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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JUAN S., et al., Persons Coming Under the  
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

PAULA C.,

Defendant and Appellant.

F063368

(Super. Ct. Nos. 507933 & 507934)

**OPINION**

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

Gino de Solenni, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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

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Paula C. (mother) appeals juvenile court orders continuing dependency  
jurisdiction over her sons, Juan and Pablo S. She contends at the time of the review

hearing the juvenile court lacked substantial evidence to continue jurisdiction. We determine that substantial evidence supports the juvenile court's decision to maintain jurisdiction under Welfare and Institutions Code section 364,<sup>1</sup> and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Dependency jurisdiction was taken over then four-year-old Juan, two-year-old Pablo, and their six-year-old sister Silvia in February 2005 due to domestic violence between mother and the children's father, who hit mother in the face, father's physical abuse of Juan, and substance abuse by mother and father. Father did not participate in reunification services and his services were terminated in August 2005. In October 2005, the children were returned to mother's custody with family maintenance services.

The children were removed from mother in December 2007 due to neglect and mother's failure to protect the children from abuse by her boyfriend. In August 2008, the children were placed with foster parents Mr. and Mrs. O. In December 2008, mother had a baby, the children's half-sibling, who tested positive for methamphetamine at birth. Dependency jurisdiction was taken over the baby. Parental rights were terminated in October 2009 and the baby was adopted in February 2010.

In 2009, Silvia, who had serious behavioral issues, claimed Mrs. O. pulled her arms and scratched her. Silvia was placed with her maternal grandmother, who became her legal guardian. Meanwhile, the O.'s were appointed the boys' legal guardians in November 2009, and the boys continued as dependents.

In 2009, mother married Martin C. In May 2010, she gave birth to a baby girl. The Agency investigated her situation and found no current risk to the baby, although voluntary family maintenance services were provided.

In the summer of 2010, the boys told a social worker they wanted to leave the O.'s home because Mrs. O. was physically abusing them. Although Mrs. O. denied any

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<sup>1</sup> All undesignated statutory references are to the Welfare and Institutions Code.

physical abuse, the O.'s decided to voluntarily relinquish their role as the boys' guardians. A section 387 petition was filed to change the boys' placement from guardianship to foster care. The juvenile court subsequently found the allegations of the petition true, set aside the guardianship, ordered the boys removed from mother's custody and gave her reunification services.

In March 2011, the juvenile court granted mother's section 388 petition to start trial visits with the boys. In April 2011, the juvenile court ordered the boys returned to mother's custody and mother be provided family maintenance services. Mother was due to give birth to another baby that month.

In June 2011, the Agency received an emergency referral involving 13-year-old Silvia, who had reported to a therapist that she did not want to return home and would rather kill herself than do so because Martin had been touching her inappropriately. While investigating this referral, the Agency learned that Martin had been arrested on November 7, 2010, and subsequently convicted of infliction of corporal injury on a spouse in violation of Penal Code section 273.5, subdivision (a). Martin was placed on three years' probation and ordered to complete a 52-week domestic violence class. By July 2011, he had completed close to half of the class.

According to the police report of the incident, Martin and mother began arguing in front of Silvia after he accused mother of wanting to start a relationship with the boys' father. Mother attempted to call the maternal grandmother on a cell phone to ask her to come over and calm Martin down. When Martin became more irate and aggressive, mother threw the cell phone to Silvia and told her to go to her grandmother's house. Silvia left. Martin walked toward mother and pushed her to the couch. When mother tried to get up, Martin grabbed her ponytail and yanked her head as she pushed him away. Mother told him to leave her alone because she was pregnant. Martin put his hands around mother's neck and began to choke her. He let go a couple of seconds later, when the grandmother and mother's brothers began knocking on the door.

According to the boys' maternal grandmother, "this" was an on-going issue between mother and Martin. When police asked mother if there were other incidents of spousal abuse, mother responded, "I'm just tired of it. I'm trying to get my boys back and be the best mom for my family. I'm just tired of it." Mother stated the children had not been the victims of physical or emotional abuse. Mother admitted to the police that she had gone to a hospital once in the past for treatment of injuries caused by spousal abuse.

