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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B239564
(Los Angeles County
Super. Ct. No. CK59839D.H.)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TERRELL H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Marilyn Kading Martinez, Juvenile Court Referee. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

Appellant Terrell H. (Father) challenges some—but not all—of the sustained counts in this dependency case. (Welf. & Inst. Code, § 300.)¹ Substantial evidence supports findings that Father repeatedly raped his 12-year-old daughter and beat his son with extension cords, leaving physical and emotional scars on the children. Father concedes that the court properly asserted jurisdiction in this case. Nevertheless, he questions the court’s findings that (1) the sexual abuse of his daughter places his son at risk, and (2) both children are at risk of physical abuse. We reject his appeal.

FACTS

In March 2011, the Department of Children and Family Services (DCFS) was alerted that Father sexually abused his daughter D.H., born in 1995. The child disclosed that Father fondled her vagina and had intercourse with her from August 2007 until May 2008, while she and her brother Jeremiah H. (born in 1997) were living with Father in Plano, Texas. The children’s mother Veronica D. (Mother) stated that Father “ran off with the children” when D.H. was four years old, because Mother “was doing drugs.” While the children lived with Father, Mother “did not speak to them, and got further into drugs.” The children returned to California in 2009.

In an interview with the DCFS social worker, D.H. spoke openly about Father’s sexual abuse. It began when D.H., frightened by a rain storm, got into Father’s bed as she had done many times before. Father “put his penis into my vagina.” She is not sure how often it happened after that, but it was “too much.”

D. H. did not disclose the abuse until she heard Mother talking on the telephone with Father. D.H. was very upset that Mother gave their home address to Father. When Mother asked what was wrong, D. H. told Mother about the sexual abuse. Mother “freaked out” and took D. H. to a clinic to be examined. The physician notified the police. Mother is very angry and does not want Father to have any contact with the children. She cried during her interview.

¹ All undesignated statutory references in this opinion are to the Welfare and Institutions Code.

A police report recites that at the time of the first assault, in August 2007, Father rubbed D.H.'s vagina for a few minutes, turned her face down, pulled up her nightgown, spread her legs, and inserted his penis into her vagina. She felt pain, but did not move or say anything. After thrusting against her for some time, he stopped and allowed her to sleep. D.H.'s brother Jeremiah was asleep on the floor in the same room during the assault, but never woke up. Father did not have sexual intercourse with D.H. for several months afterward, while they were living in the same residence as Father's girlfriend. When they moved into a hotel, Father resumed his assaults on D.H. Father tried to bribe D.H., saying, "I'll buy you [a texting toy] if you let me stick my dick in you." He said this when standing in front of her naked, after showering. D.H. said no, but Father pushed her onto the bed, pulled off her pants and penetrated her vagina with his penis. From January through May 2008, Father had sexual intercourse with D.H. every other day. On weekdays, this occurred while Jeremiah was sleeping. On weekends, Father assaulted D.H. in the middle of the day, when Jeremiah was not around. Father removed D.H.'s clothing and she never consented to intercourse. The abuse stopped when D.H. moved back to California at the end of the sixth grade. D.H. felt she could not fight Father because he is much bigger and able to control her, and there was no one to tell because she has no family in Texas. She did not want Jeremiah to know about the abuse because he is close to Father.

Jeremiah told the social worker that Father hit him with a switch or extension cord, and D.H. independently confirmed that Father "used to whoop Jeremiah with an extension cord and switches." Jeremiah has multiple scars on his back consistent with this type of abuse, and has a facial scar he suffered while living with Father, though he is not sure what caused it. Jeremiah acknowledged having "anger problems" and he makes suicidal statements when upset. Mother confirmed that Jeremiah is angry, fights in school, punched D.H. in the mouth, and slapped Mother's six-year-old daughter. Mother believes that Jeremiah is upset about the DCFS investigation.

D.H.'s brothers "told her that she should have kept her mouth shut and none of this would be happening," referring to the DCFS investigation. D.H. asked the social

worker, “What was I supposed to do, keep in all my pain?” She was downcast, and is open to counseling.

In May 2011, Mother called the social worker in a state of agitation because Father served her with papers seeking custody of the children. D.H. privately indicated that she “is really upset” that Father is seeking custody, and she does not understand why he would, after abusing her. D.H. “doesn’t want to see her father or have anything to do with him. She was visibly upset.”

The paternal grandmother told the social worker that Father had a stroke in 2009 that affects his speech and ability to do tasks without help. She is helping Father seek custody of the children, and accused Mother of fabricating the abuse allegations to prevent Father from seeing his children. When the social worker spoke to Father on the telephone on June 18, he denied molesting or raping D.H. and accused D.H. of lying. He initially denied ever physically punishing the children, even after the social worker advised him that she observed marks on Jeremiah’s back from the beatings. Soon afterward, Father called and left the social worker a message “saying that he did whoop them when they were getting loud, but it was no kind of physical abuse.”

