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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

A132862

(Alameda County  
Super. Ct. No. HJ11016829)

A.A. (Father) appeals from the juvenile court’s jurisdictional and dispositional findings and order filed July 29, 2011, adjudging his son, M.A., a dependant of the court pursuant to Welfare and Institutions Code section 300, subdivision (j).<sup>1</sup> Father does not contest that substantial evidence supports a finding that M.A.’s half sister, who was 15 years old at the time, had been abused or neglected within the meaning of the statute, but asserts no evidence supports a finding there is a substantial risk M.A., who was three years old at the time, will be abused or neglected. We conclude the juvenile court’s jurisdictional and dispositional findings and order as to M.A. are supported and affirm.

<sup>1</sup> All further undesignated statutory references are to the Welfare and Institutions Code.

## **BACKGROUND**

On April 22, 2011, the Alameda County Social Services Agency (Agency) filed a section 300 petition on behalf of M.A. (date of birth March 2008) and his half sister, S.M. (Sister) (date of birth April 1996). The petition asserted subdivision (b) allegations against Mother based on an automobile accident on April 20, 2011. Mother allegedly initiated a verbal and physical altercation with Sister while driving on the freeway and talking on a cell phone, resulting in Mother's losing control of the vehicle and running into a concrete retaining wall. Sister sustained physical injuries from both the physical altercation and the accident. Mother was arrested for child endangerment. It was further alleged the police had been called to Mother's house the day before the accident, after Mother and Sister got into a physical altercation during which Mother hit Sister about the head, pulled her hair, scratched her face and bit her finger. It was additionally alleged that Mother had physically assaulted Sister several months earlier, in December 2010, and at that time struck her, attempted to choke her and hit her with a bathroom plunger. Sister allegedly refused to return to Mother's home, fearing she would be subject to further verbal and physical abuse. Mother, in turn, allegedly felt Sister was disrespectful and asserted she was beyond her control and had been expelled from school because of her behavior. Because of Mother's past substance abuse and incarcerations, Sister had been placed under a legal guardianship through 2010. Sister's father, James M., also had a history of past drug abuse and incarceration. Based on the alleged abuse of Sister, section 300, subdivision (j) allegations were made as to M.A.

Mother and Father and their separate counsel were present at the detention hearing on April 25, 2011, and requested a contested jurisdiction and disposition hearing.

On May 3, 2011, the child welfare worker (CWW) filed a jurisdiction/disposition report recommending that Sister be placed outside the home (she had been temporarily placed in the home of her maternal aunt) with reunification services offered to Mother and James M., and M.A. remain with his parents with family maintenance services offered to Mother and Father. None of the parents was in agreement with the Agency's recommendations. Sister was unwilling to return to her Mother's home, did not feel

emotionally ready to reside with her father and his wife, and wanted to remain with her maternal aunt. From 1997 until January 2011, Sister was under the legal guardianship of her maternal grandparents, but resided with her maternal aunt. Mother regained legal custody in January. The Agency had previously received four referrals of neglect by Mother, including because Sister tested positive for cocaine at birth and because the maternal grandmother during the guardianship was seen at Eden Hospital for a drug overdose. The Agency had requested that Mother submit to a hair follicle test for drugs in light of her unusually violent conduct toward Sister and past history of severe substance abuse, as well as Sister's assertion Mother continued to drink and abuse marijuana. Mother refused, claiming she was taking prescription drugs, which would result in a positive test. Mother was told to advise the testing service of her medications and consult with her attorney. Mother expressed great frustration with Sister. She admitted the altercation leading to the accident, but denied that she was customarily abusive with Sister. Sister reported Mother did not hit her frequently, but it happened every few months and described Mother as "explosive." Father, who also has a somewhat dated criminal history, believed Sister was manipulating the situation in order to return to her aunt and characterized Mother as "emotionally fragile." He stated he was a willing and capable caretaker of M.A., there were no abuse or neglect issues as to that child, and the youngster should not be part of a dispute involving his half sister. Sister's father reported that Mother had been on the cell phone with him at the time of the accident, and he had repeatedly asked her to pull off the road and she refused to do so. He said he had been clean and sober for five years, was employed and an active member of the recovery community in Woodland, and wished to assume care for Sister on a trial basis to see if a better environment would help her. Despite her behavioral issues, Sister was described as very engaging with adults and peers, mature for her years, saddened by her strained relationship with Mother, open to counseling, and representing that she received excellent grades at school and hoped to go to college.

