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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re T.H., a Person Coming Under the  
Juvenile Court Law.

B243492

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK84972)

Plaintiff and Respondent,

v.

HELEN H.,

Defendant and Appellant.

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

Marguerite Downing, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant Helen H.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Senior Associate County Counsel, for Plaintiff and Respondent.

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Helen H. (Mother) challenges the juvenile court's finding that T. H. is a child described by Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b). Mother contends there was insufficient evidence to support the juvenile court's jurisdictional findings. We affirm.

### FACTS

Diane T. gave birth to T. in 1996. T. was thereafter adopted by Henrietta H. when she was six months old. Henrietta also adopted a boy, Charles H. When Henrietta died of cancer in 2008, Mother and Henry H.<sup>2</sup> (Father) adopted T. and Charles. On December 23, 2010, a juvenile dependency petition under section 300 was sustained against Mother and Father on the grounds they inappropriately disciplined T. and Charles. Specifically, Father pushed Charles's head and grabbed his shirt. Mother pushed T. and pulled her hair. The social worker also heard Mother yell at Charles. Charles stated Mother often called him a liar. Mother and Father participated in court-ordered counseling and parenting classes. Both T. and Charles continued to live with Mother and Father, and the case closed in July 2011.

On May 1, 2012, a juvenile dependency petition was again filed under section 300 stemming from an altercation between Mother and T. on February 28, 2012. T. reported to the case worker that Mother asked her to vacuum that day. When she knocked over some glass bottles and failed to comply with Mother's directions quickly enough, Mother came into the room and asked her if she had a problem. When T. responded by asking Mother if she had a problem, Mother grabbed her by the wrists and began shaking her. Mother's hand also hit her in the face. T. reported that Mother often called her a "ho" or a "slut."

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<sup>1</sup> All further section references are to the Welfare and Institutions Code unless otherwise specified.

<sup>2</sup> Henry is Henrietta's father.

T. denied being physically disciplined by Mother and Father. Instead, she said they usually took things away from her and refused to allow her out of the house. T. felt that Mother and Father were too strict and did not want her in the home. T. herself did not want to live there and wanted to live with her godmother, Natalie P., instead. T. admitted to recently sneaking out of the house to stay with a friend for a few days. Mother and Father reported her missing on February 20, 2012, and March 1, 2012. T. also snuck a boy into her bedroom on at least three occasions.

Mother denied hitting T. in the face, but admitted grabbing her by the wrist to restrain her. Mother felt T. was disrespectful and wanted to live elsewhere so she could “run wild.” Mother and Father agreed to voluntary family reunification services when T. continued to express a desire to leave the home.

T. was placed in a foster home on March 15, 2012, because Mother and Father did not want her placed with Natalie. In April, the foster mother took T. to Las Vegas to visit her biological mother. As the foster mother was getting ready for the visit, T. left the hotel room without permission to meet her biological mother alone. When they returned from Las Vegas, the foster mother asked to have T. removed from her home but later changed her mind. T. continued to express a desire to live with her godmother or remain with her foster mother.

Mother and Father were upset that T. refused to come home, but were unwilling to participate in services. Father told the caseworker, “I went through this a year ago . . . I’m not going to do it again.” Mother wanted T. at home only if she agreed to follow the rules. She felt the referral was a “set up” by T. Asked about her upbringing, Mother stated she was “whooped with the switch” but did not consider that child abuse. Likewise, Father “got [his] butt tore up (spankings)” when he was a child but did not consider spanking child abuse.

The social worker who had previously worked on T. and Charles’s case in 2010 was also interviewed. He received a phone call from T. in February 2012. She told him she no longer wanted to live with Mother and Father, and asked how she could be removed from the home. He asked her if she was being abused and she denied any abuse

occurred. He then told her she would need to be physically or sexually abused and provided her with the child protective services hotline. Natalie's mother, Melinda A., confirmed Mother and Father were very strict and that Mother often demeaned T. and called her names. Melinda wanted T. to live with her and Natalie.

