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

L.P.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F065168

(Super. Ct. No. 10CEJ300242-1)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian M. Arax, Judge.

Fresno Dependency Office and Samuel D. Kylo, for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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* Before Levy, Acting P.J., Kane, J., and Detjen, J.

L.P. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's order setting a permanency planning hearing (Welf. & Inst. Code, § 366.26) for her two-and-one-half-year-old daughter, Victoria.¹ Mother contends there was no rational evidence to support the court's jurisdictional findings regarding her acts and omissions and assumes she is entitled to resume custody of Victoria. On review, we will deny mother's petition.

PROCEDURAL AND FACTUAL HISTORY

Victoria turned one year old in September 2010. Two days before Victoria's first birthday, mother gave birth to her second daughter, P. Mother and the little girls' father lived together, with the little girls, in one bedroom of the maternal grandparents' home. The parents had been a couple for five years, since they were both teenagers.

Mother was the little girls' primary caregiver, as mother did not work and the father was recently employed. He worked a 10:00 a.m. to 6:00 p.m. shift, Tuesday through Saturday. The maternal grandparents provided some respite care for the little girls.

P.'s Traumatic Injuries

On Friday, November 5, 2010, at approximately 4:30 p.m., mother brought eight-week-old P. to the emergency room at Children's Hospital Central California for cold symptoms. However, according to P.'s attending physician in the intensive care unit, mother's simple explanation of cold-like symptoms did not match the severity of P.'s injuries. The infant was immediately admitted to the hospital, as she had difficulty breathing, was lethargic and was experiencing seizures. She exhibited soft tissue swelling of the scalp, bruises to the left side of her jaw and neck, swollen eyes and nonreactive pupils.

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

A CT scan conducted on November 5th showed P. had multiple brain bleeds. There were areas of fresh bleeding as well as areas that appeared to have been bleeding for an extended period of time. The first doctor to examine and treat P. estimated the time frame for the bleeding to be anywhere between two hours and two days prior to P.'s arrival at the hospital.

P.'s injuries were life-threatening. Mother, reportedly shocked by this news, told an investigating officer on November 5th that she had no idea how P. was injured. Later during the same interview, she said the father admitted the previous night to accidentally "bonking" P.'s head on the side of the bassinet. However, that was the extent of anything she knew about what could have hurt P.

A bone survey also conducted on November 5th revealed that P. had, in addition to a possible skull fracture, two recent rib fractures and a healing fracture of her left tibia. According to the hospital's child advocacy physician, Dr. Phillip Hyden, the rib and tibia fractures could not have occurred during the event that caused P.'s brain injuries. P.'s rib and tibia fractures were at least 10-day-old healing fractures. Dr. Hyden told a social worker that P. might have been fussy as a result but, due to her age, he was not willing to say one way or another if mother should have been aware of the healing fractures.

Victoria's Fractures

Based on P.'s injuries, Victoria had a bone survey conducted on November 8, 2010. It revealed Victoria had four fractures at different stages of healing. They included a fracture of the right distal humerus (right upper arm), a fracture of the left distal radius (left lower arm big bone), a healing fracture of the left distal ulna (left lower arm small bone), and a non-displaced fracture of the distal left tibia (left lower leg big bone).

Victoria had been seen in the hospital's orthopedic clinic on November 2, 2010, for the right upper arm fracture. According to the clinic's November 2d record, mother

reported Victoria was injured on October 28, 2010, as she tried to run in socks on the kitchen tile floor and slipped awkwardly onto her right arm. Her primary care physician reportedly saw Victoria the same day as the injury and sent her to the clinic for x-rays and splinting. On November 2d, Victoria's arm was placed in a cast.

Because Victoria's fractures were in a healing stage, that usually implied they were two weeks to several months old. Dr. Hyden told the social worker on November 9, 2010, that Victoria might not have presented any symptoms. He could not state one way or another if mother should have been aware of Victoria's fractures. He also could not say "for sure" that these injuries were intentional. However, due to the fact that there were three fractures, there was more concern that they were nonaccidental.²

Mother's Denial

Mother claimed she had no idea how either little girl's fractures occurred, except for Victoria's right upper arm fracture. Mother also denied any responsibility for the fractures. Mother said that Victoria had just started walking a few months before and was clumsy. This was the only thing mother could imagine would cause Victoria's fractures.

