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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re NATHANAEL W., a Person
Coming Under the Juvenile Court Law.

STANISLAUS COUNTY
COMMUNITY SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARGO R.,

Defendant and Appellant.

F063683

(Super. Ct. No. 512572)

OPINION

THE COURT*

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

Liana Serobian, 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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* Before Levy, Acting P.J., Gomes, J., and Franson, J.

Margo M. appeals from the juvenile court's order removing her 15-year-old son, Nathanael, from her custody. (Welf. & Inst. Code, § 361.)¹ We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Nathanael first came to the attention of the juvenile court in May 2011 when the Stanislaus County District Attorney filed a wardship petition (§ 602) alleging that then 14-year-old Nathanael committed assault and battery against Margo. Margo claimed that Nathanael was mad at her because she refused to pay for a school field trip. She said Nathanael attempted to hit her with a crutch. Margo insisted upon Nathanael's arrest and pursued prosecution for the alleged offense. However, Margo changed her mind and recanted her version of the events. The juvenile court dismissed the petition at the request of the district attorney.

In July 2011, the Stanislaus County Community Services Agency (agency) received information from a mandated reporter associated with Hutton House, a temporary placement for runaway or homeless children, that Nathanael stayed there for eight days during that month. The staff at Hutton House were concerned that Margo was paranoid schizophrenic and that Nathanael was suffering emotional abuse in her care.

On July 22, 2011, Margo had Nathanael involuntarily admitted to a psychiatric facility for being a danger to others. He was diagnosed with bipolar disorder, though it is not clear from the appellate record on what basis the diagnosis was made. He was not treated with medication during the course of his stay or prescribed any upon discharge.

In late July 2011, a social worker from the agency went to the family home to check on Nathanael. There were two Aspiranet mental health clinicians there assessing the family for in-home services following Nathanael's psychiatric admission. The Aspiranet counselors stated that Margo exhibited paranoid thoughts. They thought she was mentally ill and that Nathanael's problems stemmed from his inability to cope with

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

her. Margo quickly discontinued Aspiranet's services, claiming that one of the male counselors parked outside her home for six hours and watched her.

In August 2011, the social worker went to Margo's home and learned that Nathanael had been taken to juvenile hall the night before. Margo said that she and Nathanael fought over his use of a cell phone and that he went after her with a pen which ended up two inches from her eye. However, Margo also said that he went after her with scissors and that he sprayed her in the eyes with an insect repellent. When the police responded, they told Nathanael that Margo wanted him arrested. Nathanael pleaded with Margo to let him stay at the Hutton House. She said she wanted him arrested and booked into juvenile hall. Margo told the social worker that she could not control Nathanael and wanted him to go to foster care.

The district attorney filed a second wardship petition based on Margo's allegations that Nathanael threatened her with a pen and scissors. The juvenile court entered temporary detention orders and ordered an assessment pursuant to section 241.1.

The Stanislaus County Juvenile Probation Department and the agency prepared a joint assessment and each concluded that Nathanael would be best served by being taken into protective custody and made a dependent under section 300. The juvenile delinquency court agreed, dismissed the section 602 petition and ordered the agency to file a section 300 petition. The agency filed a dependency petition alleging multiple counts under section 300, subdivision (b) (failure to protect). Nathanael was released from juvenile hall into foster care.

The juvenile court detained Nathanael pursuant to the dependency petition and continued the matter to October 2011 for a combined hearing on jurisdiction and disposition (combined hearing). The court also ordered weekly visitation.

In its report for the hearing, the agency recommended that the juvenile court offer Margo reunification services. The agency reported that Margo suffered a variety of health issues stemming from a near fatal car accident in January 2002. Margo advocated

for services for herself and received voluntary family maintenance services from January 2002 to February 2003 after she contacted the agency for assistance with her children; Sade, her teenage daughter, and Nathanael. However, once services were no longer available to her, the family dynamics deteriorated and Margo had conflicts with her children. Even with services, Margo was abusive. In February 2005, Margo had an altercation with Sade and Sade was placed in juvenile hall. On diverse occasions for at least three years preceding Sade's entry into juvenile hall, Margo hit Sade with various objects including a hanger, her fists and a stick. The beatings were ongoing and sometimes involved Nathanael who was only five. More than once, Sade ran away from home. She believed that Margo had a split personality and was afraid of her especially when "she [got] crazy like that." Sade was ultimately adjudged a dependent of the juvenile court and placed in a guardianship with a relative.

