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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re K.M. et al., Persons Coming Under  
the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSEPH M.,

Objector and Appellant.

A144535

(Alameda County Super. Ct.  
Nos. SJ14022770, SJ14022771)

On January 9, 2015, the Alameda County Juvenile Court sustained the allegations of the amended petition filed by the Alameda County Social Services Agency (Agency) that two minors came within the scope of Welfare and Institutions Code section 300, subdivision (b), to wit: (1) “Joseph M[.], presumed father of K[.] M[.] and Christina C[.], has mental health issues that negatively affect his ability to provide regular care, supervision, and protection for his child. On April 24, 2014, Mr. M[.] hit K[.]with a belt several times, inflicting welts on K[.]’s legs, arms, thighs, back, shoulders, and buttocks. In addition, Mr. M[.] has exposed the children to an unsafe environment of domestic violence with their mother A[.] M[.] Christina . . . reports she has seen Mr. M[.] hit her mother, push her, and yell at her;” and (2) “A[.]M[.], mother of K[.]M[.] and Christina C[.], has failed to provide adequate care, supervision and protection for her children, in

that K[.] was hit with a belt by the father, Joseph M[.], several times, causing physical injury, and Ms. M[.] failed to protect K[.] from physical injury. In addition, Ms. M[.] has exposed her children to an unsafe environment of domestic violence with their father, Joseph M[.] Christina reports she has seen Mr. M[.] hit her mother, push her, and yell at her.”

The court then stated: “There is no question that Mr. M[.] has inflicted serious physical harm on K[.] and that both children continue to be at risk of serious physical harm. This risk is current. There is evidence that the April 24th incident was not the first time that Mr. M[.] has used physical discipline on K[.] and that coupled with the fact that Mr. M[.] is not and has not as to this date learned or received any input on other methods of discipline, that leaves both children at continuing risk of harm until Mr. M[.] learns a different method of discipline.

“The children are at risk from [the mother] because she did not and does not recognize the seriousness of the use of the type of physical discipline that was used by Mr. M[.] When she was asked about the injuries to K[.] that were displayed in the photographs, her response was that they were minor injuries. With this mindset, she is not in a position to provide protection for these children. [¶] . . . [¶]

“The Court finds that the allegations regarding domestic violence are true based on the combination of statements by Christina, the fact that the police have been called to the home because of disputes in the home, those disputes which Ms. M[.] has described as a state of lunacy, and the key-snatching incident as described by Mr. M[.], the Court concludes from all of these factors that domestic violence has occurred in the home and that domestic violence has impacted the children.”

The sole issue on this appeal by the father is set out in his opening brief as follows: “Substantial evidence did not support the court’s jurisdictional findings, so the judgment should be reversed and the jurisdictional and dispositional orders should be vacated.” However, the ensuing argument establishes that the father has a far less expansive target.

Father does not contend that the incidents cited by the court did not occur, or that the statements cited by the court were not made. He does not dispute that the incident with K. resulted in him admitting a misdemeanor criminal charge that he had inflicted “unjustifiable physical pain.” (Pen. Code, § 273a, subd. (b).) Rather, father believes the juvenile court’s decision is vulnerable because there was insufficient proof of the children being in future danger.

He first asserts that “[t]he evidence showed the father had enrolled on December 16, 2014 (during the period of the jurisdictional hearing) in an on-line 52-week parenting class (as required by the criminal court) at the time the juvenile court sustained the petition. The court failed to take account of this evidence, it appears. The court said there was no evidence father had ‘learned’ or ‘received any input’ about methods of physical discipline other than corporal punishment, but this was contradicted by the fact that father was enrolled in a parenting class and he promised at the hearing never again to use corporal punishment.”

On this point father cites to this court’s decision where we stated: “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.] Thus the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risks of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ ” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) Father argues “the injuries to K[.] which had occurred in April 2014 (nine months before the conclusion of the January 2015 jurisdictional hearing) were a one-time isolated incident,” and that in light of the “ ‘totality’ of the evidence . . . there was ‘no risk of this occurring again.’ ”

Father also asserts there was “no evidence of a ‘sustained pattern of physical and emotional abuse of a child perpetrated in an environment of ongoing domestic violence between the parents,’ ” and thus “the evidence was insufficient to prove by a preponderance that the children were at current risk of being seriously physically harmed or made physically ill by domestic violence in the home . . . .”

The Agency responds that the merits of father’s contention need not be reached because of the accepted principle “[i]n dependency cases . . . that a jurisdictional finding good against one parent is good against both.” It follows that “[w]hen one parent asks the reviewing court to review the jurisdictional findings involving only his [or her] conduct, but does not challenge the jurisdictional findings based on the other parent’s conduct, any decision the Court of Appeal might render on those challenged findings will not result in a reversal of the lower court’s order asserting jurisdiction” and “[h]ere, the father [does] not challenge the jurisdictional allegations [*sic*] based on mother’s conduct . . . .” The Agency’s position is well taken, but we choose not to rest our affirmance on this ground alone.

Just as father ignored the finding against the mother, he overlooks the other parts of the allegations that were sustained by the juvenile court. And he takes a very selective view of the record. One example is how he treats the April 24th incident. What he sees as a one-time aberration, the juvenile court could—and did—view as part of a pattern, a continuation of father’s lack of control, as evidenced by its finding that “the April 24th incident was not the first time that Mr. M[.] has used physical discipline on K[.]” The court sustained the allegation that “Christina . . . reports she has seen Mr. M[.] hit her mother, push her, and yell at her,” and there was evidence to that effect from Christina and the mother. K. concurred with Christina: the Agency’s caseworker advised the court that “there is a history of domestic violence, which the children report as upsetting and disruptive to their daily life,” and “the children report that the parents frequently argue in their presence, causing them to feel unsafe in the home . . . .”

Father was asked “have there ever been any instances of domestic violence” with the mother; he responded with a categorical “No.” It is clear from the preceding paragraph that the court did not believe father on this point. Father can hardly be expected to address a problem he denies having.

As for father’s representation that he would never do it again, the court was not required to accept it at face value. The court could conclude the reason inappropriate discipline had not recurred was that father was barred from the children by a protective

order, and thus had had no opportunity to test the validity of his promise. As the Agency cogently argues in its brief: “[F]ather wants credit for not doing something he was physically prevented by the courts from doing.”

An additional ground for questioning father’s vow of self-control came from his own testimony and actions: “Q. . . . [Y]ou mentioned in testimony . . . that you understand that the concerns are the April 24th incident and domestic violence. [¶] Have you participated in any services since April of 2014 that are aimed at addressing any of these concerns? A. Oh, yes. *I attended one domestic violence class and I did not return because . . . I know what domestic violence is.*” (Italics added.) Later in the hearing he added: “I’m not a person with domestic violence. So, therefore, that’s why I’m not going.” The juvenile court was obviously of a different opinion, as evidenced by its approving a case plan that had this provision: “The parent will enroll, fully participate in, and successfully complete an Agency approved domestic violence program.”

As for his participation in the “on-line 52-week parenting class (as required by the criminal court)” on which father places so much emphasis, he admits it was done under compulsion and at the time of the dispositional hearing had been underway for only six of its 52 weeks. Moreover, it does not appear that the program had been approved by the Agency.

In these circumstances, the juvenile court had ample grounds for concluding father was unwilling to acknowledge his dark impulses or his inability to control them.

For each and all of the foregoing reasons, the dispositional order is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Stewart, J.