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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B249403
(Los Angeles County
Super. Ct. No. CK96183)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

STACY B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Veronica S. McBeth, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

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

No appearance for Minor.

* * * * *

Appellant Stacy B. (Father) appeals from the juvenile court's jurisdiction order sustaining a dependency petition under Welfare and Institutions Code section 300, subdivision (b),¹ as to the child T.B. and a disposition order declaring her a dependent of the court and permitting her to remain at home.

We affirm. Substantial evidence supported jurisdiction, as the evidence showed Father's alcohol abuse and history of domestic violence with Tammy J. (Mother) created a risk of harm to T.B. Further, the juvenile court acted within its discretion in declaring T.B. a dependent of the court, finding that less restrictive alternatives would not be effective to protect her.

FACTUAL AND PROCEDURAL BACKGROUND

Detention.

Father and Mother are the unmarried parents of S.B. born in 1995 and T.B. born in 2000. In 2009, law enforcement received a referral that S.B. had been sexually assaulted by an unknown perpetrator, but she later recanted and said she lied about the incident. Another law enforcement referral in February 2012 indicated that Mother physically abused S.B. and wanted her to move out. No physical evidence of abuse was observed.

The family came to the attention of the Los Angeles County Department of Children and Family Services (Department) on October 19, 2012, after Mother contacted the police because a verbal argument with Father had escalated into a physical altercation. According to the referral, Mother stated Father grabbed her, dragged her to the floor and scratched her forehead. She stated there was ongoing domestic violence in the home, but this was the first time she had contacted law enforcement. Mother refused law enforcement's offer of an emergency protection order. T.B. was in the house when the altercation occurred but did not see anything.

A social worker interviewed Mother, who stated that the referral allegations were accurate except that Father choked but did not drag her. Elaborating, Mother stated that Father wanted to have sex with her but she refused. She ultimately relented, but Father

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

became upset after she asked him to finish. She went to sleep on the couch, but Father then accused her of sleeping with other men and began to physically attack her. She screamed when he choked her, but was able to break free and run out the back door, going next door to her own father's home to call the police. After she heard Father leave, she returned to her home. S.B. was not home during the incident, and T.B. remained in her room. Mother indicated she did not want to get back together with Father and was fearful of him. The social worker observed that Mother had a scratch on her forehead; she also saw that Mother had received the paperwork to obtain a restraining order and was having the locks changed. Mother stated Father had physically abused her in the past and had hit her a few times. Approximately five years earlier, she reported one incident to the police, but recanted after one of the children had a crisis and Father promised to change.

Mother explained that Father had kicked S.B. out of the house after she had thrown away his "cannabis butter." She described Father as having a drinking problem and stated he smoked marijuana nightly. Though on occasion he would force her to smoke marijuana with him, she denied there was any marijuana in the house currently.

The social worker interviewed T.B. outside of Mother's presence. She did not see any violence; she woke up when she heard Mother yelling, Mother had left the house and Father was getting ready to leave by the time she came out of her room. Previously, she had witnessed her parents physically fight and she knew that S.B. had broken up physical altercations. She loved Mother and Father and was not scared of them, and she was sad when they fought. She had seen Father use marijuana.

Approximately three days later, Mother told the social worker she had decided against a restraining order, noting she had been speaking with Father on the telephone and was no longer fearful of him. S.B. confirmed to the social worker Mother's account of why she no longer lived at home, adding that Father threw her bookshelf on the ground, spilling her belongings, after he discovered what she had done. According to her, she gave the cannabis butter to the neighbors because they were "drug heads" and she did not want the drugs in her own home. Both Mother and Father smoked marijuana

in front of her. She stated that Mother and Father argued all the time, and that she had witnessed physical fights and broken one up. With respect to the most recent altercation, Father kept calling her to ask her to beg Mother to let him come home. The calls upset her.

