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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ANGELICA F. et al., Persons Coming
Under the Juvenile Court Law.

B246790
(Los Angeles County
Super. Ct. No. CK92561)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JASON F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Sherri S. Sobel, Referee. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Jason F. appeals from the juvenile court's January 3, 2013 jurisdictional and dispositional orders. He is the half brother and stepfather of Angelica F., born in August 1999, and the father of Sadie M., born in August 2010. Angelica and Sadie are maternal half siblings. Heather M. (Mother) is not a party to this appeal. Daniel F. is the father of Jason F. and Angelica, and the paternal grandfather of Sadie; he is not a party to this appeal. The court adjudged Angelica and Sadie dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling).¹ Jason F. claims the juvenile court committed reversible error by sustaining the allegations under section 300 of specific sexual misconduct that were supported only by Angelica's hearsay statements. We disagree because there was sufficient corroborating evidence in addition to Angelica's statements to support the jurisdictional findings. Jason F. presents no argument with respect to the dispositional orders. We conclude that substantial evidence supports the jurisdictional orders and affirm.

BACKGROUND

The minors came to the attention of the Department of Children and Family Services (DCFS) on January 11, 2012, when it received a referral alleging Jason F. was hospitalized for suicidal thoughts and depression he attributed to Angelica's false accusation of rape.

On March 15, 2012, DCFS filed a section 300 petition pursuant to subdivisions (b), (d), and (j) on behalf of Angelica and Sadie. As amended and sustained, paragraphs b-1, d-1, and j-1 of the petition alleged under section 300, subdivisions (b), (d), and (j) that Jason F. sexually abused Angelica by placing his penis in her vagina; on previous occasions he had exposed his penis to Angelica; and he forced her to touch his penis. Mother knew of the sexual abuse of Angelica and failed to protect her. As amended and sustained, paragraph b-2 of the petition alleged under section 300, subdivision (b) that

¹ Undesignated statutory references are to the Welfare and Institutions Code.

Sadie's father, Jason F., has a history of illicit drug abuse and is a current user of marijuana, which renders him incapable of providing regular care of Sadie.

Mother told DCFS that about two weeks before Christmas 2011, Angelica had accused Jason F. of sexually molesting her, but Mother did not believe Angelica. Mother had walked into Angelica's bedroom around 4:00 o'clock one morning. Angelica looked startled, initially denied that Jason F. had done anything to her, then stated that Jason F. had shown her his penis at her request. Angelica then recanted her statement to Mother. Jason F. told Mother that he had been showing Angelica a scar on his "upper thigh." Mother did not think it was odd that Jason F. was showing Angelica his scar.

Mother told DCFS that subsequently she grounded Angelica. Mother stated that on one of the days Angelica was restricted to the house, Mother had given Angelica permission to jump on the trampoline outside while Mother was at work. After Mother allowed Angelica to be moved to Rhode Island to live with Daniel F., Angelica told her that when she was grounded she had not gone outside to play, but instead Jason F. had raped her in Mother's bed. Mother did not believe Angelica's account because Crystle S., with whom the family was then living, told Mother that she had seen Angelica playing outside. Mother never took Angelica for a medical examination because Angelica admitted that she had lied about the sexual abuse. Mother believed Angelica accused Jason F. of sexually molesting her because Angelica wanted to live with Daniel F. in Rhode Island. When asked why Daniel F. and Jason F. shared the same last name, Mother "explained that it was a 'Portuguese thing'; that a lot of people from Portug[al] share similar last names."

Jason F. told DCFS that he had gone into Angelica's room about 4:00 a.m. on one occasion, and when Mother came into the room and saw that "his pants were a little loose," Mother said, "What the fuck is going on here?" Jason F. stated he had shown a scar on his "upper left thigh" to Angelica. But when he lifted his shorts to comply with DCFS's request to show his scar, there was no visible scar. Jason F. had used drugs in the past and "smoked marijuana a month ago."

The juvenile court detained Angelica from Mother and Sadie from Mother and Jason F.

