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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B244020  
(Los Angeles County  
Super. Ct. No. CK90626)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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E.P. (Mother), the mother of two teenage sons (Joseph and Jose) and a toddler (Daughter), appeals from the orders entered after the juvenile court declared her children dependents of the court and made disposition findings. Mother contests the jurisdiction determinations as to all three of her children. We affirm.

### **BACKGROUND**

On April 12, 2012, the Department of Children and Family Services (DCFS) filed a first amended Welfare and Institutions Code section 300 petition as to Mother's children, Joseph (then age 16), Jose (then age 14), and Daughter (then age 3), each having a different father.<sup>1</sup> The juvenile court held a jurisdiction and disposition hearing on September 10, 2012. The court declared all three children dependents and sustained allegations against Mother under section 300, subdivisions (a) (serious physical injury) and (b) (failure to protect) as to Joseph and Jose; (c) (serious emotional abuse) as to Jose only; and (j) (abuse of sibling) as to all three children. The court placed Daughter at home with Mother and Joseph and Jose with Jose's father. Mother filed a timely notice of appeal. (§ 395, subd. (a)(1); see *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [jurisdiction findings reviewable on appeal from the judgment following disposition].)

After Mother filed her appeal, at a hearing on May 6, 2013, for a section 364 review as to Jose and Daughter and a section 366.21, subdivision (e) review as to Joseph, the juvenile court terminated jurisdiction over Joseph and Daughter and continued jurisdiction over Jose. Joseph returned to Mother's home, where Daughter had remained with Mother. Jose continued to reside with his father. The court set a section 364 review hearing as to Jose for November 4, 2013.

### **DISCUSSION**

Mother contends that the evidence is insufficient to support the jurisdiction findings against her as to all three of her children. We disagree.

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

“The purpose of section 300 is ‘to identify those children over whom the juvenile court may exercise its jurisdiction and adjudge dependents.’ [Citation.]” (*In re A.O.* (2010) 185 Cal.App.4th 103, 110.) To declare a child a dependent under section 300, the juvenile court must find by a preponderance of the evidence that the allegations are true. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see § 355, subd. (a).) “[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104.) We review the court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value. (*Matthew S.*, at p. 1319.)

The juvenile court sustained two separate allegations against Mother under section 300, subdivision (a), which allows a dependency when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent . . . .”

Paragraph a-1 of the operative petition alleged under section 300, subdivision (a) that “[o]n a prior occasion . . . [M]other . . . physically abused the child Jose by throwing dishes at the child causing a dish to break on the child’s foot. In 2010 . . . [M]other struck the child inflicting marks and bruises on the child’s body. On a prior occasion . . . [M]other struck the child with [her] hands. On a prior occasion . . . [M]other threatened to strike the child with a bat. On a prior occasion . . . [M]other pinned the child down and threatened to strike the child. Such physical abuse was excessive and causes the child unreasonable pain and suffering[.] Such physical abuse of the child by . . . [M]other endangers the child’s physical health and safety and places the child and the child’s siblings, Joseph . . . and [Daughter] at risk of physical harm, damage and physical abuse.”

Paragraph a-2 of the operative petition alleged under section 300, subdivision (a) that “[o]n a prior occasion . . . [M]other . . . physically abused the child Joseph, by choking the child. On [a] prior occasion . . . [M]other attempted to mace the child. Such physical abuse was excessive and caused the child unreasonable and suffering. Such physical abuse of the child by . . . [M]other endangers the child’s physical health and safety and

places the child and the child's siblings, Jose . . . and [Daughter] at risk of physical harm, damage and physical abuse.”

The juvenile court sustained the same two allegations, one regarding her conduct toward Jose and one regarding her conduct toward Joseph, against Mother in paragraphs b-1 and b-2 of the operative petition under section 300, subdivision (b). Under section 300, subdivision (b) the juvenile court may adjudge a child a dependent of the court when “[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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse.”

The juvenile court sustained an additional allegation against Mother as to Jose in paragraph b-4 of the operative petition, which alleged under section 300, subdivision (b) that “[o]n 10/21/2011, 10/21/2011, 10/25/2011, and on prior occasions . . . [M]other . . . excluded the child Jose from the child's home. On a prior occasion, the child was forced to walk in the rain and was picked up by law enforcement. Such exclusion of the child from the child's home by . . . [M]other endangers the child's physical health and safety and places the child and the child's siblings, Joseph . . . and [Daughter] at risk of physical harm, damage and danger.”