The social worker also interviewed Father. He explained that he had been under a lot of stress recently, having suffered a heart attack, and acted out as a result of jealousy. He admitted that he and Mother had been involved in a physical altercation, but denied hitting, striking or choking her, instead explaining that Mother's telephone scratched her forehead when he grabbed it from her. Regarding previous domestic violence, he stated that approximately one year ago Mother scratched her own face when she tried to kick him out of the house and he refused to leave. Approximately two or three years earlier, they had a physical fight and head-butted each other, resulting in injuries to Mother's eye. Father admitted smoking marijuana nightly for pain management of old bullet wounds. He added that he intended to quit soon and agreed to drug test. He hoped to get back together with Mother. He admitted kicking S.B. out of the house, claiming she brought his cannabis butter to school. He also admitted having an extensive criminal history. The Department confirmed Father had been convicted for multiple offenses and arrested for several additional crimes, including rape by force and spousal abuse.

The Department initiated an emergency Team Decision Meeting (TDM) instead of detention; Father agreed to stay away from the family home pending the TDM. Mother and Father initially met separately with the Department at the TDM. On the one hand Mother outlined the "sexual torture" Father committed, but on the other believed he would not hurt anyone. She conceded that she had failed to protect the children by allowing them to witness certain abuse. At the Department's insistence, she reluctantly agreed to obtain a restraining order. Mother characterized S.B. as "out of control," though she would not have made her leave the house before she was 18 years old. Father stated he was dependent on Mother. He admitted to verbal arguing and fighting, but failed to realize that their physical altercations were abusive. On the basis of Mother's

and Father's statements, the Department determined that neither parent could safely protect the children and detained them.

The following day when social workers came to retrieve the children, they were not at home or at school. Mother provided the Department with a copy of a restraining order she obtained against Father. However, she refused to disclose the children's whereabouts to the Department. Father indicated he would stay away from the home if Mother could retain custody of the children. By October 26, 2012, however, Mother had become fearful of Father, stating he had been harassing her on the telephone, and informed the Department she would be going to a domestic violence center with the children.

On October 29, 2012, the Department filed a section 300 petition, alleging under subdivisions (a), (b) and (j) the children were at risk of harm by reason of Mother's and Father's engaging in domestic violence and history of substance abuse, and Father's physical abuse. Mother and Father appeared at the detention hearing, and the juvenile court released the children to Mother on the condition that Father not reside in the home.

Jurisdiction and Disposition.

The Department re-interviewed all family members for its December 3, 2012 jurisdiction/disposition report. T.B. stated that she had witnessed Mother and Father argue, but she had never witnessed physical violence between them and felt safe with both parents. She denied ever seeing Mother or Father smoke marijuana, though admitted she had smelled it in her parents' bedroom. She denied that Mother or Father was ever physically abusive toward her and believed that S.B. was gone for a couple of weeks because she broke the rules of the house.

S.B. learned about Mother's and Father's most recent altercation from Mother, who said she was hurt when Father tried to grab her cell phone. Though Mother and Father argued frequently, S.B. had never seen them be physically violent with one another. She knew Father smoked marijuana regularly and drank on occasion, but she did not believe either affected his behavior negatively. She, too, denied that her parents were ever physically abusive toward her or T.B. She minimized the reasons for her

leaving her home, stating that she gave away “butter” and was staying with a friend because Father thought she was getting out of control.

Describing her recent altercation with Father, Mother stated he had been out drinking and wanted to have sex with her when he came home. She agreed because otherwise Father “would have done torturous things” to her, which occurred only when he drank. After Mother went out to sleep on the couch, Father saw her looking at her cell phone and accused her of cheating on him. He grabbed her cell phone aggressively, scratching her forehead. When she tried to leave, Father grabbed her and held her until she broke loose. She stated that Father used to cheat on her, and she described an incident where she hit herself with a jewelry box and then made a police report against Father. She and Father separated for approximately six months after that incident and had not had any issues after getting back together until the recent Department involvement. She expressed concern and feelings of being overwhelmed because Father was completely dependent on her. She admitted to using marijuana only on occasion and agreed to drug test. In November 2012 she once tested positive for marijuana. Mother confirmed S.B.’s original version as to why she left home for a few weeks.