In June 2011, D.H. reiterated that she “does not want anything to do with her father and does not want to visit with him” despite a visitation order from the family law court. D.H. wanted Father “to stop bothering them and leave her family alone.” D.H. was emotional about the difficult situation. D.H. and Mother advised the social worker that Jeremiah’s behavior is getting worse: he leaves without saying where he is going and comes home late. Jeremiah refused to speak to the social worker and turned his back on her. In August, Mother applied for a restraining order against Father, and D.H. announced that she was very happy not to see Father.

Father refused to give the social worker contact information for his other children, who live in Texas. He declined to participate in a voluntary family reunification program, and refused to drug test without a court order. DCFS determined that there was “a very high risk” for the children because D.H. was continuously raped by Father for an extended period of time; there is no protective order against Father in place; Mother is

depressed and tested positive for marijuana, codeine and morphine; and the children are having a traumatic reaction to abuse they sustained in Father's care.

On September 1, 2011, DCFS filed a dependency petition on behalf of D.H. and Jeremiah. It alleged: (1) Father physically abused Jeremiah using extension cords and switches, inflicting marks and bruises and causing unreasonable pain and suffering. The physical abuse endangered Jeremiah's health and safety; (2) on numerous occasions in 2007 and 2008, Father sexually abused D.H. by forcibly raping the child, causing her pain. She fears Father and refuses to have contact with him. The sexual abuse endangered D.H.'s physical health and places Jeremiah at risk of physical harm, danger, and sexual abuse; and (3) Father's physical abuse of Jeremiah places both children at risk of physical harm and abuse.

Father filed a statement of parentage indicating that he married Mother in 1996, and both children were born during the marriage. He was the primary parent from 2001 until 2009, assisting the children with homework, preparing meals, maintaining a home, attending church with them, and so on. He asked the court to enter a judgment of parentage. Mother informed the court that she and Father married in 1995 and separated in 1996. The court found that Father is the presumed father of both children.

The family has had prior involvement with DCFS. In 2005, four counts were sustained against Mother, who engaged in violent altercations with her male companion; has a history of substance abuse rendering her incapable of providing regular care; was incarcerated for violating a restraining order; and failed to make an appropriate plan for her child's ongoing care and supervision. Two referrals in 2003 reported that Father physically abused the children; was very violent; beat the children; had a drinking problem; and locked the children alone in the home for long periods. A 2005 referral alleged that D.H. and Jeremiah were being abused by an unknown perpetrator (the children were living with Father at the time). In 2006, two referrals were received alleging sexual abuse of the children's half sister at the hands of Mother's male friend, who is a registered sex offender.

At the detention hearing on September 1, 2011, Father denied the allegations in the petition. The court found a prima facie case for detaining the children from Father. They were released to Mother's custody. Father was authorized to have monitored visits with Jeremiah, but no contact with D.H. In an interview for the jurisdiction report, Father stated, "I don't understand why she would say something like that. I would never do that to my own child. I have never abused any of my children. All of the allegations for me are wrong. . . . I know that all those things that they are saying about me are lies."

The jurisdiction hearing was conducted on February 15, 2012. Mother and the children did not appear. Father denied that he sexually abused D.H. or physically abused Jeremiah, claiming there was no evidence to support the allegations. Based on a preponderance of the evidence, the court found the petition to be true. The court specifically found that D.H. was consistent in her reports to her physician, to DCFS, and to law enforcement, and she has no motive to lie. Father admitted that he "did whoop them" and Jeremiah was clear and consistent about the manner in which he was beaten. Although this occurred in the past, it was necessary to assert jurisdiction to prevent Father from taking custody because he poses a risk to the children.

The court sustained allegations that Father physically abused Jeremiah using extension cords and switches, inflicting marks: the abuse endangers Jeremiah and places D.H. at risk of physical harm and abuse; and Father sexually abused D.H. by forcibly raping her, causing pain and fear: this abuse endangers D.H.'s health and safety and places Jeremiah at risk of harm and sexual abuse. The court declared the children to be dependents of the court pursuant to section 300, subdivisions (a), (b) and (d).

Moving to disposition, the court removed the children from Father's custody and allowed them to remain with Mother. The children, Mother and Father were ordered to participate in counseling to address case issues including physical and sexual abuse and parenting. Father is not to have contact with D.H., and may have monitored visits with Jeremiah in a therapeutic setting. Father appeals.

DISCUSSION

The disposition order is an appealable judgment. (§ 395; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) “In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, 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 Heather A.* (1996) 52 Cal.App.4th 183, 193; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

At the outset, we observe that Father does not contest dependency court jurisdiction. He concedes that “The juvenile court was right to view Father’s behavior of years past as abusive.” Father does not deny that he sexually abused D. H. and beat Jeremiah with extension cords. He simply does not believe that there is a nexus between the past abuse and any current risk to the children, so he wants us to reject some of the court’s findings while accepting the validity of other sustained counts.

Father acknowledges that the case law does not support his position that multiple jurisdictional findings must be reviewed piecemeal. The law is clear that a judgment will be affirmed “if the evidence supports the decision *on any one of several grounds.*” (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875, italics added; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.) Otherwise stated, “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor *if any one of the statutory bases* for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, italics added; *In re Christian P.* (2012) 208 Cal.App.4th 437, 450; *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) If there is any basis for asserting jurisdiction, no reversal of the

judgment occurs even if other bases are improper. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.)

