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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

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

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

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

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

F062754

(Super. Ct. No. 516090)

**OPINION**

F062925

(Super. Ct. No. 516090)

**THE COURT\***

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Jessica M. Ronco, under appointment by the Court of Appeal, for Defendant and Appellant D.B.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant J.L.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County Counsel for Plaintiff and Respondent

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Appellants, J.L. (father) and D.B. (mother), are the parents of 10-month-old K.L., the subject of this appeal. They contend the juvenile court erred in removing K.L. from their custody at a contested dispositional hearing in June 2011. We affirm.

**PROCEDURAL AND FACTUAL SUMMARY**

We recently affirmed the juvenile court's dispositional order removing K.L.'s brother, Angel, from mother's custody (F062585). The circumstances requiring Angel's removal are germane to this case. Consequently, we include in our summary those facts from Angel's case necessary to give context to K.L.'s removal.

**Angel's Removal**

In February 2011, Modesto police officers responded to a report of domestic violence between mother and father. Father was mother's live-in boyfriend and is father of her then 11-month-old son, Angel. Mother told Officer Brandvold that father grabbed her around the neck while she was holding Angel and dragged her through their home, ultimately pulling her through their bedroom window by the hair causing redness and

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\* Before Levy, Acting P.J., Cornell, J. and Kane, J.

abrasions on her elbows. At the time, mother was approximately eight months pregnant with K.L.

Mother also told Officer Brandvold that the incident occurred after she told father she was leaving him because he had been physically abusing her. She said that Angel was pressed against her chest while she was being dragged and, at one point, he was struggling to breath. When she tried to stand, she almost dropped him. Mother also said that, during the altercation, father said to her “I’m going to kill you and your son.” She did not believe he would harm Angel but thought he may try to harm or kill her. Officer Brandvold documented mother’s elbow injuries and offered her medical treatment, which she refused. She also refused his offer to take her and Angel to a shelter.

In March 2011, a social worker from the Stanislaus County Community Services Agency (agency) followed up on the February incident by visiting mother and father at their residence. Mother admitted that a physical altercation occurred but minimized and took responsibility for it. She told the social worker that she and father had been drinking alcohol, which may have contributed to the domestic violence. Father denied that domestic violence occurred but agreed to leave the home even though he had nowhere to go.

The social worker had further contact with mother over the next several days but mother was aggressive and angry. She was also uncooperative and refused to drug test. Consequently, the social worker concluded mother would not voluntarily receive services and returned with law enforcement to forcefully remove Angel from mother’s custody. During the removal, mother lunged at the social worker and had to be physically restrained.

In mid-March 2011, the juvenile court ordered Angel detained and social worker Nichole Cunningham gave mother and father referrals for parenting classes, domestic violence and anger management counseling, and for drug and alcohol assessments. She also asked mother multiple times when the baby was due but mother refused to say.

Consequently, Ms. Cunningham contacted all the hospitals in the county requesting notification when mother delivered.

In the weeks following Angel's detention hearing, mother and father completed their initial assessments and both tested negative for drugs. During her assessment, mother disclosed that she took methamphetamine the day after Angel was removed by the social worker. The assessor believed mother needed substance abuse treatment, however, recommended she participate on a walk-in basis until the baby was born. Father was referred to day treatment but said he had jury duty and could not attend. He told Ms. Cunningham that he previously completed drug treatment. Ms. Cunningham verified that he completed inpatient drug treatment at Stanislaus Recovery Center (SRC) in 2009 and outpatient treatment in 2010. However, during his outpatient drug treatment, it was recommended he return to inpatient treatment.

In April 2011, the juvenile court convened the jurisdictional hearing in Angel's case and set it for a contested hearing on May 2, 2011. Less than a week later, mother gave birth to K.L. and, after a short hospital stay, took K.L. home.

#### **K.L.'s Removal**

In April 2011, an emergency response social worker, with police officers, removed then five-day-old K.L. from mother and father's custody and the agency filed a dependency petition alleging mother and father's domestic violence, substance abuse and failure to participate in services placed K.L. at a substantial risk of harm.

