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

In re C.E. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

R.G.,

Defendant and Appellant.

F071828

(Fresno Super. Ct. Nos.
15CEJ300004-1, 15CEJ300004-2)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Brian M. Arax,
Judge.

Monica Vogelmann, under appointment by the Court of Appeal, for Defendant
and Appellant.

Daniel C. Cederborg, Fresno County Counsel, and Brent C. Woodward, Deputy
County Counsel, for Plaintiff and Respondent.

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

R.G. (mother) appeals from a dispositional order of the juvenile court. She challenges the sufficiency of the evidence upon which the juvenile court ordered her 16-year-old daughter C.E. and 11-year-old son Isaiah removed from her custody. (Welf. & Inst. Code, § 361.)¹ Mother contends the dispositional order must be reversed because there is no evidence the children were at risk in her care. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

In January 2015, Fresno police responded to a report of an assault between family members at mother's home. Mother told a policer officer that her 19-year-old son Lorenzo and her 15-year-old daughter C.E. assaulted her. She claimed that she and C.E. were arguing on the way home from the store. C.E. accused her of being a "bad mother" and mother told C.E. she was ungrateful. C.E. continued the argument at home, yelling at mother from the living room where she sat on the couch. When mother entered the living room to tell C.E. to stop yelling, C.E. rose from the couch and pushed mother without provocation or warning. They engaged in a struggle during which C.E. punched mother several times in the face. Mother sustained minor facial cuts, abrasions, redness, and swelling. Mother was able to stand up and take control of C.E. by grabbing her upper body. C.E. also stood up and mother pushed her outside through the front door and locked her out. Mother walked to her boyfriend's house to get his cell phone. She returned to her house approximately 15 minutes later. She saw C.E. outside on the front porch. As she approached the front porch, a car pulled up. Lorenzo exited the car, confronted mother on the front lawn and yelled at her, warning her never to hit his sister. Lorenzo pushed mother causing her to fall to the ground and kicked her in the upper body and head. Mother said Lorenzo stopped kicking her and walked back to the car. C.E. got into the car and they left. Mother called the police. Mother also said that Lorenzo had her other son, then 10-year-old Isaiah, taken from her home the day before and refused to

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

tell her where he was. She did not notify the police because she did not believe Isaiah was in danger.

The police officer located Lorenzo, C.E., and Isaiah at another residence. Lorenzo was emotional while explaining why he wanted to take C.E. out of the home and away from their mother. He claimed mother was unfit and abused drugs. He said he received a call that mother assaulted C.E. and C.E. wanted him to pick her up. When Lorenzo arrived at the house, he saw C.E. sitting on the front porch with blood on her shirt. He approached mother and told her he was leaving with C.E. and calling the police. According to Lorenzo, mother stood in front of him yelling. He asked her to move aside but she refused so he pushed her away. Lorenzo denied kicking mother as she lay on the ground. He said he walked away, entered the vehicle with C.E., and left. The police received his call within approximately a minute of mother's call.

C.E. told the police officer about her argument with mother, but said mother was the one who continued it at the house. When they arrived home, C.E. sat in the living room as mother entered the kitchen. C.E. said mother continued to yell at her. Mother entered the living room and confronted her as she sat on the living room couch. Mother pushed her several times without provocation. She pushed mother back in self-defense, using both arms, and a physical altercation ensued. They ended up on the living room floor. During the altercation, mother bit C.E. on her right wrist, breaking the skin and causing bruising and swelling. C.E. said she pulled mother's hair to pull her to the ground so she could run away. She was not able to get away from mother and punched her several times in the face after mother bit her. She was finally able to run outside and call for help.

Mother did not remember biting C.E., but said that if she did, it was because C.E. was pulling her hair. Mother was arrested but the district attorney declined to file a complaint, citing conflicting statements and insufficient evidence.

The Fresno County Department of Social Services (department) took C.E. and Isaiah into protective custody and placed them in foster care. The following day, the social worker met with Isaiah to discuss the altercation between his mother and sister. He said it was the first time they fought with each other. He said mother disciplined him by talking to him and denied that she used any other form of discipline. He said no one in the house used drugs or alcohol. He was not afraid to be returned to his mother's custody and felt safe with her. If he could change anything, it would be that mother not "sleep so much."

C.E. told the social worker it was the first time she fought with mother. She said she felt safe returning to her custody. She said mother disciplined her by yelling at her. She said mother used methamphetamine about a year before and recently drank one to two shots of alcohol (Peach Amsterdam) each day. She agreed that mother slept a lot.