Father disagrees with the case law cited above; he terms it “fundamentally unfair.” But the purpose of the dependency proceeding is “to protect the child, rather than prosecute the parent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) This is precisely why the courts are not concerned with each count alleged in the dependency petition—unlike a criminal prosecution, no prison sentence is meted out for each count. If evidence supports even one count of parental abuse or neglect, the courts must act to protect the child from harm and assert jurisdiction over the child.

Given the gravity of the sustained allegations in this case, the court had to exert jurisdiction to protect the children and ensure that Father undergoes all necessary counseling and treatment programs to prevent him from inflicting further damage. Painting this as a mere “child custody” dispute that belongs in family law court, as Father does, greatly understates the damage that Father caused and the ongoing trauma that his children continue to suffer.

After conceding the harm he inflicted on D.H. and Jeremiah while they lived with him in Texas—leaving physical scars on Jeremiah and emotional scars on D.H.’s psyche—Father believes that this is all water under the bridge, because the children have been safe from him since they returned to live with Mother in California a few years ago. The problem is that Father now lives in California, filed a petition in family law court to gain custody of D.H. and Jeremiah, and obtained a visitation order to see them. There is not a shred of evidence that Father no longer is an incestuous child rapist or child batterer. While the children were safe when Father lived 1,400 miles away, that buffer is gone and they must be protected from him now.

Father focuses on the portion of section 300 pertaining to a “substantial risk” of future harm or sexual abuse. He ignores the other half of the equation, relating to *past*

harm or abuse.² “[P]roof of current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b), which is satisfied by a showing that the child *has suffered* or there is a substantial risk that the child will suffer, serious physical harm or abuse.” (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) A showing that the child “has suffered” can be based on evidence of prior conduct, in order to establish dependency jurisdiction. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1438; *In re N.M.* (2011) 197 Cal.App.4th 159, 165 [past events used to establish jurisdiction under § 300, subd. (a)].)

Though several years have passed since they last saw Father, the pain of his abuse is still fresh for D.H. and Jeremiah, who never received help to cope with their trauma. As D.H. asked the social worker, “What was I supposed to do, keep in all my pain?” The passage of a few years cannot erase the damage caused by Father’s vile conduct. Father’s reappearance in California and petition for custody over D.H. and Jeremiah reignited the children’s fear and anger at Father, causing family turmoil that currently endangers their well-being. (See *In re Christopher C.* (2010) 182 Cal.App.4th 73, 85 [“the children in our case are in the midst of the turmoil that threatens their emotional well-being”].) D.H. is “visibly upset,” sad and emotional that Father petitioned for custody. Jeremiah acknowledges having “anger problems”; he makes suicidal statements; fights in school; punched D.H. in the mouth; and leaves home without permission. Father fails to connect the dots between his past abuse, his recent custody petition, and the children’s current state of distress. While admitting that he “whooped” the children, Father denies that this constituted physical abuse. The court acted well within its discretion to protect these children from Father, who requires extensive counseling to overcome his predilections for sexual abuse and violence.

² A child may be declared a dependent of the court if he or she “has suffered . . . serious physical harm inflicted nonaccidentally” by a parent (§ 300, subd. (a)); if he or she “has suffered . . . serious physical harm” caused by parental failure to supervise or protect the child (§ 300, subd. (b)); or if he or she “has been sexually abused” by a parent (§ 300, subd. (d)).

Finally, the court properly asserted jurisdiction because it determined that Father’s continuous sexual abuse of D.H.—while Jeremiah was in the same room—posed a risk of substantial harm to both children. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1345 [father’s sexual abuse of daughter posed a risk of harm to his sons, who were unaware of father’s conduct].) The legislative intent is to protect the siblings of sexually abused children. (*Id.* at p. 1347.) “[A]berrant sexual behavior by a parent places the victim’s siblings who remain in the home at risk of aberrant sexual behavior.” (*Ibid.*) A parent who sexually abuses a daughter in the presence of his son evinces “a total lack of concern for whether [the son] might observe his aberrant sexual behavior.” (*In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414.) In this case, Father, repeatedly raped D.H. at night while Jeremiah was in the same hotel room.

Father suggests that incest is not aberrant because it does not depart substantially from standards of behavior in his group, even if it is “not acceptable in the view of most Californians.” Incest is criminal behavior, punishable by imprisonment, as are forcible rape and sex with a minor child. (Pen. Code, §§ 261, 261.5, 264, 269, 285; *People v. Tobias* (2001) 25 Cal.4th 327, 336, 337-338 [incest is “unlawful by the nature of the acts involved” and is “highly reprehensible and abusive behavior”]; *People v. Bowles* (1960) 178 Cal.App.2d 317.) We do not require expert testimony, scientific authority or empirical evidence to conclude that Father’s incest with his 12-year-old daughter is atypical, peculiar, anomalous, irregular and eccentric . . . in a word, aberrant.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.