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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B236650
(Los Angeles County
Super. Ct. No. CK88042)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

VICENTE V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Sherri Sobel, Juvenile Court Referee. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Vicente V., the father of three boys, Kevin, Brandon and David, appeals from the judgment entered after the juvenile court declared his children dependents of the court and made dispositional orders.¹ Although father does not contest jurisdiction, he contends that substantial evidence does not support the sustained allegations under Welfare and Institutions Code section 300, subdivision (a), relating to his physical abuse of Kevin and to domestic violence between him and mother. Father requests that we strike these sustained allegations and remand the matter for a new dispositional hearing. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Referral Regarding Father's Children, Investigation and Detention*

On May 23, 2011, the Department of Children and Family Services (DCFS) received a telephone call referral regarding father's children. According to the caller, father, mother and two of the children, Kevin, age 10, and David, age 1, attended a baby shower at a park on May 22, 2011. At the baby shower, Kevin told father that he had been hit in the head by another child while jumping in a bounce house. Father "began punching and kicking the child on his face, stomach, because the child had not protected himself[;] the father continued to hit the child when the child was on the floor gasping for air." The caller referenced a long history of domestic violence between mother and father and stated that the family's "living space has no windows, no kitchen, no restroom or beds, and that the family sleeps on filthy piles of clothes and that the home is infested with cockroaches[.]"

Later that day, a social worker and police officer visited the home. The officer saw "the superficial bruise [Kevin] ha[d] on the side of his right eye," which Kevin said had been caused when he and a girl bumped heads in a jumper. The officer found no other marks on Kevin and no marks on David.

The next day, May 24, 2011, the social worker assigned to follow the case received a telephone call from mother's nephew, who reported that he had hosted the

¹ Statutory references are to the Welfare and Institutions Code.

baby shower and “observed Kevin playing happily in the children’s jumper until another child . . . hit him accidentally. . . . [The nephew] observed Kevin walk over to tell his father about the incident when his father suddenly became enraged. . . . [F]ather [struck] Kevin with a ‘bofetada’ (slap) in front of all the guests, including [Kevin’s] mother and . . . sibling.” The nephew described the slap as father “strik[ing] the child on the face, with a closed fist.” The nephew “then observed [father] kick Kevin near his buttocks, causing Kevin to fall to the floor and then [father] kicked him again.” According to the nephew, “Kevin was crying and appeared very afraid of his father. . . . [M]other observed the entire incident and did not intervene.”

That same day, the social worker observed a dark bruise under Kevin’s left eye, although the previous day the officer had reported a superficial bruise under the right eye. Kevin said the bruise observed by the social worker had been caused when the child bumped him on the jumper. Kevin reported that “‘when [he’s] bad [his] dad hits [him] on the hand’ . . . [and] also hits him very hard on his butt with [an] open hand.” Kevin said that father “‘hits [him] hard’” and “he is afraid of his father ‘when [father] is really pissed off.’” According to Kevin, his parents used to hit him with a sandal and a hanger but now use only their hands to hit him on the butt and the back of the leg. The social worker did not observe any marks of significance on Kevin other than the bruise on his face. Kevin also reported that mother hits father when father “‘goes to Dodger Stadium and bars. . . .’” Kevin “‘get[s] pissed off that [mother] fights with [father].’” After being asked about the baby shower, Kevin “began to put his head down for seconds at a time and took a while to produce each sentence. [He] often looked blankly at the wall, then put his head down once again and would sigh. Kevin then stated that his father had kicked him once on the butt and the back of his left leg.” Kevin later “insisted” his father had kicked him only once on the butt and denied that father had punched or hit him on the face. With regard to the kick, Kevin “stated, ‘it hurt, he hit me hard.’” “[F]ather then grabbed [Kevin] from the collar of his shirt and pushed him into the car. . . . [H]is mom did not protect him . . . [but] ‘said kinda mean things to [him].’” While mother and father were being interviewed, Kevin was silent but punched the table with his fist and kicked a

chair until it fell over. When he sat back down after picking up the chair, he urinated on himself, an issue that the principal reported Kevin had at school. The principal also said that “Kevin has a history of aggression, being withdrawn, and having poor social skills” and that the parents had been made aware of recommended behavioral therapy but had not followed through for him to receive the services. Father and mother denied the principal’s reports.

