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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S.H., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. E.S. et al., Defendants and Appellants.	D057417 (Super. Ct. No. EJ3198)

APPEAL from orders of the Superior Court of San Diego County, Michael J. Martindill, Juvenile Court Referee. Affirmed.

E.S. (the mother) and Y.A. (the father) (together the parents) appeal jurisdictional and dispositional orders regarding their daughter, S.H. The father contends insufficient evidence was presented to show a substantial risk of harm to S.H. in his care. The parents assert insufficient evidence supported the order removing her from their custody,

and there were reasonable alternatives to removal. Each parent joins in the arguments of the other. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On March 3, 2010, the San Diego County Health and Human Services Agency (the Agency) petitioned under Welfare and Institutions Code[1] section 300, subdivision (b), on behalf of 14-year-old S.H., alleging the parents had not protected her from daily beatings by her 17-year-old brother and adult sister, and S.H. was afraid to return home. The court ordered S.H. detained.

S.H. and her family recently immigrated to the United States from Iraq. They are a Muslim family. S.H. said that for a week, her brother, M., and sister, L., had been pushing and shoving her and hitting her with shoes because she was in contact with a Christian boy. S.H. said M. and L. beat her while the parents were at English classes in the evenings, and one night the mother had stayed home, but she did not stop M. and L. from hitting her, saying they had a reason to do so. S.H. said she was afraid the father would kill her when he found out about the Christian boy; a few years earlier when L. dated a boy the father did not approve of, L. was punished by being hit every day and the father touched L. sexually on her private parts. She reported the father punishes her and her siblings by hitting them and throwing things at them.

L. denied the father had abused her or that she had hit S.H. or seen M. hit her. M. said he had not hit S.H., but he had pushed her during an argument. He denied there was

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1 Statutory references are to the Welfare and Institutions Code.

any physical punishment in the home. The mother said there was no physical abuse, but sometimes S.H. and M. fight, and M. had pushed S.H. during an argument. The father denied physical or sexual abuse and said he had brought the family to the United States to save their lives.

The social worker initially recommended returning S.H. to the parents' care on the condition they participate in counseling and parenting education. S.H. told the social worker she wanted to go home and had lied about seeing the father sexually molest L., but it was true that M. and L. had physically abused her and the mother knew about it.

S.H. then changed her story and said she was afraid to go home, she had seen the father sexually molest L. and she was afraid he would molest her as well. She also disclosed there was domestic violence in the home, and the father had choked the mother and threatened her with a knife. She said, however, that if information about the domestic violence were brought up in court, she would deny it happened. The other family members denied there had been any domestic violence. The social worker said she believed the family was pressuring S.H. to lie. S.H.'s therapist reported she was concerned about S.H.'s safety if she were returned home.

At the jurisdictional hearing, the parties reached an agreement on the allegations of the petition, and the court found the allegations true as amended. At the dispositional hearing in May 2010, S.H. testified she had changed her mind a few times about wanting to go home, but at time of the hearing, she wanted to return home although she was unsure about her safety. She said, "you know if they will hurt me, not me. You have to know, not me." She denied ever telling the social worker the father had physically

abused the mother and denied telling the social worker she would lie in court. She also denied being pressured to say she wanted to return home. She said she cared very much about her family.

The social worker testified the parents had been pressuring S.H. to change her story, the mother blamed S.H. for the Agency's involvement, and S.H. had told her she was afraid to go home. She said although the father was attending therapy, she believed he was not being fully honest, and S.H. had told the former social worker that the father and M. had threatened to kill her.

The court found the Agency had established by clear and convincing evidence that removing S.H. from her parents' care was necessary and appropriate. It ordered S.H. placed in foster care and the family to participate in reunification services and ordered six hours of weekly unsupervised visitation at the family home.

DISCUSSION

I

The father contends insufficient evidence was presented to support the finding S.H. was at substantial risk of harm and that he did not protect her. He argues that even if this court finds support for the allegation the mother did not protect S.H., the evidence did not show he neglected her within the meaning of dependency laws.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) " ' "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or

uncontradicted, which will support the conclusion reached by the trier of fact." ' " (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also '. . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The purpose of dependency law is to:

> "provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused . . . [or] neglected . . . and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.)

A petition is brought on behalf of the child, not to punish the parents. (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599.) A petition alleges substantial risk to the child. It is not required that there be a finding of fault as to each parent. (See *In re Phoenix B.* (1990) 218 Cal.App.3d 787, 792-793.) If the actions of either parent place the child at substantial risk according to the provisions of section 300, the juvenile court assumes jurisdiction over the child. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202; *In re Jeffrey P*. (1990) 218 Cal.App.3d 1548, 1553-1554.)