The CWW also met with M.A. and Mother and Father, and reported the child appeared happy, healthy, well-mannered and bonded with his parents. Although M.A.'s

medical records indicated the child was in excellent health, the CWW expressed concern that Mother's anger issues and possible substance abuse needed to be addressed to ensure the child's continued safety in the home.

The matter was called on May 5, 2011. Mother and Father were present, as was the father of Sister, each represented by counsel. Mother and Sister's father both asked that Sister be placed in her father's care. Mother and Father thereafter asked that the subdivision (j) allegations as to M.A. be dismissed.

The CWW prepared two addenda to the jurisdiction/disposition report, one dated July 8, 2011, and the other, July 29, 2011. As to Sister, the July 8 addendum reported her continued strong desire to continue residing with her maternal aunt and dislike that she was being pressured by her father to reside with him. As to M.A., the Agency had assisted in getting him enrolled in day care. Mother stated this allowed her to work, attend counseling and participate in substance abuse testing. Father continued to object to any involvement of the Agency as to M.A., stating the child is not subjected to any domestic violence, Mother does not use drugs, and he is protective of the child. However, since mid-May, Mother had provided a diluted specimen and then twice tested positive for marijuana. She now claimed to have a medical marijuana card.

The July 27 addendum reported that Sister had visited with her father and told him she was prepared to reside with him at the start of the coming school year. Although the CWW placed many calls to Sister's cell phone, none were returned, and the maternal aunt was unaware of any "change of heart" by Sister about her preferred residence. The CWW interpreted this to mean Sister was still conflicted about her living situation and recommended that visits and counseling with her father continue. M.A. was doing well in day care, and was also enrolled in a summer soccer program.

The contested jurisdiction and disposition hearing took place on July 29, 2011. The Agency's report and two addendums were admitted into evidence without objection. The Agency reported Sister was now agreeable to residing with her father, with family maintenance services. The Agency then made minor corrective modifications to the petition and a number of modifications to the recommendations. The parties then

submitted the matter to the court for jurisdictional and dispositional findings. Father requested that the court dismiss the section 300, subdivision (j) allegations as to M.A. on the ground the circumstances as to Sister did not pertain to M.A. The Agency asserted the problem was not strictly between Mother and Sister, and the consequences had impacted M.A. and placed him at risk. The court sustained the amended subdivision (b) allegations as to Sister and amended subdivision (j) allegation as to M.A., ordered family maintenance services, and ordered placement of Sister with her father. Father filed a timely notice of appeal on August 4, 2011.

### **DISCUSSION**

Father challenges the sufficiency of the evidence to support the jurisdictional and dispositional order as to M.A. “We review the trial court’s findings to determine whether there is substantial evidence to support them. We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the finding or order.” (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57 (*Maria R.*), citing *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

“The purpose of the dependency system ‘is to provide maximum safety and protection for children who are currently being physically, sexually or emotionally abused, being neglected, or being exploited, *and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.*’ (§ 300.2.) ‘When a parent abuses his or her own child, or permits such abuse to occur in the household, the parent also abandons and contravenes the parental role. Such misparenting is among the specific compelling circumstances which may justify state intervention, including an interruption of parental custody.’ ” (*Maria R., supra*, 185 Cal.App.4th at p. 63, quoting *In re Kieshia E.* (1993) 6 Cal.4th 68, 77.)

