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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.S. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Q.S., Defendant and Appellant.	E083523 (Super.Ct.Nos. J299753, J299754, J299755, J299756 & J299757) OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Tom Bunton, County Counsel, Joseph R. Barrell, Deputy County Counsel for Plaintiff and Respondent.

Defendant and appellant Q.S. (Mother) appeals from the juvenile court's removal order at the disposition hearing, placing her five children ranging from ages two to 14 outside of her custody. (Welf. & Inst. Code,[1] § 361, subd. (c)(1).) Mother contends the evidence did not support removing the children from her home; she does not challenge the court's order taking jurisdiction of the children for their protection. We affirm the removal order.

FACTUAL AND PROCEDURAL HISTORY

Mother struck her daughter, D.S., age 12, just above her eye with a battery charger and phone cord or extension cord with enough force to make her bleed. Qu.S., age 8, saw his sister bleeding when she came downstairs in their home, with her hand on her head. When D.S. left the house, Mother directed her older sister, C.S., age 14, to "go after" her, but C.S. could not find her.

D.S. walked to a nearby convenience store where someone called 911 to report a youth crying and still bleeding. Around the same time, Mother also called the police to report D.S. missing and officers from the Fontana Police Department, realizing it was the same child, responded to the scene. Social workers from plaintiff and respondent San Bernardino County Children and Family Services (CFS) also arrived and learned Mother had repeatedly struck D.S., it was not the first time Mother hit her, other instances involved "a belt all over her body," and Mother also "hit" all of the children except the

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

youngest, M.S., age two. The officers located Mother and arrested her because of the severity of D.S.'s injury.

In an interview with a social worker, Mother denied using any physical discipline with her children. On the day in question, she "swung [a] belt five times" at D.S., claiming to hit her only "approximately four times in the shin area," over which D.S. had a blanket at the time. She was "unsure" how D.S. came to be bleeding. Mother was frustrated with the children as they were getting ready for church.

Mother reported she and the children moved from North Carolina to California to "get away from . . . bad things." One of the children's fathers had "passed away due to being murdered," another recently had been released from prison, and a third remained in prison in North Carolina. The fourth father was only known to Mother by his street name. Mother denied the children had visitation with any of the fathers and indicated she and the children could use "therapy services to help process what they have been through in the last of couple of years," including being homeless for a month when they first moved from North Carolina a few years ago. Mother reported some history of domestic violence, specifically "one time when [the oldest, C.S.] was an infant."

Mother reported she had been diagnosed with "bipolar, anxiety and OCD." The two boys, ages 7 and 8, were developmentally delayed, were both due to "see the psychiatrist in the next couple of months," and had been diagnosed with "ADHD and autism," for which they took medication twice a day.

Apart from D.S., the other children denied physical abuse and reported feeling safe in mother's home, including because, without explanation, their "little sister" resided

there. Interviewed again, D.S. also reported feeling safe at home, including because of "her siblings and her mother." She now told the social worker she would only "occasionally get hit with a belt or her hand" and "it was a long time ago . . . the last time this occurred." Based on exigent circumstances in that no one was available to care for them when Mother was arrested, the social workers detained the children.

CFS filed dependency petitions for each of the children, and the juvenile court at the detention hearing sustained their out-of-home placement. CFS subsequently amended the petitions with more specific allegations regarding Mother's physical abuse of D.S. and updated information regarding risks posed by each of the fathers or their failure or inability to care for their children. The amended petitions for each child included allegations of a risk of serious physical harm in mother's care (§ 300, subd. (a)), no provision for support (§ 300, subd. (g)), and abuse of a sibling (§ 300, subd. (j)). Further, for the two oldest daughters, C.S. and D.S., based on their respective fathers' history, the amended allegations included failure to protect (§ 300, subd. (b)).

CFS investigated further before the jurisdiction and disposition hearing. D.S.'s paternal grandmother indicated mother had difficulty managing her anger. D.S. previously showed the marks on her body that Mother inflicted. C.S.'s father acknowledged a history of domestic violence he claimed was mutual with Mother.

Mother told CFS she was heartbroken to be separated from the children and wanted to participate in all reunification services available. CFS recommended that services for Mother include anger management and parenting classes, individual and

family therapy, and random drug testing after Mother disclosed marijuana use but denied driving with the children while high.

The court at an interim hearing ordered CFS to attempt to place the toddler, M.S., with her older sisters at their request and, further, to interview the sisters. In those interviews, C.S. was "very guarded"; she "adamantly" denied all allegations against Mother, stating Mother never abused or neglected her or any of her siblings. D.S. refused to discuss the allegations, having already said "everything she needed to." D.S. added, however, in her mother's defense that Mother disciplined her children appropriately; D.S. stated: " '[W]e got what we deserved.' " CFS also attempted to interview the boys, but they were uncooperative and "exceptionally hyperactive."

The C.H., children's maternal grandmother (MGM), expressed interest in relocating from North Carolina to care for the children, along with her husband. She indicated Mother was willing to move out of her home for this to happen. MGM, however, minimized Mother's alleged conduct and supported her disciplinary measures.