Substantial evidence supports the court's finding of jurisdiction. The petition alleged under section 300, subdivision (b), that S.H. had suffered or there was substantial risk she would suffer serious harm or illness as a result of the parents' failure or inability to supervise or protect her in that:

> "On or about and between February 22, 2010[,] to February 26, 2010, [her] 17-year-old brother and an adult sister beat her up on a daily basis by punching, pushing, slapping and hitting her with shoes, and the child sustained three scratches on her left arm from fighting with her brother and also sustained bruising to her left arm and right wrist and the child's mother has failed to protect the child, and the child reports being afraid . . . to return to the home and there is a substantial risk the child will suffer serious physical harm or illness."

The finding the parents were not protecting S.H. is well supported. The mother was aware that M. and L. had been beating S.H., but did nothing about it. The fact that S.H. reported only the mother, but not the father, saw M. and L. beating her is not significant. The record indicates that after disclosure of the abuse, the family blamed S.H. and urged her to change her story and that neither parent would protect her if she returned home. Substantial evidence supported the court's finding S.H. had suffered injury when the parents had left her in the care of her older siblings, and she was at substantial risk of further injury in the family home.

II

The parents maintain the court erred by removing S.H. from their care. They assert the court stated it wanted to place S.H. with them, but erroneously believed it was prohibited under case law from doing so. They argue the court erred by finding there were no reasonable alternatives to removal.

Section 361, subdivision (c)(1), provides a child may not be removed from a parent's custody under section 361, subdivision (c)(1), unless the court finds by clear and convincing evidence:

> "There 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 . . . physical custody."

The focus of the statute is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) At disposition the juvenile court considers all relevant evidence that refers to the allegations of the petition, and it considers the conditions as they existed at the time of the hearing. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The court is required to consider the parent's past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900.) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

Substantial evidence supports the order removing S.H. from the parents' care. S.H.'s older siblings, M. and L., had beaten her. The mother knew about the abuse, but did not intervene. Instead, the parents blamed S.H. for the Agency's involvement in their lives and urged her to lie. She did not want to say in court whether she was afraid that she would be hurt if she were to return home. When asked by the mother's attorney whether she thought M. might hurt her, she stated, "you know if they will hurt me, not me. You have to know, not me." The social worker listed several factors that showed risk to S.H., including the parents not providing emotional support for S.H., their blaming her for the Agency's involvement with the family, S.H.'s fear of returning home, and the inappropriate discipline in the home. The parents did not show they had developed

insight into the abuse, but rather continued to deny the allegations. The social worker characterized S.H. as the scapegoat for the family.

The parents did not show there were reasonable means available to protect S.H. short of removing her from their custody. They had begun services, but until they made progress in therapy and addressed the issue that led to the Agency's involvement, S.H. remained at risk.

The parents argue the court mistakenly believed it did not have discretion to place S.H. with them after it had removed custody. A review of the record shows that although the court may have misspoken when ordering placement, there was no error.

The court stated S.H. was deserving of court protection and, although the parents had begun services, their commitment to protecting her had not yet been determined. It expressly found by clear and convincing evidence that removing S.H. from the parents' home was appropriate under section 361, subdivision (c)(1). It declared her a dependent child in the care, custody and control of the Agency and found her current placement in licensed foster care was appropriate.

The court then entertained S.H.'s and the parents' requests for unsupervised visitation in the family home, noting that it was important to the family that S.H. be able to have meals together with them. In deciding on six hours of unsupervised visitation per week, it stated:

> "In reviewing this case, before I made the decisions, I took a look at whether or not I could order detention and then turn right around and place her with the parents. Unfortunately, there are four recent cases which say 'no,' 'no,' 'no,' and 'no,' to that approach. That would have been my preference had it been allowed by the appellate courts.

> Since that's not the case, the next best thing I have is to order detention and immediately move to some unsupervised visitation."

The court's statement suggests it may have been confused about the terms "detention" and "removal", but does not show reversible error.

In *In re Damonte A.* (1997) 57 Cal.App.4th 894, 899-900, the reviewing court held it was reversible error for the juvenile court to find by clear and convincing evidence that the children were at risk in the parent's care and remove custody, but then temporarily place them with the parent. In *In re Andres G.* (1998) 64 Cal.App.4th 476, 480-483, this court agreed the practice of removing custody and then detaining the child with the parent was unauthorized and contravenes the statutory scheme. In *In re S.O.* (2002) 103 Cal.App.4th 453, 456, this court clarified that it is not error for the juvenile court to assume jurisdiction over a child and then order him or her placed with a parent, but what is proscribed is to remove the child from parental custody under section 361, subdivision (c)(1), and then immediately place the child with the parent. (*In re S.O.*, at p. 462.)

Here, the court removed S.H. from parental custody, finding by clear and convincing evidence that removal was necessary under section 361, subdivision (c)(1), and placement in foster care was appropriate. As the court recognized, it would have been error for it to remove custody and then immediately place her with the parents. The court reasonably concluded it was necessary for S.H.'s safety to remove her from parental custody, but that she would be safe in the family home for six hours of weekly unsupervised visitation. The parents have not shown error.

DISPOSITION

The orders are affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.