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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.W., et al., Persons Coming Under
the Juvenile Court Law.

B245568

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK89963)

Plaintiff and Respondent,

v.

M.W. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County.
Valerie Skeba, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Plaintiff and
Appellant, R.W.

Julie E. Braden, under appointment by the Court of Appeal, for Plaintiff and
Appellant, M.W.

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

R.W. (father) and M.W. (mother) appeal from the order adjudicating their sons, J.W. and C.W., dependent children pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).¹ Both parents contend the jurisdictional findings were not supported by substantial evidence. We affirm.

FACTUAL AND PROCDURAL BACKGROUND

Viewed in accordance with the usual rules of appeal from a dependency jurisdiction order (*In re Marquis H.* (2013) 212 Cal.App.4th 718, 726-727 (*Marquis H.*)), in December 2011, 14-year-old J.W. and 4-year-old C.W. lived with mother and father in Palmdale. On Sunday, December 4, mother left town on a business trip. The next evening, father and J.W. argued over the fact that J.W. had dyed his hair black. J.W. sustained a bloody nose and swollen lip after father hit J.W. in the face multiple times; father also shoved a bar of soap into J.W.'s mouth which made J.W.'s mouth and lips burn; J.W. wore braces and either the blows to his face or the bar of soap caused lacerations to the inside of J.W.'s cheek; when J.W. tried to run outside for help, father grabbed him by the hair and pulled him back into the house. J.W. eventually escaped to a neighbor's home. That neighbor brought J.W. to Julie Kilpatrick's home because the neighbor believed Kilpatrick, an employee of the Department of Public Social Services, would know what to do. Kilpatrick's niece, Katheryn, was also present and took pictures of J.W.'s injuries. J.W. was hysterical when he arrived and begged Kilpatrick not to send him home because he was afraid of what father would do to him. Kilpatrick agreed to allow J.W. to stay until his mother returned. Over the course of the next day, J.W. recounted to Kilpatrick and Katheryn father's ongoing physical abuse of J.W. and domestic violence against mother. By Wednesday morning, J.W. was calmer but still afraid to go home and no longer convinced that mother could protect him. Kilpatrick called the Department of Children and Family Services (DCFS) hotline to ask what to do. DCFS told Kilpatrick to keep J.W. in protective custody and someone would get back to

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

her. DCFS began an investigation.² But when Kilpatrick had not heard back from DCFS by that evening, she called the sheriff's department to ask what to do. A sheriff's deputy arrived at Kilpatrick's home about half an hour later. Without taking Kilpatrick's statement or looking at the pictures of J.W.'s injuries, the officer told J.W. that he had to go home – either willingly or in handcuffs. At Katheryn's urging, J.W. agreed to go with the officer but as he was being taken him away, he called out to Kilpatrick, "Please don't let them take me home. Please help me."

J.W. was transported to the sheriff's station where social worker Tara Anderson was asked to watch him until mother arrived. J.W. was crying as he described to Anderson the altercation with father on Monday evening. J.W. told Anderson that he was afraid of father. He said, "My dad gets so mad he wants to hit someone, so he punches the walls. He punched a hole in the cupboard in the kitchen and put a picture over it to hide the hole." J.W. told Anderson that mother and father argue frequently. In a recent incident triggered by the mortgage not being paid because, J.W. said, father used the money to buy marijuana and drug paraphernalia, father yelled and screamed and pushed and shoved mother; mother told J.W. to call the police but J.W. was too afraid of father's threats to make the call; father told mother to get out of the house and threw her clothes in the front yard. J.W. also told Anderson that father was growing marijuana in the house, smoked marijuana in the presence of both children, left drug paraphernalia lying around the house and spent all of the family money on marijuana.

When mother arrived at the sheriff's station that evening, she said that J.W. was being reprimanded for leaving home and dying his hair black; as she was leaving for her trip, father took away J.W.'s computer and cell phone; during an argument father "smacked J.W. on the mouth." Mother denied any domestic violence but when J.W.

