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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re G.L., a Person Coming Under the
Juvenile Court Law.

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Respondent.

A135491

(Solano County
Super. Ct. No. J41223)

T.L., the father of G.L., age 1 (born Oct. 2011), appeals from an order declaring G.L. to be a dependent of the juvenile court. He contends that there is insufficient evidence to sustain the allegations of the Welfare and Institutions Code¹ section 300 petition, and that the court erred in bypassing reunification services under section 361.5, subdivision (b)(5). We affirm.

FACTUAL BACKGROUND

On December 7, 2011, the Solano County Department of Social Services (the Department) filed a section 300 petition alleging that G.L. sustained severe physical injuries and abuse while under his parents' care including a skull fracture, subdural

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

hemorrhage, and soft tissue injury to the scalp, acute fractures to the left and right scapulas, a healing fracture to the left clavicle, old and new rib fractures, four compression fractures to the vertebrae, and two fractures to the minor's left knee, as well as bruising to the minor's buttocks, and elevated liver enzymes indicative of abdominal trauma.

The Department's report for the detention hearing explained that on December 1, 2011, it received an emergency response referral regarding G.L., who was then six weeks old. G.L. had stopped breathing and was taken by emergency personnel to Kaiser Vallejo and then transferred to Children's Hospital in Oakland where he was admitted to the Intensive Care Unit. He had sustained multiple injuries including a skull fracture, subdural hematoma, bruising on the head and buttocks, and multiple rib fractures. G.L.'s two half-siblings were detained and placed in the respective custody of their fathers. They are not subjects of this appeal.

Dr. James Crawford-Jakubiak opined that G.L. suffered a brain injury that had " 'pervasive long term outcomes.' " His theory regarding G.L.'s injuries was that he likely suffered a very violent impact, because of the force required to break a scapula. He surmised that the injuries likely resulted from a strong and violent pulling on the arms and a downward type of force in which G.L. was slammed down hard, causing compression and force on all of his joints and bones. The clavicle and rib fractures appeared to be healing fractures and thus older injuries. He informed the police that those injuries could be up to three weeks old, but the compression fractures, head trauma, and other fractures appeared to be recent. He further opined that the injuries were caused by an adult and not a small child as the perpetrator had to use extreme force.

The Department's social worker met with mother and the maternal grandmother. Mother was devastated and emotional while the maternal grandmother had a flat affect. Mother reported no domestic violence. She told the social worker that on the day of the incident, she left for work at approximately 9:20 a.m. and received a telephone call at about 1:20 p.m. telling her that G.L. was being taken to the hospital. Mother requested that father be prohibited from visiting G.L. at the hospital. G.L.'s two half-siblings were

not at home at the time of the incident; one was with his father, while the other one was at school. The maternal grandmother believed that someone had dropped G.L.

The Department's social worker interviewed father by telephone. Father was adamant that he did not know what happened to G.L. He reported that he arrived at mother's home during the late morning on December 1, 2011 to babysit G.L. and that the maternal grandmother was there. G.L. was fussy so he picked him up and went to the bedroom to change him. G.L. fell asleep and then stopped breathing.

The Department reported that mother had several referrals involving G.L.'s half siblings for general neglect during 2009 and 2010. The referrals were either unfounded or evaluated without further action. Father had a prior conviction for residential burglary and suffered a parole violation for drugs.

The court held a detention hearing on December 9, 2011 and ordered that G.L. and his half-siblings be detained. The court granted parents supervised visits with G.L.

The Department filed an amended section 300 petition on December 15, 2011. The amended petition did not include G.L.'s half-siblings. On December 19, 2011, G.L. was discharged from the hospital and placed in a foster family home. On January 12, 2012, the court set the matter for a contested jurisdictional hearing.

The Department's report for the jurisdictional hearing noted that father was arrested for felony corporal injury upon a child (Pen. Code, § 273d) in connection with the injuries inflicted on G.L. and was currently in the county jail. It further reported that G.L. was suffering from head trauma, serious and extensive brain injury, multiple fractures, and refractory seizures. Dr. Crawford-Jakubiak opined that G.L.'s condition was consistent with abuse in its most violent form.

The Department's social worker interviewed mother on December 15, 2011. Mother said that on the day of the incident she left G.L. in the care of her mother and that he was fine, awake and alert. The maternal grandmother told her that father came over to help her out and that he took G.L. out of the swing in the living room and into mother's bedroom. The maternal grandmother told her that father came out of the bedroom ten to

fifteen minutes later and said that G.L. was not breathing.² Mother told the social worker that she confronted father on December 12, 2011. She asked him what he did to G.L. and he said, “ ‘If I hurt him on accident, I can’t say anything. It’s too late now.’ ” Mother noted that father often picked up G.L. in a “rough” manner and that she had tried to show him how to properly handle the baby. She related an incident in November 2011 when father became angry and grabbed G.L. “very hard” out of her arms. She also informed the social worker that father had a drinking problem.