Following the discovery of Victoria's multiple fractures, the child was detained and placed in foster care.

Death of P.

On November 10, 2010, P. was declared brain dead and died after she was taken off life support. A coroner declared the cause of P.'s death to be "fatal child abuse syndrome along with blunt force trauma to the head." In a written report after P. died, Dr. Hyden offered the following assessment: "[b]ecause both children have radiographic

² It appears from the record that Dr. Hyden may have been referring to the three fractures Victoria had besides the one that was in a cast.

findings of older skeletal injuries, the possibility of nonaccidental trauma must be strongly considered for any injury Victoria sustained.”

Father’s Changing Stories of Abuse

A sheriff’s deputy and sheriff’s detectives interviewed the father several times over the course of P.’s hospitalization and following her death. Asked about what he knew regarding the events prior to P.’s hospitalization, the father repeatedly changed his story. He eventually admitted dropping, shaking and throwing P. against a wall in the bedroom late at night on November 4, 2010.³ The father claimed he did not tell mother anything. The father was arrested and booked for child abuse and murder.

During an early interview, the father said P. startled him causing him to drop her. He claimed that mother was in the shower at the time. The father also claimed he had never done anything to injure Victoria. During another interview, the father described learning from mother that Victoria had slipped in the kitchen and broken her hand. He did not believe mother had injured Victoria. He also remembered a time in October 2010, as the family left the county fair, that Victoria fell off some stairs. He claimed Victoria landed on her hands and hit her head. He also described Victoria as falling down a lot because she was ““everywhere learning to walk.””

Mother did not believe the father would hurt the little girls but she had no reasonable explanation as to how they sustained their numerous and severe injuries. When informed that father admitted to shaking P., mother responded he did not tell her that but, if he told this to the detective, it must be true. However, she also claimed she could not imagine the father doing something like that.

³ Notably, when questioned, the maternal grandparents and their other children who were in the house claimed they heard nothing that night.

Juvenile Dependency Proceedings

In a second amended petition, respondent Fresno County Department of Social Services (department) alleged Victoria was subject to juvenile court dependency jurisdiction pursuant to section 300 based on both the acts and omissions of each parent. The department alleged Victoria: suffered or there was a substantial risk that she would suffer serious physical harm inflicted nonaccidentally by either parent (§ 300, subd. (a)); suffered or there was a substantial risk that she would suffer serious physical harm due to both parents' failure to protect both Victoria and P. (§ 300, subd. (b)); was under the age of five and suffered severe physical abuse by a parent or by any person known by the parent, and the parent knew or reasonably should have known that the person was physically abusing the child (§ 300, subd. (e)); and each parent caused the death of P. through abuse or neglect (§ 300, subd. (f)).

The court eventually conducted a jurisdictional hearing in March 2012. The department relied on a jurisdictional report and an addendum report. These reports contained but were not limited to the evidence summarized above and included, among other documents, 14 sheriff's department reports, the hospital records for Victoria and P. and the coroner's report. Mother's counsel called several witnesses.⁴ At the conclusion of the jurisdictional hearing, the court found all the allegations in the department's second amended petition true.

In June 2012, the court held a dispositional hearing in the matter, following which it removed Victoria from parental custody, denied both parents reunification services (§ 361.5, subd. (b)(4), (5) & (6)), and set a permanency planning hearing for Victoria on October 12, 2012. The grounds for denying the parents services were that: each parent

⁴ Testimony at the jurisdictional hearing will be described in our DISCUSSION, as it becomes relevant to the argument on review.

had caused P.'s death through either abuse or neglect (§ 361.5, subd. (b)(4)); Victoria came within the court's jurisdiction under section 300, subdivision (e) because of the conduct of each parent (§ 361.5, subd. (b)(5)); and Victoria was adjudicated a dependent pursuant to any subdivision of section 300 as a result of the infliction of severe physical harm to her and P. by an act or omission of each parent (§ 361.5, subd. (b)(6)).

