

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ABEL R., a Person Coming Under the
Juvenile Court Law.

B247555

(Los Angeles County
Super. Ct. No. CK97194)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAIME R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin,
Referee. Affirmed.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Stephen D. Watson, Senior Associate County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Jaime R. (Father) appeals from the jurisdictional order regarding his son, Abel R., who was declared a dependent of the juvenile court in February 2013. Father contends the court erred in finding under Welfare and Institutions Code section 300, subdivision (b), that he posed a current substantial risk of serious physical harm or illness to Abel at the time of the jurisdiction hearing.¹ Father also appeals from the dispositional order by which the court declined to place Abel in Father's custody. Because we conclude that substantial evidence supports both the jurisdictional and dispositional orders, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2012, Abel (born in Mar. 2011) came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) when it received a referral alleging the child was being improperly supervised and neglected by Mother and being physically abused by an unknown perpetrator. The social worker observed numerous bite marks on the child's arms, chest, and back.

Mother was subject to a voluntary family maintenance case plan that had been initiated in April 2012, but she had failed to comply with the terms of the case plan. Father was not involved with the child's care and was not included in the case plan. Mother had a history of mental health issues and suffered from bipolar disorder. In October 2012, a team decision-making meeting was held and concern was expressed that Mother might be abusing drugs, failing to properly supervise the child, and that there was domestic violence between Mother and Father. The social worker who supervised the case at that time reported that Father had mental health issues and was seeing a psychiatrist.

DCFS filed a section 300 petition on January 4, 2013, alleging Abel was at risk of serious physical harm (§ 300, subd. (a)) based on Mother's neglectful acts that resulted in

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

the child sustaining numerous bite marks. Further, the petition alleged that the child was at risk of physical harm, damage, and danger based on his parents' history of engaging in violent altercations, including Father striking Mother with a cord and with papers while she was pregnant with Abel. These same allegations were asserted to support a finding that Abel was subject to dependency court jurisdiction based on his parents' failure to protect him from harm. (§ 300, subd. (b).) DCFS further alleged that Mother's mental health problems rendered her incapable of providing care for the child.

The maternal grandmother told the social worker that early in Mother's pregnancy Mother and Father were arguing and Father hit Mother on the face with a cord used to hold bales of hay together. Mother said, "don't hit me," but Father again hit her on the shoulder with the cord. The maternal grandmother called the police, but Mother did not want to press charges and therefore no report was made. When Mother was seven months pregnant, Mother and Father were arguing and Father threw a stack of papers at Mother. When the maternal grandmother intervened, Father pushed her. The maternal grandfather told Father to leave. On his way out, Father slammed a door so hard that it broke. The maternal grandmother called the police. The maternal grandmother further reported that Father often threw things, such as perfume bottles. Once he punched the bathroom wall and left a large hole in it. Father frequently called Mother abusive names. The maternal grandmother had seen Father take prescription medication for purposes of anger management. Father blamed Abel for the troubled relationship he had with Mother and was not affectionate with the baby. Father had not been in a relationship with Mother since March 2012 and he did not make efforts to visit the child.

A pre-release investigation report was prepared regarding the possibility of releasing Abel to Father. Father told the social worker in January 2013 that he and Mother argued all the time. However, he denied ever hitting Mother or the maternal grandparents, and he said the maternal grandfather kicked in the bedroom door. Father acknowledged he had taken medication for ADHD (attention deficit hyperactivity disorder) in the past to help him concentrate, but he said he no longer needed it and had stopped taking it. He had last seen Abel in late December 2012 when he took the child to

Disneyland. He said he did not visit with Abel frequently because Mother told him he would never have any rights to the child. Father referred to the child as “Daniel” rather than Abel. He said he wanted custody of the boy.

Mother had told a social worker in January 2011 (when she was pregnant with Abel) that she was worried about Father’s inability to control his anger. She said, “[h]e wouldn’t really hit me, I would push him and he holds my hand. He gets up in my face with [a lot] of anger.” At that time, she reported that Father used to take medication to help him with his anger but he had stopped taking it; she could tell when he stopped taking the medication because he became verbally aggressive and had difficulty concentrating. However, when interviewed after the section 300 petition was filed in this case, Mother denied that she and Father ever engaged in domestic violence. She acknowledged that they argued but said it was never physical.

The paternal grandmother, when asked by the social worker if Father had issues with his anger, replied, “Sometimes, yes. That was one of the problems he had when he was younger. He was taking the medication because he couldn’t focus. I guess the medication was making him angry. They changed to different medication. There was medication that he would get more frustrated and angry. After that he started taking different medication and was better. He wouldn’t get mad more easily; he is much better. With the medication I know he used to get angry. The doctor said it was a reaction of the medication. It settled down in one part, and the other part he would get angry. It got better and it was okay.” The paternal grandmother said Father and Mother fought but it never involved hitting.

In its jurisdiction report dated February 13, 2013, DCFS informed the court that it could not recommend that Abel be released to Father’s care, given the unresolved reports of domestic violence and Father’s failure to make himself available for an in-person interview with DCFS. DCFS advised that Father participate in anger management classes in order to ensure the child’s safety. Abel was being cared for by the maternal grandmother, who reported that she had no contact with Father; he had never called or come to her home to visit Abel.

In late January 2013, DCFS reported that the social worker interviewed Father at his home, where he lived with the paternal grandparents. The social worker reported she would work toward scheduling visitation with Father and Abel, possibly to be monitored by the paternal grandparents. As to Father's previous contact with Abel, the social worker reported that Father had made minimal efforts to maintain a relationship and visitation with the child. DCFS intended to set up visitation so Father could begin rebuilding his relationship with his son. Father admitted to the social worker during the interview that he had taken medication to control his anger and calm down, but said he stopped taking it in high school because he did not need it anymore. Father reported that his school therapist knew he had stopped taking the medication and observed that Father had begun to control his anger.

