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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

STACEY G. and JASON L.,

Defendants and Appellants.

B236040

(Los Angeles County
Super. Ct. No. CK80585)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, David R. Fields, Judge. Affirmed.

Janice A. Jenkins, under appointment by the Court of Appeal, for Appellant, Stacy G.

Gerard McCusker, under appointment by the Court of Appeal, for Defendant and Appellant, Jason L.

Office of the County Counsel, John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Stacey G.¹ (mother) and Jason L. (father) appeal from the trial court's assertion of dependency jurisdiction over their two children, minors Logan L.² (Logan) and Andrew L.³ (Andrew) (together, the children), under Welfare and Institutions Code⁴ section 300, subdivision (b). Father contends that the children did not fall within such jurisdiction because there was no evidence that mother personally posed a risk of violence to the children; there was no evidence that he allowed mother to have unlimited access to the children; and there was no evidence that the children were at risk of serious physical harm at the time of the hearing because he discontinued his relationship with mother before it was held. Therefore, he argues, the judgment must be reversed. We disagree and will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND⁵

Father met mother in May of 2003 and they moved in together about one year later. Logan was born in 2005 and the couple married on April 16, 2008. The couple

¹ Mother's appointed counsel stated in her opening brief that she "does not raise any challenge to the juvenile court's order." Pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, the brief set forth the applicable facts and law and requested that we permit mother to file a brief herself in propria persona. Mother was allowed to submit such a letter or brief, but she failed to do so. Therefore, the appeal with respect to mother is dismissed as abandoned.

² Logan was born in September of 2005.

³ Andrew was born in January of 2009.

⁴ All section references cited herein are to the Welfare and Institutions Code unless otherwise noted.

⁵ The factual and procedural background is drawn from the record, which includes a one-volume Clerk's Transcript and a one-volume Reporter's Transcript.

separated a few months after Andrew was born in 2009. After an attempt at reconciliation, father moved out permanently. Mother was briefly involved with another man, but, after that involvement ended, she began a relationship with her cousin, Carlos G. (Carlos). Carlos moved in with mother shortly thereafter.

The Department of Children and Family Services (DCFS) became involved with mother, Carlos and the children on January 3, 2010 when mother brought Andrew to the emergency room at Norwalk Community Hospital. There, Andrew was treated for a fractured skull, acute and chronic subdural hemorrhaging, bruising and swelling to both eyes, bruising throughout his face and body, and bites to his penis, his right thigh and his left thigh. Although mother stated she “noticed” bruising around Andrew’s eyes on December 29, 2009, she failed to seek treatment for five days. She stated that she believed Andrew injured himself by banging his head on his crib, which was inconsistent with the nature and extent of his injuries, many of which were in different stages of healing and were suggestive of nonaccidental trauma. DCFS took the children into protective custody and filed a section 300 petition⁶ on their behalf, which was sustained on March 2, 2010.

⁶ The petition alleged, “On 1/3/10, eleven month old, [Andrew] was medically examined and found to be suffering from a detrimental and endangering condition. The child sustained a fracture to the child’s skull and acute and chronic subdural hemorrhages to the child’s brain. The child sustained bruising and swelling to both of the child’s eyes. The child sustained bruising throughout the child’s face and body. The child sustained a bite mark below the child’s penis and bite marks to the child’s right and left thighs. The child’s injuries are in different stages of healing. The injuries were inflicted by the child’s maternal cousin Carlos Garcia and the mother know [sic] that the maternal cousin was severely abusing the child but failed to protect the child and allowed the maternal cousin, Carlos Garcia unlimited access to the child. The

Although the allegations against mother in the dependency petition appeared to be limited to her failure to protect the children and to her neglect of the children, in a separate criminal action she was convicted of violating Penal Code section 273a, subdivision (a),⁷ on January 29, 2010 as a result of her participation in the abuse of Andrew. Mother spent approximately three months in jail and was released on probation for five years. A criminal protective order pursuant to Penal Code section 136.2⁸ was issued on January 13, 2010 to protect the children from her. It expires on January 13, 2013 and currently is in full force and effect. The protective order requires that mother have *no contact whatsoever* with the children and that she not come within 100 yards of them.

mother's failure to protect and neglectful acts on the part of the child's mother endanger the child's physical and emotional health, safety and well-being, create a detrimental home environment and place the child and child sibling, [Logan] at risk of physical and emotional harm, damage and danger."

⁷ Penal Code section 273a, subdivision (a), states, "Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years."

⁸ In general, Penal Code section 136.2 authorizes a criminal court to issue orders relating to the prevention of harm, intimidation or dissuasion of a victim or a witness; to the possession of firearms by a person subject to a protective order; to the protection of victims of domestic violence; and to emergency protection of other victims.

