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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

IN RE JOSEPH S. et al., Persons Coming
Under the Juvenile Court Law.

MARIN COUNTY DEPARTMENT OF
HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

JOSE S., SR.,

Defendant and Appellant.

A135211

(Marin County Super. Ct.

Nos. JV25486A,

JV25487A, JV25488A)

The juvenile court declared the four minor children of appellant Jose S., Sr. to be dependent children on the sole ground that they were at risk of serious emotional harm. (Welf. & Inst. Code,¹ § 300, subd. (c).) They were allowed to remain in the family home and offered family maintenance services. Jose, Sr. appeals the dispositional orders,² challenging the jurisdictional findings for three of the minors. He contends that those findings are flawed because (1) Joseph's petition did not allege the statutory basis on which the juvenile court found jurisdiction, and (2) insufficient evidence supports the

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

² Typically, a juvenile court disposition order constitutes a judgment and is a proper means for reviewing the underlying finding of jurisdiction. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950.)

finding that Jacqueline and Jasmine were at substantial risk of serious emotional harm. We affirm the orders entered on behalf of Jacqueline and Jasmine, but reverse Joseph's order and remand for further proceedings on his petition.

I. FACTS³

Carolina S.⁴ and appellant Jose S., Sr. have four children. Jose, Jr. was born in 1994 and Joseph was born in 1999. In 2001, daughter Jacqueline joined the family, followed by Jasmine in 2005. Ongoing verbal and physical violence in the home had prompted more than thirty referrals to child protection authorities since 1995. Some of these instances also involved the police. Jose, Sr. had been arrested twice on domestic violence charges.

In November 2011, Carolina was arrested and charged with domestic violence after an incident with Jose, Sr. that occurred in the presence of all four minors.⁵ Respondent Marin County Department of Health and Human Services (department) was advised of the incident, although the minors were not removed from the home.

In December 2011, the department filed a petition alleging that all four minors came within the jurisdiction of the juvenile court. The petition alleged that Carolina and Jose, Sr. had failed to protect the four children. (§ 300, subd. (b).) It also alleged that three of the minors—Jose, Jr., Jacqueline, and Jasmine—were at risk of serious emotional damage. (§ 300, subd. (c).) The petition did not make any such allegations about Joseph. The department sought to have the minors remain in the home, supported by family maintenance services focused on anger management, domestic violence prevention, and therapy for the entire family.

³ County counsel's failure to cite to the record on appeal in its brief hindered our efforts to understand the facts that arose in the juvenile court. (See Cal. Rules of Court, rule 8.204(a)(1)(C).) Although we could have stricken the brief or returned it for addition of record citations, we opt to disregard this noncompliance rather than delay determination of the issues raised on appeal. (Cal. Rules of Court, rule 8.204(e)(2)(C).)

⁴ Carolina did not appeal the juvenile court's order. We refer to her to the extent necessary to resolve the issues that Jose, Sr. raises in his appeal.

⁵ The case was not prosecuted.

More specifically, the department reported that Jose, Jr. showed signs of depression—loss of appetite, sleeping problems, social withdrawal, loss of interest in school, and suicidal thoughts. Jacqueline was anxious, finding it difficult to focus on school work or to block out thoughts of her parents’ fighting while at play. She also reported a loss of appetite and stated that she felt “really unsafe” at home. The younger daughter Jasmine had her own anxiety symptoms—violent nightmares that disrupted her sleep. All of these children had witnessed domestic violence in the home.

The department was unable to interview Joseph, because Jose, Sr. denied the social worker any access to the minor.⁶ When confronted with these effects of domestic violence on his other three children, Jose, Sr. was angry, paranoid, dismissive, and obstructionist. He was willing to obtain therapy for Jose, Jr., but insisted that no one else in his family needed it.

At the detention hearing, the department claimed that all four minors were at risk of emotional harm without family maintenance services. The parents were investigating obtaining individual counseling for Jose, Jr. through their health care provider. The juvenile court ordered the parents to give the department access to Joseph. Jose, Sr. and Carolina were granted family maintenance services and the children were allowed to remain in their home. Both parents were ordered to participate in services—perhaps including counseling—related to the prevention of domestic violence.

