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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B242203
(Los Angeles County
Super. Ct. No. CK 93060)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.K.,

Defendant and Appellant.

APPEAL from an order of the Superior Court for the County of Los Angeles.

Donna Levin, 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, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

SUMMARY

The mother in this dependency case contends the juvenile court erred in asserting jurisdiction over her three children. Jurisdiction was premised on allegations that there was a substantial risk of serious physical harm—future sexual abuse—to mother’s children because of mother’s impromptu marriage to a man the day after his children were detained as part of an investigation that led to separate dependency proceedings involving his four children in which he was found to be a sexual predator. We find no error and affirm the jurisdictional order.

FACTS

On April 18, 2012, the Department of Children and Family Services filed a petition to detain mother’s three children, sons C.H. and J.I. (ages 15 and 9, respectively) and daughter S.K. (age 6). The Department’s addendum report stated the reason for the proposed detention: “The mother’s male companion [J.P.] sexually abused two unrelated children. Mother knew about the sexual abuse and failed to protect the children by allowing the male companion unlimited access to the children.” (Boldface omitted.)

The events preceding the detention hearing unfolded this way.

Mother had been dating J.P. for over two years. On February 1, 2012, J.P.’s children were taken into protective custody by the Los Angeles Police Department, because J.P. was being investigated for raping a 13-year-old girl on at least three occasions between August 2009 and July 2010, resulting in the birth of a child in April 2011. According to police reports, J.P. was in a dating relationship with the victim’s mother and lived with them at the time of the child’s rape. The child reported instances when J.P. would give her food or a drink, she would feel sleepy or dizzy and later wake up with her pants or underwear off. When the victim’s mother confronted J.P. about the child’s pregnancy, J.P. said, “ ‘[W]hat’s done is done.’ ” In a pretext telephone call recorded by the police, J.P. did not deny that he had impregnated the child.

On February 2, 2012, J.P. met with a Department social worker and brought mother along. They showed the social worker a marriage certificate showing they were married earlier that day. Mother said she had known J.P. and his children for some time

and was like a mother to his children, and that she had three children of her own. J.P. wanted his children released to mother, but was told that screening was necessary before consideration for placement. According to a departmental report in the dependency proceeding involving J.P.'s children, mother told the social workers that she and her children frequented J.P.'s home and J.P. frequented her home; she said that "[J.P.] and her family spend much time together, sometimes sleeping over at each other's homes," that J.P.'s children "refer to her as 'mom'"; and that "sometimes 'the family stays at his house and sometimes they stay at her house.'" (Italics omitted.)

On February 3, 2012, a referral to the Department concerning mother and her three children "was generated as a 'related' referral to that of [mother's] husband [J.P.] and his four minor children."

On February 14, 2012, the Department received information indicating that J.P.'s five-year-old daughter had disclosed to her foster mother that J.P. sexually molested her.

On February 17, 2012, after several unsuccessful attempts, a social worker contacted mother and her children to investigate the safety of mother's children. Mother cooperated, and the social worker talked to each of the three children, all of whom denied any sexual abuse or maltreatment by mother or J.P. The social worker told mother she was concerned for the children's safety, given the allegations that J.P. had impregnated a 13-year-old and sexually molested his five-year-old daughter. Mother said she did not believe her children or J.P.'s children were at risk, and "I find it destructive to the family that you guys are involved." But mother "agreed to a safety plan whereby she agreed that her husband [J.P.] would have zero unmonitored contact with her children." Mother also said that, even though they were married, she and J.P. continued to live in separate residences.

A month later, on March 19, 2012, the juvenile court sustained the sexual abuse allegations against J.P. in the dependency case involving his children, documenting his sexual abuse of his five-year-old daughter and the rape of his girlfriend's 13-year-old daughter. That same day, the social worker tried unsuccessfully to contact mother, and

could not contact the children at their schools because mother had refused permission for the Department to interview them anywhere other than mother's home.