In August of 2010, the trial court in the dependency case granted father sole legal and physical custody of the children. Unaware of the criminal protective order⁹ against mother, it also ordered twice-monthly monitored visitation with the children for her allowing father to determine the monitor. The trial court then terminated jurisdiction.

On April 13, 2011, DCFS again became involved with the children after it received a referral regarding father's care of Logan and Andrew. As part of the investigation, DCFS interviewed father on April 19, 2011 regarding the allegations. Father informed DCFS that within a few months after the previous dependency case was closed, he began seeing mother again. On February 17, 2011, the two officially became a couple.

Father stated that he allowed mother to visit with the children, including allowing her to stay overnight at his home where he lived with the children and their paternal grandmother because mother was homeless. At first, mother was only allowed to sleep in the garage because of paternal grandmother's mistrust of her. Later, father allowed mother to sleep with him in the children's room only "a couple of times," because the family was receiving "Section 8"¹⁰ assistance and was not allowed to have anyone else staying in the home. Father stated that mother was visiting the home five to six times a week. He denied ever leaving mother alone with the children and stated, "My

⁹ Mother failed to inform the trial court in the dependency action of her criminal conviction or of the criminal protective order in effect against her.

¹⁰ Section 8 of the United States Housing Act of 1937 provides housing assistance to qualifying low-income individuals and families. (See, 42 U.S.C. § 1437f; 24 C.F.R. § 982.1, et seq.)

children would tell me if she was doing something to them that is why she stopped letting me see them after we separated when the abuse was happening.” He later claimed that when mother slept over, he “stayed awake all night” to keep an eye on her.

Father also disclosed that early in his relationship with mother, there was domestic violence with mother as the aggressor. Mother confirmed this, stating that she used to hit and bite father. He also believed that mother was responsible for making the allegations against him to DCFS.

In a later interview with DCFS on June 14, 2011, father became irritated because he did not understand why the investigation had not yet closed. He said, “You guys are trying to tell me what to do when the Court papers clearly state that I have the right to choose what I want to do after the case was closed.” He further stated that he had not seen mother in over ten days and that they were in a relationship but not living together. He explained, “You guys don’t have the right to make these decisions for me, I am an adult and if I choose to be in a relationship with [mother] it is my decision, not yours.” When asked if father understood why the children should not be left alone with mother, he asserted, “They can’t be left alone with her because of you guys. I know she won’t hurt my children because she does not want to go back to jail.” DCFS explained that it was in the children’s best interest for visits with mother to take place outside the home, but father disagreed.

DCFS requested that the children be detained and the trial court granted its request. Father agreed to move out of the home so the children could be detained with paternal grandmother.

After the investigation, DCFS filed a petition on behalf of the children on June 29, 2011. The petition, as amended, alleged, “The children[’s] . . . father, . . . allowed the children’s mother, . . . to have overnight visits with the children in the children’s home and to have unlimited access to the children in violation of the Juvenile Court orders that the mother have monitored visits with the children. The father’s violation of the Juvenile Court orders endangers the children’s physical health and safety and places the children at risk of physical harm, damage and danger.”

Father later informed DCFS that on June 24, 2011 he ended his relationship with mother. He also stated that the children’s last in-person contact with mother was on May 26, 2011. He blamed DCFS and the court for not making it clear to him that mother could not stay overnight in his home. Further, he blamed DCFS for not informing him of the criminal protective order and that mother was not to have any contact with the children.

The jurisdictional hearing was held on September 14, 2011. The trial court found that father knew or at the very least may have known about the criminal protective order against mother. It also found that father put his interests above those of his children by resuming a relationship with mother, a known criminally-convicted child abuser, and allowing her to stay in the home. The court also stated that it did not find father’s statements that he stayed up all night when mother slept over to be credible. Thus, it found that father allowed mother unlimited access to the children by allowing unmonitored overnight visitation in violation of both the prior dependency order and the criminal protective order. The trial court determined that father put the children at risk,

and that such risk was current, because father resumed his relationship with mother and allowed her unmonitored access to the children. It adjudged the children to be dependents of the court under section 300, subdivision (b), and ordered the children placed with father on the condition that he continued to reside with paternal grandmother. DCFS was permitted unannounced home visits and ordered to provide family maintenance services to father. No reunification services were ordered for mother.

Father filed a Notice of Appeal on September 14, 2011.

ISSUES ON APPEAL

Father contends that the children did not fall within the jurisdiction of the court because there was no evidence that mother personally posed a risk of violence to the children; there was no evidence that he allowed mother to have unlimited access to the children; and there was no evidence that the children were at risk of serious physical harm at the time of the hearing because he discontinued his relationship with mother before it was held.

