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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re E.A., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

B.D.,

Defendant and Appellant.

G046996

(Super. Ct. No. DP022277)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Cheryl L. Leininger, Judge. Affirmed.

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

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

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B.D. (mother) appeals from the juvenile court's jurisdictional and dispositional orders concerning her daughter, E.A., who will be 18 years old in March 2013. Mother challenges the sufficiency of the evidence to support the juvenile court's dependency finding taking custody of E.A. because mother could not keep E.A. safe from the dangerous, runaway lifestyle she chose to escape the volatile home environment mother provided. (See Welf. & Inst. Code, §§ 300, subs. (b) [failure to protect] & (g) [caretaker absence], 361, subd. (c) [removal from home]; all further undesignated statutory references are to this code.) As we explain, substantial evidence supports the juvenile court's ruling, including mother's admissions she could not control E.A., did not want E.A. to return home because of her behavior and accusations of abuse, that "it is best to let go since E[A.] does not want to come back," and her statements on the eve of trial reiterating she did not want E.A. returned to her care. We therefore affirm the juvenile court's dependency and out-of-home placement orders.

I

FACTUAL AND PROCEDURAL BACKGROUND

At the end of February 2011, less than a month before her 17th birthday, E.A. ran away from home for the 30th time in less than a year. On most occasions, she fled for a day or less, but sometimes she was gone up to three days. She usually went to her boyfriend's home, with whom she had begun drinking alcohol and smoking marijuana on an almost daily basis before she turned 16 years old. She admitted her boyfriend sometimes struck her. Nevertheless, she preferred his company to mother's because E.A. and mother fought frequently in incidents that included hair-pulling, slapping, spanking, breaking dishes and, according to E.A., mother sometimes using a

belt to discipline her and, recently, whipping her with TV-DVD cable cords in anger and frustration.

Their relationship had soured dramatically when E.A. turned 12 years old, and E.A. did not understand why. Mother gave birth to E.A. when mother was 15 years old. Mother's criminal history included a grand theft arrest for taking a vehicle without consent, a misdemeanor conviction at age 19 for providing false information to a peace officer, recent misdemeanor convictions in 2007 for criminal threats, battery, and vandalism, Vehicle Code violations for driving without a license, and convictions for driving under the influence (DUI) in 2008 and 2009. By her early 20's, mother had three other children fathered, like E.A., by different gang members who did not remain in the children's lives. Child welfare records showed five contacts with mother, most recently in 2008 when E.A. came to school with bruises on her upper arms. But E.A. explained she sustained the bruises in a fight with her brother because she was teasing him, she denied she feared mother, and child protective services (CPS) closed this and other referrals as "unfounded."

Mother explained to a social worker in the present case that she had stopped drinking and that her two DUI violations occurred in the midst of a broken romance and a "partying" lifestyle she abandoned a few years earlier. Mother began to turn her life around at that time, enrolling in a community college with plans to get her G.E.D. and become a paralegal. E.A. later wrote in a 2011 journal entry as her own problems escalated: "I'm afraid of my future. [¶] I[m] scared my life will be like my parents[']. I won't get to fin[i]sh school and I will be hook[ed] on drugs and alcohol. I will go to jail."

The police took E.A. into protective custody late in the evening on February 29, 2011, after responding to a call from a youth pastor reporting potential child abuse. According to E.A., she ran away that day to a girlfriend's home to escape mother's increasingly physical abuse, but the friend was not home, so the friend's parents drove her to their church, where the minister called the police. E.A. told the police she had been enduring her mother's verbal and physical abuse since age 12, but it had intensified in the last year due to E.A.'s poor school performance, discipline problems at home, her relationship with a boyfriend, and her habit of running away. According to E.A., mother punched her in the left cheek with a closed fist during a confrontation a month earlier, and kicked her in the leg when she fell to the ground. And in a February argument over E.A.'s Facebook use, mother removed a thin black cord connecting a DVD player to the TV, held E.A. against the wall with her left hand, and whipped the cord across her legs more than 15 times. The officers observed "several crescent shaped bruises on [E.A.]'s right leg just above the knee" and "several older straight line scars on both legs," but detected no signs of prior trauma on her face or cheeks.

E.A. cried at the prospect of returning home because she was "extremely fearful" of mother and further abuse. She did not, however, believe her younger brothers, in ninth, seventh, and first grade, were in danger. The officers telephoned mother, who denied any abuse and noted CPS had closed earlier referrals. Mother described E.A. as "operat[ing] at a nine to ten year old maturity level." The officers transported E.A. to Orangewood Children's Home (Orangewood) at 3:00 a.m.