² In response to Kilpatrick's call, social worker Hayk Martirosyan went to the home at about 3:00 p.m. on December 7. Father denied the allegations and would not allow Martirosyan into the house. While Martirosyan waited outside, father went into the house. Father came back outside and informed Martirosyan that a deputy would pick up J.W. and transport him to the police station where mother would meet J.W. and bring him home. Martirosyan said she would return the next day to interview the family.

urged her to tell the truth, mother said, “The cops haven’t been to our house in over a year. The yelling and fighting seem normal to me. The last incident was about two weeks ago when I told my son to call the police. . . .” Mother became so upset during the interview that she hyperventilated and threw-up into a trash can. Eventually, mother admitted arguing with father over money; every few weeks mother leaves the home because of arguments with father; on these occasions she leaves both children with father, or takes C.W. and leaves J.W. Mother said that father has a license to grow marijuana and was growing it at home; she did not know how many plants he had. Mother reported that father drinks “about six beers once a week and smokes marijuana.” In a telephone interview with the social worker that night, father denied all of the allegations; he admitted slapping J.W. but claimed J.W. went into the bathroom and caused his own nose to bleed. Father threatened to sue the social worker for “filling [J.W.’s] head with false accusations.” After father refused to leave the family home for more than one night, mother agreed to move into a motel with the children and seek a restraining order against father the next day. The social worker helped mother and the children check into a motel at about 2:00 a.m.

At about noon the next day, social worker Martirosyan reported to Anderson that mother had checked out of the motel and returned home with the children. Anderson called mother, who recanted her statements of the night before. Mother said J.W. was no longer afraid of father and that she was not going to obtain a restraining order against father.

When social worker Anderson contacted the sheriff’s department to arrange for a deputy to accompany her to the home to interview J.W., she was told that a deputy had already interviewed the family and determined there was no evidence of physical abuse or domestic violence. Therefore, the sheriff’s department would not assist DCFS in substantiating the charges. Although the sheriff’s department advised against detaining the children, DCFS believed detention was warranted by J.W.’s and mother’s statements to Anderson, as well as sworn affidavits executed by witnesses Kilpatrick and Katheryn. DCFS obtained a removal warrant for J.W. and C.W. on December 10. The deputy who

accompanied the social worker to execute the warrant that day said she and her partner would stand by, but would not assist in any way. Ultimately, the warrant could not be executed because no one answered the door that day, or the next two days. When Anderson gave mother and father notice of a December 19 hearing on a Detain at Large Petition, a Protective Custody Warrant and a Search Warrant to remove the children, they agreed to make the children available. The children were detained that night and placed in a foster home. Over DCFS objection, the dependency court released the children to mother and gave father monitored visits.

According to a January 2012 Initial Case Plan, DCFS was then “inclined to believe that the situation which occurred on [December 5, 2011] was excessive; however, [comparison of photographs taken of J.W. that day and his yearbook photo] unveils interesting details which the Department finds imperative to consider.” DCFS concluded that father may have slapped J.W. that day, but not hard enough to leave a mark and that J.W. may have been under the influence of some substance. Mother and father signed a section 301 Voluntary Case Plan pursuant to which father agreed to complete an anger management program and to submit to drug and alcohol testing.³ Father did not complete an anger management program and did not consistently drug test. On June 26, he told the social worker that he was not going to drug test. At a team meeting that day, mother and father agreed to continue with the section 301 plan. But father was a no-show at the next drug test.

On July 12, 2012, DCFS filed a petition alleging the children were persons described by section 300, subdivisions (a), (b) and (j). Paragraphs a-1, b-1 and j-1 of the petition alleged father physically abused J.W. on multiple occasions; paragraphs a-2 and b-2 alleged mother and father had a history of domestic violence; paragraph b-3 alleged that father had a history of alcohol abuse, including a conviction for driving under the

³ In lieu of filing a section 300 petition, section 301 authorizes the social worker to provide the family with services and undertake a program of supervision, if the parents agree. If the family refuses to cooperate with the services being provided, the social worker may file a section 300 petition.

influence; paragraph b-4 alleged that mother and father were growing marijuana plants in the family home and that drug paraphernalia was accessible to the children. Finding DCFS had established a prima facie case that the children came within the statute, the dependency court set the matter for a jurisdiction hearing, pending which the children were released to the parents.