Angelica told DCFS by telephone from Rhode Island that Jason F. sexually abused her in California, including making her masturbate him and his penetrating her vagina. She left California “so she wouldn’t have to deal with [Jason F.] anymore.” Later, Angelica elaborated in an in-person interview with a child protective services social worker in Rhode Island that late one night, when she was getting a drink of water from the kitchen, Jason F. took her to the garage and gave her marijuana and vodka or tequila mixed with soda. Angelica was “[c]ompletely out of it.” Jason F. pulled down his pants, grabbed her hand and put it on his penis, making her masturbate him. He took her to the living room and felt her breast. Then he took her to her bedroom, and with his back against the door, put his penis inside her vagina. He also performed oral sex on her and then put his penis in her mouth. When the door moved, they both got up and went to the side of the room. Mother entered the room, yelling, and asked her if Jason F. was “doing anything sexual to her.” Angelica initially denied that Jason F. had done anything, then admitted that he was doing “sexual things to her.” Jason F. signaled Angelica to “be quiet” and told Mother that he had been showing Angelica a scar on his butt. Angelica then recanted her statement to Mother that Jason F. had “show[n] [her] his penis.” A couple of days later, when she was grounded, Jason F. had made Angelica pretend she was going outside to play and motioned for her to go into his bedroom. He had alcohol on his breath. He put his penis in her mouth and then performed oral sex on her. Then he put his penis inside her vagina and ejaculated on her belly. He also showed her pornography on his computer. Jason F. performed oral sex on her and had her perform oral sex on him “[m]aybe maximum five times.” Angelica stated that Jason had “‘penetrated’ her on two different occasions,” had not worn condoms, and had not ejaculated inside her.

Daniel F. stated to DCFS by telephone that he had divorced Mother “due to [M]other’s infidelity with his son, Jason F[.]” Angelica had sent him a text message around the time of the sexual abuse that “‘she needed to get out of her mother’s house.’”

She later told him that “‘something sexual happened with Jason [F.] twice, but she didn’t go into details about it.’” Jason F. had been using drugs from the time he was young, including crystal methamphetamine.

Paternal great-grandmother stated to DCFS by telephone that Angelica had told her Jason F. had been touching her sexually. Jason F. had a drug problem from the time he was a teenager and had used crystal methamphetamine in the past.

Half sibling Katie F. stated to DCFS by telephone that she was not surprised when Angelica told her Jason F. had touched her and had sex with her. She stated, “Jason [F.] is someone you get a bad vibe from. . . . When he lived here with my grandmother in Rhode Island for a few months, he tried to ask me to come into his room. It was a weird feeling, like creepy, and I was really uncomfortable. I walked out of the room quickly.” Jason F. had been using drugs for a long time, had been addicted to crystal methamphetamine, and had lost all of his teeth because of his drug use.

Dr. Rachel Clingenpeel, a child abuse physician in Rhode Island, concluded that Angelica had been sexually abused and told DCFS that Angelica “gave an extremely credible disclosure of sexual abuse.” A forensic medical examination report indicated that Angelica “has bacterial vaginosis, which is common in women and girls who have had sexual contact, but it is not diagnostic of sexual contact.”

At the adjudication hearing on August 2, 2012, Father objected to “everything in the reports” as hearsay. On cross-examination Angelica testified by telephone that she was not angry at Mother for leaving Daniel F. for Jason F. She was in preschool or kindergarten when Jason F. moved in with Mother. One day in December 2011, between 2:00 a.m. and 4:00 a.m., while she and Jason F. were in the garage, Jason F. grabbed her wrist and made her use her hand and her mouth on his penis. On another occasion, Mother walked in on them, but Jason F. had pulled his pants on before she opened the door. Jason F. had “placed his penis in [Angelica’s] vagina all the way.”

Dr. Carole Jenny, professor of pediatrics at Brown Medical School and head of the child protection program in Rhode Island, testified at the adjudication hearing by telephone that she had physically examined Angelica and concluded that she had been a

victim of child sexual abuse. Dr. Jenny based her opinion on Angelica's consistent disclosures; emotional expression, indicating major trauma; bacterial vaginosis infection, which is more commonly seen in sexually active girls than in girls who have not had intercourse; and the findings regarding Angelica's genital examination, which were consistent with sexual abuse.

The adjudication hearing was continued.

A few months after Angelica testified, Angelica's psychiatrist and clinician reported that because Angelica was suffering from panic attacks, rapid heart rate, upset stomach, and rage triggered by conversations regarding the case, Angelica should not continue to testify, asserting that requiring her to testify would be emotionally detrimental to Angelica and retraumatize her. The juvenile court determined that Angelica was unavailable to testify. Jason F. made a motion to strike Angelica's testimony and dismiss the petition. The court denied the motion to strike and the motion to dismiss, concluding that the testimony that Angelica gave on cross-examination was admissible and that her statements made to DCFS had to be corroborated by her "therapist and from other sources."