In the days following intake at Orangewood, a doctor diagnosed E.A. as undernourished. E.A. acknowledged a poor diet she described as an "eating disorder" in which she did not eat at home even when hungry because she was so "angry and upset

about how . . . mother behaved and ‘acted’ towards her.” She similarly did not sleep well at home, often “wak[ing] up in the middle of the night due to her own feelings of stress.” She also engaged in “cutting” by drawing blood on her arms with a razor, which she hid from mother by wearing long-sleeved shirts. Her health improved dramatically at Orangewood; she put on weight and was sleeping through the night, she described herself as “happy” and noted, “I have a sense of humor now[,] it’s good to have friends and have people” around, whereas she had felt “isolated” being homeschooled. Her new therapist described her as “very insightful and very thoughtful,” with “good verbiage” despite possible developmental delays. An earlier medical exam while in mother’s care suggested E.A. suffered slight “autistic like behaviors, but her new therapist observed no “autistic ‘symptom[o]logy.’”

Meanwhile, the juvenile court sustained E.A.’s detention, and set a jurisdictional and dispositional hearing for May 2012.

In an interview with a social worker, mother denied “ever” hitting or punching E.A., and denied striking her with TV cords or “any objects.” She acknowledged, however, “having behavioral problems with the child . . . for a long time.” She tried seeking help early on, beginning faith-based counseling in 2007 and completing a church program in 2009 entitled, “Changing Destructive Adolescent Behavior.” She sent E.A. to her maternal grandmother’s for two months at the end of 2010, but E.A. engaged in the same behavior: she “ditche[d] school, smoke[d] marijuana, and r[an] away.” Mother tried a county intervention class called REACH in early 2011 but then, as E.A.’s school truancy and runaway problems grew worse, mother appears to have dropped outside help, except monthly half-hour telephone counseling for E.A. Mother

pulled E.A. out of high school to homeschool her using Internet classes. A progress report for September through October 2011 showed E.A. failing all her classes.

In March 2012, E.A. was performing well in school at Orangewood, where she preferred the “normal school setting” with the opportunity to interact with teachers and other students, but mother demanded her removal, expressing concern E.A. would lose the “positive connections” she had established through the staff at the online school. Disappointed and “[v]ery sad,” E.A. lamented that “[e]very time’ she tried to do well, [mother] would do something to challenge that.” Mother eventually consented to E.A. reenrolling provided Orangewood would develop an individual education plan for E.A. in coordination with the online school’s specialist.

A CAST (Child Abuse Services Team) doctor reviewed photographs of E.A. taken at the time she was detained and observed “the marks on [her] hands, lower legs, and thighs do not look like being hit with a cord” because “they are not patterned and do not look like bruises,” though she noted “someone can be hit with an object and a mark will not be left.” The doctor also reported “the bruise on the child’s knee could possibly be from being hit[,] but that . . . is not clear,” and discolorations on E.A.’s “lower legs and thighs look more like marks that could be caused [by her e]czema.” An Orange County Social Services Agency (SSA) social worker therefore categorized E.A.’s allegation of physical abuse as “inconclusive,” which the agency defined as “one . . . determined not to be unfounded, but the finding[s] are inconclusive and there is insufficient evidence to determine [physical] child abuse or neglect has occurred.”

Nevertheless, mother agreed, as she had in SSA interviews at the outset of the detention, that she “currently does not want the child to return to her home” because she could not “house the child . . . due to the ongoing behavioral problems” and thought it

“best to let go” because E.A. “does not want to come back to her.” The social worker observed that although mother wanted E.A. “back in her care” eventually, “[a]t this point, the mother believes that the child being removed . . . may be positive for the child and herself and hopes that future services will benefit their relationship.”

For her part, E.A. told the social worker she had once “thought she could handle it and stay [with mother] until she was eighteen,” but she concluded, “I cannot put up with it anymore.” She did not want to return home, but instead wanted to remain “in foster care until I am 18.” E.A. refused for weeks to consider a visit with mother, but they met in early April when mother came to Orangewood for E.A.’s individual education planning session. The social worker observed E.A. had “built up [an] emotional wall to separate from” mother, and E.A. “did not make eye contact and her shoulders seem[ed] to crouch slightly turned away from” mother.

At the end of April, just before trial in early May, E.A. had an overnight visit at her grandmother’s home, and E.A. intercepted two text messages from mother on grandmother’s cell phone. The messages stated mother did not want to see E.A. or for E.A. to be around her brothers, but instead that E.A. should live with the grandmother. When E.A. returned to Orangewood, she showed the staff photographs of her “making out” with a boy at the mall while purportedly under grandmother’s supervision during the visit.