The boys continued to live with mother and Martin, as well as their two younger half-siblings. Silvia no longer lived in the home. The boys each began attending weekly counseling sessions after they were assessed for mental health counseling services in September 2010. Mother had completed a parenting class. The provider of the class reported that in individual sessions, mother demonstrated a good understanding of the information and skills presented in the program, participated regularly, and shared experiences in regards to implementing the information presented with her family, while in the parent/child labs, she demonstrated use of the skills presented in the program and showed appropriate amounts of caring and physical contact with the boys. Mother and Martin both admitted to the social worker they needed domestic violence counseling, as well as family and couples counseling, to address the current situation in the home.

In a report prepared for the review hearing, the Agency asserted continued court supervision was required due to the domestic violence issues in the home. The social worker, court and attorneys were unaware of Martin's arrest and conviction until around June 27, 2011, when Silvia reported that Martin had sexually abused her. Mother and Martin concealed the information from the social workers and other professionals involved with the case. Whenever the social worker personally contacted mother and Martin in their home, they told her everything was fine and they were doing fine; the social worker did not see any indication of problems, issues or concerns. In reality, however, verbal and physical conflict was occurring between mother and Martin, as well

as with Silvia, who was living in the home, which finally was exposed when Silvia mentioned to other professionals that Martin had been verbally and physically abusive toward mother, and sexually inappropriate towards her. Silvia also reported an incident in which Martin punished the boys by locking them in their bedroom and placing some type of lock or chain on the door to secure them in the room for a given period of time. The social worker viewed this as inappropriate discipline.

Based on this information, the social worker believed that mother and Martin were not ready to provide appropriate care for any of the children without court and Agency monitoring and intervention. The social worker recommended Martin receive services and be added to the case plan to address domestic violence issues and obtain counseling. The social worker further recommended that mother be given additional services to assist her in dealing with domestic violence issues, including counseling. While the boys told the social worker they liked living with mother and Martin, the social worker was concerned that something was occurring within the family, and court and Agency involvement was still required to ensure the children were in a safe environment.

At the August 23, 2011 contested family maintenance review hearing, the juvenile court considered the Agency's status review report. The court stated it was very disappointed and concerned about the issues between mother and Martin, especially since the information was not divulged to the Agency, explaining that it took domestic violence extremely seriously. The court declined to appoint an attorney for Martin, as it had no authority to do so, and deleted any references to him in the case plan.

Mother's attorney objected to the continuance of dependency jurisdiction. She argued jurisdiction should be terminated as the boys had not witnessed any inappropriate conduct, were not afraid to be in the home, wanted to be with mother and their home life had not been disrupted. She further argued there was no evidence the boys were at risk, and requested the court dismiss the case and award sole custody to mother. Father's

attorney objected to dismissal of dependency, arguing the boys were at risk due to the domestic violence in the home. County Counsel agreed.

The court continued dependency jurisdiction, stating it was “very concerned about serious domestic violence” that occurred in the home within the past year, that included Martin choking mother, and mother’s failure to report the incident in an apparent attempt to hide it. The court ordered mother to complete a county-certified domestic violence prevention plan, participate with the boys in family counseling, enroll in individual counseling, enroll in couples counseling if she intended to remain a couple with Martin, complete a class for domestic violence as a victim, and submit to random drug testing. The boys were to continue receiving individual counseling.

### **DISCUSSION**

Section 364 provides for review hearings at least every six months when a dependent child is not removed from the physical custody of the parent. (§ 364, subd. (a).) Section 364 hearings focus on whether continued supervision by the juvenile court is necessary. (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 36.) “The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of the evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.” (§ 364, subd. (c).) “By its very terms section 364 limits the court’s inquiry to whether the conditions for continuing supervision exist.” (*In re Elaine E.* (1990) 221 Cal.App.3d 809, 814.) If the court continues dependency jurisdiction, it must set a further review hearing within six months. (§ 364, subd. (d); Cal. Rules of Court, rule 5.706(e)(2).)<sup>2</sup> This review process is repeated until the court terminates jurisdiction. (§ 364, subd. (d); rule 5.706(a).)

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<sup>2</sup> Rule references are to the California Rules of Court.

