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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re PAULA M. et al., Persons Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

G053123

(Super. Ct. Nos. DP024750 &
DP024751)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Plaintiff and Respondent.

Nicole Williams, under appointment by the Court of Appeal, for the Minors.

A.C.¹ (the mother) appeals from the juvenile court's order at the 18-month review hearing establishing a plan of long-term foster care. The Orange County Social Services Agency (SSA) joins with her, but the mother's two teenage daughters, Paula and Clara (the children or the girls), disagree. While the mother argues there was no substantial evidence to support the court's findings that a substantial risk of detriment was present if the children were returned to her, the girls assert the court properly concluded returning them to the mother's care would present a substantial risk to their emotional well-being. We conclude the court's findings were supported by substantial evidence, and therefore we affirm the order.

I FACTS

In late 2012, Paula² (born 2001), and Clara (born 2002), were living with A.M. (the father) and visiting the mother on the weekends. This arrangement was based on a recommendation of the mother's therapist due to severe emotional difficulties she was experiencing at the time. The mother had a law enforcement history which included theft, second degree burglary, and battery, the latter apparently arising from an incident in which she slapped the father. She had been married since 2007, but it is unclear whether she was living with her husband at the time. The girls had a number of adult siblings. The family had a fairly lengthy list of referrals and reports to SSA, some of which were substantiated, between 2002 and 2012.

During the weekend visits, the mother noticed the children would seem anxious. She asked if the father was mistreating them, but they would not tell her.

¹ The father is not a party to this appeal and is mentioned only as relevant.

² The record reflects that Paula had special needs. The mother believed Paula had autism, which was apparently untrue. She had a primary diagnosis of hearing impairment and a secondary diagnosis of speech or language impairment.

Eventually, they told her that while they were “rough playing” with the father, he would touch their private parts. The mother called the police, but the girls would not speak in their presence.

In November 2013, the mother was deported to Mexico. In March 2014, the girls reported the father sexually abused them. An investigation led to detention and placement in emergency foster care, and the father was arrested. Paula told the social worker that the father began touching her when she “started to form.” Paula said she had reported this to the mother previously, but the mother believed she was lying. Clara and Paula reported similar instances of sexual abuse. The father denied the allegations.

SSA subsequently filed a petition under Welfare and Institutions Code section 300, subdivisions (b), (d), and (g).³ In sum, the 12-paragraph petition alleged both physical and sexual abuse by the father, that the mother resided in Mexico and was unable to protect or support the children, and the parents had a history of domestic violence between them.

At the detention hearing, counsel was appointed for the mother, who was not present, and the children were ordered detained. Services were also ordered. The mother told the social worker she wished the children to be returned to her in Mexico, where she had stable housing and extended family support. She was living with her husband. She had already participated in available services and was willing to participate further as required. SSA contacted the Mexican Consulate and began coordinating efforts through the appropriate family service agency, known as DIF.

SSA learned the father had been released from custody with no criminal charges pending.

In May 2014, the children were placed in a foster home and were well. They stated they did not wish to return to the mother in Mexico. Paula told the social

³ Subsequent statutory references are to the Welfare and Institutions Code.

worker the mother was “jealous” and had slapped her face in the past. Clara did not want to go to Mexico because she wanted to finish school and go to college, and she did not speak Spanish well. She said her “mother is nice.” The girls’ therapist wanted more information about whether the mother knew about the abuse, and if so, how she could protect the children in the future.

The mother remained in Mexico, and completed certain documentation. She was also participating in parenting classes and counseling. DIF reported the mother had “the moral, emotional and financial stability and resources” to provide for the children.

At the jurisdiction hearing in June 2014, the court found the allegations true and set a disposition hearing. Shortly thereafter, both girls changed their tune and said they wanted to live with their mother. Clara said that talking on the phone with the mother had changed their mind. Paula said she really missed her mother and wanted to live with her. SSA recommended the children be placed with the mother in Mexico.