The juvenile court heard testimony over several days in May. Mother acknowledged that E.A. was “at risk” when she ran away from home, especially when she stayed with a boyfriend who used drugs. Mother did not know E.A. cut herself with a razorblade. She admitted she used a belt to discipline E.A. twice when she was around 12 years old, but denied she left marks or bruises or that she slapped, punched, kicked,

pulled hair, or disciplined E.A. by whipping her with TV cords. She admitted her relationship with E.A. was “pretty bad,” but she believed it would improve now that E.A. had a new boyfriend with whom mother would allow contact. She wanted E.A. returned to her care, but she knew E.A. did not want to see her and had refused to meet with her even in monitored visitation or conjoint counseling. Mother felt individual therapy sessions SSA had set up for her were all *she* needed, which she agreed to continue if the dependency petition were dismissed. E.A., on the other hand, needed an array of services, but mother had not yet located a children’s therapist for E.A., nor considered summer camp or classes for her beginning in a month. Mother admitted she had just submitted an application for a Big Sister mentor for E.A., and she planned to send E.A. to a military-style, residential academy beginning in July, at which point E.A. burst into tears and left the courtroom.

After mother completed her testimony, E.A. took the stand over the course of two days. She explained she had laughed out loud in court in disbelief when mother had testified she spanked E.A. in 2011 because E.A. had called her the “B word.” E.A. had not called mother that word, but she admitted she said she wished mother would die. E.A. testified “there was [*sic*] so many time[s] that I . . . got hit” that she could not remember them all or specific dates, but she described the incidents in January and February 2012 when mother had punched and whipped her. She also described other incidents in July or August 2011 when mother punched her, slapped her, pulled her hair, and hit her with the TV cords.

She could not live with mother again. “I have to be this tough person all the time. And I can never finish — I can never just — I cannot be around my mom. My mom — I have a lot of hurt and anger towards her. I don’t think I can live with her.”

When E.A. did something wrong, mother would swear at her and hit her, angering E.A. E.A. cut herself with a razor on two occasions when she was enraged. She did not sleep well at her mother's because she was scared and did not feel safe given the physical blows. E.A. hoped mother had changed, "that she really cared about me," but when she saw the text messages on her grandmother's phone, E.A. concluded, "[S]he's lying . . . that she cares about me. She just doesn't want to look back."

After E.A. finished testifying on a Friday, the juvenile court continued the hearing several days. E.A. ran away from Orangewood that afternoon, but returned voluntarily on Monday. According to mother, E.A. phoned the paternal aunt the Saturday and Sunday she was gone, and admitted she "had gone to a party, gotten drunk, and had sex with her ex-boyfriend." E.A. also later "AWOL'd" again for 45 minutes because she was upset with a peer at Orangewood; she returned after she "just walked over to Carl's Jr. in order to calm down." E.A.'s therapist notified the social worker that E.A. was "beginning to feel cooped up" at Orangewood and growing "very anxious to be placed" in a foster home. Fortunately, a potential foster parent stepped forward to schedule a preplacement visit.

Meanwhile, at the continued hearing, county counsel and minor's counsel argued that E.A. needed the juvenile court's protection as a dependent child, which mother opposed. The juvenile court sustained dependency jurisdiction over E.A. Noting E.A. "ran from the courtroom two or three times in tears," the court observed that while "[c]learly mother loves" E.A., "mother and minor's relationship is completely dysfunctional and they are estranged at this time." The court found "both mother[s] and minor's testimony to be credible at times . . . and not credible at times . . .," including "some denial and minimization by mother and exaggeration by minor." The court

concluded , however, that “there was sufficient evidence about some of the face slapping and about pulling — about the hair pulling by mother on at least a couple of occasions,” and “[c]ertainly these things are not appropriate parenting techniques.”

More importantly, the juvenile court found mother was “aware that [E.A.] had problems,” but after initial efforts failed, mother “did little to address the ongoing escalating problems” as E.A. spiraled downward. Mother “didn’t seek out and obtain or even attempt to obtain additional and necessary help for” E.A.; in particular, the “30 minutes once-a-month-phone [counseling] session was insufficient to help.” Mother’s inability to protect E.A. was manifest in E.A.’s “dangerous risky behavior that resulted in physical injury to herself.” Specifically, for example, E.A. “ran to a place where she felt she had someone who cared for her and who supported her. Unfortunately it was to a person who took advantage of her and physically abused her.”

The juvenile court concluded E.A. remained at risk in mother’s care because mother “was not capable of recognizing the seriousness of the problems or doing something about it or she simply couldn’t deal with it, didn’t want to deal with it, or neglected to deal with it.” Mother did “not appear to accept any responsibility for [E.A.]’s behavior” and lacked “understanding and insight into the issues with [E.A.] . . . and the work the two of them need to do or what is needed to help.” For example, while the court “commend[ed] mother for her efforts and her optimism that minor can start counseling immediately and get into programs, none of these programs are in place except perhaps for maybe starting the counseling. And even that is uncertain whether that could actually start immediately.” The court also noted that the text messages E.A. intercepted “of course hurt [E.A.], but it also cause[d] the [c]ourt to doubt mother’s sincerity and credibility about having [E.A.] return and being capable of adequately

supervising or protecting [E.A.]” In sum, the court concluded: E.A. “is not ready and mother is not ready for the minor to return home.” Consequently, the juvenile court found continued placement out of mother’s custody was necessary, and mother now appeals.