Father reiterated that he and Mother argued regularly, and S.B. once intervened when he and Mother got into a “shoving match.” Father’s account of the most recent incident was generally similar to Mother’s, and he accepted 75 percent of the blame for the altercation. He thought Mother may have overreacted because she was under a lot of pressure, and he also thought the Department had blown the situation out of proportion. He assumed his children knew he smoked marijuana, but added that he had not smoked since the Department became involved and agreed to drug test. He denied ever physically abusing the children. He also confirmed S.B.’s original version as to why she left home, except that he denied kicking her out and stated she went to her friend’s house voluntarily.

The Department also attached a police report to the jurisdiction/disposition report, which contained Mother’s account of the altercation that Father grabbed her cell phone and then pushed and scratched her, and grabbed her and dragged her toward the bedroom.

At that time, she also stated she had been involved in several unreported domestic violence incidents with Father.

Despite the somewhat conflicting accounts, the Department opined that there was domestic violence in the home that jeopardized the safety of the children, and further opined that Father was abusing marijuana and alcohol, and was in need of substance abuse services. It recommended releasing the children to Mother with family maintenance services and providing reunification services to Father.

In a February 19, 2013 interim review report, the Department reported that Mother had three negative drug tests and two no-shows during the past three months, and Father had two negative tests and one no-show. In January 2013, police followed up on a referral that T.B. was a victim of general neglect by Mother. When officers arrived, they discovered that Father had been in the home. In a later interview with the Department, Mother denied that Father had been in the home.

At the beginning of the jurisdiction hearing also on February 19, 2013, the juvenile court dismissed S.B. from the petition because she had turned age 18. The juvenile court admitted the Department's reports into evidence. Mother testified, claiming that Father accidentally scratched her forehead while grabbing her cell phone. Previously, the children had not observed any injuries resulting from an altercation with Father. She admitted telling the police that Father had hit her and was abusive, but now stated that information was false and exaggerated. She stated she obtained a restraining order only because the Department said it would remove T.B. from her custody if she did not. The statements in her restraining order application about Father threatening to kill her were likewise false. She continued to maintain, however, that Father became aggressive when he drank, but added that she was annoyed by rather than afraid of his aggressive behavior. Mother repeated her description of the 2009 incident where she told police Father hit her, when she actually hit herself in the head with a jewelry box after she discovered Father had been cheating on her. She added that six months later she provided an affidavit to the police recanting her story that Father hit her. She now denied

that there was any history of domestic violence between Father and her, despite telling the social worker there had been prior violent incidents.

Mother claimed she did not permit Father to smoke marijuana in front of the children, but she knew he kept his marijuana in their bedroom in an unlocked box. Mother admitted to occasionally smoking marijuana. She believed that Father had since stopped smoking and drinking, and was seeking counsel from his church. She knew this information from talking on the telephone with Father; she denied he had been at the house. Father had been at the same job for 15 years, and had never missed work due to drinking or smoking.

At the conclusion of Mother's testimony, the juvenile court indicated that the balance of the jurisdiction hearing would need to be put over for a short time. Speaking directly to Mother and Father, the juvenile court emphasized the importance of cooperating with the Department. It stated that while Father's drinking had not interfered with his job, it may be interfering with his ability to be a good parent, and it directed him to refrain from drinking and smoking marijuana. The juvenile court directed the Department to provide weekly alcohol and drug testing, and low or no cost referrals for individual counseling, conjoint counseling and parenting classes.

When the jurisdiction hearing resumed on March 13, 2013, Mother reported she had been unable to enroll in counseling or parenting classes because the services were expensive, had wait lists or did not correspond with her work schedule. She had four negative drug tests. Father, too, had not participated in any services, but primarily because he did not see the need for them. Father had four negative drug tests and one no-show. The juvenile court admitted additional Department reports into evidence and heard argument from counsel. It amended and sustained only two counts in the petition under section 300, subdivision (b)—one relating to Father's alcohol abuse and the other relating to Mother's and Father's history of violent altercations. It expressly found Father's marijuana use did not pose a risk to the children. It struck all remaining allegations in the section 300 petition.