Sometime in August, however, matters changed again. The foster mother overheard Paula tell the mother she did not want to go to Mexico. Paula told the social worker that staying in the United States would provide her with better opportunities for college. Clara stated she had not really wanted to go to Mexico, but said she did to avoid hurting the mother’s feelings.

At the disposition hearing in September, the court found that despite reasonable efforts, the children’s welfare and protection required declaring them dependents and removing them from parental custody. Services were offered to the mother only.

By November, the mother moved to Tijuana so she could visit with the girls at San Ysidro. She had housing and a job. While the children wanted to see the mother, they did not wish to live with her.

In January 2015, they told the social worker they enjoyed seeing the mother, and had met her husband. They continued to say they did not wish to live with her. That same month, DIF completed a home study on the mother's residence, with favorable results.

By the end of January, the girls, who were 13 and 12 years old at that point, did not wish to continue living with their current caretaker. Paula was cutting herself. By February, they were moved to a new foster home, which they reportedly liked, and began to do well there. The mother continued receiving services in Tijuana.

There was a positive family visit in February. By March, the mother was visiting with the children monthly and calling them twice a week.

At the six-month review hearing in March, the court maintained the children as dependents because the conditions that gave rise to dependency still existed. The court found the services provided to the mother were reasonable.

In April, the mother completed therapy in Tijuana. The therapist provided a positive report, stating she was willing to learn new skills, had improved her communication skills, and her main objective was to provide a stable home for the children. She also completed an anger management class. In May, the therapist reported the mother had done well in domestic violence classes. The therapist recommended family reunification.

At the 12-month review hearing in May, the court continued dependency.

In June, SSA prepared an ex parte request to reunite the children with the mother immediately. The social worker stated the best and most appropriate placement was with the mother in Mexico. The mother had completed her case plan and she was ready to care for the children. The children, however, expressed their desire to remain in the United States so they might have better opportunities.

The children remained in foster care. Paula told the social worker she did not like seeing her mother, and the mother was only concerned with the children joining

her in Mexico. She said the mother “only gives us problems like telling lies.” Paula did not wish to return to the mother’s care even if the mother lived in the United States. Clara was also reluctant. She said she was afraid to go back to the way things were, and her mother reminded her of that. She was angry with the mother for “lying” to them. The foster mother reported generally poor behavior by both girls. Neither of the children’s therapists could provide a placement recommendation.

During this period, the visits between the mother and the children continued on a monthly basis. Overall, the visits went well.

SSA continued to recommend reunification. The minors opposed, and the court held a contested hearing on SSA’s ex parte request. The mother and the children both testified.

The testimony of both minors reflected their conflicted feelings. Paula, who was age 14 at that time, believed the mother could protect her, but she did not feel safe around the mother. She sometimes missed the mother. At times visibly upset and tearful, Paula testified that she did not want to go to Mexico because it was new and would be a different thing to get used to. She had negative feelings about the mother because of the family history, including an incident where the mother hurt her, said a “bad word” to Clara, and made Paula “lie” about it. Paula said the mother had hit her and Clara, including an incident where the mother had hit her with a sandal and left a bruise.

Paula said the visits at the border were generally fun. She agreed the only reason she did not want to live with the mother is because she was afraid of living in a new place. She did not think the mother had the money to send her to an English school, and she did not read or write in Spanish. She pointed out small differences she had noticed during a visit to Mexico, and said she felt like she did not belong. She did not want to get used to living some place different. Paula said that after a one-month visit to her mother in Mexico prior to dependency, when she returned to her father’s home, she felt that she would rather be with her mother, but not in Mexico.

Paula also said she wanted a better life for herself and said her sister was the most important person in her life. She felt the United States had the right education for her, and she wanted to study here. She wanted to visit her mother in Mexico for a couple of days. She would like to spend Christmas with her. When asked if she would like to attend school in California and visit her mother during the summer, she said “that would be great.”