At the contested jurisdictional hearing, T. testified Mother shook her, slapped her, and slammed her against the wall. Mother also threatened to "slam [T.] on the ground and stomp [her] out." T., for the first time, described Mother hitting her arms repeatedly in the living room in December 2011 or January 2012. The court sustained the petition under section 300, subdivision (b) as follows: "In February of 2012, the child [T.]'s mother, Helen . . . , physically abused the child, in that the mother grabbed the child's hands, shook the child, and struck the child's face with the mother's hands. The child does not want to reside in her mother's home. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child is a prior dependent of the Juvenile Court due to the mother's physical abuse of the child. Such physical abuse of the child by the mother endangers the child's physical health and safety, creates a detrimental home environment and places the child at risk of physical harm, damage, danger and physical abuse."

The juvenile court explained that he "agree[d] with some of what the attorneys on the other end, [Mother's] way of resolving it is completely inappropriate, but [T.] is willful, was AWOL, was trying to run her own program, had boys in and out of the house. I didn't find her to be credible. Her ability to sit here and say that it was all them and that it's not me, I did not find to be credible. I think that the discussion from this end of the table about her setting this up, getting out of the home, she thinks she can have more freedoms, I think a lot of that is true. But I think that . . . adults need to do better." Mother appealed from the juvenile court's jurisdictional order on August 13, 2012.

## **DISCUSSION**

Mother paints T. as a typical rebellious teen who wants more freedom and does not want to follow the rules of strict parents. She urges us to reverse the jurisdictional findings and redirect our time and resources to children "who really do need the

protection of the court.” Mother raises two separate issues with regard to whether T. falls within the definition of section 300, subdivision (b): (1) T. did not suffer “serious physical harm” as described by subdivision (b); and (2) an isolated incident does not support an inference T. is at substantial risk of serious physical harm in the future. We find substantial evidence supports the juvenile court’s finding T. is a child described by section 300, subdivision (b).

A child may be considered a dependent of the court 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).) Thus, a jurisdictional finding under section 300, subdivision (b), requires: (1) neglectful conduct by the parent in 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 James R.* (2009) 176 Cal.App.4th 129, 135.)

On appeal, the substantial evidence test is the appropriate standard of review for jurisdictional findings. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) 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.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

## **I. Serious Physical Harm**

Mother contends that her altercation with T. was an isolated incident that failed to produce any “serious physical harm” as required by section 300, subdivision (b). Subdivision (b) does not define “serious physical harm.” The limited authority on the topic suggests that, at a minimum, serious physical harm may be found where there is physical evidence of the harm, such as bruising, lacerations, broken bones or other

internal injuries. For example, in *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438, this court found serious physical harm where the mother struck a three-year-old child with a belt on the stomach and forearms, leaving deep purple bruises, but declined to find serious physical harm where the eight-year-old sibling was left with a red line on her back. In *In re David H.* (2008) 165 Cal.App.4th 1626, 1645, the court found serious physical harm where a seven-year-old child was struck with a belt or a cord, leaving welts, bruises and broken skin. Subdivision (a) of section 300 is also instructive in that it provides that “ ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.”

Here, there is no evidence serious physical injury resulted from a 63-year-old woman grabbing the wrists of a 16-year-old girl, shaking her, and hitting her in the face.<sup>3</sup> Indeed, the Los Angeles County Department of Children and Family Services sent a social worker to investigate the incident the day it occurred. The social worker reported there were no visible marks or bruises on T. at that time and T. denied there ever were any. Further, T. was not afraid of Mother. Substantial evidence does not support a finding T. suffered serious physical harm under section 300, subdivision (b) as the result of this incident.

## **II. Substantial Risk of Future Harm**

Even if T. did not suffer serious physical harm as a result of that incident, however, the record supports a finding that a substantial risk remains that T. will suffer serious physical harm in the future. “In determining what constitutes a substantial risk of serious physical harm [under subdivision (b)], some general guidance may be drawn from subdivision (a) of section 300, which uses the same language to authorize jurisdiction where ‘[t]he minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor’s parent or guardian.’ For purposes of that subdivision, ‘a court may find there is a substantial risk

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<sup>3</sup> Although T. testified Mother also slammed her against the wall and had hit her arms in December 2011 or January 2012, the juvenile court did not find this testimony credible.

