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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re A.R. et al., a Person Coming Under
the Juvenile Court Law.

H037878
(Santa Clara County
Super. Ct. Nos. JD20548, JD20549,
JD20550, JD20551 & JD20552)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

S.C. et al.,

Defendant and Appellant.

Father and Mother appeal from a final judgment pursuant to Welfare and Institutions Code section 361, subdivision (c)(1).¹ On appeal, they both assert the court lacked substantial evidence to remove the father from the custody of the children.

STATEMENT OF THE FACTS AND CASE

Father and Mother are the parents of five children, A.R., A.C., N.C., M.C. and Na.C., currently ages 15, 10, 9, 4 and 2. The case originated in February 2011, when

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

police responded to a call of a disturbance at the family home. When the police approached the home, they heard father yelling obscenities, and mother saying, “No please! Please don’t!” When the officers went inside the house, they saw mother crying with three of the children clinging to her legs. The officers saw that father appeared to be under the influence of alcohol.

Mother told the officers that father was drunk that night, and started accusing her of posing for pornographic pictures on the internet. The couple began to argue, and mother said it was only verbal but she believed it was about to “get out of control.” Mother said that father had been physically abusive of her in the past.

The police also interviewed the eldest child, A.R. who told them that father had been drinking all day. A.R. said that father was calling mother names and the two were shoving each other. The younger children woke up when they heard their parents fighting, and ran to mother.

The children’s paternal grandmother came to the house and took father out of the house for the night. The police reported the incident to the Santa Clara County Department of Family and Children’s Services (Department). In response, the Department started an investigation.²

Following an investigation, in March 2011, the Department filed section 300, subdivisions (b) and (c) petitions on behalf of the children requesting juvenile court jurisdiction. The petitions alleged the children were at risk of physical and emotional harm due to the ongoing domestic violence in the home, mother’s minimization of the violence, and father’s alcohol abuse.

² There had been three prior referrals alleging domestic violence by father. The social workers tried to offer mother services, but she resisted.

In its jurisdiction report submitted in April 2011, the Department stated that the children could remain safely in the home as long as the parents participated in services under the supervision of the juvenile court.

Mother and Father contested the jurisdiction petition, and the matter was set for trial in June 2011. The court sustained the allegations in the petition. The court ordered that the children remain in the home with the parents with a plan of Family Maintenance. The court ordered both parents to complete a parenting without violence class and counseling. The court also ordered father to complete a drug and alcohol assessment by August 15, 2011, submit to weekly drug testing, attend a 12-step program two times a week, secure a 12-step sponsor and complete a 52-week batterer's intervention program. Mother was ordered to attend a domestic violence victim's support group. The court also ordered father to stop using marijuana.

The court reviewed the case in September 2011. At that time, father had not completed his court ordered alcohol and drug assessment, continued to use marijuana, and had missed many weekly drug tests. Father was not attending court ordered 12-step meetings, and had not obtained a 12-step sponsor. Father had been referred twice to the batterer's treatment program, once in July and again in August, but had failed to attend the intake class.

On October 31, 2011, the Department sent father a letter stating that if he did not participate in the batterer's treatment program, it would assess whether to recommend that he be removed from the home.

In November 2011, the Department filed a section 388 petition requesting that the court remove the children from the father. The petition alleged that father was not participating in this domestic violence program or addressing his substance abuse problems.

A hearing on the section 388 petition was held in December 2011. At the hearing, the court was presented with evidence that father had completed his drug and alcohol assessment on October 25, 2011, during which the assessor recommend outpatient treatment for father. Father disagreed with the assessor, and refused to participate in the recommended treatment. The assessor also recommended that Father meet with a doctor to address his pain, for which father continued to use marijuana despite the court's order that he stop. Father did complete the intake for his batterer's treatment program in November 2011, but did not attend the first two classes.

A trial was held in January 2012 on the contested disposition petition. At the trial, the social worker testified that she had worked with the family since July 2011, and the father had not drug tested since November 2011. Father was not attending 12-step meetings, did not have a 12-step sponsor, and refused the referral to an outpatient drug treatment program. After numerous referrals, father did eventually begin the batterer's treatment program classes in December 2011. The social worker reported father continued to refuse to take responsibility for his substance abuse or domestic violence.

The social worker told the court that she assessed the children were at risk with the father living in the home due to his untreated domestic violence and substance abuse issues. Father did not demonstrate accountability for his behavior, or acknowledgement that he needed to change. Father was defensive with the social worker regarding participating in services.

Mother testified at the trial that she had completed the parenting without violence program and the domestic violence victim's support group. She recognized that father's primary trigger for violence was his alcohol use. Mother said that she and children were not safe when father used alcohol. If father used alcohol, her plan was to "grab [the] children and leave."

Mother also testified that she did not want father to leave the house, the children would be sad if he did, and it would be a financial hardship for her. Mother believed that because of the services she received she could protect the children from the father's abuse.

Father testified at the trial that he believed his family was in the system because he was not "behaving correctly," and that it was his fault the Department was asking for his removal from the home. He testified that he recently started the 52-week batterer's treatment program. Father stated that he was no longer drinking alcohol, but admitted that he missed drug testing. Father also admitted that he continued to use marijuana three times a week for anxiety. Father disagreed with the drug and alcohol assessment, but told the court he was willing to attend an outpatient drug program.