DISCUSSION

1. Standard of Review

“At the jurisdictional hearing the juvenile court determines whether the allegations in the petition that the minor comes within section 300 (and therefore within the juvenile court’s jurisdiction) are true. The court’s jurisdictional findings must be based on a preponderance of the evidence. (See § 355.) If the court finds jurisdiction under section 300, it declares the child a dependent of the juvenile court and proceeds to

the disposition phase, where the court considers whether the child should be removed from the parents under section 361.^[11]” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) “On appeal, the ‘substantial evidence’ test is the appropriate standard of review for . . . jurisdictional . . . findings. [Citations.] The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]” (*Id.*, at p. 1433.)

2. *Substantial Evidence Supports the Trial Court’s Finding of Jurisdiction Under Section 300, subdivision (b)*

Father contends the trial court erred in finding that the children fell within the jurisdiction of the court pursuant to section 300, subdivision (b). In support of his contention, he argues that there was no evidence that mother personally posed a risk of violence to the children; there was no evidence that he allowed mother to have unlimited access to the children; and there was no evidence that the children were at risk of serious physical harm at the time of the hearing because he discontinued his relationship with mother before it was held. Father’s arguments are entirely without merit.

Section 300, subdivision (b), provides that a child falls under the jurisdiction of the “juvenile court” if “[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, or the willful

¹¹ Section 361 describes, inter alia, the circumstances under which a child may be taken from the custody of his or her parents.

or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left[.]. . .”

Under this section, *either* prior harm *or* a substantial risk of harm can provide the basis for dependency jurisdiction. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1439.)

The record indicates that mother posed a clear risk of harm to the children. We have held that unmonitored contact with parents under whose care a child was killed due to nonaccidental trauma constitutes a substantial risk of serious physical harm to such child's surviving siblings. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2007) 158 Cal.App.4th 1562, 1568.) Such risk also exists with respect to a child who was the victim of such trauma but survived. Andrew is just such a child, who luckily survived despite suffering horrific abuse while in the care of mother and her boyfriend-cousin, Carlos. Unmonitored contact with her clearly constitutes a substantial risk of serious physical harm to the children. Indeed, not only was mother criminally convicted due to her participation in such abuse, the criminal court determined that contact with mother posed such a risk to the children that it issued a criminal protective order to keep her away from them.

Although father argues that he never allowed mother to have unmonitored access to the children, the trial court found that he permitted her to have overnight visits. Father does not dispute this, but instead argues that he stayed awake all night on such occasions.¹² The trial court did not find this statement to be credible. A monitor is not

¹² Although far from clear, it appears father is also relying on paternal grandmother's statement that she stayed up all night when mother slept in the garage.

available when he is asleep. (See, e.g., *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 700.) The record supports the trial court's finding that by allowing mother overnight visits, father gave mother unmonitored access to the children. This fact in combination with the substantial risk of serious physical harm that such access by mother posed to the children supports a jurisdictional finding under section 300, subdivision (b).

Father argues last that even assuming the foregoing, he terminated his relationship with mother prior to the jurisdictional findings above and therefore, at the time of the hearing, there was no evidence that the children were at risk of serious physical harm. The determination of whether a child is at substantial risk of serious physical harm is made based on the "totality of the circumstances – [including] the severity of the incidents, [whether] there was . . . a substantial lapse of time between [the incidents of abuse] and the filing of the section 300 petition, [the amount of contact between the children and mother, and whether steps have been taken to address the abuse.]" (*In re J.K., supra*, 174 Cal.App.4th at p. 1440.)

The totality of the circumstances here supports the conclusion that, despite father's terminating his relationship with mother, the children remain at risk. Father was fully aware that mother was not a passive bystander in Andrew's abuse because he stated to DCFS, "[mother] allowed this to happen and participated in the abuse by also hitting my children and giving them cold showers as a form of discipline," and he knew

However, paternal grandmother was unaware that mother ever slept overnight *inside* the home and it is reasonable to conclude that she was obviously not watching over mother when mother slept in the same room with father and the children.

she was incarcerated for child abuse and endangerment. He too suffered domestic violence at the beginning of their relationship when mother hit and bit him. He also believed she instigated DCFS's most recent involvement. But, within a few months of the termination of DCFS's prior dependency case, father reunited with mother and wanted "to work things out with her." He blamed DCFS for not permitting mother to visit with the children, insisting that she does not pose a risk to them despite the fact that she is a known perpetrator of acts of violence against Andrew. He refused to take responsibility for their protection by blaming DCFS and the trial court for not informing him that she was not allowed to stay overnight in his home. His statements and his actions demonstrate he lacks insight into the danger that mother posed and still poses to the children despite his awareness of the facts. Without such insight, it is reasonable to conclude father may again allow mother access to the children. Under the totality of the circumstances, the record supports the trial court's conclusion that the children remain at risk of exposure to mother, warranting jurisdiction under section 300, subdivision (b).

DISPOSITION

The judgment is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.