The agency also expressed its concerns that Margo suffered from substance abuse as well as mental illness and that she perceived Nathanael as the problem. Margo wanted Nathanael to return home, as did he.

The combined hearing was conducted in October 2011 and Margo's attorney made an offer of proof that she wanted Nathanael to return home and that she was willing to participate in any recommended services. The agency provided an offer of proof that during the week of October 10, a social worker attempted to see Margo's home twice and was not allowed to enter. The parties accepted the offers of proof.

The juvenile court exercised its dependency jurisdiction and ordered Nathanael removed from Margo's custody. In doing so, the court stated, "[T]he last thing I want to do is return Nathanael home until I am sure that he and mother are going to be able to reside in the home safely without any additional issues, because I don't want Nathanael to be back in delinquency court because the police have been called and there are more allegations of threats. I don't see that being in Nathanael's best interest." The court also ordered reunification services. This appeal ensued.

DISCUSSION

Margo contends the juvenile court erred in removing Nathanael from her custody. She argues there was insufficient evidence to support the juvenile court's finding that there would be a substantial danger to Nathanael's well-being if he were returned home. She also argues that family maintenance services were a reasonable alternative to removing him from her custody. We disagree.

“At the dispositional hearing, ... there is a statutory presumption that the child will be returned to parental custody.... [T]he burden is on the state to prove, by clear and convincing evidence, that removal of the child from the parent's custody is necessary.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) Section 361, subdivision (c), the governing statute, 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 [¶] ... [t]here 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.” (§ 361, subd. (c)(1).)

“The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. [Citations.]” (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) “A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citations.]” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136,

disapproved on another ground by *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

On a challenge to the juvenile court's dispositional finding, we employ the substantial evidence test, bearing in mind that the clear and convincing standard requires a heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Under the substantial evidence test, 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.) On the facts of this case, we conclude substantial evidence supports the juvenile court's removal order.

Margo has a lengthy history of abusive behavior, whether physical or emotional, toward her children. Nathanael was exposed to this behavior from a very young age. By the time these proceedings were initiated, he had become physically threatening to Margo. At the same time, he wanted to be with her. As a result, they were engaged in a repeating cycle of conflict which involved threats of violence and too often ended in Nathanael's arrest or hospitalization. In addition, Nathanael was exhibiting signs of mental illness that some believed was more emotional distress in reaction to Margo's behavior than actual pathology. It was in an attempt to break this damaging cycle and give Margo and Nathanael time to stabilize that the juvenile court ordered Nathanael removed from her custody.

Margo raises various challenges to the juvenile court's removal order. Specifically, she contends that removal is only warranted in extreme cases of parental abuse or neglect and that Nathanael's was not an extreme case. She challenges the agency's assertion that her mental illness presented a danger to Nathanael and warranted his removal. She points out that she was never officially diagnosed with mental illness. She also contends that removal could have been averted by returning Nathanael to her

care under family maintenance with agency supervision, citing her willingness to comply with the agency's recommendations.

As we stated above, removal is warranted to avert harm to a minor. Thus, the harm can be potential rather than actual. It certainly is not reserved for only extreme cases. The harm in this case was the emotional turmoil Nathanael endured trying to remain in Margo's care and cope with the conflict. The juvenile court was correct in deciding that Nathanael had to be removed from the situation until it stabilized. As far as whether Margo was mentally ill, it does not matter, at least as far as the court's ruling was concerned. The juvenile court did not cite mental illness as a basis for removing Nathanael from Margo's custody. Finally, there was no reason for the juvenile court to believe that family maintenance was a viable alternative to removal. While Margo may have asserted that she would be compliant, she had not demonstrated that in the past. Moreover, even with family maintenance services in place, the agency cannot supervise the family full time and it is clear from the record that Margo and Nathanael's conflicts escalated very quickly. Consequently, the juvenile court was also correct in concluding that there were no reasonable means other than removal to protect Nathanael from further emotional harm. We find no error.

DISPOSITION

The orders appealed from are affirmed.