Proceeding to disposition, the juvenile court heard additional argument, and thereafter ordered that T.B. remain placed at home and permitted Father to move back home. It stated that it was making a home-of-parents order in view of the family's positive attributes, including that Mother and Father had been together for over 20 years, Father had stable employment, both Mother and Father had been testing clean for an extended period, and T.B. and S.B. were well-adjusted and doing well in school. It further ordered that Mother and Father continue to drug test and that they engage in conjoint and family counseling. It also directed the Department to make unannounced home visits, and directed Mother and Father to make T.B. available for those visits.

Father appealed.

DISCUSSION

Father contends that substantial evidence did not support the juvenile court's jurisdiction findings and that the juvenile court abused its discretion in declaring T.B. a dependent of the court. We disagree.

I. Substantial Evidence Supported Jurisdiction Under Section 300, Subdivision (b).

As amended and sustained by the juvenile court, the section 300 petition alleged as the bases for jurisdiction that “[F]ather . . . is an abuser of alcohol, which renders the father incapable of providing regular care of the child. The father’s alcohol abuse endangers the child’s physical health and safety, placing the child at risk of physical harm, damage and danger. . . . [and] [f]ather . . . and mother . . . have a history of engaging in altercations in which the parents yell at and strike each other in the presence of the child. The child intervened in the altercations between the mother and the father. Such conduct on the part of the parents against each other endangers the child’s physical health and safety and places the child at risk of physical harm[,] damage, danger and failure to protect.”

We review the juvenile court’s jurisdictional findings under the substantial evidence standard. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574.) Pursuant to this standard, we determine whether there is any substantial evidence, contradicted or

uncontradicted, to support the juvenile court's determination. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.) “[W]e draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Jurisdiction is appropriate under section 300, subdivision (b) where there is substantial evidence that “[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” Three elements must exist for a jurisdictional finding under section 300, subdivision (b): “(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.” [Citation.] ‘The third element “effectively requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]’”” (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.) Substantial evidence supported jurisdiction. Father drank an unknown amount of alcohol before the physical altercation that led to Department involvement. Father accused Mother of cheating on him before the altercation, and Mother testified that “[t]he only time that he makes accusations towards me cheating on him is when he's been drinking.” Mother further stated “[h]e (father) only does torturous things when he drinks” and that drinking alcohol made him more aggressive. She characterized him as being mild mannered and quiet when not drinking, but aggressive and disagreeable after drinking. She believed he had a drinking problem and needed alcohol classes.

The evidence showed that T.B. had suffered the consequences of Father's drinking and consequent aggressive behavior. She had witnessed physical altercations between Mother and Father. Though Mother's account of her relationship with Father varied, she stated that she had been physically abused by Father in the past and not reported the

incidents to the police. She admitted to being fearful of him. Immediately before the section 300 petition was filed, Mother considered taking the children to a domestic violence shelter. Father admitted that S.B. had to break up a shoving match between Mother and him. His criminal record included arrests for rape by force and spousal abuse. During the most recent altercation, Father aggressively scratched Mother and physically restrained her in an effort to prevent her from leaving. T.B. was in the home during the incident.

It is well established that “domestic violence in the same household where children are living *is neglect*” that constitutes a failure to protect the children “from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.) Citing both *In re Heather A.* and a series of studies on the detrimental effects of domestic violence on children, the court in *In re R.C.* (2012) 210 Cal.App.4th 930, 941, recently explained that “[e]xposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b).” Such “[c]hildren can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot, or leg” [Citation.]” (*Id.* at pp. 941–942.) But ““even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents. . . .”” (*Id.* at p. 942; accord, *In re T.V.* (2013) 217 Cal.App.4th 126, 134 [“Although T.V. was not present at the time, the domestic violence between the parents was ongoing and likely to continue, thus placing T.V. at substantial risk of physical harm”]; *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562 [observing that domestic violence is detrimental to children].) The evidence here is no different than that in *In re R.C.*, *supra*, at page 943, where the court found evidence of domestic violence in the form of the father’s breaking the mother’s cell phone, pushing her down and choking her, and verbally threatening her constituted substantial evidence supporting jurisdiction under section 300, subdivision (b), even though the child witnessed only one incident and was not physically harmed.