Clara, who was 12 years old at the time, also testified. When asked if she wanted to be placed with her mother, she flatly answered, “no.” She said: “I don’t want to be placed in Mexico because I don’t feel safe with my mom.” Clara reported a time when she seven or nine when the mother left for Chicago “for a long time,” and because Paula did not want to talk to her, she was the “only one to face my mom.” She felt that her mother only wanted to know about Paula, and it did not feel right to her. When she was young, the mother would leave them with an older sibling while she went to “party” at night, though the mother was with them during the day.

When asked if she would want to live with the mother if Mexico were not part of the equation, Clara said that she did not know. She said that she did not “want to be neglected like I was when I was little. I don’t want to deal with my mom arguing with my stepdad. I don’t want to have to fear my mom’s going to hurt my sister.”

When questioned about the visits at the border, Clara said that it was usually she who did the talking, and Paula was quiet. She described the visits as “okay.” When asked if there were sad times, Clara said she was not really sad, but did not like it when her mother would scold her or tell her how to behave. It upset her, because “my mom wasn’t there for a lot of my life so it’s kind of like she’s trying to take the mother role, but it’s kind of already too late for me.” She did not feel sad when the visits were over.

Clara said she had telephone conversations with her mother, but Paula did not. She described the conversations as “all right.” Sometimes they argued on the phone.

The mother would want Clara to tell her about Paula, but Clara did not want to talk about Paula. She was concerned about saying something to the mother that might upset Paula. She felt like her mother put her in the middle.

When asked if there was anything else she wanted the judge to know, Clara replied: “I used this explanation with all my friends that ask, with my sister, all the time when they ask me if I want to stay or go to Mexico. ‘You can put my mom and me in the same room, and we’d be miles apart.’” She and her mother were never close. She did not hate her mother, but she did dislike her. She was not sure if she loved her. Clara said her mother “was never really a mom, at least not towards me.” She was not sure if her mother loved her.

Clara described her sister as the most important person in her life, the only person who is ever really there. She said she did not have an important adult in her life, and was not sure if she had an adult she trusted. She thought her mother wanted her to live in Mexico because “she wants to fix things, that she’s changed,” but she had “heard that line more than once” from the mother. Her mother had said she was going to change in the past, but never did. She felt she had to look out for her sister, because her father used to mistreat her, and her mother would scream at her and frighten her. Clara said that looking out for her was the only way she could help Paula out. When asked if she would want someone else to help her, to carry the load for a while, Clara said that she did not think that was possible. They looked out for each other. She would like somebody that could “be a big, big sister” to help.

After Clara’s testimony, the mother’s counsel, in trying to evaluate whether the mother should testify, agreed it would be helpful for the court to comment on the evidence it had heard from the children. With no objection from the other attorneys, the court noted that it found Clara’s testimony “moving. It suggested to the court that there is . . . a significant issue regarding her mental and emotional – with the emphasis on

emotional – health as it may thereafter impact her . . . ability to fully . . . develop both in a healthy fashion, that she . . . would seem to be parentified, that she lacks trust, that . . . she is protective of her sister, and does not seem to repose trust in any adult or traditional figures, that her testimony was emotional, that it was reflective of somebody. . . reliving or reciting this information [and] clearly had a[n] emotional impact and was reflective of emotional turmoil . . . and also particularly striking is the child’s age of 12.” The court found the testimony credible, and “sprung from a place deep inside this young lady and that touched nerves that have been rubbed raw.” The court expressed a concern that returning custody to the mother “would create a risk of serious emotional detriment.”

After the court’s comments, the mother testified. She said she felt pain and regret at listening to the children’s testimony. She had learned to admit mistakes, ask for help, and to dedicate herself to the children. She wanted to make amends while the children were still young. She recognized that a transition to living in Tijuana would be difficult for them. She had family who were available to help, and she had completed a parenting class. She regretted her errors as a parent and asked the court to give her the opportunity to demonstrate she had changed.

After hearing argument from counsel, the court denied the request to place the children with the mother. The court acknowledged the rights of the mother, but noted those rights were not unlimited. The court stated this was a tragic case, and not at all about the relative merits of living in the United States versus Mexico. Both, the court stated, were countries of opportunity with rich heritages and traditions. Rather, this case was about whether the children should be returned to the mother, who happened to live in Mexico.