Mother reported that Kevin had a red eye from a collision in the jumper while at the baby shower. She denied that father had hit Kevin in the face or kicked him at the baby shower. Mother said she and father were angry at Kevin because the injury to his eye from the jumper accident had occurred earlier in the day. She then stated that when her family was leaving the shower “Kevin was crying as he was in pain but his eye was only red at the time.” Mother “reported that she and father do not hit their children.” She said, “Well I spank [Kevin] on the butt with my open hand, but he just laughs and doesn’t take me serious[ly].” Mother said she did not know why Kevin would say that his father had kicked him on the butt at the baby shower.

According to father, as the baby shower was ending, “Kevin reported bumping heads with another child while playing in the jumper. Father stated that he became angry because Kevin has a tendency to ‘let himself get hit [b]y other kids.’ Father stated that he has spoken to Kevin about speaking up when he is being hit and telling the parents. Father stated that he began to yell at Kevin for not informing him or mother as soon as the incident occurred. Father denied striking the child on the face or kicking the child. . . . He admitted that Kevin was crying because [Kevin] was in pain.” Father denied kicking Kevin on the butt and “reported rarely spanking the child on the butt.”

A mental health screen assessment of Kevin on May 25, 2011 indicated that “Kevin appeared emotionally disturbed, extremely fearful of his father and heavily coached.” “Kevin reported [domestic violence] in the home consisting of mother hitting father with a belt after he arrived home from the bars.” A forensic examination that same day revealed “a bruise to Kevin’s right hip/upper thigh area” The examiner “informed father that it was consistent with being struck with a pointy boot.” Father

became angry and refused to talk about the bruise. The examiner told father that Kevin had reported being kicked twice by father. “Father was adamant that he did not kick the child and that he did not know where the bruise came from.” The examiner told the social worker that “her assessment of the child is that he is afraid of the father, and is minimizing abuse at home.”

Later that day, DCFS detained Kevin and David. During the detention, mother and father argued with DCFS, and Kevin became “emotionally distraught.” Mother and father refused to provide the children with any personal belongings. Father yelled to Kevin, “[Y]ou see what happens when you get bruises!” Mother stated to Kevin, “[T]hat’s why I can’t take you out anywhere!” DCFS placed Kevin and David in a foster home.²

DCFS reported multiple prior referrals regarding the family, including a substantiated allegation of emotional abuse by father against Kevin in October 2005 based a verbal and physical argument between his parents and an altercation between father and the paternal grandmother during which father placed “Kevin in the middle in an effort to stop the fight.”

2. *The Section 300 Petition and the Detention Hearing*

On May 31, 2011, DCFS filed a section 300 petition regarding father’s three children. As relevant, the petition alleged under section 300, subdivisions (a) and (j), that, “[o]n or about 5-22-11, the children[’s] . . . father . . . physically abused . . . Kevin by striking the child’s face with the father’s fists inflicting in swelling and bruising to the child’s eye. The father repeatedly kicked the child’s stomach, leg and back causing the child to fall to the ground and inflicting marks and bruises to the child’s body. On prior occasions, the father struck the child’s body with the father’s fists. On prior occasion, the father struck the child with sandals and hangers inflicting marks and bruises to the child’s body. Such physical abuse was excessive and caused the child unreasonable pain and

² Due to multiple and severe medical conditions, Brandon, age 6, lived at a healthcare facility, where he had been since he was an infant, and remained in the facility.

suffering. The child is afraid of the father due to the physical abuse to the child. The child's mother . . . failed to protect the child when she knew that the child was being physically abused by the father. Such physical abuse of the child by the father and the failure to protect the child by the mother endangers the child's physical health, safety and well-being, creates a detrimental home environment and places the child and the child's siblings . . . at risk of physical harm, damage, physical abuse and failure to protect." Under section 300, subdivisions (a) and (b), the petition alleged that "[t]he children[']s . . . mother . . . and . . . father . . . have a history of engaging in violent altercations in the child Kevin's presence. On prior occasions, the father physically assaulted the mother. On prior occasions, the mother struck the father with belts. Such violent conduct on the part of the parents endangers the children's physical health and safety and places the children at risk of physical[] harm and damage."