Interviewed prior to the jurisdictional hearing, mother and father denied all of the allegations. Father accused Kilpatrick (the neighbor) of conspiring with social worker Anderson to make false accusations against father. J.W. recanted his prior accusations of physical abuse and domestic violence. Five-year old C.W. told the social worker that he observed his parents hitting each other in the face.

By the time of the continued jurisdictional hearings on October 2 and 16, J.W. was 16 years old. Supervising social worker Virginia Clanton testified because the social worker who wrote the report was on maternity leave; the only personal knowledge Clanton had was from reading the reports. Based on those reports, Clanton testified that DCFS was concerned that the children had witnessed multiple incidents of domestic violence, J.W. was afraid of father, and father had a substance abuse problem. Clanton believed J.W. would be at risk of abuse if DCFS did not continue to monitor the family because of the parents' refusal to cooperate with the Voluntary Case Plan.

Father testified that he never hit J.W. or engaged in any domestic violence with mother. About six weeks before the hearing, father and mother began counseling sessions with a pastor; those sessions had helped father be a better husband. Things with J.W. were going well and there had been no major problems since December 2011. Father previously used edible marijuana to treat his anxiety and gastrointestinal problems but had switched to prescription medications. Father denied ever growing marijuana in the house.

Mother testified that father never physically harmed her or J.W. After she lost her job in September 2009, she and father argued about money but those arguments never rose to physical altercations. Mother speculated that C.W. was confusing a cartoon with real life when he told the social worker that he had seen mother and father hit each other.

Mother did not believe father had any anger management issues. J.W. never expressed to mother any fear of father. Mother never told the social worker that father had marijuana plants in his home office. Mother testified that one Saturday a month, father drinks four or five beers. Father's alcohol use does not play any role in their arguments.

The dependency court found mother's and father's testimony "to be completely unbelievable and not credible." In the court's view, father had "not benefited very much, if anything, from counseling." It found no good cause for father to have missed drug tests in May, June and July of 2012 and that father "has a very significant substance abuse history with alcohol and marijuana, and I believe that contributes significantly to his anger issues." The court credited C.W.'s statement that mother and father hit each other. It also found persuasive Kilpatrick's affidavit recounting what occurred when J.W. arrived at her home after the altercation with father on December 5, 2011. The court concluded that, although the abuse occurred almost a year ago, "father's untreated substance abuse, his lack of insight and progress in counseling, mother's denial of everything, of anything being wrong, I think creates a situation where this will likely continue not just to [J.W.] but perhaps to [C.W.]. . . . [¶] . . . I think the parents' way of addressing this situation is to minimize and deny. And for these reasons, I think this behavior that was fairly significant when it came in last year will continue into the present." Declaring the children dependents pursuant to section 300, subdivisions (a), (b) and (j), the dependency court sustained the following allegations:

Paragraphs a-1, b-1, j-1

"On [December 5, 2011], [father] physically abused [J.W.] by striking [J.W.'s] face with the father's hands, inflicting a bleeding laceration to the child's nose and swelling to the child's lip and face. The father placed a bar of soap in [J.W.'s] mouth, causing pain and abrasions to the child's mouth and lips. The father grabbed [J.W.'s] hair. On prior occasions, the father struck [J.W.]. Such physical abuse was excessive and caused [J.W.] unreasonable pain and suffering. [J.W.] is afraid of the father and does not wish to reside with the father due to the father's physical abuse of the child. [Mother] failed to protect the [J.W.] in that [mother] knew of the father's physical abuse of [J.W.] and allowed the father to reside in the children's home and have unlimited access to [J.W.]. Remedial services have failed to resolve the family problems in that father failed to regularly participate in Child Abuse Prevention Counseling. [Mother] failed to participate in Family

Preservation Services In-Home Counseling. Such physical abuse of the child by the father, the mother's failure to protect the child and the parents' failure to comply with [the section 301] contract ordered by the Juvenile Court, endangers [J.W.'s] physical health and safety and places [J.W.], and [C.W.], at risk of physical harm, damage, danger, physical abuse and failure to protect."

