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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.N.,

Defendant and Appellant.

A134609

(San Mateo County
Super. Ct. No. 81774)

Appellant T.N. (father) appeals the juvenile court’s orders adjudging his nine-year-old daughter, A.N., a dependent child pursuant to Welfare and Institutions Code section 300, subdivision (b),¹ and placing her outside his care. The minor had been in the custody of non-relative caregivers in California since 2009, and the juvenile court refused to return the minor to father in American Samoa as he requested. Father argues that insufficient evidence supports the juvenile court’s orders. We disagree and affirm.

¹ All statutory references are to the California Welfare and Institutions Code unless otherwise indicated. In his appellate briefs, father refers to the minor by the name used in the original dependency petition. The juvenile court later “corrected” the minor’s name to reflect her true name, A.N., which also is the name used by respondent in its brief. We likewise refer to the minor by what was characterized below as her true, legal name.

I. FACTUAL AND PROCEDURAL BACKGROUND

Father has five children, only one of whom is the subject of these proceedings. After the minor's mother died in 2008, father sent the minor and his two other daughters from their home in Samoa in 2009 to live with an " 'aunt' " in Hawaii, and the minor was later taken by caretakers to San Bruno. On September 21, 2011, respondent San Mateo County Human Services Agency (Agency) filed a juvenile dependency petition alleging that the minor was a child described by section 300, subdivision (b) (failure to protect), after she reported to her teacher and San Bruno police that her non-relative caretakers physically abused her.² The petition (which was later amended to reflect the minor's true name, *ante*, fn. 1, but was not otherwise meaningfully altered) alleged that the minor's caretakers had subjected her to abuse, including dragging her by her hair, beating her regularly with a stick, and causing bruising and scarring on various parts of her body. The petition further alleged that father had not seen the minor since she was five years old (when she left Samoa), and that he had failed to protect the minor from her current caregivers, which placed her at risk of physical harm and neglect. The minor was ordered detained and was placed in foster care.

The social worker reported in a combined jurisdiction/disposition report dated November 3, 2011, that police observed " 'extensive bruising on both legs and both feet, in various stages of healing' " when the minor was first taken into custody, consistent with the minor's report that she was struck almost daily (often with a stick) when she did not correctly complete her homework or chores. Other medical reports supported the abuse allegations. The minor also reported physical abuse to the social worker during two meetings in October 2011, and the social

² The minor told officers that she lived with seven people: two aunts, the mother of one of the aunts, two uncles, and two cousins. An investigation revealed that the minor was not related by blood to any of the people in the household. Two of the minor's caretakers (sometimes referred to hereafter as the minor's "aunts") were arrested on charges that they physically abused the minor, but the district attorney's office reportedly declined to prosecute the two women. The aunts apparently were not interested in reunifying with the minor.

worker found her to be “very credible and specific regarding the abuse she endured.” The minor told the social worker that she had not spoken with father since she was in kindergarten (a possible reference to the last time she had *seen* father in person), and that “ ‘all of a sudden in second and third grade something happened and he stopped calling.’ ”

One of the minor’s older sisters also had lived in the San Bruno home with the minor for a time but returned to Samoa in 2010 after she reported sexual abuse. The older sister reported to father once she returned that the minor was being physically disciplined by her caretakers; however, the social worker reported that it was unclear whether he knew the severity.

Father reported during telephone calls with the social worker that he was American Samoan and living in American Samoa with his two teenaged sons. He had not spoken to the minor since 2010, when he lost her then-current caretakers’ telephone number upon losing his cellular phone. When pressed about losing contact with the minor, father stated that he “ ‘hear[d] rumors that they [presumably, the minor’s caretakers] don’t want me to talk to her.’ ” Father stated that he wanted the minor to be returned to his care in Samoa. Father denied knowing about the minor being hit with objects and said that one of her caretakers did tell him that she would spank the minor when she did not listen. When the social worker told father in full detail what bruises were seen on the minor and what the minor reported as to how she got the bruises, he provided alternate explanations and repeatedly stated that he did not believe the allegations. The social worker also reported that when pressed about what he knew about the caretakers’ care of the minor, it seemed to the social worker that father did “not want to disclose” that type of information. As of the time of the preparation of the November 3, 2011 jurisdiction/disposition report, the social worker was concerned that if the minor was returned to father’s care, he would again leave her with people who placed her at risk of harm.