In addition, under section 300, subdivision (b), the petition alleged that: (1) "[t]he children[']s . . . home was found to be in a filthy and unsanitary condition due to a roach and rodent[] infestation Such a filthy and unsanitary home environment established for the children by the mother . . . and the father . . . endangers the children's physical and emotional health and safety and creates a detrimental home environment for the children and places the children at risk of physical and emotional harm, damage and danger"; and (2) "[t]he children[']s . . . father . . . has a history of alcohol abuse and is a current abuser of alcohol[,] which renders . . . father incapable of providing regular care for the children. On prior occasions, the father was under the influence of alcohol while the children were in the father's care and supervision. The children's mother . . . failed to protect the children when she knew of the father's alcohol abuse. The father's alcohol abuse . . . and the mother's failure to protect the children endangers the children's physical health and safety and creates a detrimental home environment, placing the children at risk of physical[] harm, damage and failure to protect." And under section 300, subdivisions (b) and (j), the petition alleged that ". . . Kevin has exhibited mental and emotional problems including enuresis, aggressive behavior and is withdrawn. The . . . mother . . . and . . . father . . . medically neglected the child by

failing to provide the child with recommended psychological treatment for the child's mental and emotional problems. Such medical neglect of the child on the part of the child's parents endangers the child's physical health and safety and places the child and the child's siblings . . . at risk of physical[] harm, damage and medical neglect."

At the detention hearing, also on May 31, 2011, mother and father denied the petition's allegations. Based on the evidence, the juvenile court found a prima facie case for detaining Kevin as a person described by section 300, subdivisions (a) and (b), and Brandon and David as persons described by section 300, subdivisions (a), (b) and (j). The court ordered reunification services for mother and father and monitored visitation.

3. *The Pretrial Resolution Conference*

In the report prepared for the pretrial resolution conference, DCFS indicated that, in an interview on June 21, 2011, Kevin stated "that he was currently not residing with his parents because of his father kicking him at a family party." Kevin reported that his father had hit him with a hand or sandal for behaving badly. He also reported that mother had hit him with her hand for behaving badly. One time when he was younger mother used a hanger to hit him on his leg. Kevin acknowledged that cockroaches and mice or rats were present in the home. Kevin said that his father drank beer, but "does not get drunk or punch anyone." According to DCFS, "[a]s to the allegations of physical abuse, domestic violence, and the father's alcohol abuse from his interview at the time of [d]etention and the interview for this report the child Kevin appears to now be minimizing the physical abuse he has sustained by both the mother and the father, the parents['] domestic violence, and the father's alcohol abuse[.] [Kevin] . . . answer[ed] most questions with I don't know and I don't remember. Further, when addressing the father's alcohol abuse the child minimized the father's drinking by reporting that he would not get drunk, would not punch people, and would not drink at bars or casinos. It [is] evident that the child believes that if he minimizes the allegations he and his sibling might be returned home or his parents will no longer be in trouble. Since his exam for physical abuse was conducted on 5/25/2011, th[e] child is very concerned that his reports will get his parents in trouble. Further, there have been a few occasions that the parents

have made comments to the child regarding the case which are likely making the child feel like the case is all his fault.” Despite several attempts to contact mother and father, DCFS was unable to reach them to obtain their statements regarding the allegations.

At the pretrial resolution conference on June 27, 2011, the juvenile court continued the placement of Kevin and David and set the matter for an adjudication hearing on August 3, 2011, which was continued to September 8, 2011.

