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

In re SOPHIA V. et al., Persons Coming Under
the Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

ANGELINA G.,

Defendant and Appellant.

F070050

(Super. Ct. Nos. 516681, 516682)

OPINION

THE COURT*

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

Aida Aslanian, 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., Franson, J. and Smith, J.

Angelina G. appeals from the juvenile court's orders removing her eight-year-old daughter Sophia and seven-year-old son Daniel from her custody pursuant to a supplemental petition (Welf. & Inst. Code, § 387),¹ terminating its dependency jurisdiction and granting the children's father sole physical and legal custody. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

These dependency proceedings were initiated in Alameda County in February 2013, when the Alameda County Social Services Agency (Alameda) received a report that Angelina left then six-year-old Sophia and five-year-old Daniel alone for approximately two hours. Daniel is developmentally delayed and required constant supervision. It was also reported that Angelina used drugs, was often up late, and acted erratically. While Alameda was investigating the reports, Angelina was arrested for driving under the influence (DUI) of alcohol.

Alameda filed an original dependency petition under section 300, alleging Angelina's substance abuse interfered with her ability to properly care for the children. Alameda cited Angelina's February 2013 arrest for DUI. Alameda also alleged that Angelina and the children's biological father, Daniel V., exposed the children to domestic violence and that Daniel V. was arrested for DUI in 2011. Alameda listed the city of Daniel V.'s address on the petition as Ontario, California.

The Alameda County juvenile court sustained the allegations in the petition, elevated Daniel V. (father) to presumed father status, and granted Alameda discretion to release the children to Angelina's custody pending the dispositional hearing.

In its report for the dispositional hearing, Alameda recommended the juvenile court allow the children to remain in Angelina's custody with family maintenance services and transfer the case to Merced County, Angelina's county of residence.

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

Alameda did not recommend reunification services for father and informed the court that father wanted to visit the children but that there was an order restraining him from having any contact with them and Angelina. The restraining order was issued in 2011, after father was arrested for domestic violence. He grabbed Angelina by the arm and slapped her face during an argument about the children. Angelina was reportedly fearful of father and claimed he previously tried to remove the children using a falsified custody order.

In March 2013, the juvenile court exercised its dependency jurisdiction over the children and ordered Angelina to participate in family maintenance services, which required her to complete a parenting class, submit to random drug testing and participate in mental health counseling. The juvenile court ordered the case transferred to Merced County. The court did not order family reunification services for father. In June 2013, the case was transferred to Stanislaus County.

In an interim report filed in June 2013, the Stanislaus County Community Services Agency (Stanislaus) informed the juvenile court that Angelina had not engaged in any services because of her multiple moves. Consequently, she had not resolved the problems identified in Alameda County and Stanislaus was still concerned about her substance abuse, the children's exposure to domestic violence, and Angelina's tendency to leave the children without a proper caregiver. Stanislaus recommended the juvenile court continue family maintenance services for Angelina and order supervised monthly visitation for father consistent with the terms of the restraining order.

Beginning in July 2013, and over the course of the ensuing seven months, the juvenile court authorized family maintenance services for Angelina. However, she resisted drug treatment. In early July, she tested positive for methamphetamine and marijuana during her initial drug and alcohol assessment and was referred for drug treatment but refused it. In mid-September 2013, Angelina entered drug treatment but continued to use drugs, prompting the staff in November to recommend she participate in inpatient drug treatment. Angelina refused. In December, Angelina tested positive for

methamphetamine. In January 2014, Angelina was admitted to another inpatient drug treatment program. She said she did not need drug treatment and was moving with her boyfriend to the Bay Area. In February 2014, emergency response social workers went to the home Angelina shared with her boyfriend and the children to discuss their concerns about her drug use. They spot tested Angelina and she tested positive for methamphetamine.

Stanislaus took the children into protective custody and placed them together in a foster home in Stanislaus County. Stanislaus also filed a supplemental petition under section 387, alleging family maintenance services had not been effective in protecting the children. In support of the petition, Stanislaus alleged Angelina continued to use drugs and alcohol, admitted to using marijuana and refused to participate in substance abuse treatment. Stanislaus also alleged that Angelina delayed in obtaining medical insurance for the children and caused them to miss school.