The department filed a dependency petition, alleging one count as to each child under section 300, subdivision (a) (serious physical harm). The first count alleged that C.E. suffered serious physical harm inflicted nonaccidentally by mother (Count 300 (a-1)). As factual support, the department alleged that on January 8, 2015, C.E. was found to have a bite mark on her wrist, and sustained abrasions and a swollen wrist as a result of mother hitting and biting her. The second count alleged that Isaiah was at risk of suffering serious physical harm inflicted nonaccidentally by mother (Count 300 (a-2)) and cited the same factual basis.

The petition identified Cory E. as C.E.'s father and alleged that he failed to provide her support. (§ 300, subd. (g).) The petition identified Wayne M. as Isaiah's alleged father and indicated that his whereabouts were unknown.²

² His whereabouts would remain unknown throughout these proceedings.

The juvenile court detained C.E. and Isaiah on the petition and offered mother services, including supervised visitation, pending its disposition of the case. The court set the jurisdictional hearing for February 9, 2015.

Meanwhile, mother took advantage of the services offered. She enrolled in a parenting class and in random drug testing, began intensive outpatient substance abuse treatment, attended weekly Alcoholics Anonymous meetings and participated in individual therapy. During that time, mother regularly visited the children. They enjoyed being with her and wanted to go home.

Prior to the jurisdictional hearing, the department filed a first amended petition, and modified the Count 300 (a-1) allegation by deleting the words “has suffered serious physical harm non-accidentally” to “is at risk of suffering serious physical harm non-accidentally” by mother. The department modified the factual basis for the allegation by deleting the references to mother biting and hitting C.E. and alleged instead that C.E. and mother engaged in a physical fight and C.E. was found by authorities at the scene to have abrasions and a swollen wrist. The department retained the original Count 300 (a-2) allegation as to Isaiah but modified the factual basis to match that in Count 300 (a-1). The department also deleted the subdivision (g) allegation as to Cory and alleged one count as to him under section 300, subdivision (b) (failure to protect).

In its report for the jurisdictional hearing, the department advised the juvenile court of its concern that mother would continue to physically abuse C.E. and cause her and Isaiah to suffer grave physical and emotional trauma. To highlight its concern, the department reported that though mother was never criminally convicted, she had a history of prostitution, child endangerment, and use and possession of a controlled substance. In addition, she was the subject of seven child welfare referrals for general neglect from 2009 to 2013. The earlier referrals alleged mother and Cory used methamphetamine in front of the children and engaged in domestic violence. In most cases, the department found the referrals inconclusive or unfounded. In October 2010, the department received

a referral alleging that then 11-year-old C.E. contacted the reporting party crying because mother punched her after C.E. saw her using drugs. The reporting party stated that mother was so “high,” she did not know who her children were. The next day, the department received another referral that C.E. reported mother hit her, used drugs, and kept company with a man who offered C.E. drugs. A police officer responded to mother’s home and arrested her for child endangerment and being under the influence of a controlled substance. In 2013, the department received a referral concerning then eight-year-old Isaiah. The reporting party was concerned that he was being cared for by a teenage sibling because he was often late to school and when asked about it said that his mother got home late, dropped off their food, and left. The department was unable to contact mother and deemed the allegations inconclusive.

The department recommended the juvenile court sustain the allegations in the first amended petition and adjudge the children its dependents.

Mother agreed that she had a substance abuse problem and was involved in an altercation with C.E. resulting in injuries, but disputed that she injured C.E. intentionally. She requested a contested jurisdictional hearing to litigate the subdivision (a) allegation, which the juvenile court granted and set for May 2015.

Meanwhile, the department issued its report for the dispositional hearing in which it advised against returning C.E. and Isaiah to mother’s custody. The department recommended the juvenile court order the children removed from mother’s custody and provide her reunification services.

In June 2015, the juvenile court convened a contested hearing on jurisdiction and disposition. Mother called C.E. as her witness.

C.E. testified that she and mother grabbed each other at the same time and began tussling and then the tussling ceased. She denied that mother bit her. She said she had gotten into a fight earlier in the day with another girl while she was on her way home and the girl bit her arm.

Mother's attorney asked C.E. who inflicted the scratches and scrapes that the police officer saw on her body when they responded to her home. She said it could have been mother or the girl she fought with earlier. She explained that she told the police officer that mother bit her because she was scared. Asked why she was scared, she responded she did not know. She denied that mother coached her.

Following C.E.'s testimony, the juvenile court sustained the first amended petition. The court explained that mother's voluntary act of tussling with C.E. placed C.E. at serious risk. The court also commended mother for completing drug treatment but expressed its disappointment that she was not drug testing. The court stated it was not comfortable returning the children to her given her history of drug use and child welfare intervention and the circumstances of her case. In explaining its ruling, the court noted that mother was looking away and getting a little hostile. The court stated, "So mother's ability to control herself [is] definitely manifesting itself in Court." According to the record, mother's attitude toward the court persisted as she refused to listen to the court's explanation.