At the conclusion of the trial, the court found by clear and convincing evidence that there was a substantial danger to the physical health, safety, protection, or emotional well-being of the children if they remained in the custody of Father, and there was no reasonably means of protecting the children. As a result, the court ordered Father removed from the family home where the children resided, and Father have reunification services. The court also continued family maintenance services for the mother and the children.

The court stated: "The [juvenile] court believes that the concerns of the intimate partner violence in this case are serious and that remedying those concerns require that the parents diligently participate and assertively progress in professional domestic violence services." The court further stated: "While it is true that failure to comply with the case plan is not in and of itself proof of risk, the Court cannot shut its eyes to the totality of the circumstances and ignore the development of the case plan and the efforts that the Court was trying to make when the orders were made in the first place."

Mother and Father filed separate notices of appeal in January 2012.

DISCUSSION

Mother and Father argue that the evidence was insufficient to support the court's order removing Father from the family home.

“A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the [statutorily specified] circumstances.” (§ 361, subd. (c).) “[I]n dependency proceedings the burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is to be removed from his or her home. (*In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1111-1113 [burden of proof in jurisdictional phase is preponderance of the evidence; burden of proof in dispositional phase is clear and convincing evidence when court awards custody to a nonparent]; see also §§ 355, 361, subd. (b) [now subd. (c)].)” (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 169, superceded by statute on another point, as noted in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1239-1242.) When the juvenile court orders removal at disposition, it is required to “state the facts on which the decision to remove the minor is based.” (§ 361, subd. (d).)

In this case, the juvenile court found that “[t]here is or would be substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child were returned home, and there are no reasonable means by which the child's physical health can be protected without removing the child from parent's/guardian's physical custody.” (See § 361, subd. (c)(1).)

We apply the substantial evidence test to determine whether sufficient evidence supported removal. (*In re Basilio T., supra*, 4 Cal.App.4th at p. 170.) Substantial evidence is evidence that is reasonable, credible, and of solid value supporting the challenged factual findings. (See *In re Angelia P.* (1981) 28 Cal.3d 908, 924.)

Subdivision (c)(1) of section 361 allows removal where “[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 or guardian's physical custody.”

The evidence at trial showed father did not adequately address his substance abuse problem in that he did not attend 12-step meetings, did not have a 12-step sponsor, refused to stop using marijuana and regularly missed drug tests. In addition, father did not complete his drug and alcohol assessment until October 25, 2011, two months after the court-imposed deadline of August 15, 2011. After completing his assessment, father did not accept the assessor's recommendation that he participate in an outpatient drug treatment program, or meet with a doctor to assess his need to manage his pain without marijuana.

In addition to evidence of his continuing substance abuse problem, there was also evidence that father did not adequately address his tendency toward domestic violence. Father was referred to domestic violence batterer's programs in July and August 2011, but did not enroll and did not attend. At the urging of the Department through the October 31 letter, father eventually attended an intake class on November 12, 2011, but missed the first two classes. Father did not begin his domestic violence classes until December 2011.

At trial, the social worker testified that father had not taken responsibility for his substance abuse problem or his proclivity toward domestic violence. Father continued to be unable to discuss his case plan with the social worker without becoming extremely upset and intimidating toward her. Based on father's lack of acknowledgment of his substance abuse and domestic violence problems, the social worker assessed that the children were at risk of physical and emotional abuse if the father remained in the home with them.

Under these circumstances, the juvenile court could reasonably conclude that father's untreated substance abuse problems and ongoing problem with domestic violence posed a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being. Moreover, father had not participated and made progress in the court ordered services to address these problems. (§ 361, subd. (c)(1); see rule 5.695(d)(1).) This is not a case where a parent had already made significant strides in addressing the problem leading to dependency jurisdiction. (Cf. *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 285-286, 288-289 [parents were remorseful about use of corporal punishment, they had completed a parenting course and were working with a private therapist to improve parenting skills and, in the therapist's opinion, "it was totally safe to return the child"].) The record does not establish that if father remained in the home with family maintenance services that the children would be safe.

Reasonableness of Efforts to Prevent Removal

Father asserts that if the Department offered more services, he would be able to stay in the home with the children. However, the court found that reasonable efforts had been made to prevent removal in this case. The evidence showed that the emergency response social worker offered services to the family, but father would not speak to her, and mother was resistant to any intervention. Working to keep father in the home, the Department offered court supervised services, and referred father to substance abuse and batterer's treatment programs. Father refused to participate in the services offered, and only after receiving the October 31 letter from the Department that his failure to participate could lead to negative consequences, did father begin his batterer's classes. The evidence is clear that father was offered ample opportunities for services to assist him with the problems that lead to the court taking jurisdiction in the first instance, yet he failed to adequately take advantage of these services. The social workers involved in this case worked steadily to assist father with his substance abuse and domestic violence

problems, and their efforts were reasonable. Father finally accepted responsibility and was willing to participate in treatment but his efforts were too late to avoid his removal at the time of the section 388 petition.

We find there was sufficient evidence to support the juvenile court's order removing father from the home, and that the Department made reasonable attempts to prevent removal. (See § 316, subd. (c)(1).)

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

ELIA, J.

GROVER, J.*

* Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.