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

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

STANISLAUS COUNTY
COMMUNITY SERVICES AGENCY,

Plaintiff and Respondent,

v.

VANESSA L.,

Defendant and Appellant.

F068505

(Super. Ct. No. 516562)

OPINION

THE COURT*

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

Merrill Lee Toole, 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 Kane, Acting P.J., Franson, J., and Sarkisian, J.†

† Judge of the Superior Court of Fresno County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Vanessa L. appeals from the juvenile court's order issued at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹ continuing the out-of-home placement of her 10-year-old son, Thomas. Vanessa contends there was insufficient evidence to support the juvenile court's finding that Thomas's return to her custody would expose Thomas to a substantial risk of detriment. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Vanessa and her husband, Fernando, are the parents of Thomas. Fernando is also the father of 15-year-old Alexander, Thomas's stepbrother. Alexander was placed with Fernando and Vanessa at the age of five. Over the course of the ensuing eight years, Vanessa and Fernando subjected Alexander to ongoing and escalating emotional and physical abuse. Alexander was slapped and punched, deprived of food, and locked in a bedroom naked with no furniture or carpet. He was let out to eat and go to the bathroom and he slept on two sheets on the floor. Thomas witnessed Alexander's abuse and became an unwitting participant by letting Alexander out of his room at night to use the bathroom and then locking him back in his room.

The Stanislaus County Community Services Agency (agency) provided Fernando and Vanessa family maintenance services in 2005, but closed the case after six months because Fernando and Vanessa were not cooperative. The agency offered them family maintenance services again in 2012, but they refused to participate in services that involved Thomas.

In January 2013, the agency took Alexander into protective custody after Vanessa burned his wrist by holding it over a hot pan. The agency also took Thomas into protective custody because he was exposed to Alexander's abuse.

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

The juvenile court adjudged Thomas and Alexander its dependents and ordered Fernando and Vanessa to participate in reunification services including family counseling as well as individual counseling to address their abuse of Alexander and its harmful effect on Thomas. In addition, they were ordered to complete a parenting program to work on appropriately parenting Thomas.

Fernando and Vanessa appealed from the juvenile court's dispositional orders removing Thomas from their custody (*In re Thomas L.* (Nov. 17, 2013, F067163) [nonpub. opn.] and *In re Thomas L.* (Jan. 30, 2014, F067285) [nonpub. opn.] respectively) which we affirmed.

The contested six-month review hearing was conducted in October 2013. In the preceding months, Fernando and Vanessa remained an intact couple and were facing felony charges of child abuse (Pen. Code, § 273a, subd. (a)) as a result of their mistreatment of Alexander. Thomas was placed with a relative and doing well there. He regularly visited his parents but cried when the visits were over. He also visited regularly with Alexander.

In its report for the six-month review hearing, the agency recommended the juvenile court continue reunification services for Fernando and Vanessa, but not return Thomas to their custody because they made little progress in counseling. The agency provided the court letters from Fernando and Vanessa's therapist, Maryanne Cose, and parenting instructor, Melissa Hale, dated in mid-September describing Fernando and Vanessa as initially guarded and defensive in counseling sessions. Fernando and Vanessa believed they had a positive family unit, referring to themselves and Thomas, and blamed the family problems on Alexander. Vanessa considered herself a good mother with an unruly child and rationalized her behavior. Cose and Hale, however, both reported that Fernando and Vanessa had become less guarded and more willing to examine how their behavior contributed to Thomas's removal.

Vanessa was called to testify by county counsel at the contested six-month review hearing but refused to answer questions about her treatment of Alexander on the advice of her criminal attorney. She acknowledged needing assistance with parenting but then clarified that “all parents need some [assistance] at some point.” She also conceded that Alexander was treated differently and felt badly about that.

Following Vanessa’s testimony, county counsel made an offer of proof, which the parties accepted, that social worker Christine Shahbazian if called to testify would oppose overnight visits because Fernando and Vanessa had not made sufficient progress in their court-ordered treatment plan and had not acknowledged Alexander and Thomas were abused.