The juvenile court found the department made reasonable efforts to prevent C.E.'s and Isaiah's removal and ordered them removed from mother's custody. The court ordered mother to participate in parenting, mental health, domestic violence, and substance abuse services, and supervised visitation. The court also ordered reunification services for C.E.'s father and set a post-disposition mediation in August 2015, and a six-month review hearing in December 2015.

This appeal ensued.

DISCUSSION

In order to remove a child from parental custody, the juvenile court must find by clear and convincing evidence, as relevant here, that "[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).)

We review the juvenile court's dispositional order removing a child from parental custody for substantial evidence, bearing in mind that clear and convincing evidence requires a heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Having reviewed the record, we conclude substantial evidence supports the juvenile court's removal order.

Mother contends there was insufficient evidence that the children would face substantial danger if returned to her custody. Rather, she argues, by all accounts the physical altercation was a one-time incident and the children had a good relationship with her and felt safe in her care. She asserts that the juvenile court based its removal order "in large part" on her failure to drug test and its frustration with her courtroom behavior. We disagree.

The juvenile court expressly stated its reasoning for removing the children, and it went far beyond mother's failure to drug test and her attitude. Rather, the court removed the children because of the circumstances of mother's physical altercation with C.E. and mother's history. The court concluded rightly that mother's willingness to engage in a physical fight and C.E.'s willingness and ability to fight back created an inherently dangerous situation that could easily escalate to more physical violence.

Mother contends, nevertheless, that her fight with C.E. was only a one-time incident, implying that this behavior was isolated and not likely to recur. The evidence, however, paints a different picture. The record reflects that mother has a propensity for violence. She has a history of domestic violence and there were reports that she struck C.E. on prior occasions. There was also recent evidence that mother is confrontational and provocative with her children (i.e., Lorenzo and C.E.). The only difference about the incident at issue here is that C.E. struck back. In our view, it was just a matter of time. Further, there is no reason to believe it is isolated given mother's combative nature.

Finally, mother's good relationship with the children and their sense of safety in her care may be positive indicators for reunification, but they do not nullify a real threat of violence in the home. Ultimately, the juvenile court must determine if the parent poses a substantial danger to the child. In this case, the juvenile court determined that mother posed such a danger to C.E. and Isaiah, and substantial evidence supports its conclusion.

Mother further contends there was insufficient evidence that the department made reasonable efforts to prevent C.E.'s and Isaiah's removal from her custody.

As stated above, the juvenile court cannot remove a child from parental custody unless it finds a substantial danger and "there are no reasonable means" to protect the child short of removal. (§ 361, subd. (c)(1).) To assist the court in determining whether "reasonable means" exist, the California Rules of Court require the department to submit a social study which must include "[a] discussion of the reasonable efforts made to prevent or eliminate removal" (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).) There is no discussion in this record of the efforts the department made to prevent C.E.'s and Isaiah's removal. The department merely stated in its dispositional report that "Reasonable efforts have been made to prevent removal," and under a heading entitled, "Reasonable Efforts," listed the services the court ordered for mother at the detention hearing.

Further, the juvenile court is required to state the facts on which it based its decision to remove the child. Section 361, subdivision (d) provides that "[t]he court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home The court shall state the facts on which the decision to remove the minor is based." Here, the juvenile court found that "Reasonable efforts were made to prevent removal." The court did not, however, "state the facts" supporting its finding.

Notwithstanding the above, "[w]e infer all necessary findings supported by substantial evidence [citations] and 'construe any reasonable inference in the manner

most favorable to the judgment,” (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 443.) The question in this case is whether substantial evidence supports a finding that there were no reasonable means to protect C.E. and Isaiah without removing them from mother’s custody. We conclude that it does.

The juvenile court is responsible for the safety of the dependent child. If the court concludes, as it did here, that returning that child to parental custody would expose the child to substantial danger, the court cannot return the child unless there are reasonable means available to protect the child.

Mother contends the juvenile court could have provided her voluntary maintenance services and ordered her not to drink alcohol and not to use corporal punishment on the children. It is doubtful a person with mother’s history would be deterred by the court’s orders. Further, we cannot conceive of and mother does not identify the kind of services that would effectively address the volatility in her home.

Viewing the evidence in the light most favorable to the juvenile court’s judgment, and bearing in mind the department’s heightened burden of proof, we conclude substantial evidence supports the juvenile court’s order removing C.E. and Isaiah from mother’s custody and affirm.

DISPOSITION

The juvenile court’s dispositional order is affirmed.