In advance of the jurisdiction hearing, the department filed several reports with the juvenile court. In its original report filed in late December 2011, it recounted some of the domestic violence referrals received about this family and about the family of Jose, Sr., and his first wife and child. Summaries of interviews with Jose, Jr., Jacqueline, and Jasmine were consistent with the allegations of the petition. Jose, Jr.’s report was particularly troubling, as it recounted an attempted suicide after Carolina was arrested. He and his parents had begun therapy, according to his father. When Joseph was interviewed, he denied that his parents yelled at each other and reported that his father

⁶ Joseph also declined to discuss these matters with the department.

forbade him from talking to the social worker because “he hates” the child protective service workers. Jacqueline told the social worker that her parents scream at each other; according to the child, Carolina says that Jose, Sr. may be crazy—a psycho. When Jose, Sr. arrived in the midst of these interviews, he became angry with the social worker and his children.

The department also reported that since 2003, Jose, Sr. had been arrested twice for spousal battery and once for spousal rape in incidents involving Carolina. (See Pen. Code, §§ 262, subd. (a)(1), 273.5, subd. (a).) The report included a more general assertion that Jose, Sr. had an extensive criminal history including charges of drug offenses, theft, burglary, and false imprisonment. He disputed those general allegations. Jose, Sr. was unable to work due to a disability, prompting stress and depression about his family’s financial instability. He admitted that these pressures played a role in fights with Carolina. His wife told the department that while she was in jail, Jose, Sr. had disposed of all her clothing. She was concerned that he might be using cocaine, which might account for his erratic behavior. A police officer conducting a welfare check independently observed that Jose, Sr. did seem paranoid.

The department recommended that the juvenile court take jurisdiction over the four minors pursuant to subdivisions (b) and (c) of section 300 and that they be given family maintenance services while remaining in their home. The January 4, 2012, jurisdiction hearing was continued for a contested hearing on February 21, 2012. The department issued a January 2012 addendum attaching police reports relating to Jose, Sr.’s, recent instances of domestic violence. It asked the juvenile court to take judicial notice of these reports. On February 16, 2012, Jose, Sr. filed a hearsay objection to part of the December 2011 department report referencing events involving his first wife and child, and unsubstantiated aspects of his criminal history.

On February 21, 2012, the department produced a second addendum, updating the information provided in the December 2011 and January 2012 reports. This addendum included summaries of events occurring since the December 2011 report. More recently, Jose, Sr. had displayed erratic and delusional behavior, telling his daughters that Carolina

drugged them while they slept so they would torture him.⁷ Jacqueline and Jasmine believed him. Jose, Sr. had also reported to police that at night, a neighbor poked his children with wires sent through the ceiling. Carolina again expressed her concern that Jose, Sr. was using drugs.

The department recounted Joseph's anger at his father about the false accusations that his mother drugged her children. The minor reported that, at one point, Jose, Sr. planned to have the children undergo blood tests to find out if they had been drugged. Later, he abandoned that plan. Joseph also opined that his father was using drugs. Asked how safe he felt at home, Joseph placed himself as a 6 on a scale of 10.

Carolina reported that all four minors had been assessed by a therapist who concluded that the daughters did not need therapy, but that her two sons did. However, she refused to allow the social worker to speak with Joseph's therapist. Jose, Sr. opined that all his children were "doing great" and refused a request to take a drug test. Neither parent seemed concerned about the impact of Jose, Sr.'s, delusions and their ongoing fighting on their children. The department asked the juvenile court to consider the information recounted in this report at the jurisdiction hearing.

At the contested jurisdiction hearing on February 21, 2012, the juvenile court excluded evidence of Jose, Sr.'s criminal history from 1985 to 1992.⁸ As Jose, Sr. had not received the second addendum until the day of the hearing, the juvenile court did not consider the addendum as evidence that day. Carolina offered evidence of Joseph's academic success.⁹

The social worker testified about her concern that fighting between Jose, Sr. and Carolina was having a negative emotional effect on the minors. Jose, Jr., believed that

⁷ When questioned about this later by the social worker, Jose, Sr. denied making this accusation against Carolina.

⁸ It denied the father's objection to report references to referrals from 1995 through 2002 pertaining to Jose, Sr.'s first wife and daughter, as well as reports of his criminal history since 1992. (See § 355, subd. (c)(1).)

⁹ The social worker testified that she was concerned about Joseph's overall emotional state more than his educational progress.

everyone in the family needed counseling, specifically pointing to Joseph's anger issues as a concern that needed to be addressed in therapy. The father was unwilling to receive services through the department, seeking instead to obtain counseling through his health care provider. The department recommended county-funded counseling for all family members with therapists who met higher child welfare requirements. The social worker opined that Jose, Sr.'s health care provider did not offer therapy of the frequency or duration needed to meet the family's needs, based on her experience with its therapeutic model.

The contested hearing was continued until February 27, 2012. By this time, the juvenile court considered the original report and both addendums from the department. Joseph did not attend the hearing, at his request. The social worker testified that Jose, Sr. did not allow Carolina to leave their home.