The juvenile court also sustained an allegation against Mother as to Jose under section 300, subdivision (c), which permits jurisdiction when “[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent . . . or who has no parent . . . capable of providing appropriate care.” To establish jurisdiction under section 300, subdivision (c), DCFS must prove “(1) serious emotional damage as evidenced by severe

anxiety, depression, withdrawal or untoward aggressive behavior or a substantial risk of severe emotional harm if jurisdiction is not assumed; (2) offending parental conduct; and (3) causation. [Citation.] ‘While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citation.] Standing alone, the past infliction of harm does not establish the substantial risk of future harm. Rather, “[t]here must be some reason to believe the acts may continue in the future.” [Citation.]” (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379.)

Paragraph c-1 of the operative petition alleged under section 300, subdivision (c) that Mother had “emotionally abused [Jose] by calling the child derogatory names including using the word ‘bitch’ as the child’s name. [M]other frequently withheld food from the child causing the child to go to bed hungry. [M]other removed the child’s bed frame and drawers from the child’s room. [M]other refused to allow the child to do laundry in the child’s home. [M]other frequently excluded the child from the home. [M]other told the child on numerous occasions [she] wished the child was never born. [M]other[’]s ongoing emotional abuse of the child resulted in the child exhibit[ing] self mutilating behavior. Such ongoing emotional abuse of the child on the part of [M]other places the child at substantial risk of suffering serious emotional damage as evidenced by severe anxiety, depression, withdrawal, and aggressive behavior toward . . . self or others.”

The juvenile court also made jurisdiction findings as to all three children under section 300, subdivision (j), which permits a dependency 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. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent . . . and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

Substantial evidence supports all of the jurisdictional findings of the juvenile court. The juvenile court found Mother lacked credibility, leaving Jose's and Joseph's accounts to support the challenged findings. Those accounts show the following. Jose did not want to visit Mother; Mother was mean during visits. Mother routinely called Jose "bitch" and treated him like "crap." Mother said she wished he were never born. Mother threw dishes at him. Mother held him down on the floor and threatened to hit him if he did not give her his "iPOD" password. Jose sometimes felt it would be better if he was not living in "this world." He cut himself twice on the arm, near the elbow. Mother took away his bed, which Mother admitted. Mother kicked Jose out of the house late on a rainy night and the police picked him up.

Mother choked Joseph on one occasion and tried to mace him on another, which Joseph later recanted. Joseph has a history of cutting himself because Mother was verbally abusive and had forced him to sleep in the car. Joseph cut himself four to five times, explaining he did so because it was "cool." Mother had Joseph arrested based on false statements. According to the police, Mother told them Joseph said to her, "You are Going to Make me Kill Myself" as he held [a] knife to his chest."

With respect to Daughter, she was shaken and crying as a result of witnessing a violent episode between Mother and Joseph. She was living at home with Mother when the violence between her two siblings and Mother took place.

Based on the foregoing, substantial evidence supports all of the juvenile court's jurisdictional findings.

Mother also argues that the juvenile court erred by concluding that no reasonable alternatives existed to removal of Jose and Joseph and that DCFS made reasonable efforts to prevent removal. As to both Jose and Joseph, substantial evidence supports the removal finding based on the physical contacts between Mother and the two minors. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [disposition findings reviewed for substantial evidence].) And although Mother did not visit with Jose as she expected, Jose did not want to visit with Mother, and Mother put certain conditions on visitation. Given

those circumstances, substantial evidence supports the conclusion that DCFS made reasonable efforts to bring the two together to prevent removal. (See *ibid.*)

**DISPOSITION**

The orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

I concur:

CHANEY, J.

ROTHSCHILD, J., concurring and dissenting

I concur in the majority's decision that substantial evidence supports dependency jurisdiction over Jose P., Jr., based on the allegation against Mother under Welfare and Institutions Code section 300, subdivision (a)<sup>1</sup>, but dissent with respect to the other jurisdiction findings as to Jose and all jurisdiction findings as to Mother's son Joseph M. and her daughter E.M.

The section 300, subdivision (a), allegation against Mother regarding Jose stated that, "[o]n a prior occasion . . . [M]other . . . physically abused the child Jose by throwing dishes at the child causing a dish to break on the child's foot. In 2010, the mother struck the child inflicting marks and bruises to the child's body. On a prior[] occasion, the mother struck the child with the mother's hands. On a prior occasion the mother threatened to strike the child with a bat. On a prior occasion, the mother pinned the child down and threatened to strike the child."