The social worker shared her concerns with father during a telephone call on November 4, 2011. She also questioned father about why one of the minor's older sisters (the one who had reported sexual abuse while in San Bruno) was no longer in his care, and he reported that she had been sent to live in western Samoa with an "[a]unt" so that the daughter could attend a "better school." He insisted, however, that he was "going to try to get her back, I want to get all the kids back." The social worker concluded in an addendum report dated November 15, 2011, that the Agency was not "completely opposed" to returning the minor to father's care, but that there remained concern over whether father would keep the minor with him.

Father requested at a hearing on November 15, 2011, that the minor be sent to him in American Samoa, a result that was "legally mandated," according to father's counsel. The juvenile court continued the matter for a contested jurisdictional hearing and also ordered that a mental health evaluation be conducted on the minor after her counsel raised concerns over her behavior, as reported by the foster parents. The minor thereafter underwent a psychological evaluation, and the social worker reported that the minor was found to display "emotional immaturity, but also demonstrated an attempt to contain her emotions around her past trauma of abuse, abandonment and the death of her mother." She was diagnosed with an adjustment disorder, anxiety and depressed mood, and post-traumatic stress disorder.

In an addendum report dated January 17, 2012, the social worker reported that the minor had stated that she wanted to return to Samoa to live with father, and that she missed her father and her siblings. However, concerns were raised following a courtesy assessment of father's home by a Samoan social services agency that was completed on December 9, 2011. A branch manager of the social services agency reported that father shared a bedroom with two teenaged sons, with no room for a separate bed or privacy for the minor. According to the manager, father lived in "a 'high crime area,'" worked for most of the day as a cab driver and had no plan for caring for the minor during the day, and "pretty much ha[d]

his hands full with the boys,' ” both of whom had pending juvenile cases for underage drinking. A subsequent written report likewise stated that father’s home was not recommended for placement at that time. Father reported to the Agency social worker in these proceedings that his living situation was “temporary,” and he denied that he would have trouble caring for the minor. The Agency continued to be concerned that father was unable to provide the minor with a safe, nurturing environment. The Agency was hopeful that the minor eventually would be returned to father’s care after he secured an appropriate home and provided an adequate plan for child care.

A contested jurisdictional/dispositional hearing was held over two days in January 2012. The social worker testified consistent with her reports. She also testified that as of December 2011, the minor still showed physical signs of abuse, in the form of possible scars on her face, from the abuse she suffered at the hands of her previous non-relative caretakers. She acknowledged, however, that there were no allegations that father had ever abused the minor when she was in his care.

Father testified by telephone that when he sent the minor with his wife’s “auntie” to live in the United States, he thought that the woman would take good care of the minor. He claimed that although he “d[id]n’t want anybody . . . to separate [the minor] from me,” he gave in to the “aunties” after they came to him “three times and four times” asking for him to give up his daughters. When he heard in 2010 from the minor’s older sister that the minor had been spanked, father thought that the minor was not receiving “more than a spank.” Father further testified that he did not believe his current neighborhood in American Samoa was dangerous, but that he was looking for a bigger home for him and his children. He stated that he would not send the minor to live with anyone else, because he did not want for “anything to happen to her any more.”

At the conclusion of testimony and argument, the juvenile court found “by a preponderance of the evidence that the amended petition is true.” The court explained: “There still is not a real concrete plan to allow her to live in his home.

