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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B243446

(Los Angeles County
Super. Ct. No. CK92945)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALFONSO P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,

D. Zeke Zeidler, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

Appellant Alfonso P. (father) appeals a juvenile court order asserting jurisdiction over his step-daughter Andrea P. pursuant to Welfare and Institutions Code section 300, subdivisions (b)¹ and (d), and over his son Luis P. and daughter G.P. pursuant to subdivisions (b), (d) and (j). Alfonso P. also appeals the dispositional order removing Luis and G. from his physical custody. Father contends there was no substantial evidence supporting these orders. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Andrea was born in Guatemala in 1994 and initially lived with her mother. In 2003, mother moved to the U.S. and left Andrea in the care of maternal grandmother. Mother met father in the U.S. and they had two children together, Luis in 2007 and G. in 2009. While Andrea was still in Guatemala, Father sent her money and she called him “papi.” In 2010, when Andrea was 15 years old², she came to live with mother, father, Luis and G. in the U.S. Father said he viewed Andrea as his step-daughter.

On February 10, 2012, the Department received a referral alleging that father had been writing love notes to Andrea. Department social workers thus began an investigation. Andrea reported that approximately six months after she moved in with mother and father she started finding letters from father left around the house or in her

¹ All future statutory references are to the Welfare and Institutions Code.

² Although Andrea states that she moved into her mother’s home one week before her 15th birthday in August 2010, her birth date in August 1994 would make her 15 years old at the time.

backpack. The letters stated that father had fallen in love with her and asked her to give him “an opportunity to demonstrate [his] love.” Father left Andrea money with the letters and once left her flowers. Father continued to leave notes for Andrea until mother confronted father about his actions. He then left one more letter for Andrea in approximately December 2011.

In her interview with the police, Andrea said that she was afraid father would try to rape her. She would lock the bedroom door when they were home alone and blocked the bathroom door with a broom when she was taking a shower.

She said that, in addition to writing letters to Andrea, Father promised to buy her a cell phone or give her money if she had sex with him. Mother told her that father refused to give mother money in hopes that Andrea would have sex with him, that father had made comments about Andrea’s beauty and buttocks, and that father had said he was in love with Andrea. Andrea reported that mother stayed with father because he threatened to call immigration authorities and take their younger children away.

During mother’s and father’s initial interviews with the Department, they both denied allegations of sexual abuse. Mother and father subsequently acknowledged having lied about not being aware of the letters. Father said he was “in love” with Andrea and that he wrote the letters “with the hope that she would agree to date him.” Father stated that he had an “obsession” with Andrea and admitted that his conduct was “harassment.” Father also admitted that he took a photograph of Andrea’s underwear but claimed his intent was to show mother that Andrea was purposefully leaving her underwear for father to find it. Father believed that Andrea had incited his behavior by

“flirt[ing]” with him, and did not think he needed sexual abuse counseling. Father denied making comments about Andrea’s beauty and body, or that he promised to buy Andrea a cell phone in exchange for sex. At the time the petition was filed, father had moved out of the family home.

Mother also believed Andrea had flirted with father, and said she did not report the sexual abuse because of Andrea’s “behavior.” However, mother also stated she was afraid that if she reported father to law enforcement, father would retaliate against her by calling immigration authorities or hurting her older son, Nelson P. Mother had previously reported father to the police for domestic violence. Father had lately been refusing to provide mother with money for groceries and had indicated to mother in approximately February 2012 that he would give her money if Andrea had sex with him.³

The Department and the police also interviewed Andrea’s older brother Nelson P. who was 21 years old. Nelson stated that he saw one of the notes father sent to Andrea in which father expressed his “undying love and desire to be a couple.” He believed father would try to rape Andrea. He also said that father had threatened mother with calling immigration authorities if she reported him to law enforcement. Nelson

³ Mother told the Department that “lately [father] has been refusing to provide her with money for groceries, shopping, etc., for their children. The mother stated that several weeks ago she asked [father] for money for things for the home and [father] replied ‘mejor que afloje ella.’ The mother stated that to her such words meant for Andrea ‘to give it up.’ [The Department] inquired if it means for Andrea to have sex with [father] and mother reiterated ‘yes.’ The mother stated she once again told him to leave Andrea alone and [father] simply laughed and gave her money.”

said that mother and father argue a lot and that, in February 2012, law enforcement had come to the home due to domestic violence.

