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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re EDUARDO P., a Person Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

CAROLINA C. et al.,

Defendants and Appellants.

G046029

(Super. Ct. No. DP017067)

O P I N I O N

Appeals from orders of the Superior Court of Orange County, Jane L.
Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and Appellant Carolina C.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and Appellant Gabriel P.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

On February 17, 2012, this court issued an opinion denying the parents' petition for extraordinary relief from an order terminating reunification services for their six-year-old son Cesar P. and setting a Welfare and Institutions Code section 366.26 (all statutory references are to this code) hearing. (*Carolina C. et al. v. Super. Ct.* (Feb. 17, 2012, G045961) [nonpub. opn.].) Here, the parents' appeal from the juvenile court's failure to return now 12-year-old Eduardo to their care and, instead, placing him in long-term foster care. Finding substantial evidence supports the juvenile court's decision, we affirm.

I

FACTS

Eduardo P., one of 11 children, was born in 1999. Six of his siblings became dependents of the juvenile court in 1998 after incidents of physical abuse by their father, Gabriel P. Subsequently, but prior to the instant situation, the family received many services from Orange County: "Emergency Response, Family Maintenance/Court, Family Maintenance/Voluntary, Family Reunification, Family Preservation Services, Long-Term Foster Care." There have been 24 prior allegations of physical abuse or neglect over the years involving the family.

The 25th incident of physical abuse in the family occurred on May 16, 2008, when the father came home "extremely intoxicated" and pushed the mother,

Carolina C., to the ground in the presence of the children because he was upset by music being played loudly. One of the children came toward the father with a pair of scissors aimed toward his stomach. The father pinned him down. Called by one of the children, two Garden Grove police officers struggled with the father, placed him in handcuffs and arrested him.

The mother has no criminal history. The father has been arrested or convicted 19 times, almost always due to corporal injury inflicted on his spouse.

Social workers spoke with each of the children separately. Eduardo “said he is afraid of his father because he is afraid father will hit him if he gets very mad. However, the father has not hit him. Eduardo said he loves his father a little. In regards to the mother’s form of discipline, Eduardo said she pulls his ear and makes him face the wall. He is not afraid of his mother and loves her a lot. Eduardo said the father drinks a lot and he gets drunk almost everyday.”

A restraining order was issued against the father, and he resided out of the family home, at least for a while. Eduardo and eight of his siblings remained in the care of their mother. In July 2008, all parties stipulated, “Find by clear and convincing evidence that Sec. 361(c)(1) applies and to vest custody with father would be detrimental to the child and to vest custody with the mother is required to serve the child’s best interest. Welfare of the child requires that custody be taken from father.” The court found allegations of abuse in the amended petition to be true and ordered the children dependents of the juvenile court.

On November 25, 2008, a supplemental petition was filed. It alleged: “On multiple occasions, the children’s mother has failed to protect her younger children from physical violence. On or about November 1, 2008, the child Arturo physically assaulted his younger siblings, Brisa, Erica and Eduardo. . . . Such behavior places the younger children . . . Eduardo P. . . . at risk of physical harm. [¶] The children’s mother has not discouraged the older children’s physical violence and verbal threats. . . . [¶] The

children's mother, Carolina C[.] is unable and/or unwilling to protect her younger children from the physical abuse of their older siblings." The next day the juvenile court removed the children from the mother. The court found the allegations of the supplemental petition true by a preponderance of evidence.

Eduardo exhibited physical and verbal aggression and poor frustration tolerance. In January 2010, Eduardo's physician diagnosed mood disorders and prescribed psychotropic medication. By April 2010, his foster parents reported he was no longer taking medication. Court-appointed special advocates reported "Eduardo was expelled from school due to an episode of uncontrolled behavior that resulted in students and teachers being harmed. He is not attending a new public elementary school."

In June 2010, Eduardo was placed in a foster home. Around the same time, the mother moved into the father's home. The parents visited with their children at the Orangewood Children's Home Center.

By January 2011, Eduardo was living "in a regular group home." His physician reported he "failed foster home placement due to aggression." The doctor said the child had poor frustration tolerance, mood disturbances and was "hitting, pushing, kicking, fighting." He ordered psychotropic medication.

The court conducted a lengthy hearing at the 18-month review. The social worker testified she recommended Eduardo be placed in long-term foster care. She said she is concerned about the "parents' ability to safely supervise and guide him and correct him due to his aggressive behaviors." She articulated her concerns about the father: "[H]e stopped going to the AA meetings. There was an incident of June of 2010 where the police came to the home, and they described the father as being intoxicated with slurred speech and red eyes and the smell of alcohol. He's missed a lot of the alcohol drug testing. At one point there was a six-month period where he was testing once a month, and he missed three, so he missed about half of those tests." She added: "I don't believe he's resolved the domestic violence concerns about intimidating, jealousy,

manipulating behavior towards the mother.”