Paragraphs a-2, b-2

"[Mother and father] have a history of engaging in violent altercations. In November 2011 and on prior occasions, the father pushed and grabbed the mother. On prior occasions, the father struck the mother with the father's hands. The father struck the wall of the child's home with the father's fists, causing holes in the walls of the children's home. The mother failed to protect the children in that the mother allowed the father to reside in the children's home and have unlimited access to the child. Remedial services have failed to resolve the family problems in that father failed to participate in Domestic Violence Counseling to address Anger Management. The mother failed to participate in Family Preservation Services In-Home Counseling. Such violent conduct by the father against the mother, the mother's failure to protect the children and the parents' failure to comply with [the section 301] contract ordered by the Juvenile Court, endangers the children's physical health and safety and places the children at risk of physical harm, damage, danger, physical abuse and failure to protect."

Paragraph b-3

"[Father] has a history of substance abuse including alcohol, and is a current abuser of marijuana, which renders the father unable to provide regular care and supervision of the children. On numerous occasions, the father possessed, used and was under the influence of marijuana while the children were in father's care and supervision. The father has a criminal history of a conviction of Driving Under the Influence of Alcohol. [Mother] knew of the father's substance abuse and failed to protect the children in that mother allowed the father to reside in the children's home and have unlimited access to the children. Remedial services have failed to resolve the family problems in that father failed to participate in a substance abuse rehabilitation program and random drug testing. The mother failed to participate in Family Preservation Services In-Home Counseling. Such substance abuse by the father, the mother's failure to protect the children and the parents' failure to comply with [the section 301] contract ordered by the Juvenile Court, endangers the children's physical health and safety and places the children at risk of physical harm, damage, danger, physical abuse and failure to protect."⁴

⁴ The dependency court dismissed paragraph b-4, alleging that father was growing marijuana in the house.

Mother and father timely appealed.

DISCUSSION

A. Standard of Review

“ ‘We review the entire record to determine whether substantial evidence supports the court’s finding. We resolve all conflicts, and draw all reasonable inferences in support of the findings. “We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.” ’ [¶] ‘ “Substantial evidence does not mean any evidence; it must be “ ‘substantial’ proof of the essentials which the law requires.” ’ ‘To be sufficient to sustain a juvenile dependency petition[,] the evidence must be “ ‘reasonable, credible, and of solid value’ ” such that the court reasonably could find the child to be a dependent of the court by clear and convincing evidence.’ A mere ‘scintilla’ of evidence is not enough.” ’ ” (*Marquis H., supra*, 212 Cal.App.4th at pp. 726-727, citations omitted.)

B. There Was Substantial Evidence of “Serious Physical Harm”

Both parents challenge the sufficiency of the evidence to support the jurisdictional finding under section 300, subdivisions (a) and (b). The gist of their arguments is that the evidence that father engaged in a physical altercation with J.W. on December 5 was not believable and, even if believed, the conduct did not constitute the requisite “serious physical harm,” nor was there evidence it was likely to reoccur. We disagree.

Subdivision (a) applies when the “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 or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted” A child need not be seriously injured before the court may take dependency jurisdiction under section 300, subdivision (a). (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) In *N.M.*, evidence that the father hit the child with a broom

causing marks on her ribs and hands on one occasion, hit her with a pipe causing marks on her leg on a second occasion, kicked her and hit her on the hand causing bleeding on a third occasion, and slapped her on the face with an open hand on a fourth occasion, was sufficient to establish serious physical harm within the meaning of that section.

Subdivision (b) applies when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left 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.” To establish jurisdiction under section 300, subdivision (b), the department must prove (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) serious physical harm or illness to the minor, *or* a substantial risk of such harm or illness. (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1259.) Like subdivision (a), subdivision (b) of section 300 is satisfied by a showing of serious physical abuse. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1434 (*J.K.*.)