DISCUSSION

Preliminary Issues

Mother contends the court's jurisdictional findings related to her acts and omissions were not rationally supported by the evidence before the court. She therefore assumes, without explanation, that the court should have left Victoria in her custody.

The department notes that mother does not separately challenge the sufficiency of the evidence to support the court's jurisdictional findings based on the father's conduct. The department also claims mother does not dispute the court's dispositional orders removing Victoria from parental custody and denying mother, as well as the father, reunification services. As a consequence, the department argues that mother has forfeited any such claims of error and consequently presented no claim of error for which this court might grant any effective relief.

We will assume, based on our reading of mother's petition and for the sake of argument, mother means to argue that in the absence of substantial evidence to support any of the jurisdictional findings related to her, the court could not remove Victoria from her custody. Therefore, we decline the department's invitation to dismiss the petition as non-justiciable (*In re I.A.* (2011) 201 Cal.App.4th 1484). If mother's insufficiency of the evidence argument were persuasive and legally correct, this court could render relief that would have a practical, tangible impact on her position in the dependency proceeding. (*Id.* at p. 1492.)

Sufficiency of the Evidence

Although mother challenges all of the jurisdictional findings made pertaining to her acts and omissions, we are not required to address each and every challenge she makes. If there was substantial evidence to support one of the jurisdictional findings as to mother, it is irrelevant whether the remaining allegations are supported. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202.)

At the jurisdictional hearing, the parties and the court focused on whether mother knew or reasonably should have known that her daughters were being physically abused. With this in mind, we have directed our attention to this issue because if there was substantial evidence that mother knew or reasonably should have known, the court could exercise its jurisdiction over Victoria based on the department's allegations related to mother under at least section 300, subdivisions (b), (e) and (f). As discussed below, we conclude there was substantial evidence in the record to support the court's determination that mother knew or reasonably should have known that her daughters were being physically abused.

Medical Evidence of Physical Abuse

Mother first claims there was no medical evidence that Victoria's injuries were intentionally inflicted. She relies on: (a) Dr. Hyden's November 9th statement to the social worker that he could not say for sure that Victoria's injuries were intentional and (b) the testimony of detective Juan Galindo who stated Victoria's fractures were not indicative of child abuse.

In the process, mother ignores Dr. Hyden's other statements. Dr. Hyden also told the social worker on November 9th that due to the multiple fractures Victoria suffered there was more concern that they were nonaccidental. Further, in his written assessment after P. died, Dr. Hyden explained "[b]ecause both children have radiographic findings of

older skeletal injuries, the possibility of nonaccidental trauma must be strongly considered for any injury Victoria sustained.”

In addition, by focusing exclusively on Victoria’s injuries, mother overlooks the undisputed medical evidence that P.’s injuries, including the healing rib and tibia fractures, were the product of physical abuse. The court was not required to overlook such evidence. Furthermore, detective Galindo was not qualified as an expert on child abuse.

On a related note, mother contends the evidence was clear regarding accidental causes for Victoria’s injuries. The court, however, was not bound by the parents’ explanations particularly in light of the medical evidence. Nevertheless, mother misses the point of our review. Our authority begins and ends with a determination as to whether there is any substantial evidence, contradicted or not, which will support the court’s findings. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) All conflicts in the evidence must be resolved in favor of the prevailing party. (*Id.* at p. 1379.)

The Court’s Consideration of the Evidence

Mother next contends the court failed to adequately consider factors, which in her view weighed in her favor. She relies on testimony, which she characterizes as significant, that there was no history of domestic violence in the family, neither parent had a criminal history or history of drug abuse, and the father was employed.

There is nothing in the record to support mother’s essential claim that the court failed to do its job as trier of fact. Further, mother’s argument is little more than an invitation for this court to reweigh the evidence. However, the weight to be afforded evidence is an issue solely for the trier of fact. (*In re Laura F.* (1983) 33 Cal.3d 826, 833; *In re Heather P.* (1988) 203 Cal.App.3d 1214, 1226-1227.) On review, we may not reweigh or express an independent judgment on the evidence, but may decide only

whether sufficient evidence supports the findings of the juvenile court. (*In re Laura F.*, *supra*, 33 Cal.3d at p. 833.)