I agree with the majority that substantial evidence supports the sustaining of this allegation. According to the evidence, Jose reported that, "once he did not do the dishes he was supposed to do and his mother then took a stack of dishes and threw them at [him] one at a time. He stated that one of the dishes broke on his foot and that his mother 'made [him] clean it up because she said [he] made her do it.'" He said that Mother "came with this big stack of [dishes] and just started throwing them at [him.] Another time she took the stick out of the window that she uses to keep the window locked and she tried to hit [him] with it. When [he] put [his] arms up, she tried to stick the stick up [his] butt. . . . She has hit [him] in [his] legs with the stick, but [he] do[es]n't remember if there were marks or bruises. The time that she pinned [him] down was when she was trying to get [him] to tell her [the] password to [his] iPod. [He] wouldn't give it to her because [he] knew that she would keep it and the iPod was [his], it was a birthday gift." Jose's paternal grandmother reported that, in or about October 2010, Mother had "hit Jose and left marks on his body." The grandmother said that Jose had "disclosed [that]

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

mother hits him with her hand and has tried hitting him with a bat.” This evidence, combined with the acrimonious relationship that continued between Mother and Jose at the time of the jurisdiction and disposition hearing and Mother’s failure to acknowledge her conduct toward Jose, is sufficient to support the jurisdiction finding as to Jose under section 300, subdivision (a), based on a substantial risk of his suffering serious physical harm inflicted nonaccidentally upon him by Mother.

I disagree, however, with the majority with respect to jurisdiction based on the other allegations sustained by the juvenile court.

The other section 300, subdivision (a), allegation stated that, “[o]n a prior occasion, . . . [M]other . . . physically abused the child Joseph[] by choking the child. On prior occasion, the mother attempted to mace the child.” Joseph initially “denied any neglect or abuse at home.” He later stated that Mother had ““choked [him] for [his] iPod,”” with “her hands around his neck,” and had “tried to spray him with the mace on her keychain.” He, however, also reported that Mother ““didn’t have her hands on [his] neck and she didn’t try to mace [him]. [He] didn’t tell the social worker that [his] mom tried to mace [him]. She (mom) called the police on [him] because [he] didn’t want to give her [his] iPod. Her hands were on [his] pocket, not around [his] neck.”” At the time of the jurisdiction and disposition hearing, Joseph was 17 years old and six feet tall. He wanted to return to live with Mother. Although the majority relies on the juvenile court’s finding that Mother lacked credibility, leaving Joseph’s account as the evidence, Joseph’s reports of Mother’s physical contact with him were conflicting and unsubstantiated. The other evidence of violence between Joseph and Mother relied on by the majority was part of allegations that were dismissed by the juvenile court. As a result, given Joseph’s conflicting and unsubstantiated reports about physical contact with Mother, Joseph’s age and size at the time of the hearing and his desire to live with Mother, I believe the evidence does not sufficiently establish a substantial risk of Joseph suffering serious physical harm inflicted nonaccidentally upon him by Mother.

Nor do the allegations as to Joseph under section 300, subdivision (a), support jurisdiction over Jose or the daughter. As noted, jurisdiction over Jose under section 300,

subdivision (a), was proper based on the allegation regarding Mother's conduct toward Jose. Thus, the section 300, subdivision (a), allegation as to Jose based on Mother's conduct toward Joseph is superfluous. And no evidence suggests that the daughter was at substantial risk of serious physical harm based on Mother's conduct toward Joseph.

The juvenile court sustained the same two allegations based on physical abuse, one regarding Mother's conduct toward Jose and one regarding her conduct toward Joseph, under section 300, subdivision (b). The allegations relate to physical abuse. They do not suggest that Mother failed to protect her children from others. Nor do the allegations suggest that Mother was unable to adequately supervise her children, for example, because she suffered from a "mental illness, developmental disability or substance abuse." (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) I conclude that no basis exists for jurisdiction over any of the children under section 300, subdivision (b), based on Mother's alleged physical abuse of Joseph and Jose.

The juvenile court sustained an additional allegation under section 300, subdivision (b), that, "[o]n 10/21/2011, 10/21/2011, 10/25/2011, and on prior occasions, . . . [M]other . . . excluded the child Jose from the child's home. On a prior occasion, the child was forced to walk in the rain and was picked up by law enforcement." I do not believe the evidence is sufficient to support jurisdiction based on this allegation. Even assuming that Mother excluded Jose from the home as alleged, no evidence exists that he suffered any physical harm or illness, much less serious physical harm or illness, as a result of the incidents. Moreover, at the time of the jurisdiction and disposition hearing, Jose was living with his father, as he wanted, and thus not at substantial risk of suffering future serious physical harm or illness from being excluded from Mother's home. Even if Jose were to return at some point to Mother's custody, based on his age and relationship with his father and paternal grandmother, no evidence suggests that he would suffer future serious physical harm or illness if Mother again excluded him from the home. Nor does the evidence support jurisdiction over Joseph and the daughter based on the allegation of Mother's conduct in excluding Jose from the

home. No evidence exists that Joseph or the daughter was at substantial risk of serious physical harm or illness due to Mother's conduct in excluding Jose from the home.