And the same reasons that caused him to have her go to live with relatives appear to exist. And also, the Court is concerned that another child, the older daughter, was returned to father and then for other reasons he had her live with relatives, including, I think, the reason of the schooling, that the schooling was better.

[¶] It's not to say that I don't think over time that there could be reunification. But I think at this present time, I do believe that the allegations contained in the petition are true, and I find that by a preponderance of the evidence."

With respect to disposition, the juvenile court adopted the Agency's recommendation that the minor be placed outside of father's care, opining: "I do think this is the kind of situation where the child can, you know, be reunified with the father. But I'd like to see more things in place in terms of establishing the father's residence that would accommodate an eight-year-old girl, where she could live in a separate bedroom from her two teenage brothers and her father.

[¶] Perhaps some parent education in Samoa, so that father could be educated in terms of parental responsibilities towards an eight-year-old girl. [¶] He clearly loves [the minor], but I think he was at a loss to explain certain concepts that seem to be pretty basic for parents to understand. So I think education could really help this father be in a position where he could safely have [the minor] returned to him." The court ordered that father receive reunification services, with a September 2012 goal for return of the minor to his care. Father timely appealed from the dispositional order.

II. DISCUSSION

A. Jurisdictional Order.

Father first argues that insufficient evidence supports the jurisdictional finding that the minor came within the statutory definition of a dependent child. "In addressing this contention, we are constrained by familiar principles: 'In juvenile cases, as in other areas of the 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. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.’ [Citation.] ‘ “If the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed” ’ [Citations.]” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) If there is substantial evidence, this court has no power to substitute its deductions and must affirm even if we would have reached different conclusions. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.) Father has the burden of showing that there is no evidence of a sufficiently substantial nature to support the juvenile court’s order. (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57.)

The minor was adjudged a dependent child under section 300, subdivision (b).³ “The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M., supra*, 1 Cal.App.4th at p. 820.) “Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial risk of serious physical harm or illness.*” (*Id.* at p. 823, original italics.) “[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*Id.* at p. 824, original italics.)

³ Section 300 provides, in relevant part, that any child that comes within the following description is within the jurisdiction of the juvenile court: “(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.”

Apparently for the first time in these proceedings, father suggests in his opening brief that the extent of the abuse is “completely unclear.” Whereas father’s counsel below acknowledged that the minor was “*horribly mistreated* by people who were supposed to be watching out for her health and safety” (italics added), his appellate counsel contends that the minor’s account of her treatment was “called into question” because the minor was known to be untruthful. Although it is true that the minor’s foster parents reported that the minor lied while in their care about various misdeeds, there was no suggestion that the minor lied *about the abuse she suffered*. To the contrary, a social worker reported that the minor was “very credible and specific regarding the abuse she endured.”

Father essentially attempts to distance himself from the caretakers he tasked with the minor’s care, arguing that the Agency did not establish that the minor was currently at risk of serious harm because she was removed from the abusive custodians as a result of these proceedings. He likewise contends that the Agency failed to show the necessary causation between any act or omission on his part and the harm the minor suffered in the care of others. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.) The cases upon which he relies reversing jurisdictional findings under section 300, subdivision (b) for lack of causation are easily distinguishable. For example, in *In re X.S.* (2010) 190 Cal.App.4th 1154, unlike here, appellant did not know that he was the four-month-old infant minor’s biological father until a paternity test was conducted after the detention hearing. (*Id.* at pp. 1156-1157.) After paternity was confirmed, appellant took steps to care for his son, and there was absolutely no showing that the minor was a dependent child because of the father’s (as opposed to the mother’s) actions. (*Id.* at pp. 1160-1161.) Here, by contrast, there is no dispute that father knew that the minor was his biological daughter when he gave up physical custody of her to “aunties,” apparently under pressure to do so after his wife died.