Relying solely on the evidence favorable to his position, Father argues the evidence was insufficient to support jurisdiction. He argues the evidence failed to show how T.B. remained at risk from his alcohol abuse or from the recent single episode of domestic violence. Father's argument essentially ignores the evidence demonstrating that his drinking precipitated his aggressive behavior and that there was a history of domestic violence between Mother and Father. "[F]act-specific arguments which ignore the substantial evidence standard of review are not appropriate." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) Rather, pursuant to our review for substantial evidence, "this court will view the juvenile court record in the light most favorable to that court's order. . . . We may not reweigh or express an independent judgment on the evidence, but must decide only whether sufficient evidence supports the findings of the juvenile court. . . . Issues of fact and credibility are matters for the trial court alone; we may decide only "whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." . . .'" [Citation.]" (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; accord, *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 ["The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence"].)

Nor are we persuaded that the evidence was insufficient to show T.B. was at a present risk from Father's alcohol abuse and domestic violence. Though Father stated he had stopped drinking and there was no evidence that Mother and Father had been involved in a violent altercation since Department involvement, the evidence showed that during the course of their over 20-year relationship Mother and Father had periods where their issues appeared to have resolved interspersed with periods highlighted by verbal and physical altercations. On the basis of this evidence, the juvenile court could reasonably conclude that Mother's and Father's current behavior was temporary and that T.B. remained at risk from Father's previous conduct. (See *In re S. O.* (2002) 103 Cal.App.4th 453, 461 ["past conduct may be probative of current conditions' if there is reason to believe that the conduct will continue"].) Moreover, throughout the proceedings, Mother

and Father increasingly denied that their behavior had any negative effect on T.B. Mother initially described Father as having a drinking problem and being fearful of him given their history of domestic violence. Yet when she testified at the jurisdiction hearing, Mother stated that she had exaggerated the situation, adding she was not afraid of Father when he drank and he was not violent with her when drinking. “[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.” (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.)

Juvenile dependency proceedings are intended to protect children who are currently being abused or neglected, “and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2.) “‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ [Citation.]” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) Substantial evidence that T.B. remained at risk supported the juvenile court’s assumption of jurisdiction over her under section 300, subdivision (b).

II. The Juvenile Court Properly Exercised Its Discretion in Declaring T.B. a Dependent of the Court.

At disposition, the juvenile court declared T.B. a dependent of the court and ordered she be placed at home with both Mother and Father, allowing Father to move back home. It further directed Mother and Father to participate in services including drug testing and conjoint and family counseling. We review the juvenile court’s disposition order under the abuse of discretion standard. “The juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion. [Citation.]” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474; accord, *In re Levi H.* (2011) 197 Cal.App.4th 1279, 1291; *In re A.E.* (2008) 168 Cal.App.4th 1, 4.)

Father maintains the juvenile court abused its discretion by not ordering services in accordance with the less restrictive alternative provided by section 360, subdivision (b), which provides: “If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child’s parent or guardian under the supervision of the social worker for a time period consistent with Section 301.” We find no abuse of discretion. The juvenile court has broad discretion to craft a disposition that serves the child’s best interests. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179.) As in *In re N.M.* (2011) 197 Cal.App.4th 159, 171, the record here “supports the juvenile court’s determination that formal supervision was appropriate.” The court expressly took into account the family’s positive attributes in permitting T.B. to reside at home with both parents. Nonetheless, it recognized that Mother and Father had yet to fully address and resolve Father’s alcohol abuse and their domestic violence, and that they failed to acknowledge the effect of their behavior on T.B. These circumstances are akin to those in *In re N.M., supra*, at page 171, where the court acknowledged that although the father had been largely cooperative and voluntarily started services, a potential for the recurrence of abuse remained. The *In re N.M.* court concluded that by ordering family maintenance services and home visits, a formal reunification plan offered monitoring and reporting of the father’s progress while a voluntary case plan would not. (*Ibid.*) “A primary purpose of the juvenile law is protection of the child. [Citation.]” (*Ibid.*) Here, the juvenile court properly exercised its discretion to conclude that court supervision offered the best protection for T.B.

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J. *

FERNS

We concur:

_____, Acting P. J.

ASHMANN-GERST

_____, J.

CHAVEZ

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.