Jose, Sr. also testified that, in his view, his children had no problems—that the social worker was the real problem. His children were not at risk and his family did not need any department services to protect them. He had taken Joseph to therapy with his private insurer. He told the juvenile court that the children had been assessed and found not in need of counseling, so he did not pursue therapy for them. Joseph was doing very well in school. Jose Jr. was having difficulty sleeping, so his father was taking him the doctor to address this concern. All of his children were involved in football or cheerleading. All had received some tutoring at some point—educational assistance that Jose, Sr. had provided for them at his expense. He refused to do a self-assessment for alcohol or drug abuse.

At the close of the jurisdiction hearing, the juvenile declared all four minors to be dependent children on the basis of the subdivision (c) allegation of serious emotional

damage. It struck the subdivision (b) failure to protect allegation on insufficiency of evidence grounds.¹⁰

After mediation in advance of the disposition hearing, Carolina agreed with the department's objectives, but Jose, Sr. did not. After the father's contested disposition hearing in April 2012, the juvenile court concluded that the father was not amenable to services. It ordered that the minors remain with their parents in the family home and that the department provide family maintenance services. Jose, Sr. was ordered to participate in anger management¹¹ classes and individual counseling, as well as to submit to random drug testing for a period of time. Jose, Sr. appealed all four dispositional orders, but in his briefs, he challenges only the jurisdictional findings made on behalf of Joseph, Jacqueline, and Jasmine.¹²

II. JOSEPH

Jose, Sr. contends that as Joseph's petition did not allege that this minor was at risk of emotional harm—the sole statutory basis on which the juvenile court based its jurisdictional order—that court had no authority to take jurisdiction over Joseph. (§ 300, subd. (c).) The petition filed on Joseph's behalf alleged that jurisdiction existed based only on failure to protect grounds. (§ 300, subd. (b).) The juvenile court found insufficient evidence to support that allegation, but took jurisdiction over Joseph based on

¹⁰ The post-hearing findings and orders regarding Jose, Jr. accurately reflected the juvenile court's oral determination. However, the findings and order issued after the hearing for Joseph, Jacqueline, and Jasmine did not recite that the subdivision (b) findings had been stricken and stated that jurisdiction had been sustained on both grounds. We treat this inconsistency as a clerical error in the findings and deem the oral pronouncement to be the accurate juvenile court ruling.

¹¹ Jose, Sr. offered evidence that he had completed anger management courses in the past, but his ongoing anger issues satisfied the juvenile court that the prior coursework had not benefitted the father.

¹² As Jose, Jr. reached the age of majority in June 2012, it may be that the juvenile court's jurisdiction over him has been terminated.

an allegation that was not made in the petition with regard to this minor—that he was at risk of serious emotional harm.¹³ (§ 300, subd. (c).)

A parent in a juvenile dependency proceeding is entitled to due process. (*In re J. T.* (1974) 40 Cal.App.3d 633, 637.) Notice of allegations on which deprivation of custody may be premised is required to comply with due process, so that the parents may respond to those allegations. (*In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397; *In re J. T.*, *supra*, 40 Cal.App.3d at p. 639.) In this matter before us, no formal notice was given to Jose, Sr. that the juvenile court might take jurisdiction over Joseph because of a risk of serious emotional harm.

Jose, Sr. asks us to dismiss the underlying petition filed on Joseph’s behalf, but we reject his proposed remedy for this due process error. The department has the authority to amend Joseph’s petition to allege serious emotional harm, consistent with the evidence that developed after the petition was filed. (§ 348; see Code Civ. Proc., § 473.) We conclude that while the jurisdictional order must be reversed, the case should be remanded to the juvenile court to allow Joseph’s petition to be amended, and to allow the juvenile court to determine anew whether the allegation in the amended petition is true. (See, e.g., *In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1043.) That determination will be made based on the facts existing at the time of the new jurisdiction hearing. (See *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

¹³ County counsel’s response to this legal contention is woefully inadequate. Its three-page statement of facts is mostly a procedural history, with no citations to the record and the most minimal explanation of the circumstances facing the three minors before us on appeal. Counsel’s single page of argument fails to address the specific contention about Joseph’s petition that was raised on appeal; fails to cite the standard of review; and makes broad claims of juvenile court authority without legal citation to support those claims. It is not our role to seek out the legal authority supporting the juvenile court’s jurisdiction. That task was assigned to county counsel and its brief filed in this appeal fails to do so. (See Cal. Rules of Court, rule 8.204(a)(1)(B)-(C).)