Section 300, subdivision (j) was “ ‘intended to expand the grounds for the exercise of jurisdiction as to children whose sibling has been abused or neglected as defined in subdivisions (a), (b), (d), (e), or (i). Subdivision (j) does not state that its application is limited to the risk that the child will be abused or neglected as defined in the same

subdivision that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivisions (a), (b), (d), (e) or (i) of section 300, notwithstanding which of those subdivisions describes the child's sibling. Further, subdivision (j) contains a specific legislative directive to trial courts to consider multiple factors, including “ ‘the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.’ ” (*Maria R., supra*, 185 Cal.App.4th at p. 64, quoting § 300, subd. (j).)

“The ‘nature of the abuse or neglect of the sibling’ is only one of many factors that the court is to consider in assessing whether the child is at risk of abuse or neglect in the family home. Subdivision (j) thus allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.” (*Maria R., supra*, 185 Cal.App.4th at p. 64.)

There is substantial evidence in the instant case supporting the juvenile court's subdivision (j) jurisdiction and disposition findings as to M.A. This includes evidence that Mother has serious problems controlling and managing her anger, has ongoing substance abuse problems, and has engaged in extremely unsafe conduct while her children are with her. The altercations between Mother and Sister clearly placed M.A. at risk of injury, as evidenced by the accident. Even without Sister in the house, Mother's problems continue to pose a serious risk for M.A. In addition, Father has denied that these problems exist, exacerbating the risk to M.A.

The cases on which Father relies—*In re James R.* (2009) 176 Cal.App.4th 129 and *In re Ricardo L.* (2003) 109 Cal.App.4th 552—involved distinctly different situations. In *In re James*, the parents challenged findings under section 300, subdivision (b), that the children were at risk of serious harm because of the mother’s mental illness and substance abuse. The Court of Appeal concluded there was no substantial evidence that the mother’s condition posed such a risk of harm. The sum total of the evidence was that the mother had had a negative reaction after drinking beer and taking ibuprofen. There was no evidence this episode or any other caused a problem with parenting and placed the two children at risk of serious harm. There was no evidence, for example, that either child had been injured or that the mother had a continuing substance abuse or alcohol problem. (*In re James R.*, *supra*, 176 Cal.App.4th at pp. 136-137.) In contrast, in this case there is evidence of serious parenting problems, the Sister was physically injured on more than one occasion and during one of these occasions M.A. was put at serious risk of injury, and Mother has a continuing substance abuse problem.

In *In re Ricardo L.*, the Court of Appeal reversed section 300, subdivision (j), findings because the county agency failed to present any evidence as to the current state of affairs in the mother’s house that supported a finding of serious injury to the minor. The only current evidence was that the father was at the house in violation of an order requiring that any visits with the minor’s siblings be supervised. And the only evidence of a claimed risk of serious harm to the child was based on the prior dependency proceedings involving his sister and half sisters two years earlier, which involved allegations of neglect, drug abuse, and failure to protect from sexual abuse. Beyond that, no evidence was presented as to any risk of injury to the child in question. This, said the court, was insufficient to meet the agency’s burden of proof to establish a substantial risk the minor would be abused or neglected. (*In re Ricardo L.*, at pp. 566-569.) These are not the circumstances here. The evidence was current as to Sister and M.A. and, as we have discussed, supported the court’s subdivision (j) finding as to M.A.

Nor does *Maria R.* assist Father. In that case, evidence of sexual abuse of the minor’s sisters, alone, was insufficient to establish that the minor, a boy, was also likely

to be sexually abused. Because the subdivision (j) allegation and the juvenile court's finding were based solely on that particular risk of harm, the Court of Appeal reversed. However, the court also remanded the matter to consider whether there were any other section 300 risks of serious harm to the boy, such as physical or emotional abuse. (*Maria R.*, *supra*, 185 Cal.App.4th at pp. 69-70.) Here, the juvenile court did not take an unduly narrow view of subdivision (j), as the juvenile court had done in *Maria R.*, and as we have discussed sufficient evidence supports the juvenile court's subdivision (j) jurisdiction finding and disposition order.

**DISPOSITION**

The juvenile court's jurisdictional and dispositional findings and order are affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.