At the continued adjudication hearing on January 3, 2013, Crystle S. testified by telephone that Mother, Angelica, and Jason F. had lived with Crystle S. for a year. In December 2011, she woke up early one morning because she heard "a bunch of fussing." She walked into the living room, where Mother, Angelica, and Jason F. were having a family meeting regarding Angelica's allegations that Jason F. showed Angelica his penis. Angelica told Crystle S. that Jason F. had shown her his penis at her request, later recanted that statement, and after Angelica moved to Rhode Island she told Crystle S. that Jason F. had raped her. Mother grounded Angelica for making the allegations. Jason F. smoked marijuana while he lived at Crystle S.'s house.

Jason F. testified at the continued adjudication hearing that he usually smoked marijuana in the garage, and the last time he had smoked marijuana was a year ago.

Striking allegations of forcible rape, the juvenile court sustained the amended petition; declared the minors dependents of the court; removed Sadie from Mother's and

Jason F.'s custody; and removed Angelica from Mother's custody. The court placed Angelica with Daniel F. and terminated jurisdiction over her with a family law order granting Daniel F. sole physical and legal custody of her and monitored contact for Mother. Jason F. was ordered to have no contact with Angelica. The court granted Mother and Jason F. reunification services and monitored visitation with respect to Sadie.

Jason F. and Mother appealed. On June 28, 2013, we dismissed Mother's appeal for failure to file a timely opening brief.

DISCUSSION

A. Standard of review

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) “““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

B. There was sufficient corroborating evidence to support the jurisdictional findings

1. The allegations of sexual misconduct

Jason F. “concedes that the evidence supported section 300 findings based on general sexual misconduct,” but contends that the juvenile court committed reversible error by sustaining the allegations under section 300 of specific sexual misconduct that were supported only by Angelica's hearsay statements. We disagree because there was sufficient corroborating evidence to support the jurisdictional findings.

We first note that DCFS urges that “[b]ecause Jason F. concedes there was ample evidence to support jurisdictional findings that Angelica and Sadie were at risk due to his engaging in sexual misconduct with Angelica . . . and does not challenge the juvenile court’s dispositional orders,” his appeal is “nonjusticiable.” We decline DCFS’s invitation to conclude that Jason F.’s appeal is “nonjusticiable” and examine the merits of Jason F.’s appeal.

As we explain, we determine that sufficient corroborating evidence supports the jurisdictional findings. If hearsay statements are objected to, they are not sufficient on their own to support a jurisdictional finding, unless they fall within an exception enumerated in section 355. Section 355 states, in pertinent part, “(a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence.” Section 355 further states, “(b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).” Section 355 also provides, in pertinent part, “If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions: [¶] (A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay. [¶] (B) The hearsay declarant is a minor under 12 years of age who is the subject of the jurisdictional hearing. . . . [¶] . . . [¶] (D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.” (§ 355, subd.

(c)(1)(A), (B), (D).) Accordingly, an objection does not render the hearsay inadmissible, but means that “uncorroborated, the hearsay statements did not constitute substantial evidence and could not be used as the exclusive basis for finding jurisdiction under section 300.” (*In re B.D.* (2007) 156 Cal.App.4th 975, 984.)

Jason F. argues that exceptions allowing the admission of uncorroborated hearsay do not apply here, contending Angelica did not make spontaneous statements to Mother when Mother walked into her bedroom (§ 355, subd. (c)(1)(A)); Angelica was not younger than 12 years old when she was abused or when she began making allegations against Jason F. (§ 355, subd. (c)(1)(B)); and Angelica was not made available for meaningful cross-examination (§ 355, subd. (c)(1)(D)). Because we conclude that there was sufficient corroborating evidence to support the jurisdictional findings, we need not address that argument.

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction 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 . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. . . . 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.” Section 300, subdivision (d) provides that a child comes within the jurisdiction of the dependency 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” Section 300, subdivision (j) provides a basis for juvenile court jurisdiction if “[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.”

As sustained, paragraphs b-1, d-1, and j-1 of the petition alleged under section 300, subdivisions (b), (d), and (j) that Jason F. sexually abused Angelica by placing his

penis in her vagina; that on previous occasions he had exposed his penis to Angelica; and that he forced her to touch his penis. Mother knew of the sexual abuse of Angelica and failed to protect her.

Jason F. contends that corroborative evidence “did not establish that Jason [F.] had placed his penis in Angelica’s vagina, engaged in sexual intercourse with the minor, forced the minor to touch his penis, or even exposed his penis to the minor.” He argues that the corroborative evidence showed only that he “may have engaged [in] nonspecific sexual misconduct with Angelica.” We disagree.