III. JACQUELINE AND JASMINE

Jose, Sr. also challenges the sufficiency of evidence supporting the juvenile court's finding that Jacqueline and Jasmine were at substantial risk of serious emotional harm.¹⁴ (§ 300, subd. (c).) A child comes within the jurisdiction of the juvenile court if he or she is suffering or is at substantial risk of suffering serious emotional damage. This damage is evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward the self or others, as a result of parental conduct. (§ 300, subd. (c).) To prove that Jacqueline and Jasmine came within this subdivision, the department was required to prove serious emotional damage evidenced by qualities such as severe anxiety or depression. (*In re Brison C.*, *supra*, 81 Cal.App.4th at p. 1379; *In re Alexander K.* (1993) 14 Cal.App.4th 549, 557.)

In the juvenile court, the department must prove by a preponderance of evidence that the minor who is the subject of a dependency petition comes within that court's jurisdiction. (*In re Brison C.*, *supra*, 81 Cal.App.4th at p. 1379; *In re Amy M.* (1991) 232 Cal.App.3d 849, 859.) The statutory grounds are narrow. (*In re Brison C.*, *supra*, 81 Cal.App.4th at p. 1379.) On appeal, we review the jurisdictional finding for substantial evidence, resolving all conflicts in the evidence and reasonable inferences in support of that finding. The ultimate question is whether the juvenile court's finding was reasonable in light of the whole record. (*In re David M.* (2005) 134 Cal.App.4th 822, 828; *In re James C.* (2002) 104 Cal.App.4th 470, 482.) On appeal, Jose, Sr. has the burden of proving that the evidence was insufficient to support the juvenile court's finding. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Jose, Sr. contends that there was no evidence that his daughters suffered from severe anxiety or that this could result in serious emotional damage. He relies heavily on

¹⁴ Again, we find county counsel's brief to be insufficient to the task. Faced with a sufficiency of evidence challenge, county counsel has given us nothing more than generalities. It has failed to point out any specific evidence that could support the juvenile court's jurisdiction findings, nor has it offered any citations to the record on appeal to assist us in determining if the juvenile court's order was proper or not. (See Cal. Rules of Court, rule 8.204(a)(1)(B)-(C).)

a case that one appellate court concluded showed little more than a relatively happy child who had occasional nightmares and was caught in the crossfire of his parents' divorce. (See *In re Brison C.*, *supra*, 81 Cal.App.4th at pp. 1379-1382.) Even if we found that case to be persuasive,¹⁵ we would find the facts about Jacqueline and Jasmine's anxiety to be much more serious.

Close to the time of the hearing, Jose, Sr. told the girls that their mother was drugging them in their sleep. They believed him. He told police that the girls reported to him that a neighbor was poking wires at them through the ceiling while they slept. These purported assaults cannot have induced a sound night for either girl, particularly Jasmine who had previously reported anxiety that prompted nightmares in which her parents attacked each other with knives. She feared that her dreams would come true. (See *In re A.J.*, *supra*, 197 Cal.App.4th at pp. 1104.) Jacqueline reported that she did not feel safe at home. There was evidence that Jose, Sr. had had a drug problem. He did not acknowledge the possibility that his delusions and his ongoing disputes with Carolina had a negative effect on his children. He refused to let the girls receive counseling, despite Jacqueline's express request for it. This evidence was sufficient to support a finding that these two minors were suffering serious emotional harm at the time of the jurisdictional finding.

Jacqueline and Jasmine were also at risk of suffering serious emotional harm in the future, based on the evidence that was before the juvenile court at the jurisdiction hearing. (See *In re A.J.*, *supra*, 197 Cal.App.4th at p. 1104.) Jose, Sr. was delusional and passed his delusions on to both girls. (See *id.* at p. 1105.) He did not acknowledge the inappropriateness of his conduct or express any willingness to change. (See *id.* at p. 1106.) Construing the record in support of the jurisdictional finding as we must, we find sufficient evidence of severe anxiety to support the finding that Jacqueline and Jasmine were at risk of serious emotional harm within the meaning of section 300 subdivision (c).

¹⁵ The reasoning of this case is not without its critics. (See, e.g., *In re A.J.* (2011) 197 Cal.App.4th 1095, 1105-1106.)

The orders finding jurisdiction over Jacqueline and Jasmine are affirmed. The jurisdictional order entered on Joseph's behalf is reversed. His aspect of this matter is remanded to the juvenile court to allow his petition to be amended and to conduct a new jurisdiction hearing on the basis of an amended petition.

REARDON, J.

We concur:

RUVOLO, P. J.

HUMES, J.