Victoria's Possible Lack of Symptoms

Mother rhetorically asks how could she be expected to know of Victoria's injuries? In so doing, she relies on Dr. Hyden's statement that Victoria might not have presented any symptoms with her fractures and he could not state one way or another if mother should have been aware of Victoria's fractures. Mother also claims the medical professionals who treated Victoria's right arm fracture did not note other injuries to Victoria.

In the process, mother neglects to mention that there was other evidence the court could properly consider. Namely, Victoria's other fractures were older and in the process of healing when she was seen for her right arm fracture. More importantly, the issue was not whether mother should have known Victoria suffered fractures, but rather did mother know or should she reasonably have known that someone was physically abusing Victoria and P. (See *In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1729.)

Conflicting Evidence and Discrepancies in Mother's Statements

Mother's petition assumes that she told the truth when she claimed she had no idea how P. was injured or how Victoria sustained her fractures, other than the upper right arm fracture, and that the father's version of events was truthful. Yet, she overlooks the evidence that she was the little girls' primary caregiver and they lived with the father in very cramped quarters, such that it is unreasonable to conclude that she had no idea what was happening to the little girls. In addition, our review of the record reveals many discrepancies in mother's statements, not to mention the father's constantly changing story of what occurred to P. Mother's version of events also conflicts with other evidence in the record. The following is a sampling of the discrepancies in mother's statements and the conflicting evidence from which the court could reasonably infer

mother was not truthful and was hiding, for whatever reason, what she did know about the physical abuse.

Victoria's Right Arm Fracture

The hospital record of November 2d included the following report from mother: Victoria was injured on October 28, 2010, as she tried to run in socks on the kitchen tile floor and slipped awkwardly onto her right arm; and Victoria saw her primary care physician the same day. However, in a November 5th interview by an investigating officer, mother reported: she had been in the kitchen cooking and that Victoria was playing with a toy on the tile floor, which was particularly slippery, and she slipped and fell; and she (mother) took Victoria to her doctor the following day. In yet another version, mother told a hospital social worker sometime after November 5th that: Victoria slipped on the kitchen floor while wearing socks, cried for a minute and then appeared to be fine; the following day Victoria's wrist was swollen; and she (mother) brought her to the hospital. Later still, mother claimed she reported, presumably to the child's doctor, Dr. Lim, or the hospital's orthopedic clinic, Victoria did not want to walk after the slip and fall and yet no x-rays were taken of her legs. Neither Dr. Lim's nor the orthopedic clinic's record, however, contained any report that Victoria did not want to walk following her supposed slip and fall.

Bruising on P.'s Neck

The first doctor to see P. on November 5th immediately observed bruising on the right side of the infant's neck and asked mother about the bruise. She replied that it was discovered approximately four to five days prior and over time it grew bigger in size and darker in color. Later on November 5th, mother told an investigating officer that she had taken P. to see Dr. Lim a day earlier. During the appointment, mother claimed, she pointed out the mark on the right side of P.'s neck. Dr. Lim purportedly said she believed it was a bruise. Later still, in her first interview with sheriff's detectives, mother claimed

Dr. Lim asked her what the bruise was from and mother did not know. In a November 9th interview, mother claimed she noticed a discoloration on P.'s jaw and showed it to the maternal grandmother on November 1st or 2d. Over the next few days, the mark grew darker and the maternal grandmother told her to take the baby to the doctor. On November 4th, mother took P. to the doctor for the mark and for cold symptoms.

Sheriff's detectives interviewed Dr. Lim, who said she did not see any visible injuries on P. during the November 4th office visit. It was also Dr. Lim's practice to document any visible injuries during her examinations. However, her report of the November 4th office visit did not mention any visible injury, such as a bruise, to P. At most, it stated the child had a cough.

At the jurisdictional hearing, mother's counsel called the maternal grandmother as a witness. However, the maternal grandmother did not confirm any of mother's claims about the bruise. The maternal grandmother did testify about helping mother by bathing P. on the evening of November 4th. However, the maternal grandmother did not see any mark on P. Also, the maternal grandmother testified that mother told her on November 4th that she took P. to the doctor to get her vaccinated and because she (mother) thought P. was sick.