II

DISCUSSION

Mother challenges the sufficiency of the evidence to support the juvenile court’s decision finding E.A. fell within its protection as a dependent child. In the alternative, she argues the evidence did not support removing E.A. from her custody; instead, “[t]he court could have placed the minor in [mother]’s care under close supervision and with conditions in place.” Ample evidence supported the juvenile court’s finding and disposition.

The juvenile court found E.A. to be a dependent child under both subdivisions (b) and (g) of section 300. Subdivision (b) provides for juvenile court dependency jurisdiction when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” The juvenile court similarly may protect a child as a court dependent when he or she “has been left without any provision for support” (§ 300, subd. (g)), which does not require a finding of willful abandonment (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1128-1129 (*D.M.*)), but rather that “the parent is unable to provide or arrange care for the child at the time of the jurisdictional hearing” (*In re J.O.* (2009) 178 Cal.App.4th 139, 153-154).

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) The burden rests on the appellant to demonstrate the evidence does not support the juvenile court’s ruling. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) As we have observed, “The substantial evidence standard is a difficult hurdle for an appellant or writ petitioner. ‘If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.’ [Citation.] A reviewing court is in no position to judge the credibility of witnesses or reweigh the evidence, and therefore must resolve all evidentiary conflicts in favor of the juvenile court’s findings.” (*D.M., supra*, 173 Cal.App.4th at p. 1128.)

Because the juvenile court’s dependency jurisdiction may rest on a single ground (see § 300 [“Any child who comes within *any* of the following descriptions is within the jurisdiction of the juvenile court,” italics added]), subdivision (g) alone supports the juvenile court’s ruling where the evidence shows want of an adequate caretaker. (*D.M., supra*, 173 Cal.App.4th at pp. 1127-1128; see also *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 [“reviewing court may affirm [dependency jurisdiction] if the evidence supports the decision on any one of several grounds”].)

Here, mother’s own text messages showed that on the eve of trial she did not want E.A. to return home to her care. Instead, she contemplated having E.A. reside with the maternal grandmother because mother did not want to see E.A. or have her around her brothers. We may assume mother had E.A.’s best interests at heart as well as her own, given the emotional upheaval and anger on both sides, but the fact remained that grandmother was an unsuitable caretaker given her demonstrated past and present inability to manage E.A.’s behavior. And with mother effectively absenting herself via the text messages as a potential caretaker, the juvenile court reasonably could conclude

little had changed since E.A.'s detention just two months earlier, when mother acknowledged their toxic relationship drove E.A. away into at-risk behaviors and she therefore should remain in the juvenile court's care.

Mother argues more "context" was needed to understand the meaning of the text messages, and she asserts "what the text message[s] actually said" was ambiguous as to whether mother "did not want [E.A.] or did not want to see her." But neither meaning supported placing a child with a parent caretaker who either did not want her there or, worse, did not want to see her at all. In any event, mother had the opportunity to present additional context for the juvenile court to consider, and failed to do so. Absent a parental or substitute caretaker, substantial evidence supported the juvenile court's dependency finding under section 300, subdivision (g).

For the sake of completeness, we note the evidence also supports jurisdiction under section 300, subdivision (b). In essence, mother challenges E.A.'s account of abuse and an abusive home environment because E.A. "had clear motives to make up allegations against appellant." But we may not second-guess the trier of fact's credibility determinations. (*D.M.*, *supra*, 173 Cal.App.4th at p. 1128.) While the juvenile court did not include in its sustained findings E.A.'s more serious allegations mother whipped her with cords, the court's findings mother slapped E.A. and pulled her hair supported the conclusion this toxic home environment not only posed a direct risk of physical harm to E.A., but also prompted a runaway lifestyle where she faced serious risks, including drug abuse and physical abuse at the hands of others. In contrast, the juvenile court observed E.A.'s physical and mental health improved substantially outside mother's care. "She is eating better. She has actually gained some weight. She is sleeping well." Having properly determined mother failed to protect E.A. from harm

(§ 300, subd. (b)), and that even if mother had not removed herself from placement consideration in the text messages, she was not a safe, viable option and had made no suitable alternative arrangements (§ 300, subd. (g)), the juvenile court reasonably could decline to return E.A. to mother's custody (§ 361, subd. (c)).

III

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.