More to the point, there was substantial evidence that father had reason to at least suspect that the minor was suffering abuse at the hands of her caretakers, yet did nothing to stop or even investigate possible abuse, and instead lost contact with the minor for at

least a year because he misplaced her caretakers' telephone number.⁴ This case is thus unlike *In re V.M.* (2010) 191 Cal.App.4th 245, upon which father also relies, where there was no allegation that the minor had been abused or neglected by *anyone*, or that father did or failed to do anything to or for his daughter. (*Id.* at pp. 247, 253.) It is true that in *In re V.M.*, the court held that the “ ‘abdication of a parental role’ is not a statutory basis for dependency jurisdiction.” (*Id.* at p. 253.) However, we reject father’s suggestion that the Agency showed only that he left the minor “in the care of others,” without more, in light of his failure to protect his daughter after reports of possible abuse, or even to investigate further.

Father argues that because the minor is not now at serious risk of harm, she should be returned to him forthwith for essentially these reasons: father did not know of the abuse perpetrated by the minor’s custodians, the court removed the minor from the abusers, and he did not personally abuse the minor. This argument sidesteps the juvenile court’s specific observation that “the same reasons that caused [father] to have [the minor] go to live with relatives appear[ed] to exist” *at the time of the jurisdictional/dispositional hearing*. As the court observed, father had no “real concrete plan” for having the minor live with him, as evidenced by the fact that he had sent an older daughter to live with relatives, despite his stated desire to have all his children together with him. In sum, substantial evidence supports the juvenile court’s finding that there was a substantial risk that the minor would suffer serious harm as a result of the inability of father to adequately supervise or protect her. (§ 300, subd. (b).)

⁴ Father stresses that the Agency had received a prior referral (in 2009) that did not lead to dependency proceedings, supporting an inference that there was no reason to suspect that the minor was being abused. First, the prior referral focused primarily on the minor’s *older sister* and whether rape allegations she made were true. Second, that same sister returned to Samoa in 2010 (after the referral) and told father that the caretakers “ ‘make a mistake and give [the minor] a spanking,’ ” and the social worker inferred that father thereafter knew of possible abuse of both daughters.

B. Dispositional Order.

Father next challenges the dispositional order placing the minor outside his care, which we also review for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) The juvenile court found by clear and convincing evidence that there would be a substantial danger to the minor’s physical health, safety, protection, or physical or emotional well-being if the minor were returned to father’s care, and there were no reasonable means by which her well-being could be protected without removing the minor from father’s physical custody (§ 361, subd. (c)(1)). Father cites to the relevant statute (*ibid.*),⁵ but then relies primarily on cases that reversed *jurisdictional* findings under section 300 in arguing that we should reverse the *dispositional* order. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 391-392 [sustained allegations did not support jurisdiction under § 300, subs. (b) or (g)]; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 396 [insufficient allegations to support jurisdiction under § 300, subd. (b)].) Again, we reject father’s argument that the sustained allegations here were insufficient to conclude that the minor was a child described by section 300, subdivision (b).

As for the dispositional finding, father simply summarizes the evidence favorable to him (that he planned to seek a larger home for his family), and downplays evidence that supports the order placing her outside his care (the assessment by a Samoan social services agency that father’s home was unsuitable for the minor and that father did not have an adequate plan to care for the minor). It is settled that when reviewing a juvenile court’s order for sufficiency of the evidence, “we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in

⁵ Respondent cites section 361.2, subdivision (a), which governs the standards for placement with a previously noncustodial parent when a child is removed from a different caretaker. The statute provides that if a parent requests custody in that circumstance, “the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” We do not address this statute, however, as it is clear that the juvenile court here relied on section 361, subdivision (c)(1) when issuing its dispositional order, and father does not claim that the court erred in doing so.

support of the order.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) “We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) We “affirm the order if supported by substantial evidence *even if other evidence supports a contrary conclusion.*” (*Ibid.*, italics added.) Reviewing the juvenile court’s order in this manner, we conclude that substantial evidence supports it.

III.
DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Baskin, J.*

We concur:

Reardon, Acting P.J.

Rivera, J.

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