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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

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

B240502

(Los Angeles County  
Super. Ct. No. CK91485)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent.

v.

MI. S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Terry T. Truong, Juvenile Court Referee. Affirmed.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Appellant Mi. S. (father) appeals from the juvenile court's jurisdictional and dispositional orders establishing dependency jurisdiction over his children M. (born December 1998) and Z. (born August 2000) pursuant to Welfare and Institutions Code section 300, subdivision (b)<sup>1</sup> and removing them from his custody. Father contends that because he sent the children to live with their mother in Georgia before the section 300 petition was filed, there was no current risk of harm to either child within the meaning of section 300, subdivision (b) and no valid basis for the juvenile court's jurisdictional findings.

There is substantial evidence in the record that the children were at substantial risk of harm. We therefore affirm the juvenile court's orders.

## **BACKGROUND**

### **Detention and section 300 petition**

On November 15, 2011, the Department of Children and Family Services (the Department) received a referral alleging that father had physically abused M. and emotionally abused Z. and half-sibling Naomi. The referral further alleged that father beat Naomi's mother.

After several unsuccessful attempts to contact the family at their residence address, the social worker went to the children's school on December 1, 2011, and interviewed M., who disclosed a history of physical abuse by father. M. told the social worker that when he gets into "big trouble," including getting into trouble at school, father hits or slaps him in the face or kicks him all over his body. He said the most recent incident occurred four weeks ago when father kicked him in the buttocks and back. M. said the abuse began when he and Z. moved from Atlanta to Los Angeles to live with father. The children had previously lived with their mother and stepfather in Atlanta. M. reported being physically abused by the stepfather, who was subsequently arrested for the abuse.

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

M. further reported that father physically abused Z. as well. He described an incident that had occurred in September 2011 when father became upset with Z. and pulled her by the collar from a top bunk bed and threw her to the floor. M. also disclosed a history of domestic violence between father and Fonda W. (stepmother), the mother of half-sibling Naomi. He reported having seen father physically abuse stepmother at least five times, including slapping and kicking her. The last altercation between father and stepmother occurred during the week of November 28, 2011, when father threw food at her. Stepmother and Naomi subsequently moved out of the home.

The social worker interviewed half-sibling Naomi in a separate, private interview at the school. Naomi confirmed that she and stepmother had left father's home after father became upset and threw food at stepmother. Naomi said she had witnessed between 10 and 12 instances of domestic violence between father and stepmother. She described one incident during which father had restrained stepmother by the arms while hitting her. Naomi denied being abused by father but said father frequently beats M. She believed M. had been hit at least 10 times during the past year. Naomi stated that father also hit Z. and that he had pulled Z. from a top bunk bed, thrown her to the floor and kicked her.

The social worker also spoke with stepmother, who confirmed that she had left father after a recent argument. Stepmother acknowledged incidents of domestic violence with father, including one incident when father had forcefully held her down and two separate incidents in which they hit one another. She said the children were not present during these altercations. Stepmother further stated that she had seen father physically discipline M. in the past by hitting him.

Father spoke with the social worker on December 9, 2011, and denied the allegations of physical abuse. According to father, the children were abused and neglected while in the care of their mother, Brenda W. (mother), who had a history with Atlanta Children Services. Mother had asked father to care for the children for a period of time. Father acknowledged that he and stepmother had engaged in physical

altercations in the past, but denied that any altercations occurred in the presence of the children.

On December 30, 2011, the social worker informed father that the Department wished to offer him and his family a voluntary case plan to address concerns about father's disciplinary methods and anger management issues. After father declined the voluntary case offer, the social worker obtained a warrant to remove the children from his custody. When father was served with the removal warrant on January 13, 2012, he informed the social worker that he had sent the children back to Georgia to live with their mother.

The social worker spoke to mother by telephone on January 17, 2012. Mother confirmed that father had returned the children to her, stating that he could no longer care for them. When asked about her history with child protection services in Atlanta, mother stated that a physical abuse allegation had been sustained against the children's stepfather, Leon H. The family had received services, including individual therapy, anger management, and parenting classes, and the case was subsequently closed. Leon H. continues to reside in the home. The social worker also spoke with M. and Z. Both children stated that they were happy to be returned to mother's care.

The Department filed a section 300 petition on behalf of M. and Z. on January 19, 2012, alleging that father's physical abuse of the children and his history of violent altercations with stepmother placed the children at risk of physical harm. Because the children were residing with their mother in Georgia at the time the petition was filed, the Department initially recommended in its February 2012 jurisdiction/disposition report that the section 300 petition be dismissed. The Department subsequently changed its recommendation and asked the juvenile court to sustain the petition against father, then terminate the case with a family law order granting mother full custody of the children and monitored visits for father.

## **Jurisdiction and disposition**

Father was present at the February 27, 2012 adjudication hearing. He denied hitting or kicking M. and accused the child of fabricating the allegations. He did admit to “backhand[ing]” M. because of M.’s extreme behavioral problems. Father also denied pulling Z. from a bunk bed. He said he had attempted to discipline Z. and she had jumped off the bunk bed in order to avoid him.