At the adjudication and disposition hearing on February 13, 2013, the court dismissed the counts alleged under section 300, subdivision (a). As to Father, the court sustained count b-2 as amended to state that Mother and Father have a history of engaging in violent altercations and aggressive behavior by Father against Mother. On prior occasions, Father struck then-pregnant Mother with papers and another time with a cord. DCFS was ordered to provide family reunification services for Mother and Father, including among other things setting up a visitation schedule for Father. Father was ordered to address case issues if recommended by his psychiatrist, to have a psychiatric evaluation, to participate in mental health counseling, and to take any prescribed psychotropic medication. He was further ordered to complete a parenting program and an anger management program.

DISCUSSION

I. Substantial Evidence Supports the Finding on Count B-2 That Father Is an Offending Parent for Purposes of Assumption of Jurisdiction

Father argues there was no showing that he presented a current risk of danger or harm to Abel because the two incidents in which he was alleged to have been physically aggressive toward Mother happened before Abel was born. We disagree.

Before asserting jurisdiction over a minor, the juvenile court must find that the child comes within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) The burden is on DCFS to “““prove by a preponderance of the evidence that the child . . . comes under the juvenile court’s jurisdiction.””” (*Ibid.*, quoting *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) “On appeal from an order making jurisdictional findings, we must uphold the court’s findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value.” (*Veronica G.*, *supra*, at p. 185.) Issues of fact and credibility are questions for the trier of fact, and we may not reweigh the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) “If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.)” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) In addition, the section 300

petition need only contain allegations against one parent to support the exercise of the court's jurisdiction. (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.) Thus, in order to successfully argue for reversal of the juvenile court's order adjudicating Abel to be a dependent of the court, Father would have to demonstrate that no basis exists for any of the jurisdictional findings made against either Mother or Father. Father has not attempted to refute the court's exercise of jurisdiction over the child based on Mother's conduct. Nonetheless, we will discuss the court's findings regarding Father in order to demonstrate that Father's contentions are without merit.

Under section 300, subdivision (b), a child may be adjudged a dependent if 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 failure or inability of his 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 basis of Father's argument on appeal is that the domestic altercations between him and Mother occurred before the child was born, and therefore the child was not exposed to any harm from the incidents, and because Mother and Father were no longer in a relationship there was no further cause for concern. What Father fails to acknowledge is that the allegations had less to do with the potential for further domestic violence between Mother and Father, and more to do with Father's potentially unresolved anger management problem, his temperament, and his coping skills. His inability to control his anger would have implications for his ability to properly care for a toddler, regardless of whether he and Mother were still in a relationship. The record is replete with substantial evidence indicating Father had difficulty controlling his anger and frustration. Mother and the maternal grandmother told the social worker that he had difficulty with his temper, that he and Mother argued frequently, that he often called

Mother abusive names, and that he took medication intended to help him manage his problem with anger. The maternal grandmother said he threw things and damaged a door. When asked if Father had issues with anger, the paternal grandmother gave an oblique and evasive answer. She began, however, by acknowledging that he has difficulty. She said, “Sometimes, yes” (in the present tense), but then vacillated and said he had problems when he was younger, that his problems were *caused* by the medication, and ostensibly that matters improved when he stopped taking it. Father denied that any domestic violence had occurred, but acknowledged that he had taken prescribed medication to control his anger and calm him down, although he said he did not need it any longer.

Based on this evidence, the juvenile court acted well within the bounds of reason in finding that Father presented a current risk of harm to Abel. In accordance with that finding, the juvenile court ordered Father to undergo a mental health assessment, anger management training, and parenting classes, all reasonable and appropriate steps to ensure that Father is equipped to care for a young child without becoming frustrated and harming the child as a result of an inability to control his anger. Because the court’s finding on count b-2 is supported by more than adequate evidence, we will not interfere with the court’s exercise of discretion.

II. Substantial Evidence Supported the Court’s Refusal to Release the Child Into Father’s Custody

Father argues that even if we uphold the juvenile court’s jurisdictional findings, the dispositional order removing Abel from Father’s custody is not supported by substantial evidence under the heightened standard of proof applicable at the dispositional phase. (§ 361, subd. (c).) He argues that reasonable means and less drastic alternatives to removal existed that would protect the child from substantial danger, i.e., provision of family maintenance services, an order requiring Father to live with the paternal grandparents and not be left alone with the child, and an order precluding contact between Mother and Father in the child’s presence. We review the juvenile court’s

dispositional orders for abuse of discretion (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006), and find no such abuse here.

Section 361, subdivision (c)(1) provides that a dependent child may not be removed from parental custody unless the juvenile court finds by clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and that there exists no reasonable means by which the minor's physical safety can be protected without removing the minor from the parent's physical custody. Thus, "[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

The court was justified in ordering that Father not be permitted to assume custody of Abel. The evidence indicated that Father had little or no relationship with Abel and little or no experience caring for the child; he had not attempted to maintain visitation with the child and simply acceded to Mother's assertion that he had no rights to the child. As DCFS points out, it was not a matter of removing Abel from Father's custody, but rather a decision not to place Abel with Father because there had been minimal contact between the two of them. In addition, DCFS and the court reasonably wished to assess his mental health status and parenting ability before considering placing the child with him. We find no abuse of discretion in this regard.

DISPOSITION

The challenged orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.