On April 9, 2012, the Department of Children and Family Services (the Department) filed a dependency petition alleging Andrea came within the jurisdiction of the juvenile court within the meaning of section 300, subdivisions (b)⁴ and (d)⁵ based on father's letters to Andrea telling her he was in love with her and wanted to marry her, and mother's failure to take action to protect her. The petition also alleged that Father's sexual abuse of Andrea and mother's failure to protect her placed Luis and G. at risk of physical harm under section 300, subdivisions (b) and (j)⁶ and at risk of sexual abuse under section 300, subdivision (d). Father's abuse of marijuana and mother's failure to protect the children were also alleged to have endangered them.

On June 13, 2012, the Department filed a jurisdiction/disposition report. The report stated that "[i]t is clear that [father] sexually abused the child Andrea []. The

⁴ Section 300, subdivision (b) provides a basis for juvenile court jurisdiction when the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child.

⁵ Section 300, subdivision (d) provides that a child comes within the jurisdiction of the juvenile court when "[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

⁶ Section 300, subdivision (j) provides that the juvenile court may assert jurisdiction over a child when "[t]he child's sibling has been abused or neglected, as

father minimizes his actions and does not consider his actions to be sexual abuse however, it is clear that the father had romantic and sexual intentions with the child Andrea that consequently placed the child at risk of harm and danger. The child clearly felt threatened by the father's behavior. The mother knew of father's behavior, failed to protect the children, and also partakes in minimizing the father's actions."

The report also stated that "[i]t is possible that the father's substance abuse may have had some influence on his behavior with the child Andrea." Father "admit[ted] to a history of substance abuse including crack cocaine and a current abuse of marijuana." The report concluded that "the father's behavior was abusive and threatened the child Andrea's safety and [] this behavior also placed the children Luis and G. at risk of harm and danger."

On August 16, 2012, the juvenile court held a jurisdictional and dispositional hearing. Andrea testified that father had written her between 5 and 10 letters but that she felt safe in her house. Andrea's counsel argued that Andrea felt nervous on the stand and actually did feel sexually threatened by the letters. Father testified that he had written the six letters submitted into evidence. The court issued an order sustaining counts b-1, d-1 and j-1 in the petition. The court dismissed count b-2 which alleged that father's abuse of marijuana rendered him incapable of caring for the children. The court declared Andrea, Luis and G. dependents of the court, removed them from father's custody, and issued an order placing them with mother under the Department's

defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

supervision. Father was ordered not to have any contact with Andrea, but was granted monitored visits with Luis and G. The order also required father to attend counseling for parenting and sexual abuse. Father filed a timely appeal of the August 16 order.

CONTENTIONS

Father argues there was no substantial evidence to support the juvenile court's jurisdictional order sustaining counts b-1, d-1 and j-1 in the petition. He also argues that there was insufficient evidence to support the juvenile court's dispositional order removing Luis and G. from his physical custody.

DISCUSSION

1. The Jurisdictional Order

We review the juvenile court's jurisdictional findings under the substantial evidence test. (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) In determining whether there is substantial evidence, "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.)

a. *Section 300, Subdivision (d)*

Section 300, subdivision (d) provides that a child comes within the jurisdiction of the juvenile court when “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

“Sexual abuse” as defined in Penal Code section 11165.1 includes conduct whereby a person “annoys or molests any child under 18 years of age” as described in Penal Code § 647.6. (Penal Code § 11165.1(a) & 647.6(a)(1).) “[T]he words ‘annoy’ and ‘molest’ . . . are synonymous and generally refer to conduct designed to disturb, irritate, offend, injure, or at least tend to injure, another person.” (*People v. Lopez* (1998) 19 Cal.4th 282, 289.) “[S]ection 647.6, subdivision (a), does not require a touching [citation] but does require (1) conduct a ‘ “normal person would unhesitatingly be irritated by” ’ [citations], and (2) conduct ‘ “motivated by an unnatural or abnormal sexual interest’ ” in the victim [citations].” (*People v. Lopez, supra*, 19 Cal.4th at p. 289.) “[T]here can be no *normal* sexual interest in any child and it is the sexual interest in the child that is the focus of the statute’s intent.” (*People v. Shaw* (2009) 177 Cal.App.4th 92, 103.)

In the present case, the evidence consisted of the Department’s reports and attached documents, as well as testimony by father and Andrea at the August 16, 2012

hearing. Viewing this evidence in a light most favorable to the juvenile court's order, a reasonable fact finder could have concluded that father had sexually abused Andrea. Father acknowledged that he had a father-daughter relationship with Andrea. Father wrote letters to Andrea in which he said he had fallen in love with her and wanted "an opportunity to demonstrate [his] love." Father also admitted that he had an "obsession" with Andrea and that his conduct was "harassment." Both mother and Andrea reported that father offered to give them money if Andrea had sex with him.