Thereafter, mother resisted social worker efforts to interview her children again. (Mother told her counsel that after the first interviews, the children became very upset, and mother wanted to take precautions to avoid their being upset again.) On March 22, mother told the social worker that she would not allow any contact with her children, and requested contact information for a supervising social worker. Eventually, mother agreed to come to the Department's offices for a team meeting.

On April 13, 2012, mother arrived for the meeting but did not bring the children. The supervising social workers expressed the Department's concern about the sexual abuse allegations against J.P. and his access to mother's children. Department personnel read the allegations to mother, and explained they were found to be true. Mother said "she [did] not believe it" and that the teen mother of J.P.'s child had a 28-year-old boyfriend who could be the father. Mother said J.P. had repeatedly denied any sexual abuse, and said she had been to all the hearings and had "absolutely no concerns for her own children's safety or the safety of any other children."

Mother became argumentative and "wanted to know specifics and details surrounding interviews with the children rather than to consider that her children are vulnerable to being abused." The Department informed mother it would bring the matter before the dependency court; mother said she would get a lawyer and "remained adamant that her children would not be available for the [social worker] or for the court." Mother said her children were with their grandmother (and that she had given " 'legal guardianship' " of the children to the grandmother so mother had " 'no children in her custody' "). Mother would not provide the grandmother's name or address. Nor would she provide information on the identity and whereabouts of the children's fathers; she said the only father who could be contacted was T.I., who she said was in Nigeria, and she would not say if he was the father of all the children. (The Department discovered they all had different fathers.)

“No safety plan [for the children] was put in place as [mother] was unable to assure safety of the children from [J.P.] and [mother was] not in agreement with the decision to take the matter before the court.” (The Department indicated that the initial safety plan to which mother had agreed on February 17, 2012, “was to be in effect for the next 30 days at which point the Department would speak with mother . . . to reassess the safety of the children.”) The Department’s detention report concluded that “mother’s refusal to acknowledge the risk against her children places them at extreme risk.” The report indicated a social worker took the children into protective custody that same day, April 13, 2012, but an addendum report on April 18 asked for a protective custody warrant and indicated the children’s whereabouts were then unknown to the Department.

In any event, mother and children were present at the detention hearing on April 18, 2012. The juvenile court observed that mother was “obviously a bright, educated woman” with “lovely children who are very obviously well-behaved and very good in school,” but mother did “a very dumb thing” by trying to prevent the Department from having access to her children. While noting that the Department’s report “does say . . . that [J.P.] doesn’t seem to be in the home,” the court stated, “You chose to marry this man. You don’t want your children to know who and what he is. That’s your business. But you chose to marry him. That’s the reason you’re here today. You didn’t consider the safety of your children.” The court then found a prima facie showing the children were within the court’s jurisdiction under Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (d) (sexual abuse).¹ The court released the children to mother, ordering her to make them accessible for interviews with the Department, and ordering the Department to visit every day to make sure J.P. had no contact with the children.

¹ Further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

After the detention hearing, the Department continued its investigation, interviewing the children again on April 30, 2012, and interviewing the mother and others.

Mother was asked if she believed J.P. sexually abused the children in the other case, but she refused to answer that question, saying she had a right not to incriminate her husband. She said she was aware of an investigation, but was not aware of the allegations “ ‘until the day he went to Court.’ ” And in the courtroom, “ ‘they . . . didn’t really divulge any information until the last court date,’ ” so mother “ ‘wasn’t aware of the details of the allegations until recently.’ ” The allegations made by J.P.’s daughter were “ ‘read . . . in Court,’ ” and mother “ ‘didn’t agree with the statement that [J.P.’s daughter] gave,’ ” but “ ‘prior to that, I didn’t know what was said because my husband didn’t tell me.’ ” Further, mother said:

“ ‘Had I known the situation the way it is, presented today, I wouldn’t been [*sic*] married. And that’s the truth because the detriment that happened to my children’s life, it (marriage) would’ve never happened if I knew what was there. The situation at hand.’ ” When asked what she would do to protect her children if the sexual abuse allegations were true, mother said, “ ‘He would never be around my kids. He would never be around me.’ ” She said, “ ‘I’m not going to maintain a relationship with him if he’s a child molester.’ ” And: “ ‘[J.P.’s] not coming around me. I have very high ethics and morals. . . . It doesn’t matter emotions. If it conflicts with morals, then I have to make decisions to ethics and morals.’ ” She said that neither J.P. nor anyone else had a key to her house. The investigator asked if J.P. had routine access to her children before the child abuse referrals, and she said, “ ‘No. I don’t leave my children alone with anyone.’ ” Mother said that the children were at day care until 10 p.m. or 11:00 p.m. (mother both works as a teacher and attends school, pursuing a bachelor’s degree in business marketing), and either mother, the day care staff, or the maternal grandmother watched the children.

When the investigator asked mother why she married [J.P.] when an investigation was ongoing, mother said, “ ‘It was vacation, it was winter session. I was going to get married for the civil union.’ ”

The investigator asked mother if she had plans of living with J.P., and she answered, “ ‘No. Never.’ ” She said the children have never been left alone with J.P., although he “frequented her home prior to the current investigations.” She said she does not take the children with her when she visits J.P. “ ‘Your department was aware of the fact we had separate residences from the beginning. I was never interested in engaging in one single family home.’ ” “ ‘I have a separate house, I have a separate life.’ ” Mother said she was engaged to J.P. in October 2011, and could provide photos if the department wanted to see the engagement ring. When asked if she visited [J.P.] when the children were at day care, mother said she sometimes did “ ‘for maybe 30 minutes.’ ”

C.H., mother’s 15-year-old son, said that his mother had never left him or his siblings alone with J.P., and when asked if he thought she would do so, he said, “ ‘Nah. I think she wouldn’t. I highly doubt that. She has a paid baby sitter.’ ” C.H. said he had no contact with J.P.; that when his mother wanted to go see J.P., “ ‘she never has us around’ ” and “ ‘[w]e’re . . . always at day care.’ ” He said he had never been sexually abused by J.P. and was not concerned about his siblings being sexually abused. C.H. said, “ ‘We don’t have contact with [J.P.]. From the beginning from when he got married, he kept his house and we kept our house.’ ” (C.H. said his mother asked him his opinion about moving in with J.P., and he told mother he did not want the family to move.)

C.H. said the children had no relationship with J.P., had “ ‘only met him once or twice[,]’ ” a long time ago when his mother first met him. “ ‘We don’t know really much of him. I don’t even think the little kids know they’re . . . married. They don’t know nothing of him. My mom doesn’t speak of him.’ ” C.H. said he had not seen J.P. in the last six months. When asked if J.P. had ever come to the house, he said, “ ‘I have no idea. Not while I’m here. Not when my sister or brother are here.’ ” He thought his

mother had had a relationship with J.P. “ ‘for a while, but . . . kept it away from us. Didn’t really involve us much. Because he had a big family already.’ ”

J.I., mother’s nine-year-old son, likewise reported that he had not been physically or sexually abused by anybody. His relationship with J.P. was “ ‘[j]ust a friend. But now, I haven’t seen him in a while.’ ” When asked when he last saw J.P. and how often, J.I. said: “ ‘Just a little days. Not like once a week . . . we like helped him or something. Or we went there for holidays. Because he’s like my mom’s friend that we met when I was 7.’ ” J.I. said neither he nor his sister had ever been left alone with J.P. “ ‘She (mother) doesn’t leave me alone.’ ”

S.K., mother’s six-year-old daughter, shook her head “no” when asked if she had ever been touched in her private areas by anybody, if she had ever been hit by anybody, if she had ever been left alone with J.P., and if J.P. visited her home. S.K.’s alleged father was interviewed by telephone, and said that mother told him S.K. was “ ‘taking her clothes off at school’ ” and “ ‘saying bad words.’ ” S.K.’s teacher was interviewed and reported that S.K. had “ ‘a lot of behavioral issues[,]’ ” including lack of attention, taking the clothes off stuffed animals, and “ ‘put[ting] her hands in her underwear or behind.’ ” She said S.K. was “ ‘very self-conscious,’ ” “timid and withdrawn,” but that she “does have friends and plays with those friends.” When asked if she suspected any abuse or neglect, the teacher said, “ ‘I don’t know about abuse. Maybe neglect. Not enough attention. [S.K.] just doesn’t get enough attention at home.’ [¶] ‘Based on [S.K.’s] behaviors, something is wrong.’ ”