When reviewing an order under section 364, “we look to the entire record for substantial evidence to support the findings of the juvenile court.” (*In re N.S.* (2002) 97 Cal.App.4th 167, 172.) We do not consider the credibility of witnesses, reweigh the evidence or attempt to resolve conflicts in the evidence. Rather, we draw all reasonable inferences in support of the findings and view the record favorably to the juvenile court’s order. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 (*Casey D.*)). The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Mother contends the juvenile court erred by continuing jurisdiction. She maintains that she was complying with the family maintenance plan, had been testing clean, and was raising her younger children successfully without juvenile court intervention. While she admits she failed to disclose the domestic violence incident, she contends there was no evidence to establish that, at the time of the review hearing, there was domestic violence in the home. She further asserts that Martin acknowledged needing help and was getting it by attending domestic violence classes, and the boys did not disclose any incidents of violence or express concerns. She questions the need for continued court supervision over the boys when such supervision was not necessary for her younger children.

While mother was complying with her case plan and dependency jurisdiction had not been taken over the younger children, the evidence also established that the conditions which originally justified the assertion of jurisdiction over the boys remained. Jurisdiction initially was assumed in 2005, in part, because mother failed to protect the boys from domestic violence by the boys’ father. The boys were removed from mother again in 2007 due to her failure to protect them from an abusive boyfriend. Thereafter, despite prior court intervention, mother married a man who physically abused her. The November 2010 domestic violence incident was not a one-time occurrence, as mother essentially admitted to police there had been other incidents and she had been taken to the

hospital for treatment of injuries incurred due to spousal abuse. Two months before the review hearing, Silvia told professionals that Martin had been touching her inappropriately, and also disclosed that Martin had disciplined the boys by locking them in their bedroom by placing a lock or chain on the door to keep them there. The social worker further reported that Silvia mentioned to professionals that Martin had been physically abusive toward mother.

From this evidence, the juvenile court reasonably could conclude that there was a threat of not only domestic violence in the home, but also inappropriate discipline of the boys that would place them in jeopardy absent continued supervision. Moreover, despite the progress mother had made during her parenting class, the juvenile court could not trust her to protect the boys, as she hid the domestic violence incident and Martin's subsequent conviction from the Agency and the juvenile court. Mother and Martin's recognition that they needed help evidenced the continued threat of violence, and while Martin was participating in a domestic violence class, he had not yet completed it.

Mother points out that dependency jurisdiction was not taken over her younger children. While that is true, it was unnecessary to take jurisdiction over the younger children as mother was receiving voluntary maintenance services with respect to the baby girl born in May 2010, and once the boys were returned to mother's custody in March 2011, Agency supervision of the boys necessarily included supervision of the conditions in which the younger children lived. Moreover, the boys had been subjected to a long pattern of domestic violence and physical abuse, placing them at greater risk should that pattern continue. That the younger children had not been made dependents does not necessarily mean the boys were not at risk from continued exposure to domestic violence and abuse.

Mother asserts that her prior history with the Agency should not be considered in light of all she had accomplished. She points to the social worker's statement in a report prepared for a review hearing held in March 2011, when the boys were returned to her

custody, that she had proved to the social worker her past dependency case history was not a reflection on how well she had progressed in her current case plan goals, as she had been able to care for her baby without court or Agency intervention, thereby showing she would not be over-loaded if the boys were returned home. When the social worker wrote this, however, he was unaware of the November 2010 domestic violence incident or Martin's subsequent conviction. As the social worker stated after learning of those events, he was "just amazed how [mother] and [Martin] managed to conceal the arrest/conviction and other issues in the home without action taking place earlier in the court process[,]" and now that the information had been exposed, he only could recommend additional services and closer monitoring to address the issues in the home.

As noted above, section 364 requires termination of jurisdiction only when there is no evidence that the conditions that caused the court to assume jurisdiction over a child still exist or would exist if the court terminated its jurisdiction. (*In re N.S.*, *supra*, 97 Cal.App.4th at p. 172.) Inasmuch as substantial evidence supports the juvenile court's determination that concerns necessitating jurisdiction continued to exist (*ibid.*; *Casey D.*, *supra*, 70 Cal.App.4th at p. 53), we reject mother's arguments.

**DISPOSITION**

The juvenile court's August 23, 2011 orders are affirmed.

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Gomes, J.

WE CONCUR:

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Levy, Acting P.J.

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Detjen, J.