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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re S.A. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

Z.A.,

Defendant and Appellant.

G046873

(Super. Ct. Nos. DP021770,
DP021771 & DP021772)

O P I N I O N

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

Christy C. Peterson, under appointment by the Court of Appeal, for
Defendant and Appellant.

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

No appearance for Minors.

* * *

INTRODUCTION

Z.A. (mother) challenges the juvenile court's disposition order removing her children, N.A. and A.A. (now ages three years and one year, respectively), from her custody and care. (Mother does not challenge the portion of the disposition order removing now eight-year-old S.A. from her custody and care.) There was sufficient evidence of a substantial risk of harm to N.A. and A.A. if they were returned to mother's care at this juncture, and the juvenile court did not err in failing to consider less drastic measures than removal. We affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Detention and the Filing of the Dependency Petition

In October 2011, the Orange County Social Services Agency (SSA) initiated an investigation of mother, based on allegations that her seven-year-old son, S.A., who has developmental delays, was running between his home and school without adult supervision. S.A. reported he was hungry and there was no food in his house. Mother and S.A. were unkempt and smelled. S.A. also reported that mother belittled him, and mother stated that she hated him, did not love him, and he was a pig.

Later in October, S.A., N.A., and A.A., then ages seven, two, and nine months, respectively, were taken into protective custody, based on allegations that mother had physically abused S.A. The children's maternal great-aunt called the police to report that mother had pulled S.A. off the couch and onto the floor, and had kicked him on the

hand and in the chest. Mother was arrested, and a criminal restraining order was put in place protecting S.A. from mother.

S.A. told a social worker that mother frequently hit him, sometimes with a stick. S.A. also told the social worker mother had hit N.A. with a stick and slapped A.A. on the mouth, but denied either of his younger siblings had ever had a mark or a bruise. The social worker observed N.A. and A.A. were healthy, and showed no signs of abuse or neglect.

SSA filed a petition alleging the children came within the jurisdiction of the juvenile court pursuant to section 300, subdivisions (a), (b), and (g) of the Welfare and Institutions Code. (All further statutory references are to the Welfare and Institutions Code.) At a detention hearing, the juvenile court found SSA had made a prima facie showing that the children came within section 300, and removed them from mother's care; the children were placed in the maternal great-aunt's custody. The court ordered weekly supervised visits between mother and N.A. and A.A.

Jurisdiction/Disposition Report and Addenda

In the jurisdiction/disposition report, SSA noted that the maternal great-aunt reported N.A. and A.A. had adjusted well to the placement, but S.A. was a "handful." S.A. used foul language, yelled and cursed, refused to eat, and demanded takeout food. He did not listen or follow directions, and it was hard to redirect him. S.A. continued to state that mother had hit him with a clothes hanger and called him bad words, and that mother had hit N.A. and A.A. on their mouths when they cried, but now denied mother had ever hit N.A. with a stick. S.A. liked living with mother because she provided food for the children and took them to the doctor when they were sick, but he wanted to live with the maternal great-aunt because mother "hits him" and he was afraid of her.

The maternal great-aunt told the social worker that she did not see mother kick S.A. on the day of the incident leading to detention, but had heard S.A. yell, "[d]on't

hit me.” She acknowledged mother would get “very frustrated” with S.A. because he did not listen to her; mother yelled at the children a lot; and mother once chased S.A. with a broomstick when she caught him stealing money from her purse. The maternal great-aunt never saw mother hit S.A. with a stick, and never saw mother hit N.A. or A.A.; she described mother as a “good mother” who attended to her children’s needs, and felt bad that mother was in this situation.

A woman who rented a room from mother stated she saw mother hit S.A. on three separate occasions, including the October 2011 incident, and heard her yell at the children a lot, but never saw her abuse N.A. or A.A. Another roomer in the home was interviewed by the police on the night of the incident, and reported that she saw mother push S.A. off the couch and kick him twice. She had also seen mother repeatedly hit S.A. on two previous occasions, once with the heel of her shoe and once with a broom. This witness also denied ever having seen mother physically abuse N.A. or A.A.

Mother was released from jail in early November 2011, and met with the social worker in mid-December to go over her case plan. Mother was referred to counseling, anger management classes, and parenting classes. Mother began visiting with N.A. and A.A., and was helping to support them financially. Mother planned to start attending a parenting support group and an anger management class in February.

S.A. continued to be disruptive at home and at school. The maternal great-aunt reported he acted on impulse and was not able to express himself verbally when he got upset. At school, S.A. threw chairs, threatened his classmates, and hit his teacher and other students. When S.A. started therapy, his behavior improved, but then he started “on a downward spiral,” and was hitting people, throwing objects, destroying property, using profanity, being extremely disrespectful, and lying. S.A.’s behavioral intervention coach expressed concern that the maternal great-aunt was not equipped to deal with S.A.’s severe behavioral issues.

Mother reported she was doing well and had begun attending her parenting class. The parenting class instructor, however, reported mother was not doing well in the class, had difficulty staying focused, and did not bring her homework to class.

Jurisdiction/Disposition Hearing

A joint jurisdiction/disposition hearing took place over several days in April 2012. The juvenile court admitted SSA's reports. The assigned social worker testified that he would recommend mother should be provided reunification services, but it would not be appropriate to return the children to mother's care due to S.A.'s continued aggressive behavior and mother's inability to participate in and complete her case plan. Mother had attended parenting classes, but had a hard time remembering any information from them. She had not yet started her anger management class or completed any counseling; the social worker acknowledged he had only recently submitted a referral for counseling. The social worker stated he had concerns about S.A.'s veracity, particularly regarding the contention that mother had hit A.A. on the mouth. No independent information confirmed S.A.'s claims in that regard. To the contrary, mother's visits with N.A. and A.A. were going well, and the visitation monitors had no concerns about mother's ability to redirect N.A. and A.A. or discipline them without physical punishment or inappropriate verbal comments.