In February 2014, the juvenile court conducted the detention hearing on the supplemental petition. Father and Angelina appeared. The juvenile court ordered the children detained and on its own motion modified the restraining order allowing father contact with them. Father, who was living in San Bernardino County, requested custody of the children and began making the 16-hour roundtrip to visit them every other week.

In March 2014, a social worker from Stanislaus evaluated father's home. She reported that he was living with his parents and two teenage brothers. The home met all the safety requirements. Father was employed and paying child support.

The social worker contacted local law enforcement and was told there had not been any service calls to the home. She also reviewed the police reports concerning father and Angelina and discovered that, following the 2011 domestic violence charge, Angelina lost credibility with the police after she made false reports against father and plotted to frame him.

In its report for the jurisdictional/dispositional hearing (combined hearing), Stanislaus recommended the juvenile court exercise its dependency jurisdiction over the children, grant father sole legal and physical custody of them, and dismiss its dependency jurisdiction.

In June 2014, the juvenile court conducted a contested combined hearing. By that time, the children had been placed with father. Angelina appeared with her attorney and denied the allegations in the supplemental petition. She also made an offer of proof that if called, she would testify that she completed all but one of the parenting groups. She also disagreed with Stanislaus's recommendation to dismiss jurisdiction and place the children in father's custody.

At the conclusion of the hearing, the juvenile court sustained the supplemental petition, found it would be detrimental to return the children to Angelina's custody, and ordered visitation for her. The court also awarded father legal and physical custody of the children and dismissed its dependency jurisdiction.

This appeal ensued.

DISCUSSION

Section 387 Petition

Angelina contends there was insufficient evidence to support the juvenile court's findings and order under section 387. We disagree.

A supplemental petition under section 387 is the means by which the agency seeks the removal of a child from parental custody when the agency determines that placement with the parent was not effective in protecting the child.² In order to prevail on a supplemental petition, the agency must allege facts which establish by a preponderance

² Section 387, subdivision (b) provides in relevant part: "The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the ... protection of the child"

of the evidence that the previous disposition was not effective. (*In re A.O.* (2010) 185 Cal.App.4th 103, 109-110.) The agency is not required to allege any new jurisdictional facts or urge different or additional grounds for dependency because the juvenile court already has jurisdiction over the child by virtue of its true finding(s) on the original section 300 petition. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1200.)

A hearing on a supplemental petition is akin to the jurisdictional and dispositional hearings conducted on a section 300 petition. (*In re A.O.*, *supra*, 185 Cal.App.4th at p. 110.) Thus, there is an adjudicatory phase on the merits of the petition and a dispositional phase on the need for the removal of the child from his or her current placement. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 460.) During the adjudicatory phase, the juvenile court must determine whether the factual allegations of the supplemental petition are or are not true and whether the allegation that the previous disposition was not effective in protecting the child is or is not true. (*In re A.O.*, *supra*, 185 Cal.App.4th at p. 110.) If the juvenile court finds the allegations are true, and the supplemental petition seeks to remove the child from parental custody, the juvenile court applies the procedures and protections of section 361. Thus, before a child can be removed from the parent's custody, the court must find, by clear and convincing evidence, that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home, and there are no reasonable means by which the [child's] physical health can be protected without removing the [child] from the [child's] parent's ... physical custody." (§ 361, subd. (c)(1).)

"A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) 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 harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.)

We review an order sustaining a section 387 petition under the substantial evidence test. (*In re A.O.*, *supra*, 185 Cal.App.4th at p. 109.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re T.W.*, *supra*, 214 Cal.App.4th at pp. 1161-1162.)

Angelina contends the factual allegations did not support a finding that family maintenance services were ineffective in protecting the children. She claims the strongest allegation bearing on that issue related to her continued drug use (“predominantly marijuana”). However, she argues, the evidence had to show that her drug use posed an increased risk or “additional endangerment” beyond that which existed when the dependency arose in order to support a finding that family maintenance services were ineffective.