The police interviewed father on the day of the incident. Father waived his *Miranda* rights. He stated that when he arrived at mother’s home, the maternal grandmother told him that G.L. was cranky. Father picked up G.L. to greet him and took him to mother’s room. G.L. did not look like his normal self so father checked his diaper, but G.L. did not need changing. G.L. fell asleep approximately 30 seconds later but then went limp. Father took him back to the maternal grandmother and told her to call 911. Father denied causing any injury to G.L. Father did not cry or show any emotion.

The Department recommended that the court sustain the amended petition and that G.L. continue to be detained in out of home placement.

On March 21, 2012, the mother submitted the issue of jurisdiction on the amended allegations of the petition that she knew or reasonably should have known that G.L. was at substantial risk of harm in the care, custody and control of father because she had observed him handle G.L. roughly, and was aware of father’s alcohol abuse and his resulting behaviors. She submitted to the allegations with the understanding that she

² The maternal grandmother also told the police that G.L. was fine, though a bit fussy, before the incident but showed no signs of distress. When father arrived at mother’s home, he took G.L. from the maternal grandmother and went into the bedroom, and after about five minutes, returned with G.L., stating that he was not breathing well. The maternal grandmother noticed G.L.’s labored and shallow breathing; she told father to call 911. The maternal grandmother stated that G.L. was normal prior to father arriving at mother’s home.

would be offered reunification services. The court sustained the amended allegations as to mother and ordered reunification services for her.

On the allegations of the petition as to father, the court took judicial notice of all of the Department's reports. Counsel for father waived all cross-examination of the Department's social worker. He argued that there was no evidence that father did anything that caused G.L.'s injuries. The court found by a preponderance of the evidence that G.L. sustained severe physical injuries while in the care of father, and that the injuries were nonaccidental. The court denied father reunification services under section 361.5, subdivision (b)(5).

DISCUSSION

Father contends that the evidence is insufficient to sustain the allegations of the petition. He takes issue only with those allegations that focus on him as the perpetrator of G.L.'s injuries. He thus acknowledges that the petition is sustainable to the extent it focuses on parents as responsible for G.L.'s injuries.³

“ ‘In juvenile cases, as in other areas of 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’ ’ ” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Here, there was substantial evidence that father was with G.L. at the time G.L. sustained his injuries. According to the maternal grandmother, G.L. was fine, albeit a bit fussy, until father took him into the bedroom. Between five to fifteen minutes later, G.L. sustained a severe brain injury, had labored breathing, and suffered multiple fractures. There was also evidence in the record that father often handled G.L. in a rough manner

³ Mother has not appealed the court's jurisdictional finding.

and had grabbed him out of mother's arms on one occasion. Also, when confronted by mother, father did not deny that he hurt G.L.

A finding under section 300, subdivision (a) that G.L. sustained severe physical injuries while in the care, custody, and control of father may be supported by circumstantial evidence. (See *In re E. H.* (2003) 108 Cal.App.4th 659, 670.) Here, the evidence not only showed that G.L. was in father's care when he was injured, but that father had previously handled G.L. roughly. In addition, the evidence showed that G.L.'s injuries were consistent with abuse and caused by an adult. On this record, the trial court properly sustained the allegations of the petition.

Father also argues that the court erred in denying him reunification services. Under section 361.5, subdivision (b)(5), however, the court need not provide reunification services when it finds by clear and convincing evidence that "the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent" That subdivision provides for jurisdiction when "[t]he child is under the age of five years and has suffered severe physical abuse by a parent, . . . if the parent knew or reasonably should have known that the person was physically abusing the child." (§ 300, subd. (e).)

Here, the court sustained the allegations of the petition that G.L. sustained severe physical injuries while in the care, custody, and control of father. Based on that finding, the court could deny father reunification services under section 361.5, subdivision (b)(5).

"Section 361.5, subdivision (b) 'reflects the Legislature's desire to provide services to parents only where those services will facilitate the return of children to parental custody.' [Citations.] When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be 'an unwise use of governmental resources.'" [Citations.]" (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.)

The court properly denied reunification services under the bypass provision here. The record shows father was incarcerated and faced charges resulting from his infliction of injuries upon G.L. G.L., who was just six weeks old at the time of the incident,

continued to suffer from severe physical injuries and faced numerous health challenges in the future as a result of his injuries. Under these circumstances, the court justifiably found that it would not benefit G.L. to pursue reunification with father, the person who caused his numerous injuries. No error appears.

DISPOSITION

The orders are affirmed.

RIVERA, J.

We concur:

RUVOLO, P. J.

REARDON, J.