be removed based on the parents’ drug use and domestic violence. By the time of the contested jurisdictional/dispositional hearing, about two months after the child was formally detained, Father still had not enrolled in any services, believing he did not need any services. He also refused to acknowledge his drug use, claiming the reports and testimonies were inaccurate and the investigation flawed. In fact, Father had made no progress toward alleviating or mitigating the causes necessitating intervention.

Citing to cases wherein the domestic abuse involved a use of a weapon or direct harm to the child or physical injury to the mother (i.e., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 160-161, 163 [use of a knife to assault the mother]; *In re Heather A.* (1996) 52 Cal.App.4th 183, 186 [use of a gun by the father; child injured during domestic violence]), Father argues that he had adequately provided for the child for the past seven years and that the child was “never *directly harmed* by his actions.” These factors, however, are not dispositive. 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.” [Citation.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.]’ [Citation.]” (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.) There was evidence the child was at a substantial risk of

harm due to domestic violence and parental drug use. While Mother was forthcoming about her drug use and immediately sought treatment, Father denied he had engaged in any conduct justifying DPSS's intervention. Father had continued to deny personal drug use and had refused to comply with court orders aimed at addressing the underlying causes of the dependency and reunification of the family.

Father maintains that he and Mother are now separated and that the child could safely be returned to him. Contrary to Father's argument, DPSS presented clear and convincing evidence that the child could not safely return to Father's custody. As the evidence reveals, Father still had not completely separated from Mother or had any intentions of leaving her alone. Father had repeatedly attempted to make contact with Mother even after a temporary restraining order was granted. He had left Mother 29 voicemail messages on her cellular telephone, written her letters, and requested the child and the parental grandfather to help him make contact with Mother. In fact, Father remained separated from Mother because Mother was avoiding all contact with Father. It appears Father had no intention to remain separated from Mother in order to provide a safe environment for the child.

Moreover, even if Father can show that he had no intention to reunite with Mother, the child could still not safely return to Father's custody based on his substance abuse. Father had made no progress in treating his substance abuse; instead denying he had such a problem and blaming the dependency proceeding on Mother's conduct. He also refused to enroll in services despite being provided with referrals. Section 300.2 provides that a

home free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.

Father also claims the removal order was not necessary because DPSS failed to research reasonable alternatives and the court did not consider less drastic alternatives. (See, e.g., *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [reversed order removing child from home based on mother's inability to keep the home clean when a reasonable alternative existed such as requiring the removal of all animals from the home or the use of a homemaker service]; *In re Basilio T., supra*, 4 Cal.App.4th 155, 171–172 [reversed dispositional order when court failed to consider less drastic measures and no evidence that violent confrontations between the parents actually endangered the children], superseded by statute on another issue.) He asserts that the juvenile court could have permitted him to move in with his parents.

As to Father's argument that there is no evidence to show DPSS researched any alternatives to removal, as previously noted, we find the claim to be forfeited. (*In re A.E., supra*, 168 Cal.App.4th 1, 5; *In re P.A., supra*, 155 Cal.App.4th 1197, 1207-1210; *In re Urayna L., supra*, 75 Cal.App.4th 883, 886; *In re Cynthia C., supra*, 58 Cal.App.4th 1479, 1484, fn. 5.) Moreover, there is no evidence to suggest that DPSS did not research alternatives to removal; rather, based on this record, it is likely that DPSS found no alternative *but* to remove the child from Father's care and custody.

Further, although the juvenile court did not expressly state there were no reasonable alternatives, it did find there had been reasonable efforts to eliminate the need for removal. When the court does not state the factual basis for an order, we may infer

the basis from the evidence. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219; see also *In re Basilio T.*, *supra*, 4 Cal.App.4th at p. 171 [apply harmless error].) In the present case, we infer that the court considered less drastic alternatives to removal and the record supports the finding that removal was the only reasonable means of protecting the child from Father's care and custody. Father was aware of Mother's drug use and did nothing to protect the child. Father has his own substance abuse problem and a history of aggression and domestic violence. Father minimized his aggression issues and domestic violence and denied he had a substance abuse problem. He thus lacked insight into the problems that caused the child's removal. It was reasonable for the juvenile court to conclude that removal was necessary until Father had sufficient time to address these problems and gain insight.

Relying on *In re Henry V.* (2004) 119 Cal.App.4th 522, Father also argues that it is "highly possible" the juvenile court "confused" the dispositional standard of clear and convincing evidence with that of the lower jurisdictional standard since both hearings were held at the same time. Father's reliance on *In re Henry V.* is misplaced. The record shows the court was well aware it needed to make its dispositional findings by clear and convincing evidence and set out the evidence that showed the child would be at risk if returned to Father.

We conclude substantial evidence supports the juvenile court's dispositional findings and order removing the child from Father's home.

III
DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

McKINSTER
J.