Examining the situation further, the court stated it was not only important to look at the mother’s cooperation and her completion of services, but also to look at the impact on the children, with the relevant legal standard being a substantial risk of harm.

Referencing its earlier comments, the court found the mother's testimony moving. The court noted this was a crucial time for the children. "It is fair to say that Clara has been parentified to a striking level, that there is a recognition by Clara that she is the person who looks out for her sister, and . . . each child indicated that [the] most significant person in their lives . . . were one another, and there's no indication that they've been able to form a meaningful trust relationship with anybody else." Though they had formed school friendships, there were no adults in whom they placed trust. "There are deep emotional injuries that each child has sustained. And in terms of the helplessness, the notion of the past events, at the hitting, encouraging . . . because of a parent's fear, not to tell the truth, can be very confusing to a child." While the mother had moved on and recast her situation, the question was whether the children could be safely returned.

Again emphasizing that location was not the issue, the court presumed the social structure in Mexico would provide support for the children and the mother. But the court found it "plain" that there were "significant attachment issues." The court found Paula's refusal to talk to her mother on the phone "very troubling," even in light of her hearing problem in one ear. The court believed it was "the heart[, not] the ear, that is the impediment."

Further, the court found the "children have been damaged physically and, more profoundly, emotionally over a period of time, and . . . because of that emotional damage, that the prospective return, in the court's considered opinion, after listening to the evidence, does in fact pose a substantial risk of harm to these children." The court found the mother's efforts to remediate "laudable," but lacking in a concrete and coherent plan as to what she would do if emotional or behavioral challenges arose. "Were these children not so emotionally fragile, that this mother might well indeed pose no risk in terms of their return, but because of the history and because of the condition of the children, the court would find that the return would." The court took seriously SSA's

recommendation as well as the mother's participation in services, but found that "the deep-seated emotional deficits, the lack of trust between mother and the children would, if the court were to grant this, would be to inflict new emotional damage upon these children."

The court stated it did not only consider the reluctance to undergo a change, but "the depths of that dislocation is such that it would create, not only a substantial risk, but the court would find . . . emotional harm to the children." While acknowledging the mother's efforts and the depths of her feeling, the risk, the court believed, was too great.

An SSA report from October reported the children remained in foster care and continued to oppose returning to the mother's care. The foster parents reported behavioral problems, including taking care of their room and attending to personal hygiene, and generally disruptive and defiant conduct. The mother continued to wish to have the children returned to her. In a subsequent report, the foster parents asked to have the girls removed, though they subsequently changed their minds. By January 2016, they reported improved behavior and hygiene, although their behavior regressed again thereafter. The foster parents did not want to adopt, but were willing to remain caretakers as long as the behavioral problems remained under control.

At the 18-month review hearing in January, the parties adopted the same positions they had previously. SSA and the mother wanted the girls returned to the mother in Mexico, but the girls disagreed, asking the court to accept their testimony from the prior hearing, which the court did. At the conclusion of the hearing, the court found that although the mother had complied with her reunification plan and despite SSA's recommendation, returning the children would be detrimental. In addition to other factors, the court referred to the children's earlier testimony and found that they had an emotional fragility that precluded return to the mother's care. The court terminated services and ordered a plan of long-term foster care, with visits to the mother.

The mother now appeals. Initially, the children were not appointed counsel. After reviewing the mother's brief and SSA's letter brief, which concurred with the mother, we ordered counsel appointed for the children. The children's counsel submitted a responsive brief. The mother was given the opportunity to, and did, file a reply brief.

II

DISCUSSION

Standard of Review

Pursuant to section 366.22, subdivision (a)(1), at the time of an 18-month review hearing, "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." SSA generally has the burden of proof of establishing detriment.

"The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.' [Citation.] Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child's physical or emotional well-being. [Citations.]" (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.)