Andrea reported living in fear of father. She was afraid father would try to rape her, and secured the bedroom and bathroom doors to keep him out. Andrea's older brother saw one of father's letters and also feared that father would try to rape Andrea. Under the totality of the circumstances, there was substantial evidence that father's conduct was motivated by an unnatural or abnormal sexual interest in Andrea and that it would have irritated a normal person. Thus, there was substantial evidence that father sexually abused Andrea.

b. *Section 300, Subdivisions (b)& (j)*

"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.

[Citations.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) The court need not

consider the arguments made by father about the assertion of jurisdiction over Luis and G. under section 300, subdivision (d) because, as explained below, the juvenile court's findings under subdivisions (b) and (j) were supported by substantial evidence.

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child. There are three elements to section 300, subdivision (b) jurisdiction:

“(1) neglectful conduct by the parent of one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 567.) In reaching its decision, the court looks at the totality of the circumstances, including the severity of the incidents of abuse, whether there was a substantial lapse of time between the abuse and filing of the section 300 petition, and whether the parent has adequately addressed the issues that led to the neglectful conduct. (*In re J.K., supra*, 174 Cal.App.4th at p. 1440.)

Section 300, subdivision (j) provides that the juvenile court may assert jurisdiction over a child when “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

Under the totality of the circumstances, there was substantial evidence that Father’s sexual abuse of Andrea and mother’s failure to protect her from the abuse, placed Andrea, Luis and G. at a substantial risk of physical harm. Father argues that Luis and G. were not physically harmed by father’s letters or infatuation with Andrea.

However, the court found that Luis and G. were “at risk of” physical harm, not that they had been physically harmed. Father also argues that his last letter to Andrea was given to her over eight months prior to the jurisdictional hearing. However, eight months does not constitute a substantial lapse of time under these circumstances. Moreover, father’s sexual abuse was not confined to letter-writing. Both mother and Andrea stated that father offered them money in exchange for sex with Andrea. Mother claimed that father made this offer only a few weeks before she was interviewed by the Department. Lastly, father argues that Andrea was about to turn 18 years old at the time of the jurisdiction hearing and that any ensuing affair between father and Andrea would not be illegal and would not endanger Luis and G. Father admitted that he viewed Andrea as his stepdaughter and that he “harass[ed]” Andrea with expressions of his desire to be in a sexual relationship. Father’s sexual abuse of Andrea reflected an abandonment of his parental role that also affects Luis and G.

In addition, both mother and father acknowledged having lied about not being aware of the letters. Mother and father also indicated that they thought father’s behavior was justified because Andrea flirted with him. Father did not believe his conduct amounted to “sexual abuse.” The Department found that both mother and father minimized father’s behavior. Furthermore, mother, Andrea and Nelson all stated that father threatened to harm mother if she reported father to law enforcement.

Although there had been no prior physical harm to Andrea, Luis or G., father’s sexual abuse of Andrea, father’s threat to harm mother if she contacted law enforcement, mother’s failure to protect Andrea, and both parents’ denial and

minimization of the abuse, placed all three children at substantial risk of physical harm. The juvenile court therefore did not err in sustaining counts b-1 and j-1 of the dependency petition.

2. *The Dispositional Order*

Father argues that there was no substantial evidence supporting the juvenile court's dispositional order denying him physical custody over Luis and G.⁷ At the jurisdictional/dispositional hearing, the juvenile court placed Andrea, Luis and G. in their mother's custody and removed the children from father's custody.

Section 361, subdivision (c)(1) provides: "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians *with whom the child resides at the time the petition was initiated*, unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c), italics added.)

Father contends that there was no substantial evidence that the circumstances described in section 361, subdivision (c)(1) existed. The Department, however, was not

⁷ Although the Department argues that father waived this argument by submitting the matter to the court, "[e]ven if the parent does not contest the state of the evidence, he or she preserves the right to challenge it as insufficient to support a particular legal conclusion." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 464.)

required to establish such circumstances because Luis and G. did not “reside” with father when the petition was filed. At that time, the children were only residing with mother because father had moved out of the family home.

Even assuming Luis and G. had been residing with father when the petition was filed, we would affirm the dispositional order because there was substantial evidence showing the requirements of section 361, subdivision (c)(1) were satisfied. For the reasons discussed *ante*, there was substantial evidence of a substantial danger to Luis’s and G.’s physical well-being at the time of the dispositional hearing. Based on this evidence, the juvenile court could have reasonably concluded that there was no reasonable means by which Luis’s and G.’s physical health could be protected without removing them from father’s physical custody.

DISPOSITION

The order is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.