About the mother, the social worker testified: “As far as the mother, it’s more a concern of her being able to protect herself from being a further victim of domestic violence.” The mother reported she and the father tried to address jealousy and controlling behavior issues in conjoint therapy but were unable to resolve them. During a family visit in April 2011, the father made accusations that the mother was cheating because she texted someone. A confrontation ensued between the mother and father in the children’s presence.

With regard to both parents, the social worker testified “they’ve been pretty compliant” with completing services. But they have not met the objectives so far as the mother’s protecting herself and the father expressing anger appropriately. During visitations at Orangewood, there were “incidents where the children are fighting with each other, hitting each other, being aggressive towards staff, being aggressive towards the parents, being defiant, cursing, throwing objects, threatening other visitors.” The facility had to increase staff at the visitation center and have a sheriff present during visits. At some point, “we were asked to reduce the number of children at the visit.”

The mother testified she wanted Eduardo and Cesar returned to her care. She acknowledged another of her sons, Gabriel, had been living with her but no longer did as he was in jail.

The father was asked about his drinking. He said: “I have learned to stop drinking through the steps that one follows in Alcoholics Anonymous.” He said he learned from his anger management classes that “when I see that I am going to be involved in an argument, I step away.” His lawyer asked him: “And what did you learn about the impact of domestic violence as it relates to your children?” The father responded: “Not to argue in front of my children.” When the father was asked about the aggression demonstrated during family visits, he stated: “No argument of any nature has ever occurred in our family visits together.”

During argument, Eduardo's counsel informed the court that, while Eduardo wanted to be returned to his mother's care, counsel disagreed because of the "father's unresolved alcohol issues, the domestic violence concerns, the mother's inability to protect and the father's unresolved anger management problems." Eduardo's counsel also recommended long-term foster care as the best permanent plan.

Following the 18-month review, the court stated: "The family has had virtually every service that is possible to be provided within the constellation of available services that Social Services can provide;" "[E]ven after reading the most recent report, mother continues to fail to comply with regular attendance at her services. It appears to the court that mother continues to exercise poor judgment by allowing the adult son, Gabriel, Jr., who was recently released from state prison and who is on parole and who has been alleged to have touched at least one of her minor children inappropriately to reside in the home, a location to which she wants her other minor children to return;" "[T]he parents, even in monitored and controlled surroundings, have difficulty working with and parenting and setting limits for their children;" "[B]ased on animosity and the poor communications between mother and the caretaker aunt . . . resulted in Eduardo losing that placement."

The court went on to note disagreements and arguments between the mother and the father, and stated: "Meanwhile, mother has a protective order that remains in place as to the father. And the court does note all of these situations." The court stated: "[A]ll these problems . . . are severe and ongoing and . . . result in substantial problems and severe problems to the detriment and substantial detriment to all of these children and specifically to the children Cesar and Eduardo."

The juvenile court found that, pursuant to section 366.22, subdivision (a), return of Eduardo to his parents would create a substantial risk of detriment to his safety, protection or physical or emotional well-being. The court also found reasonable services

had been offered to his parents and that progress by both parents was minimal. The court terminated reunification services. The court did not set a hearing under section 366.26 for Eduardo “because Eduardo is not a proper subject for adoption at this time and has no one willing to accept legal guardianship. Court orders child to remain in long-term foster care.”

II

DISCUSSION

Both parents argue on appeal there is insufficient evidence to support the juvenile court’s order. County counsel responds that the juvenile court’s conclusion “that the parents had not merely failed to benefit from services but that there were ‘substantial problems and severe problems to the detriment and substantial detriment to all of these children and specifically to the children Cesar and Eduardo’ was amply supported by the evidence.”

“[T]he permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. At the permanency review hearing, the court shall consider . . . the parent’s or legal guardian’s ability to exercise custody and control regarding his or her child The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate . . . the efforts or progress, or both, demonstrated by the parent [¶] . . . [¶]

The court shall also order termination of reunification services to the parent or legal guardian.” (§ 366.22, subd. (a).)

“Where the appeal is on the ground that the evidence is not sufficient to sustain the verdict, an appellant has the burden to demonstrate that there is no evidence of a sufficiently substantial character to support the verdict. [Citations.]” (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.) When we review for substantial evidence, we must “determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged” (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401, fn. omitted.)

Here there is evidence the parents did not make substantial progress after participating in reunification services, that the father is a violent man, that the parents permit their children to observe violence between them, that the parents are unable or unwilling to exercise control over Eduardo, and that the mother has failed to protect Eduardo from violence inflicted by his older siblings. The social worker expressed concern about the parents’ ability to safely supervise and guide Eduardo through his bouts of aggression, which is not surprising in light of the parents’ own history. The juvenile court expressed concern about the mother’s ability to provide a safe home for Eduardo since she permitted the father into her home despite the restraining order and permitted the oldest son to live with her, even though he has been to state prison and has a history of inappropriately touching one of the younger children. Under the circumstances we find no error in this record, and conclude substantial evidence supports the juvenile court’s findings and orders.

III

DISPOSITION

The juvenile court's order placing Eduardo in long-term foster care is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.