In ruling, the juvenile court found it would be detrimental to return Thomas to Fernando and Vanessa’s custody. In doing so, it characterized Alexander’s abuse as “severe” and expressed its belief that Fernando and Vanessa still faulted Alexander for their mistreatment of him. The court did not believe Fernando and Vanessa acknowledged the fact of Alexander’s abuse and believed Vanessa considered herself a good parent. The court also found Fernando and Vanessa made limited progress and continued reunification services to the 12-month review hearing which it set for March 2014. This appeal ensued.²

DISCUSSION

Vanessa contends the juvenile court erred in finding that returning Thomas to her custody would be detrimental. It erred, she claims, because it did not properly consider the extent of her participation and progress. Specifically, she asserts, the juvenile court disregarded positive input about her parenting ability expressed by clinician Amy

² Fernando also appealed from the juvenile court’s order from the six-month review hearing maintaining Thomas in out-of-home placement. (*In re Thomas L.* (March 7, 2014, F068264) [nonpub. opn.].) We affirmed the court’s order.

Coleman who in a July 2013 letter stated Vanessa “demonstrated a good understanding of the skills and concepts presented during the parenting classes” and used positive parenting skills with Thomas. Additional positive evidence was provided, Vanessa asserts, by Melissa Hale who stated in her September 2013 letter that in their most recent sessions Vanessa appeared “open and honest” and more insightful as to why she behaved as she did and how her behavior necessitated Alexander and Thomas’s removal.

The positive evidence Vanessa cites was part of the evidence and was considered by the juvenile court. The question for this court is not whether there is favorable evidence to support a finding it would not be detrimental to return Thomas to Vanessa’s custody. Rather, the question is whether there is sufficient evidence to support the finding the juvenile court made.

“Until reunification services are terminated, there is a statutory presumption that a dependent child will be returned to parental custody. [Citation.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*)) For that reason, the juvenile court was required to return Thomas to Vanessa’s custody at the six-month review hearing unless it found by a preponderance of the evidence that returning him would pose a substantial risk of detriment to him. (§ 366.21, subd. (e).)

In assessing detriment, as Vanessa points out, the juvenile court must consider the extent to which the parent participated in reunification services, as well as the efforts or progress the parent made toward eliminating the condition that required the child’s removal. (*Yvonne W., supra*, 165 Cal.App.4th at p. 1400.) However, ultimately the juvenile court’s decision turns on whether the child would be safe if returned to parental custody. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.)

On an appeal from the juvenile court’s finding of detrimental return, we do not independently review the proceedings or reweigh the evidence to determine whether the juvenile court could have made an alternative or contrary ruling. (*In re Dakota H.* (2005)

132 Cal.App.4th 212, 228.) Rather, we determine whether substantial evidence supports the finding the juvenile court made. In this case, we conclude that it does.

Thomas was removed from Vanessa's custody because she subjected his brother, Alexander, to very serious ongoing physical and emotional abuse. As the juvenile court expressed it, "most animals are treated better than Alexander was." Further, the abuse continued for so long that it had become normative family behavior. Thomas was accustomed to seeing his brother confined, deprived and physically abused.

Contrary to Vanessa's assertion, the juvenile court acknowledged that she made progress in her services plan. It also understood her fear of incriminating herself by openly admitting she abused Alexander. However, the court was not persuaded that Thomas would be safe in her custody because she was in denial and considered herself a good parent. The court stated:

"[M]y concern ... is that the parents continue to be in serious denial about the fact that [Alexander] was seriously abused, that [Fernando] knew about the abuse and was not protective, and that the abuse was time and time again at the hands of [Vanessa]. And I have to see that there is some progress and some acknowledgement that, yeah, I did things wrong; I need to make some serious changes. And I just get from [Vanessa] that, I'm a good parent. I don't really need changes. Sure, everybody can always do better, but I'm doing a pretty good job, and I don't agree with that at all, quite frankly.... [¶] ... [¶]

"I just don't feel that either one of the parents have really shown that they have made substantive progress to the point where ... I can feel that Thomas would be safe returning to the home."

Vanessa further contends the juvenile court was not acting in Thomas's best interest in refusing to return him to her custody when Thomas wanted very much to go home. We disagree. The child's best interest is at the heart of every decision the juvenile court makes concerning the child. This juvenile court was keenly aware that Thomas desperately wanted to go home to his parents. However, it made Thomas's safety

paramount, as it should, to all other considerations, including Thomas's strong desire to return home.

In light of the foregoing, we affirm the juvenile court's finding that returning Thomas to Vanessa's custody would place Thomas at a substantial risk of harm. Accordingly, we affirm the juvenile court's order continuing Thomas in out-of-home placement.

DISPOSITION

The juvenile court's order continuing Thomas in out-of-home placement entered on October 10, 2013, is affirmed.