The maternal great-aunt testified that she had not seen mother hit or kick S.A. on the day of the incident, and, in fact, had not ever seen mother hit any of the children. Mother did not testify at the hearing.

At the conclusion of the hearing, the juvenile court found true by a preponderance of the evidence certain allegations of the petition supporting jurisdiction under section 300, subdivisions (a), (b), and (g), and declared S.A., N.A., and A.A. to be dependent children of the juvenile court. Pursuant to section 361, subdivision (c)(1), the court found returning the children to mother's custody would be detrimental to them. Mother timely appealed.

DISCUSSION

I.

IS THE JUVENILE COURT'S DISPOSITION ORDER SUPPORTED BY SUBSTANTIAL EVIDENCE?

On appeal, mother challenges the juvenile court's disposition order with regard to N.A. and A.A. only. "We affirm a juvenile court's . . . dispositional findings if they are supported by substantial evidence. [Citation.] 'In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.' [Citation.]" (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.)

In order to remove a child from his or her parents' care and custody, the juvenile court must find, "by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; see § 361, subd. (c)(1).) Mother contends on appeal that there was not substantial evidence of a substantial risk of harm to N.A. and A.A. She notes that the only evidence she had ever hit N.A. and A.A. was S.A.'s statements to that effect.

However, mother does not challenge the juvenile court's findings that she kicked S.A. during the incident in question, and that she had used physical violence against him on at least two other occasions. In addition to S.A.'s statements, these findings were amply supported by mother's and the maternal great-aunt's statements to the social worker on the day of the incident, and the statements of mother's two boarders that they had witnessed mother hit, strike, or kick S.A. Mother's actions were always described as resulting from her anger and frustration with S.A.

S.A.'s statements regarding mother hitting N.A. and A.A. were inconsistent and were unsupported by any physical evidence or any other witness statements, and, on their own, might not support a disposition order. However, the juvenile court found S.A.'s statements believable. When combined with the evidence of mother's repeated abuses of S.A., prompted by her anger and frustration toward him, there was sufficient evidence of a substantial risk of harm to N.A. and A.A. to justify the juvenile court's disposition order. "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735.) The risk that mother, without intervention to address her anger management and poor parenting issues, might use similar physical abuse against N.A. and A.A. if they developed behavior problems or otherwise caused mother to become angry or overwhelmed, is substantial.

Mother cites *In re Paul E.* (1995) 39 Cal.App.4th 996, 1004, for the proposition that the failure to comply with a service plan is not sufficient justification for removing a child from the home. This is a true statement of the law, but irrelevant here. In making the disposition order, the juvenile court did not rely on mother's failure to participate in or complete her case plan, much less was it the deciding factor. To the contrary, there was significant evidence of a substantial risk of harm to N.A. and A.A. if they were left in mother's care.

II.

DID THE JUVENILE COURT ERR BY FAILING TO CONSIDER LESS DRASTIC MEASURES?

Section 361, subdivision (c)(1) requires that, before a juvenile court removes a child from his or her parent's custody, it find that "no reasonable means" exist for preventing removal. (See *In re Henry V.* (2004) 119 Cal.App.4th 522, 525.) Mother suggests the juvenile court erred by failing to return N.A. and A.A. to mother's custody

“under stringent conditions that Mother receive immediate counseling and in-home services to support family maintenance . . . [and] ordered [SSA] to periodically visit N[A.] and A[A.]”

Mother’s argument ignores the following: Mother was released from jail in early November 2011, but failed to meet with the social worker until mid-December. Her case plan consisted of three main components: counseling, anger management classes, and parenting classes. By the time the jurisdiction/disposition hearing occurred in April 2012, mother had not yet started counseling and anger management classes, and although she had attended parenting classes, she had not received a certificate of completion and the instructor expressed doubts about mother’s comprehension of the material presented. Mother fails to explain how more stringent conditions could have ensured the safety of N.A. and A.A. if they were returned to mother’s custody and care, following the jurisdiction/disposition hearing. Mother also fails to explain how in-home supervision would change the risk of harm to N.A. and A.A., given that the presence of two boarders in her home, and of the maternal great-aunt in a duplex unit, all of whom intervened to attempt to protect S.A. from mother’s abuse, had failed to prevent mother from hitting and kicking S.A. on multiple occasions.¹

In re Jeannette S. (1979) 94 Cal.App.3d 52, relied on by mother, is distinguishable. In that case, the appellate court reversed the juvenile court’s order removing the minor from the mother’s care. (*Id.* at pp. 60-61.) The minor, who was frequently very dirty when she went to school, lived in filthy conditions with the mother, three dogs, and two cats; there were animal feces on the floor, spoiled food on the stove, and the smell of urine throughout the home. (*Id.* at p. 56.) The appellate court noted that such “filthy home” cases are the most amenable to avoiding removal of the child from

¹ Nothing herein is intended to express any opinion as to mother’s ability to benefit from the reunification services provided by SSA, and regain custody of any or all of her children.

the home, because they “are the most responsive to supervision.” (*Id.* at p. 61.) This, however, is not a filthy home case; to the contrary, the juvenile court found that mother had physically abused S.A. on more than one occasion as a result of her anger and frustration toward him.

DISPOSITION

The order is affirmed.

FYBEL, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.