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 minor or the minor'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.' (§ 300, subd. (a).)" (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.)

Mother admitted she grabbed T.'s wrists and shook her. Two years prior to this incident, Mother pushed T. and pulled her hair. Even if serious physical injury did not result from the incident in question, it is evident that Mother's mistreatment of T. is escalating. Mother does not view her behavior as abusive, despite participating in parenting classes and counseling in 2011. Also, she feels being "whooped by the switch" is not child abuse. She does not accept responsibility for any of the tension with T. Instead, Mother blames T. and feels she was "set up." T.'s and Mother's mutual animosity creates a strong possibility of greater harm in the future.

Mother relies on a number of cases which hold an isolated incident is an insufficient basis for jurisdiction under section 300. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1026; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1137.) None of these are relevant since this is not an isolated incident. The record shows there were prior physical altercations involving Mother and T. and Father and Charles as well as the incident at issue. Moreover, in each of these cases, there is evidence that the parents regretted their actions and had learned from their mistakes and, thus, it was unlikely that the children were at risk of future harm. That is not the case here.

In *In re J.N.* (2010) 181 Cal.App.4th 1010, for example, the parents became intoxicated and the father crashed the family's van into a light pole. Two of the couple's children were injured, including a 14-month-old toddler whose older brother had released his safety harness. The mother ignored an officer's advice to apply pressure to her child's wound, refused to hand the child to the officer when asked to do so, and behaved in a belligerent manner toward another woman at the scene. (*Id.* at pp. 1016-1017.) The juvenile court took jurisdiction over the children pursuant to section 300, subdivision (b).

On appeal, the court addressed whether evidence of a single episode of parental conduct was sufficient to bring the children within the juvenile court's jurisdiction. "In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, 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, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident." (*In re J.N.*, *supra*, 181 Cal.App.4th at pp. 1025-1026.) There was no evidence that the parents had a substance abuse problem that put the children at risk of serious physical harm. The children were otherwise healthy, loved and well cared for. The parents were remorseful and indicated they had learned from their mistakes. (*Id.* at p. 1018.) As a result, the court reversed the jurisdictional order. (*Id.* at p. 1026.)

In *In re Nicholas B.*, *supra*, 88 Cal.App.4th 1126, the court concluded that the allegations in the petition were insufficient to support jurisdiction under section 300, subdivision (b), in that they did not allege a current substantial risk that the child would suffer serious physical harm as a result of appellants' inability to supervise or protect him. The petition alleged one triggering incident of physical abuse by the mother, which she admitted and regretted, and there were no further allegations that the serious physical harm inflicted by the mother would occur again. (*In re Nicholas B.*, *supra*, at pp. 1134-1135.) As a result, the petition failed to allege facts to demonstrate present or future risk of physical harm. (*Id.* at p. 1135.)

Unlike the parents in *In re J.N.* and *In re Nicholas B.*, there is no evidence Mother is remorseful; indeed, she feels she did "nothing wrong." Mother continues to feel she is blameless in this matter and that it was all a "set up" by T. to obtain more freedom. Mother relies on *In re Precious D.* (2010) 189 Cal.App.4th 1251 to argue that there was no parental negligence, fault or unfitness that violated the requirements of section 300,

subdivision (b). *Precious D.* does not apply to these facts. There is ample evidence to support the conclusion Mother's conduct was inappropriate and T. was removed as a result of it.

There is no evidence in the record to suggest Mother learned a lesson and will not repeat her mistakes. The jurisdictional and dispositional reports indicate she placed the blame squarely on T.'s shoulders. She continued to complain about T.'s behavior during the investigation and was unwilling to participate in any services. Mother was also reluctant to accept T. back into the house. She told the caseworker T. would be allowed home only if she followed the rules. This leaves us with a record demonstrating a well-founded concern about future harm to T. if she fails to follow the rules.

#### **DISPOSITION**

The juvenile court's jurisdictional order is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.