“[C]orroborating evidence is that which supports a logical and reasonable inference that the act described in the hearsay statement occurred. [Citation.]” (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 984.) Analogizing “to the rule in criminal law requiring independent corroborative proof of accomplice testimony,” the *In re B.D.* court described corroborative evidence as “sufficient if it tends to connect defendant with the crime even though it is slight and entitled, when standing by itself, to but little consideration [citations], nor does it need to establish the precise facts testified to by the accomplice. It is sufficient if it tends to connect the accused with the commission of the offense, and defendant’s own statements and admissions, made in connection with other testimony, may afford corroboratory proof sufficient to sustain a verdict. It is not necessary that the corroborating evidence should go so far as to establish by itself, and without the aid of the testimony of an accomplice, that the defendant committed the offense charged. [Citations.] ¶ Moreover, defendant’s own testimony and inferences therefrom, as well as the inferences from the circumstances surrounding the entire transaction, may be sufficient corroborative testimony. [Citations.] False or misleading statements to authorities may constitute corroborating evidence or as part of circumstances supportive of corroboration [citation], and “[a]lthough it has been said that corroboration is not sufficient where the circumstances are consistent with the innocence of the accused [citations], the more recent decisions have held that whether the corroborating evidence is as compatible with innocence as it is with guilt is a question of weight for the trier of fact [citations].” [Citation.] [Citation.]” (*Id.* at pp. 984–985.)

We conclude that corroborating evidence supports a logical and reasonable inference that the specific acts of which Angelica complained occurred, namely, that Jason F. had exposed his penis to Angelica, placed his penis in her vagina, and forced her to touch his penis.

Jason F. admitted that he had gone into Angelica's room at 4:00 a.m. and that Mother had yelled on entering the room when she saw that "his pants were a little loose." Mother had said, "What the fuck is going on here?" Jason F. also admitted that he had told Mother that he had shown Angelica a scar on his body, although he stated that he had shown Angelica a scar on his "upper left thigh." But when he lifted his shorts to show DCFS his scar, there was no visible scar. As noted, corroborative evidence may consist of false or misleading statements to authorities.

Accordingly, "All of this is evidence from which a reasonable inference could be drawn that [Jason F. committed the allegations.]" (*In re B.D.*, *supra*, 156 Cal.App.4th at p. 986.) We conclude that there was sufficient corroborating evidence to support the jurisdictional findings alleged in paragraphs b-1, d-1, and j-1 of the petition alleged under section 300, subdivisions (b), (d), and (j).

2. The allegations of drug use

As sustained, paragraph b-2 of the petition alleged under section 300, subdivision (b) that Sadie's father, Jason F., has a history of illicit drug abuse and is a current user of marijuana, which renders him incapable of providing regular care of Sadie.

Jason F. contends that corroborative evidence "did not establish a 'ca[us]al nexus' between [his] drug use and a risk of harm to" Sadie. We disagree because "there is a substantial risk that [Sadie] will suffer, serious physical harm or illness . . . by the inability of [Jason F.] to provide regular care for [Sadie] due to [Jason F.'s] . . . substance abuse." (§ 300, subd. (b).)

Angelica stated that Jason F. had supplied her with marijuana and alcohol while they were in the garage, causing her to become "[c]ompletely out of it." Jason F. then sexually abused her. Numerous witnesses stated that Jason F. has a long history of using marijuana and crystal methamphetamine. Jason F. reported that he has used drugs in the

past and that “he smoked marijuana a month ago.” Crystle S. testified that Jason F. smoked marijuana while he lived in her home. And at the adjudication, Jason F. testified that he usually smoked marijuana in the garage, which was consistent with Angelica’s statement that Jason F. forced her to smoke marijuana in the garage. Thus, the corroborative evidence supports Jason F.’s using drugs and forcing Angelica to use drugs in order to molest her. The juvenile court could reasonably conclude that because of Jason F.’s substance abuse, along with his violation of a position of trust with Angelica, who is his stepdaughter and half sister; his denial of his sexual abuse and furnishing of drugs to Angelica; and his failure to recognize or care that such sexual and drug abuse could negatively affect Sadie—whose mother had failed to protect Angelica—put Sadie at substantial risk of harm.

Accordingly, we conclude that substantial evidence supported the jurisdictional finding alleged in paragraph b-2 of the petition under section 300, subdivision (b).

Jason F. has presented no argument with respect to his appeal from the dispositional orders. Accordingly, we treat any argument as to the dispositional orders as forfeited. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545–546 [if appellant’s brief does not contain legal argument with citation of authorities on point made, court need not furnish argument or search record for support for appellant’s contention but may treat it as forfeited and pass it without consideration].)

DISPOSITION

The juvenile court’s jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.