Present and former day care providers were interviewed. They described mother as a good parent, “ ‘a kind conscientious person’ ” who “ ‘watches where they go, and . . . doesn’t let them just go anywhere[.]’ ”; who “ ‘wants to know who they’re with, where they’re going’ ”; and who is “ ‘[v]ery much involved in the kids life.’ ”

The Department’s jurisdiction/disposition report stated that mother “placed her children at risk of harm by continuing her relationship with [J.P.] who has unlimited access to her children.” The Department was “highly concerned about the children’s safety and well-being due to the fact that the mother is married to the sexual abuse

perpetrator Mr. [J.P.]. She maintains a relationship with [J.P.] and has protected him throughout this investigation. Although the mother and perpetrator reside in separate residences, her children have had contact with [J.P.] in the past and it's highly likely he will have future contact. Furthermore, it is unclear when the mother sees [J.P.] and why she keeps the children in day care the vast majority of the time. It is also concerning that the mother is unwilling or unable to acknowledge the fact that her children are at high risk of harm because of her relationship with [J.P.]”

The Department concluded it was “apparent” that the children “are at very high risk of harm by [J.P.] due to [mother’s] relationship with [J.P.]”; that at the April 13th team meeting she “supported her husband . . . and minimized the severity of the risk to her children”; that “[a]lthough the mother may or may not have known why [J.P.] was initially being investigated, it is clear that she was aware after the fact and yet decided to maintain her relationship with [J.P.] and even marry him.” The Department admitted that mother “has been compliant with not allowing [J.P.] any access to the children,” but was “not confident that she is able or willing to protect her children from [J.P.] given her false understanding of the allegations [against him].” The report states that mother “claims that her beliefs and judgment about [J.P.] are based upon the Penal Code and not the [Welfare and Institutions C]ode[,]” and mother “did not specify if she would or would not continue her relationship with the perpetrator.” The Department also expressed concern about mother’s daughter S.K., whose “behaviors may suggest some form of abuse or trauma, although it is not clear what[,]” and stated that mother’s “continued support of her husband creates a detrimental home environment for her children.”

Mother did not appear at the jurisdictional hearing on May 23, 2012. The Department again asked that the children be removed from mother’s custody, and both mother’s counsel and the children’s counsel asked for dismissal of the petition. Mother’s and the children’s lawyers pointed out there was no evidence the children had any contact with J.P. after the petition was filed; the children stated they do not see J.P.; mother visits J.P. at his residence; and the children stated they were never left alone with J.P., before or after the petition was filed. The Department’s lawyer said she thought that, once the

Department got involved, mother “advised the children to not be truthful with respect to the amount of time that the children spent with [J.P.] and his children[,]” and she did not think that mother had been truthful about her children’s involvement with J.P. The Department again said that mother was “in denial” about what her husband did, and that mother “knew that he had done this, and then married him.”

The court found “there is more than enough evidence here that the mother has put her children at risk, evidenced by her attitude, her statements” The court eliminated language in the petition that alleged mother allowed her husband to have “unlimited access” to the children, stating that “[i]t is not clear that she did allow him in the home frequently.” The court stated: “. . . I think that it’s very troubling also that mother has not showed up today given her attitude about this matter and that the children are released to her. So I will find that the children are persons described by Welfare and Institutions Code [section] 300, subdivision (b).”