This court then reviews the juvenile court's determination for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) "In juvenile cases, as in other areas of law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

The parent challenging the order has the burden of showing the order is not supported by substantial evidence. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) We give ““full effect to the respondent’s evidence, however slight, and disregard[] the appellant’s evidence, however strong.”” (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) We review the evidence in the light most favorable to the trial court’s findings and draw all legitimate and reasonable inferences upholding such its findings. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Further, “[i]t is the trial court’s role to assess the credibility of the various witnesses, [and] to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. [Citations.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Substantial Risk of Detriment

One important consideration in determining detriment is the mother’s compliance with the case plan. (§ 366.22, subd. (a)(1); *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1341.) There is no dispute here that the mother participated in her case plan and cooperated with SSA, for which she deserves ample praise. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 773.) But compliance with the case plan is one factor for the court to consider, not the end of the inquiry.

The mother argues it was not her actions that directly led to dependency. That is true, and we certainly do not misplace responsibility for the father’s horrific conduct. But the mother had prior knowledge of possible molestation occurring, as reported by her daughters when they were living with the father and visiting her on the

weekends. While she states the police did not take action, that should not have been the end of the matter. The record does not show that the mother attempted to take any further steps at that time to protect the girls, including contacting SSA or making other living arrangements for the children. Paula later reported the mother believed she was lying. When, after the dependency case was initiated, the mother was asked about the allegation of failure to protect, she responded: “How can I protect them if they did not tell me about the abuse.” But they had, on at least one occasion, reported the abuse to her. She claims she had no control over the children’s living situation with the father after she was deported. She has since taken steps, through her reunification plan, such as her parenting class, that have hopefully remedied the issues of her failure to protect, as well as the issues surrounding domestic violence.

But despite the mother’s efforts, the evidence was clear and overwhelming that the children had no faith in the mother’s ability to protect them, creating a substantial risk to their emotional well-being.⁴ The children’s reluctance to reunify, the court found, was based on a deep-seated lack of trust, to the extent that returning them to the mother would be detrimental to their emotional health. Substantial evidence supports this conclusion.

Paula’s testimony was at times contradictory. She believed the mother could protect her, but said she nonetheless felt unsafe around her. She had strongly negative feelings about the prior history of abuse and her mother’s role. The mother argues Paula’s primary objection related to her fears of moving somewhere new and a

⁴ To the extent the mother characterizes the children’s testimony at the ex parte hearing as “stale,” we disagree. The testimony was just a few months old. According to both SSA and the children’s attorney, their views had not changed, and neither had the historical facts of the case. Requiring them to repeat the difficult, emotional experience of testifying was unnecessary, and most importantly, the mother stipulated their testimony at the ex parte hearing “would be the same as it is today.” She cannot now complain that testimony was invalid or incomplete.

dislike of Mexico. But there was also strong evidence of a difficult, untrusting relationship with the mother. She refused to speak to the mother on the phone, and Clara reported that she did not engage during visits, while Clara did all the talking. Paula reported her sister was the most important person in her life – not her mother.

Clara’s testimony was significantly clearer than Paula’s, and unequivocal. She flatly stated she did not feel safe with her mother. Nor did she feel close and bonded to her mother, stating that even in the same room, they would be miles apart. She felt the mother had never really been a parent toward her, and she was not sure if her mother loved her. She, too, described her sister as the most important person in her life. There was no adult who was important to her.

The juvenile court’s decision focused heavily on the fundamental lack of trust reflected in both girls’ testimony. Despite the mother’s improvements, the children’s strong feelings had not changed. Further, it was “plain” that there were “significant attachment issues.” This is not about, as the mother suggests, children being allowed to decide dependency matters. Rather, it is about “the deep-seated emotional deficits, the lack of trust between mother and the children [that] would, if the court were to grant this, would be to inflict new emotional damage upon these children.”

It is important to note that it is not this court’s role to view this issue as if it were the juvenile court. The standard of review grants deference to the juvenile court, and given the testimony and the judge’s credibility findings, there was substantial evidence from which the court could find a substantial risk of detriment if the girls were returned to the mother’s care. There was no error.

III
DISPOSITION

The juvenile court's order is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.