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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.E.,

Defendant and Appellant.

A143888

(Alameda County
Super. Ct. No. SJ14023290)

I.

INTRODUCTION

J.E. (mother) appeals the court’s jurisdictional order finding her daughter, A.E., a dependent of the juvenile court. She does not contest the court’s dispositional order awarding custody to the father and dismissing the dependency action. We conclude that the termination of dependency jurisdiction does not render mother’s appeal moot, but her claim fails on the merits as substantial evidence supported the juvenile court’s order. Therefore, we affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A.E., a 15-year-old girl, was taken into protective custody by the San Leandro Police Department after she was found crying on a park bench. At the time, A.E.’s

parents were going through a divorce. A.E.'s father (father) was in Virginia and A.E. was living with her mother in California. Father received a call from his adult son, M.E. (A.E.'s older brother), telling him that A.E. had been found in a park by two women who contacted him at A.E.'s request. Father was able to speak to A.E., and then he contacted mother who informed him that she and A.E. had gotten into an argument about cleaning. Father then called the police.

The Alameda County Social Services Agency (the Agency) filed a juvenile dependency petition. It alleged mother had used excessive discipline and/or punishment on A.E. causing her pain and injury pursuant to Welfare and Institution Code section 300, subdivision (b).¹ It alleged mother pulled A.E. out of the bathroom by her hair and hit her. A.E. had bruises on her upper right arm, middle right arm, upper left arm, middle left arm, left forearm, inner upper arm, right lower abdomen, and upper left thigh.

Mother and A.E. provided differing accounts of the incident. Mother stated that she and A.E. had an argument about cleaning. Mother described A.E. as being difficult. A.E. had made a pile of clothes in the hallway, kicked water onto the floor, and poured bleach on herself to ruin a shirt. A.E. told her mother she was going to leave home. Mother contacted a family friend to have A.E. spend the night there in order to avoid further conflict. Mother stated she did not hit A.E. and had only grabbed A.E.'s wrists to push her away. She stated that A.E. bruised easily and she may have gotten the bruises from moving boxes or when she was throwing things around the house. Mother stated she felt A.E. was "doing this to get attention."

A.E. stated that she and her mother had gotten into a fight. Her mother was frustrated with her and said she "can't do anything right." Mother wanted her to clean up, but when she attempted to do it mother got mad at her, so A.E. closed herself in the bathroom. She said mother came into the bathroom, yelled at her, and pulled her hair. Mother called her "psycho," hit her with her hands, and also threw shoes at her. Mother took A.E. to mother's friend's house around 3:00 a.m. A.E. stayed there until the next

¹ All further statutory references are to the Welfare and Institutions Code.

day and then went home. She left her home and went to the park where two women helped her. She went to the women's home and called her brother, M.E., who contacted father. She said: "This is the first time my mom did this."

A team decision meeting was held. A.E. and father participated in the meeting, but mother did not attend. Father expressed his desire to have A.E. live with him in Virginia. The Agency interviewed A.E. and made several attempts to interview mother, without success.

The court held a detention hearing on July 25, 2014. At the hearing, mother stated that she had no objection to A.E.'s placement with father. The court found a prima facie showing under section 300. The court found a substantial danger to A.E.'s physical and emotional health if she was returned to mother. A.E. was ordered detained with a relative or other suitable placement and the court gave the agency the discretion to place A.E. with father.

The Agency filed an amended petition on August 1, 2014. The section 300, subdivision (b) allegation against mother remained unchanged, but it indicated presumed father status for father.

The Agency filed a jurisdiction/disposition report recommending that dependency be dismissed and father be given physical custody of A.E. The report noted that A.E. was interviewed by the Child Abuse Listening Interview Coordination Center (CALICO). A.E. recounted the incident and stated that mother slapped her in the face and hit her. She said mother kicked her in the back, threw things at her, poured a pitcher of water on her, and instructed her not to change her wet clothes. She said mother told her how much she hated her and she did not care if she died. Mother called her a "psychopath" and "didn't care if she got kidnapped and raped." A.E. expressed her belief that mother hates her and wishes she never existed.

The report recommended that A.E. be declared a dependent of the court and removed from mother's custody. It recommended A.E. be placed with her father who should be awarded physical custody, and the jurisdiction of the juvenile court then should

be terminated. The report noted father was in agreement with the recommendation. Mother agreed A.E. should live with father in Virginia, but disagreed with the petition.

The first contested jurisdiction hearing was scheduled for November 10, 2014, but mother was not present. Mother's counsel requested a continuance because the trial of the criminal case regarding the incident was set for early December and mother did not want to testify prior to the criminal matter being resolved.