Thus, the court sustained the allegations that “[o]n prior occasions from 2009 to 2010, the children[’s] . . . mother’s . . . husband, [J.P.], sexually abused an unrelated child, . . . by forcibly raping the unrelated child by placing his penis in the unrelated child’s vagina, resulting in the unrelated child’s pregnancy and the birth of the child On a prior occasion, [J.P.] sexually abused an unrelated child . . . , by placing his penis in the unrelated child’s vagina as well as tickling and rubbing the unrelated child’s breasts with his penis and put his penis between the unrelated child’s breasts. The mother knew of the sexual abuse of the unrelated children by [J.P.] and failed to protect [her] children, in that the mother allowed her husband [J.P.] to frequent the children’s home. Such sexual abuse of the unrelated children by the mother’s husband, and the mother’s failure to protect [her] children, endangers the children’s physical health, safety and well-being, creates a detrimental home environment and places the children at risk of physical harm, damage, danger, sexual abuse, and failure to protect.” The court struck the allegation that the children were subject to the court’s jurisdiction under section 300, subdivision (d) (sexual abuse). The court allowed mother to retain custody, and ordered her “to do a developmentally appropriate parenting class and individual counseling to address case

issues,” and to make the children available for unannounced home visits. The court also ordered the daughter to be assessed for counseling.

Mother filed a timely appeal.

DISCUSSION

Mother asks us to reverse the juvenile court’s jurisdictional finding. She contends jurisdiction was improper because the petition did not allege a “statutorily identified injury,” there was no evidence of any risk of physical harm to the children, and the use of reports from the dependency proceeding involving J.P.’s children breached statutory confidentiality requirements. We find no merit in any of these contentions.

1. The Claimed Absence of a “Statutorily Recognized Basis” for Jurisdiction

Juvenile court jurisdiction is proper under section 300, subdivision (b) if “[t]he child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness, as a result of the failure . . . of his or her parent or guardian to adequately supervise or protect the child” (§ 300, subd. (b).) Mother contends the allegation in this case stated that “the mother’s failure to protect the children . . . places the children at risk of . . . damage, danger, sexual abuse, and failure to protect.” She says the references to “failure to protect” show “circular reasoning” and that the words “damage, danger, [and] sexual abuse” do not appear in section 300, subdivision (b), and are not “acceptable euphemisms” for the statutory term, “serious physical harm or illness.”

The allegations mother questions are the “supporting facts” for the statutory basis for jurisdiction: that “there is a substantial risk that the [children] will suffer[] serious physical harm or illness.” There is no requirement that the supporting facts use the term “serious physical harm,” so long as the facts alleged support the existence of a substantial risk of serious physical harm. Moreover, mother’s apparent claim that “sexual abuse” does not constitute “serious physical harm,” a claim for which she cites no authority, is patently wrong. (Cf. *In re Alysha S.* (1996) 51 Cal.App.4th 393, 398 [“[i]t may be inferred from the fact of a lewd touching that the victim suffered serious physical harm”].) The court plainly concluded that there was a substantial risk the children would suffer serious physical harm, in the form of sexual abuse, as a result of mother’s failure to

protect them by allowing J.P. “to frequent the children’s home.” So long as there was substantial evidence to support that conclusion, jurisdiction was proper.

2. The Claim There Was No Risk of Physical Harm to the Children

Mother next claims there was no evidence of a substantial risk of serious physical harm to the children. We disagree.

In reviewing a challenge to the sufficiency of the evidence supporting jurisdictional findings, “we consider the entire record to determine whether substantial evidence supports the court’s findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order and affirm the order even if other evidence supports a contrary finding. [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 134-135.) While substantial evidence may consist of inferences, “those inferences must be products of logic and reason and must be based on the evidence. Inferences that are the result of mere speculation or conjecture cannot support a finding. The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record.” (*Id.* at p. 135.)

As we have seen, jurisdiction is proper if there is a substantial risk the children will suffer “serious physical harm or illness” as a result of mother’s failure to adequately protect them. (§ 300, subd. (b).) The jurisdictional requirement of a substantial risk of serious physical harm “ ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future’ ” (*In re James R., supra*, 176 Cal.App.4th at p. 135.)