Kilpatrick’s and Katheryn’s accounts of J.W.’s appearance, statements and behavior during the time he spent at Kilpatrick’s home from December 5 through 7, and social worker Anderson’s account of what J.W. and mother told her while at the sheriff’s station on December 7, constitute substantial evidence that father engaged in the conduct alleged in paragraphs a-1, b-1 and j-1 of the petition, and that mother knew of father’s conduct but failed to protect J.W. from it. This is so notwithstanding the fact that mother and J.W. later recanted. That father’s conduct caused a bleeding laceration to J.W.’s nose, swelling to his lips and face, and abrasions to his mouth and lips is sufficient to establish “serious physical harm” under both subdivisions (a) and (b). That, as mother argues, the abuse and injuries suffered by the child in *N.M.*, *supra*, 197 Cal.App.4th 159,

were more severe than that suffered by J.W. does not establish the absence of serious harm here.⁵

Whether a single prior incident of serious physical harm is sufficient to support jurisdiction without a separate showing of a risk of future harm is subject to some debate. In *J.K.*, *supra*, 174 Cal.App.4th at pages 1434, 1436, the court held that a single prior incident of serious physical harm is sufficient to support initial jurisdiction under subdivisions (a) and (b) without a separate showing of a substantial risk of future harm. (See also *In re David H.* (2008) 165 Cal.App.4th 1626, 1644 [allegation of prior serious harm inflicted by mother was sufficient, alone, to support subdivision (a) jurisdiction].) The court in *In re J.N.* (2010) 181 Cal.App.4th 1010, disagreed with *J.K.* and held instead that a single incident is not sufficient to support subdivision (b) jurisdiction. We need not resolve the debate because the court found and the evidence was sufficient to establish a substantial risk of future serious physical harm. A finding that children are at substantial risk of being abused in the future can be based on evidence that the parents minimize and/or fail to acknowledge the harm they have already caused their children. (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 806.) Here, the mother and father have at best minimized, and at worst altogether denied, father's physical abuse of J.W. For this reason, the dependency court reasonably found J.W. was at substantial risk of future abuse.

Subdivision (j) applies when the "child's sibling has been abused or neglected, as defined in subdivision (a) [or] (b)" Our conclusion that the evidence supports

⁵ The parents also point out that the deputy sheriff rejected the allegations of child abuse and domestic violence when it refused to make any arrests arising out of the December 5, 2011 incident. DCFS reported that a deputy sheriff stated that the sheriff's department "would not support DCFS with substantiating the allegations," and that "this may be a case where [DCFS] is overstating what did occur." Another deputy sheriff stated if DCFS went out to the family home to detain the children, the deputy sheriff would stand by, "but will not be assisting in any way." Whether or not the deputy sheriff decided to file criminal charges or whether particular deputies felt the DCFS should not detain the children has no legal significance as to how the DCFS should discharge its statutory responsibilities or whether the juvenile court's rulings were correct. As we state in the text, there was substantial evidence to support the jurisdictional findings.

jurisdiction over J.W. under subdivisions (a) and (b) is sufficient to establish jurisdiction over C.W. under subdivision (j).

As a consequence of our conclusion that the evidence supports jurisdiction over J.W. and C.W. under subdivisions (a), (b) and (j) based on physical abuse of J.W., we need not reach the question of whether the evidence supports the remaining allegations of domestic violence and substance abuse because we may affirm a jurisdictional ruling if the evidence supports any of the counts concerning the child. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–877; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.) We nevertheless note that, as with the allegations of physical abuse, J.W.’s statements to Kilpatrick and Anderson, mother’s statements to Anderson, C.W.’s statements to the social workers and other evidence constitute sufficient evidence of ongoing domestic violence and substance abuse by father, from which mother failed to protect the children, to support dependency jurisdiction under subdivisions (a), (b) and (j) of section 300.

DISPOSITION

The jurisdictional order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.