The continued contested jurisdiction hearing was held on December 12, 2014. Mother appeared telephonically. Mother's counsel stated he would not be presenting any evidence. He advised the court: "I have no witnesses to present, so I expect the Court will follow the Agency's request and proceed." He stated that mother felt her side of the story had not been presented to the court and that would remain the case because no witnesses were there to testify. "Mother does understand that the Agency is asking the Court today to take jurisdiction and then promptly dismiss the case with custody and visitation as outlined in the proposed exit order." Mother was "quite comfortable" with the terms of the order.

The court found the allegations in the amended petition were true. A.E. was declared a dependent of the juvenile court. The court found clear and convincing evidence that A.E. must be removed from the physical custody of the mother and returning A.E. to her mother would cause a substantial danger to her physical health, safety, and well being. The court approved placement with father as set forth in the custody order. The court terminated the juvenile court's jurisdiction.

III.

DISCUSSION

A. The Termination of Juvenile Court Jurisdiction Does Not Render this Case Moot Because of the Potential for Adverse Collateral Consequences

After the court sustained the jurisdictional allegations in the petition, it proceeded to disposition. The court ordered A.E. be declared a dependent of the juvenile court and awarded custody to father. The court then terminated dependency jurisdiction. Arguably termination of the court's jurisdiction renders the appeal moot. (See *In re James B.*

(1986) 184 Cal.App.3d 524, 528, superseded by statute on other grounds in *In re David H.* (2008) 165 Cal.App.4th 1626 (*David H.*) [the termination of jurisdiction after issuing the disposition order raised an issue of mootness with respect to a subsequent challenge to the exercise of jurisdiction].)

The “question of mootness must be decided on a case-by-case basis. [Citation.]” (*In re Hirenia C.* (1993) 18 Cal.App.4th 504, 518.) If the jurisdictional findings can have an adverse impact on the parent’s custody rights, the court may conclude the challenge is not moot. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) Similarly, if the jurisdictional findings could have severe and unfair consequences to the parent in future family law or dependency proceedings, an appeal is not rendered moot. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.)

Mother argues that the juvenile court’s findings could impact any future visitation or custody proceedings. For example, if this court concludes the juvenile court erred in its jurisdictional findings, then the finding of abuse should be reversed. In that event, even if it does not alter the custody situation, it would eliminate any future negative consequences for mother.

Moreover, the court’s jurisdictional order removed A.E. from mother and granted sole physical custody to father in another state. The adverse impacts identified by mother are not entirely speculative given she may seek a change in custody status or greater visitation in the future. (See *In re A.R.* (2009) 170 Cal.App.4th 733, 740 [father’s appeal not moot where the dispositional order severely restricted his contact with his daughter and he would have to overcome those findings to modify the court’s order in the future].) We will, therefore, review her claim on the merits.

B. The Juvenile Court’s Order Is Supported by Substantial Evidence

On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1433, citing *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) In determining if there is substantial evidence to support the juvenile court’s disposition, “ “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." . . . ' ' (In re I.J. (2013) 56 Cal.4th 766, 773, quoting In re Heather A. (1996) 52 Cal.App.4th 183, 193.) We may not substitute our deductions for those of the juvenile court. (In re Albert T. (2006) 144 Cal.App.4th 207, 216.)

Jurisdiction is appropriate under section 300, subdivision (b) where there is substantial evidence that "[t]he 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 or guardian to adequately supervise or protect the child" (§ 300, subd. (b)(1).) Three elements must exist for a jurisdictional finding under section 300, subdivision (b): " '(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.' [Citation.]" (In re J.O. (2009) 178 Cal.App.4th 139, 152.)

Mother argues there was insufficient evidence that she physically abused A.E. She contends this was a one-time incident supported by no evidence other than A.E.'s statements that mother harmed her. Mother argues that evidence of an isolated incident of physical abuse by a parent is insufficient to demonstrate a future risk of harm, citing *In re Nicholas B.* (2001) 88 Cal.App.4th 1126 (*Nicholas B.*).² In *Nicholas B.*, the court evaluated the sufficiency of the allegations in the petition and held that if the incident was not likely to recur then there is no current risk of harm to the child under section 300, subdivision (b). (*Nicholas B.*, at pp. 1134-1135.) The petition alleged one incident where the mother struck the child in the face. (*Id.* at pp. 1134-1135.) The court concluded the evidence was insufficient where "[t]here are no further allegations nor supporting facts to suggest the serious physical harm inflicted by the mother will occur again." (*Ibid.*, fn. omitted; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 ["While evidence of past conduct may be probative of current conditions, the question under

² *Nicholas B.* involved an alleged failure of the petition to state a cause of action and was not a substantial evidence appeal.

section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.]” (Original italics.)])