On April 22, 2011, the juvenile court conducted a contested detention hearing in K.L.'s case. Mother testified and denied telling the police she was leaving father because he physically abused her. She also denied that he dragged her by the neck and that she was holding Angel during the argument. She said Angel was on a recliner and her neighbor, Monica, took Angel from the house during the argument.

Mother further testified that she completed the domestic violence assessment and was on a waiting list although she did not believe she needed domestic violence

counseling. She attended two group sessions before K.L. was born and none afterward but was scheduled to resume her attendance the following week. Mother further testified that she would separate from father if he had somewhere to go but also said that K.L. needed to be with him also.

Father testified and denied that he and mother physically fought. He said he was convicted for possession of a controlled substance in 2008 and referred to SRC but said he had not used drugs in two years. He acknowledged that SRC records reflected that he tested positive for methamphetamine in the fall of 2010 but refuted the results. He also admitted refusing to drug test for Ms. Cunningham in March 2011 but said he had just used the bathroom and could not provide a urine sample.

The juvenile court ordered K.L. detained and set the jurisdictional hearing. In ordering K.L. detained, the juvenile court stated it did not find mother and father credible and believed that they engaged in domestic violence. In addition, the juvenile court did not believe mother would comply with its orders not to have contact with father or not to allow father to have contact with K.L. if K.L. were returned to her custody.

In May 2011, the juvenile court conducted the contested jurisdictional and dispositional hearing as to Angel. Mother and father testified and refuted the police officer's account of a physical altercation between them in February 2011. They claimed it was merely a verbal argument and mother denied having any scrapes on her elbows. Their neighbor, "Monica,"<sup>1</sup> testified that mother and father argued all the time but she had never seen them physically fight. She saw bruises on mother's arm and asked her what caused them. Mother first said that she fell but later admitted that father hit her on the arm. At the conclusion of the contested hearing, the juvenile court ordered Angel

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<sup>1</sup> Monica's true name is Montie Rojas.

removed from mother and father's custody and ordered reunification services for them. Mother appealed unsuccessfully from the juvenile court's removal order.<sup>2</sup>

On May 11, 2011, Ms. Cunningham was informed that father was referred for inpatient treatment but refused the service. That same day, he tested positive for various drugs, including methamphetamine, but refuted the results. Ms. Cunningham telephoned him and referred him for further drug testing but he told her he did not want to talk to her and hung up.

On May 16, 2011, the juvenile court convened the jurisdictional hearing as to K.L. and set it as a contested hearing. The placement specialist advised the juvenile court that Angel and K.L. were being placed with father's sister that same day.

On June 10, 2011, the juvenile court convened the contested jurisdictional hearing as to K.L. and granted counsel's requests to join Angel and K.L.'s cases and take judicial notice of Angel's case. The juvenile court also accepted an offer of proof that mother was participating in her services. Father was the only witness called. He denied trying to harm mother while she was pregnant and disclaimed positive drug test results in the months of May through September of 2010 and May 11, 2011. He said he was participating in counseling for anger management, domestic violence and parenting. He did not believe he needed drug treatment but would participate in it to get his children back. He said he could not afford inpatient treatment or the time from work to complete it and preferred to participate in outpatient drug treatment.

At the conclusion of the hearing, the juvenile court ordered K.L. removed from mother and father's custody and ordered reunification services. In so doing, the court commented on their continuing denial that domestic violence occurred and father's denial of his drug use. The court expressed its concern that the children could be innocent victims of mother and father's uncontrolled anger. While the court was explaining its

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<sup>2</sup> We affirmed the juvenile court's order removing Angel from mother's custody in F062585 filed on February 14, 2012.

ruling, father left the courtroom, telling the court “You are f\*\*\*ing stupid.” The court set a combined six-month review hearing as to Angel and K.L. for December 2011. This appeal ensued.