CFS included the police incident reports in its prehearing report. The reports indicated D.S. suffered a forehead contusion, a swollen left eye, and an abrasion approximately two inches in size. D.S. left home "[o]ut of fear." She did not feel safe at home with Mother. Mother inflicted the injuries that day using an extension cord with a charging block still attached to it. She struck D.S. five to 10 times across her body and five times on her face.

Mother denied striking D.S. above the waist; she also denied ever striking her children as punishment, but, at the same time, claimed that day was different. Mother

said she grabbed a leather belt in another room to discipline D.S. with it. She implied D.S. may have been responsible for her head injury by moving around during the blows.

At the jurisdiction and disposition hearing, Mother requested family maintenance services rather than removal of the children. The juvenile court found the amended petition allegations true, except that Mother was no longer in jail.

The court concluded removal and reunification services were necessary. The court explained that its reasoning was similar to the deputy county counsel's argument, in which she stated: "I would just ask the Court to follow the [CFS] recommendation and order [family reunification] for . . . Mother. At this point in time I think it's going to be important that Mother accept responsibility for what occurred. [¶] I understand the children want to return, but this was a pretty egregious abusive situation that led to significant injuries to the specific victim child. And so CFS would like to see Mother engage in services and complete those services [to ensure] it would be safe to return [them]."

DISCUSSION

Mother contends the evidence did not support the juvenile court's removal order. We disagree.

Before the court may order a child physically removed from his or her parent, it must find by clear and convincing evidence that "[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 . . .

parent's . . . custody." (§ 361, subd. (c)(1); *In re Hailey T.* (2012) 212 Cal.App.4th 139, 145-146.) Removal "is a last resort, to be considered only when the child would be in danger if allowed to reside with the parent." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.)

We must affirm the juvenile court's dispositional order if substantial evidence, contradicted or uncontradicted, supports it. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) " ' "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.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court." ' " (*Ibid*.)

Mother relies on *In re Jasmine G.* (2000) 82 Cal.App.4th 282 (*Jasmine G.*), in which the parents twice used a belt or switch to discipline their 15-year-old daughter. By the time of the disposition hearing three months after the child had been detained, the parents had made substantial progress in services, completing a parenting course and seeking out a therapist. (*Id.* at p. 285.) The parents "both testified that they had changed their attitudes toward corporal punishment for teenagers and expressed remorse that their physical abuse of their daughter had led to the dependency." (*Id.* at p. 286.) The therapist also testified, opining the child was in no danger if returned home and confirming "the parents had each expressed remorse and had the 'motivation to change their former forms of discipline.' " (*Ibid.*) The child testified "her mother had 'learned

from this whole thing' and didn't believe her mother would 'hit [her] again.' " (*Ibid*, fn. omitted.)

The dearth of similar evidence stands out here. Mother acknowledges a lack of "witness testimony [as] presented in *Jasmine G.*," but suggests "[w]hat we do have" is the children's "statements that they feel safe in the home" and wanted to return to Mother's care. This was not enough. " 'The purpose of dependency proceedings is to prevent risk, not ignore it.' " (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) The children's statements were equivocal, particularly D.S.'s, and the facts plainly contradicted C.S.'s adamant denial any abuse ever occurred. This undercuts Mother's suggestion that the elder children "were old enough to report any problems."

Moreover, protecting her children—a parental duty that persists all day, every day (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 646), was not a responsibility Mother could cast on others, particularly the children themselves. Unlike the parents in *Jasmine G.*, Mother never expressed remorse, accepted responsibility for injuring D.S., or repudiated corporal punishment. Instead, she minimized her actions. "A court is entitled to infer past conduct will continue where the parent denies there is a problem." (*In re K.B.* (2021) 59 Cal.App.5th 593, 604, disapproved on another ground in *In re N.R.* (2023) 15 Cal.5th 520, 560, fn. 18; see also *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial properly informs a juvenile court's risk assessment].)

MGM similarly minimized Mother's conduct, supporting the juvenile court's decision not to, as Mother now suggests, place the children with her. "One cannot correct a problem one fails to acknowledge." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188,

197.) In particular, the court could reasonably be concerned that, in light of a family pattern minimizing the harm and absent demonstrated remorse, returning the children to Mother or MGM's care would only reinforce D.S.'s mistaken conclusion that, when physically disciplined to the point of drawing blood, "[W]e got what we deserved."

Mother incorrectly suggests that there is no evidence that indicates she "was offered any services prior to disposition," apparently faulting CFS's efforts to help her remediate her conduct. Not so. The disposition hearing reflected that Mother "already started her services"; they simply had not yet yielded any similar expression of regret as in *Jasmine G.* Likewise, Mother complains "[t]here was no indication [she] was given any option to participate in a safety plan to keep the children in the home or why that would not work." On the contrary, the evidence showing Mother minimized her conduct and had only just begun services amply supports the court's removal ruling.

DISPOSITION

The juvenile court's removal order is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

FIELDS
J.