As a preliminary matter, we address Angelina’s “additional endangerment” argument. Simply put, it is not the standard. The standard under section 387 is the effectiveness of the previous disposition in protecting the child. There is no requirement in the statute that the petition allege facts supporting an increased risk of danger to the child.

Turning to this case, substantial evidence supports a finding that family maintenance services were ineffective in protecting Sophia and Daniel. The juvenile court adjudged them dependents primarily to protect them from Angelina’s alcohol abuse. However, the court also determined that Angelina could protect the children at home if she participated in substance abuse treatment under Stanislaus’s supervision. Implicit in the court’s decision was Angelina’s willingness to accept services and participate in corrective efforts. (See § 16506.)³ However, Angelina’s substance abuse

³ Section 16506 sets forth the eligibility criteria for family maintenance services and provides in relevant part: “Family maintenance services shall be provided ... by county welfare department staff in order to maintain the child in his or her home. ... Family maintenance services shall ... only be provided to any of the following: [¶] ... [¶] (b) Families whose child is in potential danger of abuse, neglect, or exploitation, who are

problem was more involved than it originally appeared. She not only abused alcohol; she also used marijuana and methamphetamine. In addition, she refused any substance abuse treatment. Angelina's unwillingness to engage in treatment left the children unprotected and signified the ineffectiveness of family maintenance services as a way to keep them at home.

Angelina further contends there was insufficient evidence to support the juvenile court's order removing Sophia and Daniel from her custody. Specifically, she argues Stanislaus removed the children to force her into treatment rather than because there was a substantial danger to their health and safety. She also contends Stanislaus should have considered a less drastic alternative such as continuing family maintenance services.

Our role on review is to determine whether substantial evidence supports the juvenile court's removal order, not whether Stanislaus had an ulterior motive in removing the children. In this case, we conclude substantial evidence exists. Angelina was engaged in ongoing and untreated drug and alcohol abuse and the potential harm to the children was already known; they were at risk of being in Angelina's care while she was under the influence or left alone. Further, continuing family maintenance services was not an alternative to removing the children because it had already proven ineffective. Under the circumstances, the juvenile court did not have to wait for the children to suffer harm or neglect in Angelina's care and properly ordered the children removed.

For the foregoing reasons, we conclude substantial evidence supports the juvenile court's findings that family maintenance services were ineffective in protecting Sophia and Daniel, that there would be a substantial risk to their safety and well-being if they remained in Angelina's care, and that there were no reasonable alternatives to removal.

willing to accept services and participate in corrective efforts, and where it is safe for the child to remain in the child's home only with the provision of services.”

Thus, substantial evidence also supports the juvenile court's order removing Sophia and Daniel from Angelina's custody.

Termination of Jurisdiction and Custody Order

Angelina contends the juvenile court abused its discretion in terminating its dependency jurisdiction and awarding father legal and physical custody of the children. We disagree.

When the juvenile court places a child with a noncustodial parent, as occurred here, the court may grant legal and physical custody to the noncustodial parent and terminate its own jurisdiction. (§ 361.2, subd. (b)(1).) In doing so, the court contemplates that any further proceedings will take place in the family court. (*Ibid.*; see § 362.4.) The juvenile court has broad discretion in determining custody and we will not disturb its decision unless it exceeds the bounds of reason. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.)

Angelina argues the juvenile court did not thoroughly consider "critical information" before granting father custody, such as his efforts to address domestic violence, his use of drugs and alcohol, his home environment, his relationship with the children, and his commitment to raising them. The record, however, does not support Angelina's argument. According to the record, Stanislaus provided that information to the juvenile court in its report prepared for the hearing on the section 387 petition and the juvenile court read and considered it. The court determined on the evidence presented that Sophia and Daniel were doing well in father's care and that he could safely parent them. We find no abuse of discretion in the juvenile court's decision to terminate its dependency jurisdiction and award father custody of the children. Because we find no abuse of discretion, we need not address Angelina's contention that the juvenile court's custody order prejudiced her.

DISPOSITION

The judgment is affirmed.