## DISCUSSION

### Removal Order Pursuant to Section 361, subdivision (c)

Appellants contend there was insufficient evidence to support the juvenile court’s dispositional order removing K.L. from their custody. Section 361, subdivision (c)<sup>3</sup> (hereafter “the statute”) governs the juvenile court’s decision with respect to the removal of a child. In order to remove a child under the statute, the juvenile court must find by clear and convincing evidence that the child would be placed at risk of substantial danger if returned to parental custody and that there are no reasonable means to protect the child without removing the child from the parent.

On a challenge to the juvenile court’s findings resulting in the removal of a child, we apply the substantial evidence test, bearing in mind the heightened “clear and convincing” standard of proof required by the statute. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528-529.) With due regard for the higher standard of proof, we nevertheless view the record in the light most favorable to the challenged order, drawing all reasonable inferences in support of that order. (*In re Javier G.* (2006) 137

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<sup>3</sup> Section 361, subdivision (c) provides in relevant part:

“A dependent child may not be taken from the physical custody of his or her parents ... with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances ...: [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ... physical custody.”

Cal.App.4th 453, 462-463.) In light of the evidence, as summarized above, we conclude substantial evidence supports the juvenile court's removal order.

***“Risk of Substantial Danger”***

Appellants contend that K.L. would not have been at risk if returned to their custody because they did not harm her. To that end, they cite *In re Basilio T.* (1992) 4 Cal.App.4th 155 (superseded on another ground as stated in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1239-1249) (*Basilio T.*) in which six- and four-year-old children were removed from parental custody because the parents exposed them to violent confrontations. (*Basilio T.*, *supra*, 4 Cal.App.4th at pp. 160-163.) The appellate court reversed the dispositional order removing the children, in part because the adults were fighting with each other and there was no evidence that the children were physically harmed during the incidents. (*Id* at p. 171.)

We find *Basilio T.* distinguishable. First, appellants’ domestic violence *did* harm their children. Angel was crushed and nearly dropped while father was assaulting mother. Further, appellants’ children are infants and entirely unable to protect themselves from their parents’ violence. Finally, we endorse the view that courts need not wait for a child to be actually harmed before finding a substantial risk of physical harm. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)

Appellants further contend that K.L. would not have been at risk if returned home because the February 2011 incident was an isolated event. In support of their contentions, they point to the absence of any child welfare history prior to February 2011 and of any domestic violence incidents subsequently. They further contend that their drug use did not place K.L. at risk and that they were participating in services.

The appellate record supports appellants’ claims that they had no prior child welfare history or subsequent reported incidents of domestic violence. Further, mother correctly states that she was participating in services. However, that evidence does not address the underlying risk of danger in this case.

The risk of danger to K.L. lies in appellants' denial that they engaged in domestic violence, father's drug abuse and their unwillingness to submit to the juvenile court's authority. They refused to admit that father physically assaulted mother despite mother's statements to the police and Monica. Further, father refused to admit that he had a drug abuse problem despite objective evidence to the contrary. Under the circumstances, the juvenile court properly determined that appellants' volatile and drug-fueled interactions substantially endangered K.L. Further, the juvenile court had no reason to believe that either parent would comply with its orders. Mother made it clear that she did not intend to refuse father contact with K.L. and father demonstrated his complete disregard for the court's authority by his offensive statement.

We conclude, given the ongoing and escalating nature of appellants' domestic violence, their denial that it occurred, their substance abuse and the fact that they remained an intact couple, the juvenile court properly found that K.L. would be at risk of substantial danger if returned to their custody.

***“No Reasonable Means to Protect the Child”***

Appellants contend that a reasonable means of protecting K.L., without removing her, was to require father to vacate the home while they participated in services. We disagree.

The appellate record reflects that the juvenile court wanted to return K.L. to mother. (“I would like to order [K.L.] released into the custody of the mother ....”) However, the juvenile court believed that appellants engaged in significant domestic violence and that mother would not comply with its order to keep K.L. away from father. Under those circumstances, returning K.L. to mother's custody was not a reasonable means to protect K.L.

In sum, we find no error in the juvenile court's dispositional order removing K.L. from appellants' custody.

**DISPOSITION**

The judgment is affirmed.