The section 300, subdivision (c), allegation provided that Mother had "emotionally abused [Jose] by calling the child derogatory names including using the word 'bitch' as the child's name. The child's mother frequently withheld food from the child causing the child to go to bed hungry. The mother removed the child's bed frame and drawers from the child's room. The mother refused to allow the child to do laundry in the child's home. The mother frequently excluded the child from the home. The mother told the child on numerous occasions the mother wished the child was never born. The mother[']s ongoing emotional abuse of the child resulted in the child exhibit[ing] self mutilating behavior. Such ongoing emotional abuse of the child on the part of the mother places the child at substantial risk of suffering serious emotional damage as evidenced by severe anxiety, depression, withdrawal, and aggressive behavior toward . . . self or others."

Even assuming Mother acted toward Jose as alleged, substantial evidence does not establish that, at the time of the jurisdiction and disposition hearing, he exhibited the requisite severe anxiety, depression, withdrawal and aggressive behavior for the juvenile court to acquire jurisdiction under section 300, subdivision (c). When first interviewed in October 2011, Jose "said that at times he thinks it would be better if he was not living in this world but he has not attempted to hurt himself; however, he has thoughts about cutting his wrists. Child said that about a year ago (2010), he cut himself twice" "on the inside of his elbow. . . . Child denie[d] having ever cut on his wrists." At the jurisdiction and disposition hearing almost a year later, however, no evidence was presented that Jose was suffering from severe anxiety, depression, withdrawal and aggressive behavior. He was doing well living with his father. He and his father periodically attended cognitive behavior family therapy and were cooperative with treatment. The therapist indicated "a positive relationship between Jose and his father" and "numerous reports from Jose . . . that he enjoys living with his father[.]" The therapist did not mention any issues of severe anxiety, depression, withdrawal and aggressive behavior but simply explained

Jose's feelings toward Mother, his view on their inability to get along and his reason for not wanting to visit with her. Given Jose's progress and positive relationship with his father at the time of jurisdiction and disposition, Jose's report of his feelings in October 2011 and his cutting himself under his elbow a year earlier is insufficient to support a jurisdiction finding over Jose under section 300, subdivision (c). Moreover, no evidence supports a determination that, because of Mother's conduct toward Jose as alleged under section 300, subdivision (c), Joseph was at substantial risk of serious emotional damage. At the time of jurisdiction and disposition, Joseph, then 17 years old, wanted to live with Mother.

The juvenile court also made jurisdiction findings under section 300, subdivision (j). Although I agree with the majority that the physical abuse allegation under section 300, subdivision (a), supports jurisdiction as to Jose, I disagree that the other allegations under section 300, subdivisions (a), (b) and (c), support jurisdiction. Under that analysis, section 300, subdivision (j), can support jurisdiction over Joseph or the daughter only if, based on the allegation under section 300, subdivision (a), a substantial risk exists that Joseph or the daughter will be abused as defined in section 300, subdivision (a). (See § 300, subd. (j).) I do not conclude that substantial evidence exists of such a risk. As noted, at the time of jurisdiction and disposition, Joseph was 17 years old and six feet tall and wanted to return to live with Mother. Given those facts, Mother's physical abuse of Jose in years prior does not demonstrate a substantial risk that Joseph would be similarly abused in the future. According to the evidence, Mother had a positive relationship with the daughter and took good care of her. The daughter, who was much younger than her teenage half-brothers, remained with Mother during the dependency proceedings, and no issues were noted between Mother and the daughter. In fact, all DCFS reports indicated that the daughter was doing well with Mother. Joseph also said that Mother treated the daughter well. Although Mother said that the daughter had been "shaken and crying" after an altercation Mother had reported between her and Joseph, Mother acknowledged the daughter was "unharmful." As a result, I believe the evidence is insufficient to support a finding that a substantial

risk of similar abuse existed to the daughter based on Mother's physical abuse of Jose as described in the section 300, subdivision (a), allegation. For these same reasons, the evidence does not support jurisdiction over Joseph or the daughter based on the sustaining of the section 300, subdivision (a), allegation regarding Mother's physical abuse of Jose.<sup>2</sup>

ROTHSCHILD, J.

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<sup>2</sup> I agree with the majority that substantial evidence supports the removal of Jose from Mother's care based on the physical contacts between Mother and him. I also agree that substantial evidence supports the conclusion that DCFS made reasonable efforts to bring Mother and Jose together to prevent removal. As to Joseph, however, I conclude that the issues regarding removal are moot because I do not believe that jurisdiction over Joseph was proper.