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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.J. et al., Persons Coming Under the  
Juvenile Court Law.

B235234  
(Los Angeles County Super. Ct.  
No. CK61084)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Appellant,

v.

TIFFANY C. et al.,

Defendants and Appellants.

APPEAL from the orders of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Appellant.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant Tiffany C.

Thomas S. Szakall, under appointment by the Court of Appeal, for Defendant and Appellant Angel Q.

Tiffany C. (mother) appeals from the order of August 3, 2011, declaring her daughters, C., A., and B. (collectively “the children”) dependents of the court under Welfare and Institutions Code section 300.<sup>1</sup> Angel Q. (“Angel”), the presumed father of A. and B., appeals from the order of August 3, 2011, declaring A. and B. dependents of the court. Mother contends substantial evidence does not support: (1) the finding under section 300, subdivision (a) that C. suffered or was at substantial risk of suffering serious physical harm inflicted nonaccidentally by a parent; and (2) the order under section 361, subdivision (c)(1) removing the children from parental custody. Mother and Angel contend substantial evidence does not support the finding under section 300, subdivision (j) that the abuse of C. placed A. and B. at substantial risk of abuse. In a cross-appeal, the Department of Children and Family Services (Department) contends substantial evidence does not support the dependency court’s dismissal of the allegation under section 300, subdivision (b) that C. suffered or substantially risked suffering serious physical harm or illness as a result of a parent’s failure to adequately supervise or protect her. We affirm.

### **STATEMENT OF FACTS AND PROCEDURE**

C. was born in 2001 to mother and A.H.<sup>2</sup> B. was born in 2009, and A. was born in 2011, to mother and Angel, who did not live together. C. exhibited emotional and behavioral problems. Mother disciplined C. by whipping her “all over” her body with a folded belt (causing bruising), hitting her with her hand, and yelling. Mother called C. derogatory and hurtful names. Mother yelled at B. and hit her. C. would take the blame when B. was messy, in order to protect B. from being hurt by mother.

On June 15, 2011, angry that C.’s room was messy, mother called C. a “bitch,” threatened to “whoop [C.’s] ass,” and threw a bottle at C. in B.’s presence. Mother threw the bottle overhand, as if she were throwing a baseball, and the impact lacerated C.’s

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> A.H. was found to be an alleged father of C.

face. C. ran to a neighbor's house, where the wound was treated with ointment, but the wound opened up. C.'s godmother took her to the hospital where the wound was closed with four stitches. C. was afraid of mother, because mother was angry with her. Mother wanted C. to live in a foster home.

C. and B. were detained from mother, B. was released to Angel, C. was detained with godmother, and a section 300 petition was filed.<sup>3</sup> Mother was hesitant to visit with C. Mother was not attentive to C. during visits and did not take advantage of visits outside the Department's office. Mother appeared attentive and bonded to A.

On August 3, 2011, the children were declared dependents of the court, based on sustained allegations under section 300, subdivisions (a) [C. and B.] and (j) [the children], concerning mother and Angel, that: (1) C. and B. have suffered, or there is a substantial risk they will suffer, serious physical harm inflicted nonaccidentally by the parent, in that mother threw a bottle at C. inflicting a bleeding laceration to her forehead which required stitches, mother struck C. with a belt inflicting bruises, and C. was afraid of mother due to mother's physical abuse; and (2) such physical abuse endangers B. and A., placing them at risk of physical abuse.<sup>4</sup> Mother had attended three meetings of a parenting/anger management class. The dependency court found, pursuant to section 361, subdivision (c), there was a substantial danger to the children's well-being if they were returned home to mother and there were no reasonable means to protect them without removing them from mother. Custody was taken from mother, and reunification services were ordered. Mother was ordered to attend parent education, individual counseling, and, when appropriate, conjoint counseling with C. Mother was granted monitored visitation; the Department was denied discretion to liberalize the visits. C.

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<sup>3</sup> A. had not been born yet. In July 2012, shortly after A. was born, she was detained and released to Angel, and a section 300 petition concerning her was filed.

<sup>4</sup> The dependency court dismissed an allegation concerning the children under section 300, subdivision (b) and, in A.'s case, an allegation under section 300, subdivision (a).

was ordered placed in godmother's home, and B. and A. were ordered placed in home-of-parent Angel.

## DISCUSSION

### I. Substantial Evidence

#### A. Section 300, subdivision (a)

Mother contends substantial evidence does not support the jurisdictional finding under section 300, subdivision (a) that C. suffered or was at substantial risk of suffering “serious physical harm inflicted nonaccidentally” by mother.<sup>5</sup> We disagree with the contention.

In determining whether substantial evidence supports the factual findings, “all intendments are in favor of the judgment and [we] must accept as true the evidence which tends to establish the correctness of the findings as made, taking into account as well all inferences which might reasonably have been drawn by the trial court.” (*Crogan v. Metz* (1956) 47 Cal.2d 398, 403-404.) ““[The] [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citations.]” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) “[I]ssues of fact and credibility are the province of the trial court. [Citation.]” (*In re*

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<sup>5</sup> Section 300, subdivision (a) describes a child who: “has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.”

*Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S., supra*, at p. 321.)

If supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 [“[w]e do not reweigh the evidence”].) Thus, the pertinent inquiry when a finding is challenged on sufficiency of the evidence grounds is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*Ibid.*)

The record contains ample evidence supporting the findings under section 300, subdivision (a). There is evidence mother, aiming at C., threw the bottle overhand, as she would throw a baseball, while angrily cursing and yelling at C. Moreover, the bottle struck C. with such force it inflicted a laceration that required four stitches to close. Mother’s statement shortly after the incident that she was so exasperated with C. she wanted C. to live in a foster home, indicates mother’s inability to manage C.’s behaviors made mother frustrated, angry, and violent. This is substantial evidence under section 300, subdivision (a) that C. suffered a serious physical injury and mother inflicted it nonaccidentally. This evidence, plus the evidence that mother whipped C. on her body with a folded belt, is substantial evidence supporting a finding that C. was at risk of suffering serious physical injury inflicted nonaccidentally by mother.

Mother asks us to reweigh the evidence and find that C.’s injury was an accident. This we will not do. (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465; *In re Matthew S., supra*, 201 Cal.App.3d at p. 321.)

## **B. Section 300, subdivision (b)**

The Department contends no substantial evidence supported the dependency court’s ruling dismissing the allegation under section 300, subdivision (b). We disagree

with the contention.

Section 300, subdivision (b) describes in pertinent part a child who has suffered, or is a substantial risk of suffering, “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 . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate . . . medical treatment[.]”

The dependency court found the throwing of the bottle at C. was an intentional act, not the result of inadequate supervision of C. under section 300, subdivision (b). The evidence mother aimed the bottle at C. and threw it overhand as if it were a baseball with such force it caused a laceration requiring stitches supports the conclusion that the allegation mother’s conduct toward C. was inadequate supervision was not proven. The evidence C. ran out of the house immediately upon being struck, sought help from a neighbor, and was taken to the hospital for medical attention supports a conclusion that the allegation of medical neglect under section 300, subdivision (b) was not proven. The Department asks us to reweigh the evidence, but that is not our role. (*In re Matthew S.*, *supra*, 201 Cal.App.3d at p. 321.)

### **C. Section 300, subdivision (j)**

Parents contend substantial evidence does not support the finding that B. and A. are persons described by section 300, subdivision (j). We disagree with this contention as well.

Section 300, subdivision (j) describes a child whose “sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

Substantial evidence supports the finding under section 300, subdivision (j). The evidence under section 300, subdivision (a) that mother intentionally threw a bottle at C. with such force and direction that it seriously injured her, plus the evidence B. was present during the incident, mother whipped C. with a folded belt, and mother was already hitting and yelling at two-year-old B., is substantial evidence supporting the finding there was a substantial risk mother would inflict serious physical injury to B. nonaccidentally under section 300, subdivision (a). The evidence mother reacted with verbal and physical violence when C. and B. misbehaved is substantial evidence B. and A. were at substantial risk of suffering serious physical harm, under section 300, subdivision (b), as a result of mother's failure or inability to adequately supervise them. Accordingly, substantial evidence supports the section 300, subdivision (j) finding that there is a substantial risk B. and A. will be abused as defined in section 300, subdivision (b), and A. will be abused as defined in section 300, subdivision (a).<sup>6</sup>

Mother and Angel argue matters that were before the dependency court, such as B. and A. were younger than C. and less difficult to manage. We will not reweigh the evidence. (*In re Matthew S.*, *supra*, 201 Cal.App.3d at p. 321.)

#### **D. Removal From Custody**

Mother contends the order removing the children from her custody under section 361, subdivision (c) must be reversed, because substantial evidence does not support the findings removal was necessary for the children's protection and no lesser alternative existed. We disagree with the contention.

Section 361, subdivision (c) provides in pertinent part: "A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and

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<sup>6</sup> As A. was at risk of harm under subdivision (b), the dependency court's striking of the section 300, subdivision (a) allegation in A.'s case is not inconsistent with its finding that A. is a child described by section 300, subdivision (j).

convincing evidence[.] [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.”

“Findings made at a juvenile dependency hearing where the minors are placed out of the home of a parent must be supported by clear and convincing evidence. [Citation.] However, on review, this court only determines whether, viewed in the light most favorable to the judgment, there is substantial evidence to support the findings of the juvenile court.” (*In re Albert B.* (1989) 215 Cal.App.3d 361, 375.)

“The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court's determination in this regard will not be reversed absent a clear abuse of discretion. [Citation.]” (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) “The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

This is a case of serious physical abuse. Mother had a history of reacting to her children with high levels of frustration and anger, and with excessive physical and verbal abuse. She was unrehabilitated. With C., mother was angry and rejecting. B. and A. were very young, vulnerable children. At the hearing, she presented the dependency court with no lesser alternative to removal from her custody. The foregoing is substantial evidence supporting the finding that it would create a risk of harm for mother to have custody and there was no reasonable lesser alternative to removal. The removal order was well within the court's sound discretion.

## DISPOSITION

The orders are affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.