Mother's Statements Regarding P.'s Abuse

Mother also gave conflicting statements about what she knew regarding P.'s traumatic injuries. During her first interview with an investigating officer on November 5th, she said she had no idea how P. was injured. Later in the same interview, however, she said the father admitted to her when she got out of the shower the previous night to accidentally "bonking" P.'s head on the side of the bassinet. In a subsequent interview with detectives, she said the father told her this account when they were at the hospital and after they were told that P. had a head injury.

November 5th

Mother's explanations for why she brought P. to the emergency room on November 5th and what she observed in P. that day changed from interview to interview. Her descriptions also conflicted with other evidence in the record.

Mother originally reported bringing P. to the emergency room mainly for a cough. Yet, her simple explanation did not match the severity of P.'s injuries, including the bruises, the swollen eyes and a hemorrhage in her right eye. Mother admitted the baby had been acting strangely. When the emergency room doctor asked what she meant, mother mentioned the baby would not wake up, could not open her right eye, was not crying, and was acting as though she was in pain. Also, according to the emergency room records, P. had vomited three times over the night. However, that fact apparently had not concerned mother.

Later, to P.'s intensive care doctor, mother said P. awoke that morning and still had cough and mild cold symptoms. Nevertheless, she ate and went down for apparently a nap. But when mother went to check on P. at 11:00 a.m., P. was much less responsive than she previously had been. At that time, mother called the maternal grandmother.

Mother told a somewhat different story to a hospital social worker on November 5th. When the infant woke up that day, the cold symptoms had not improved. P. seemed very lethargic and did not want to wake up. Mother felt this was not like her baby to act this way so she became concerned and decided to take her to the hospital instead of her pediatrician. However, she only brought P. in due to cold-related symptoms and did so several hours later.

In her first interview with an investigating officer, mother claimed P. did not wake up until about 10:00 in the morning. P. usually awoke much earlier and that concerned mother a little. Mother said she attempted to give P. a bottle but she wasn't interested in eating.

In her first interview with detectives, mother stated that P. woke up two or three times during the night, but did not cry or “ask for a bottle.” Mother added the father tried to give P. a bottle but she stuck her tongue out and refused the bottle. She still had not eaten by 8:00 in the morning. That was very unusual for P. She finally woke up at about 11:00 in the morning and still refused a bottle. Nevertheless, P. appeared fine and mother placed her on a couch. Later, mother noticed something seemed wrong with P.’s right eye. It would not open all the way. Mother then called the maternal grandmother and asked her to come and take them to the doctor. Mother became scared and called the maternal grandmother again when P. stretched out and was stiff. Mother then claimed she got the children ready and waited for someone to pick them up.

Meanwhile, the maternal grandmother’s testimony about her conversations on November 5th with mother differed from mother’s description. The maternal grandmother testified that mother called her three or four times that day. The first call was around 9:30 a.m. and mother stated she changed P.’s diaper early and noticed P. was acting a little fussy. Mother called a second time and said P. was not doing well. She was moving her hands and feet quite a bit. Mother did not mention that P. had any physical bruising or swelling. The last call the maternal grandmother received from mother was between 10:30 a.m. and 11:00 a.m.

In addition, mother’s conduct on November 5th was remarkable for her inaction. She never called Dr. Lim’s office or 911 on November 5th. A family friend eventually picked up mother and the little girls around 3:30 p.m. The friend had been contacted, not by mother, but rather by the maternal grandmother approximately an hour earlier. The maternal grandmother had asked the friend to give mother a ride to the doctor for P. When the friend arrived she noticed P. was stiff on one side and unable to open her right eye all the way. P. also had what the friend thought was blood in her right eye. The

friend told mother that she needed to take P. to the children's hospital and mother agreed. Still, the friend stopped along the way to pay her rent. Mother apparently did not object.

CONCLUSION

For all the reasons discussed above, we conclude there was substantial evidence to support a finding that mother knew or reasonably should have known that her daughters were suffering physical abuse and therefore the juvenile court properly exercised its dependency jurisdiction in connection with mother's acts and omissions.

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court.