Father admitted to a history of domestic violence with stepmother but said that they were reconciling and that he was amenable to participating in couples counseling. Father said he had enrolled in parenting classes and was willing to participate in any services the court deemed necessary.

The juvenile court found the allegations that father had physically abused M. and had engaged in domestic violence with stepmother in the children’s presence to be true, noting that father’s testimony to the contrary was not credible. The court declared M., Z., and Naomi to be dependents under section 300, subdivision (b). The court then terminated its jurisdiction over M. and Z. and entered a family law order granting mother full legal and physical custody of those children, permitting father monitored visits until he completed domestic violence counseling, individual counseling and parenting classes.<sup>2</sup> Father then filed the instant appeal.<sup>3</sup>

## **DISCUSSION**

### **I. Standard of review**

We review the juvenile’s court’s jurisdictional and dispositional findings under the substantial evidence standard. (*In re David M.* (2005) 134 Cal.App.4th 822, 829 (*David M.*); *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.) Under this standard, we review the record to determine whether there is any reasonable, credible,

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<sup>2</sup> The juvenile court also ordered Naomi removed from father’s custody and placed with stepmother. Naomi is not a subject of this appeal.

<sup>3</sup> The Department filed a cross-appeal, which it subsequently abandoned.

and solid evidence to support the juvenile court's conclusions, resolve all conflicts in the evidence, and make all reasonable inferences from the evidence in support of the court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

## **II. Jurisdictional findings and dispositional order**

Section 300, subdivision (b) accords the juvenile court jurisdiction over a child 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 . . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” (§ 300, subd. (b).)

Father contends the juvenile court's jurisdictional findings must be reversed because there was no current substantial risk of harm to the children within the meaning of section 300, subdivision (b). He maintains that a jurisdictional finding under section 300, subdivision (b) requires a showing that at the time of the jurisdictional hearing, the child is at substantial risk of serious physical harm in the future. No such showing could have been made, father claims, because he had voluntarily relinquished physical custody over the children by returning them to their mother in Georgia.

The Department argues that proof of current risk of harm is not required to support the juvenile court's exercise of jurisdiction under section 300, subdivision (b). It maintains that the plain language of the statute, worded in the disjunctive, allows jurisdiction to be premised either on injury already suffered or the future risk of such injury.

Courts are divided on the issue of whether evidence of current risk of abuse or harm at the time of the jurisdictional hearing is required to support a jurisdictional finding under section 300, subdivision (b), or whether evidence of prior serious harm or abuse is sufficient. (Compare *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261 [proof of current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b)] and *In re J.K.* (2009) 174 Cal.App.4th 1426, 1435-

1436 [use of disjunctive “or” in statutory language “demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction” under section 300, subdivision (b)] with *In re J.N.* (2010) 181 Cal.App.4th 1010, 1023-1025 (*J.N.*) [disagreeing with *In re J.K.* to the extent it concludes section 300, subdivision (b) authorizes dependency jurisdiction based upon a single incident resulting in physical harm absent current risk] and *In re Carlos T.* (2009) 174 Cal.App.4th 795, 803 [“dependency jurisdiction is not warranted under [section 300] subdivision (b) if, at the time of the jurisdiction hearing, there no longer is a substantial risk that the child will suffer harm”].)

We need not weigh in on this issue of statutory interpretation because here there was substantial evidence the children were at continuing risk of harm. Past harmful conduct is relevant when determining the current risk of future physical harm to a child (see *David M.*, *supra*, 134 Cal.App.4th at p. 831), as is the egregiousness of the prior conduct. (*J.N.*, *supra*, 181 Cal.App.4th at p. 1025.) Here there was evidence that father physically abused M., not just once, but on multiple occasions by kicking and hitting him. There was also evidence that father engaged in multiple incidents of domestic violence with stepmother in the presence of the children.

Another relevant factor in evaluating whether a child is at risk because of a parent’s past conduct is “evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim . . . .” (*J.N.*, *supra*, 181 Cal.App.4th at pp. 1025-1026.) Father’s testimony at the adjudication hearing reflected little understanding of how his past conduct had endangered the children. Although father admitted to “backhand[ing]” M., he claimed that M. had lied when he told the social worker that father had hit and kicked him.

The children would have been at continued risk of harm had the juvenile court not issued the orders that father challenges in this case. Father had physical custody of M. and Z. for more than a year and a half, despite a family law order in the State of Georgia

according mother sole legal and physical custody of the children. He physically abused M. on multiple occasions during this period. Although the children were living with their mother in Georgia at the time of the combined jurisdictional and dispositional hearing, nothing would have prevented their return to father's custody or unsupervised visits with father during school vacations and holidays. The orders issued by the juvenile court ensured that any future visits between father and the children would be supervised until father completed a domestic violence program, parenting classes, and individual counseling.

Substantial evidence supports the juvenile court's jurisdictional and dispositional findings.

**DISPOSITION**

The orders establishing jurisdiction over M. and Z. and removing them from father's custody are affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
DOI TODD