4. *The Adjudication and Disposition Hearings*

In information submitted to the juvenile court before the adjudication hearing, DCFS reported that mother had stated that “father did not abuse [Kevin] during the baby shower. She indicated that the maternal relatives do not like the father and that they had made up the physical abuse allegations against him.” “[M]other denied any domestic violence in her relationship with the father[,]” except for an incident 10 years ago when she caught him cheating on her and scratched him. On another occasion, however, mother reported that before current DCFS intervention “there was ongoing domestic violence in the home[,]” but “[n]o domestic violence incidents have occurred since [DCFS] has been involved with the family . . . [and] . . . it was a good thing that [DCFS] was involved.” According to DCFS, Kevin was “acting out aggressively in his new foster home as he is throwing things, hitting the younger girls, maintaining a defiant attitude and engaging in prolonged crying spells. He has difficulty engaging in healthy social interactions and tends to withdraw and isolate from peers and his caregiver. Kevin reported that he feels angry and wants desperately to just go home. He appears to be very loyal to his parents and communicated immediately that he would like to see them together, not separately. It appears that he tends to repeat remarks that he overhears from his parents.” Father “denied that there is any domestic violence in his relationship with the mother and reported that there was only one incident that occurred many years ago” when mother caught him in bed with another woman and scratched him on his neck and cheek. Father “did not know why or who was accusing [him and mother] of [physical abuse]”

At the adjudication hearing on September 8, 2011, Kevin testified that father kicked him on the butt at the baby shower in mother's presence. Mother used to hit him with a sandal or hanger when he behaved badly. She now punished him by striking him on his butt or hand with her hand. Kevin saw mother hit father with a belt and her hand. Based on Kevin's testimony and DCFS reports, the juvenile court declared Kevin a dependent of the court under section 300, subdivisions (a) and (b), and David and Brandon dependents of the court under section 300, subdivisions (a), (b) and (j). The following day, September 9, 2011, at a disposition hearing, the court ordered Kevin and David to remain in foster care and monitored visitation for mother and father, separately, at least twice per week. The court permitted monitored visitation for mother and father together with Brandon in the healthcare facility. It also continued family reunification services for mother and father.

Father filed a timely notice of appeal. (§ 395, subd. (a)(1); see *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [jurisdictional findings reviewable on appeal from the judgment following disposition].)

DISCUSSION

Although father does not contest the juvenile court's jurisdiction over his children, he argues that the section 300, subdivision (a), allegations relating to his physical abuse of Kevin and to the domestic violence between him and mother are not supported by substantial evidence and thus should be stricken.³ Father contends that DCFS did not prove physical abuse because "[t]he evidence at the jurisdictional hearing . . . showed that [father] only kicked Kevin in the butt once in May 2011 and occasionally spanked him on the butt with an open hand when he misbehaved." He also contends the domestic

³ Father does not challenge the juvenile court's true findings on the allegations under section 300, subdivision (b), relating to the "filthy and unsanitary condition" of the home and father's alcohol abuse or the allegations under section 300, subdivisions (b) and (j), relating to Kevin's "mental and emotional problems." Father also does not contend the evidence is insufficient to support the juvenile court's true finding on the section 300, subdivision (b), allegation relating to domestic violence. We thus do not discuss those allegations.

violence between mother and father does not support a finding under section 300, subdivision (a), because “there was no evidence that either parent ever intentionally harmed any of the children or that the children were at risk of intentional harm due to the parents’ domestic violence.” We disagree with both contentions.

Section 300, subdivision (a), allows a dependency when “[t]he child 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. . . . [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. . . . ‘[S]erious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.” To declare a child a dependent, the juvenile court must find by a preponderance of the evidence that the allegations under one of section 300’s subdivisions are true. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see § 355, subd. (a).) We review the court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value. (*Matthew S.*, at p. 1319.)