Division Five of this court disagreed with the holding in *Nicholas B.* to the extent it held section 300, subdivision (a) requires allegations of a substantial current risk of serious physical harm to establish jurisdiction. (*David H., supra*, 165 Cal.App.4th at p. 1644 [“We hold that, in the absence of unusual circumstances . . . an allegation that a child *has suffered* serious physical harm inflicted nonaccidentally by a parent or guardian is sufficient to establish jurisdiction under section 300, subdivision (a).” (Original italics.)]) Other courts have held that a showing of prior abuse is sufficient to support the exercise of jurisdiction under section 300, subdivision (b). (*In re J.K., supra*, 174 Cal.App.4th at p. 1439; see also *In re John M.* (2013) 217 Cal.App.4th 410 (*John M.*.) The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient to establish a current risk of harm. (*John M.*, at pp. 418-419.) The severity of the single incident is not lessened by the fact it was isolated and in the past. (*Id.* at p. 419.)

“ ‘In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances.’ ” (*John M., supra*, 217 Cal.App.4th at pp. 418-419, quoting *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026.) The court should consider the child’s present circumstances, the parent’s attitude toward the incident, and steps taken by the parent to address the problematic conduct. (*Id.* at pp. 418-419.)

Here, examining mother’s attitude and steps taken to rectify the conduct, the record supports a finding of future risk of harm to A.E. Unlike *Nicholas B.*, where there was a single incident that the mother admitted and regretted, mother has never admitted the conduct and seems to blame A.E. for the incident. (*Nicholas B., supra*, 88 Cal.App.4th at pp. 1134-1135.) Mother repeatedly argues the case involved typical 15-year-old behavior with a mother who was overly stressed and “may or may not have had a momentary lapse in judgment in how she handled the situation.” Mother describes A.E.’s behavior as “provoking” and argues that A.E. made the allegations to get attention.

She states: “This case was about the incorrigible behavior of a teenager.” Mother has expressed no regret, she has maintained her position that A.E. was “provoking” her, and she has taken no steps to address the incident or prevent future confrontations.

Next, mother argues there was no expert evidence or testimony from a qualified professional to support a finding of substantial risk. Mother, however, has cited no authority to support her contention that expert testimony was required at the hearing. Courts have held to the contrary: “Because the matter to be determined at the jurisdictional hearing is whether a child is at substantial risk of harm at the hands of a parent, due to parental acts or inaction, if that assessment can be made within ordinary experience, no expert is necessary.” (*Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195, 202, fn. omitted.). Here, the social worker who prepared the report provided her opinion and recommendation that A.E. should be declared a dependent. The court is entitled to rely on the report as evidence to support a finding of jurisdiction under section 300. (§ 355.)

Finally mother contends there was no evidence that she hit A.E. or caused the bruising on her body. She argues A.E.’s account does not provide sufficient evidence because the words of a teenager are not enough to support the court’s findings.

The juvenile court, however, credited A.E.’s account of the incident. A.E. provided consistent and believable testimony. She gave an account of the abuse to the police and then a week later related the same basic facts during the CALICO interview. While she stated on both occasions that this was the first time her mother ever physically abused her, she explained her mother pulled her hair, hit her, and threw things at her. She also testified that her mother called her a “psycho.”

The incident resulted in observable injury to A.E. The police report confirmed multiple bruises on A.E.’s arms as well as on her stomach and thigh. One of the women who found A.E. in the park and the social worker both identified the bruises and marks on A.E.’s body.

Contrary to mother’s contention that A.E. simply was behaving like a teenager and just trying to get attention, this incident appears to be a symptom of a much greater

estrangement between the two. We note that A.E. maintained her unwillingness to see her mother for months after the incident, refusing any contact or visitation with mother. A.E. at age 15 even agreed to move across the country to live with her father; an uprooting to which mother readily agreed.

While mother explained that A.E. bruised easily and could have sustained multiple bruises on her arms, abdomen and thigh from moving boxes or throwing things around the house, her version of events need not have been accepted by the juvenile court as an accurate account. Indeed, the uncontroverted fact that mother took A.E. to a friend's home at 3:00 a.m. to avoid further conflict supports A.E.'s account of her mother's inability to handle the situation. "It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.)

Accordingly, there was sufficient evidence that A.E. suffered physical harm caused by mother and would be at a future risk of harm if left in her mother's home. Drawing all inferences in favor of the court's order, we find there is substantial evidence to support the court's jurisdictional order.

IV. DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.

A143888, *In re A.E.*