Mother asserts there is no evidence of a risk of serious physical harm to the children as a result of her allowing J.P. “to frequent the children’s home,” as alleged, and claims that jurisdiction was based “on the social workers’ suspicions generated by . . . mother’s idiosyncratic lifestyle” rather than on actual evidence of risk. She points to the Department’s incorrect statements to the court that she married J.P. (on February 1) with knowledge of J.P.’s rape of the 13-year-old, and her own statements that she did not

know of those allegations until J.P. went to court (in mid-March). She also points out her statements that she had no plans to live with J.P. and never left the children alone with him, and the Department's concession that mother and J.P. live in separate homes and that mother "has been compliant with not allowing [J.P.] any access to the children."

But mother misapprehends the substantial evidence rule, under which we draw all reasonable inferences in support of the court's findings, and affirm the order "even if other evidence supports a contrary finding." (*In re James R.*, *supra*, 176 Cal.App.4th at p. 135.) Mother adamantly refused to accept the findings that J.P. was a sexual predator (and indeed said that the sexual abuse allegations "really hurt[] him. Because both of them [the 13-year-old victim and his five-year-old daughter] are like his daughters"). While mother may not have known the details of the allegations against J.P. when she married him, she knew that an investigation was in progress and that his children had been detained and removed from his custody. Moreover, learning more about the allegations, and that they were found true by the juvenile court, did nothing to convince her that her own children were at risk.

Mother failed to appear and testify at the jurisdictional hearing. That being so, the juvenile court was under no obligation to give any credence to mother's reported statements that she did not intend to live with J.P. or leave her children alone with him. Indeed, it was reasonable to infer the contrary, as mother's statements in the dependency proceeding for J.P.'s children indicated the two families routinely frequented each other's homes. Mother's refusal to accept the evidence of J.P.'s molestations of children to whom he had access in a family setting, and her obduracy in opposing any contact by the Department with her children, gave no comfort to the juvenile court and no reason to infer that her future conduct would differ from the past. And if more evidence were needed, there is daughter S.K.'s unusual behavior at school, and son C.H.'s claim that he had "only met [J.P.] once or twice," a long time ago when his mother first met him, a claim that is inconsistent with mother's statement that J.P. "frequented her home prior to the current investigations."

In short, it was fair to infer from the evidence a substantial risk that mother would in the future allow her husband to frequent the children's home, and consequently a substantial risk her husband would molest her children, just as he molested the child of his previous girlfriend and his own child. Accordingly, jurisdiction over the children was proper.

3. The Evidentiary Claim

Finally, mother contends it was improper for the juvenile court to consider the information contained in the Department's reports in the dependency proceeding involving J.P.'s children. She says these reports were confidential under section 827, and the social workers in her case should not have had access to that information without a court order. We reject this claim.

"Section 827 provides that certain persons may inspect juvenile court records without a court order." These persons include "[t]he county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action." (*In re Christian P.* (2012) 208 Cal.App.4th 437, 445, quoting § 827, subd. (a)(1)(F).) Those persons also include "[m]embers of the child protective agencies as defined in Section 11165.9 of the Penal Code." (§ 827, subd. (a)(1)(H).) *In re Christian P.* rejected the mother's claim that the Department attorney's access was limited to the specific case for which he or she was appointed, holding that the Department's attorneys "are permitted to access juvenile court files generally, and therefore the attorney in this case was not required to petition the trial court to request access to the file for [another case]." (*In re Christian P.*, *supra*, 208 Cal.App.4th at p. 447.)

Mother contends that *In re Christian P.* "says nothing about the social worker" and that there is no evidence the social worker "properly sought access to documents in the proceeding involving the children of [J.P.]." However, section 827 includes among those who may inspect a case file "[m]embers of the child protective agencies" (§ 827, subd. (a)(1)(H).) We need not engage in statutory interpretation of that provision in this case because, unlike the mother in *In re Christian P.*, mother here made no objection to the admissibility of the reports before the juvenile court, and accordingly has

forfeited her right to raise the issue on appeal. (See *In re Richard K.* (1994) 25 Cal.App.4th 580, 590 [“As a general rule, a party is precluded from urging on appeal any point not raised in the trial court.”]; *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603 [“[a] party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do”].)

DISPOSITION

The order is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.