As to the physical abuse, the sustained allegation provided, “On or about 5-22-11, the children[’s] . . . father . . . physically abused . . . Kevin by striking the child’s face with the father’s fists inflicting in swelling and bruising to the child’s eye. The father repeatedly kicked the child’s stomach, leg and back causing the child to fall to the ground and inflicting marks and bruises to the child’s body. On prior occasions, the father struck the child’s body with the father’s fists. On prior occasion, the father struck the child with sandals and hangers inflicting marks and bruises to the child’s body. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child is afraid of the father due to the physical abuse to the child. The child’s mother . . . failed to protect the child when she knew that the child was being physically abused by the father. Such physical abuse of the child by the father and the failure to

protect the child by the mother endangers the child's physical health, safety and well-being, creates a detrimental home environment and places the child and the child's siblings . . . at risk of physical harm, damage, physical abuse and failure to protect."

As father notes, Kevin testified at the adjudication hearing that father kicked him in the butt at the baby shower. Father, however, views the evidence myopically. Other evidence, admitted at the hearing, demonstrates the kick was not the only physical contact father made with Kevin. The DCFS referral indicated that at the baby shower father punched and kicked Kevin on his face and stomach. Mother's nephew, who hosted the shower, reported that father struck Kevin "on the face, with a closed fist" and that father also "kick[ed] Kevin near his buttocks, causing Kevin to fall to the floor and then . . . kicked him again." Kevin told a social worker that father "'hits [him] hard'" and that his parents used to hit him with a sandal and a hanger. Kevin initially said that father kicked him twice at the baby shower, which was consistent with the nephew's report. He also reported that father grabbed him by the shirt collar and pushed him into the car. A mental health screen assessment indicated that "Kevin appeared . . . extremely fearful of his father and heavily coached." A forensic examination of Kevin three days after the baby shower revealed a bruise to the area of his right hip and upper thigh, consistent with being struck by a pointy boot. This evidence sufficiently supports a substantial risk of serious physical harm under section 300, subdivision (a).⁴

As to the domestic violence, the sustained allegation provided, "The children[']s . . . mother . . . and . . . father . . . have a history of engaging in violent altercations in the child Kevin's presence. On prior occasions, the father physically assaulted the mother. On prior occasions, the mother struck the father with belts. Such

⁴ Father also maintains the evidence does not support the true finding under section 300, subdivision (j), which allows jurisdiction for substantial risk of abuse to a sibling, based on the allegation regarding physical abuse of Kevin. Father, however, does not argue that sustaining the section 300, subdivision (j), allegation was improper if, as we conclude, the evidence supports the true finding regarding physical abuse of Kevin under section 300, subdivision (a). Father thus presented no basis to strike the true finding under section 300, subdivision (j).

violent conduct on the part of the parents endangers the children's physical health and safety and places the children at risk of physical[] harm and damage.”

“Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a)[,] may also apply.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) In reviewing an allegation of domestic violence, “application of section 300, subdivision (a)[,] is appropriate when, through exposure to a parent's domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent.” (*Id.* at pp. 598-599.)

Application of section 300, subdivision (a), based on domestic violence was appropriate. Before the instant dependency, DCFS substantiated an October 5, 2005 referral revealing that “the parents engaged in a severe verbal and physical argument [of] which Kevin was in the middle. . . . [T]he altercation was between father and paternal grandmother . . . with father placing Kevin in the middle in an effort to stop the fight.” In addition, in an interview with DCFS during the instant dependency, Kevin reported, “[M]y mom hits my dad because he goes to Dodger Stadium and bars[;] I get pissed off that my mom fights with my dad.’ . . . ‘[M]y mom cries.” According to Kevin, “when his parents are fighting, he goes to his paternal uncle's room. . . . [H]is family knows that his parents fight.” At the adjudication hearing, Kevin testified that he saw mother hit father with a belt when he was seven years old and that he witnessed mother strike father with her hand when he was nine or ten years old. Mother admitted that before current DCFS intervention “there was ongoing domestic violence in the home.” Although generally domestic violence between parents, standing alone, is insufficient to support a finding of a substantial risk of serious physical harm to the child, the incidents of domestic violence in this case in front of the family, in combination with Kevin's role in the middle of an altercation, his parents' propensity to hit him and minimization of it, father's alcohol use and Kevin's fear of father, indicate that father's children were at substantial risk of serious physical harm inflicted nonaccidentally on the children by the parent.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.