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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SOFIA K., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

KRISTOPHER K.,

Defendant and Appellant.

B256445

(Los Angeles County
Super. Ct. No. DK04512)

APPEAL from orders of the Superior Court of Los Angeles County,
Philip L. Soto, Judge. Affirmed.

Neale B. Good, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Melinda A. Green, Deputy County Counsel, for Plaintiff and Respondent.

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INTRODUCTION

Father appeals from the jurisdiction and disposition orders of the juvenile court declaring then four-year-old Sofia a dependent of the court and removing her from his custody. (Welf. & Inst. Code, §§ 300, subs. (b) & (d); 361, subd. (c).)¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (the Department) received a referral from the police that father had sexually abused Sofia. The officer explained to the responding social worker that the child disclosed to the police that father touched her in her “ ‘pee hole’ ” with his finger.

The social worker met with Sofia alone in an interview room. Sofia reported that she lives with her parents who scream a lot at each other. Sofia divulged that she has been touched in her vagina. She stated she has “ ‘not told my mommy.’ ” Asked how she was touched, the child raised her index finger. Sofia confirmed that it hurt. She said she was not afraid of the person who did it, but then refused to answer any more questions. A medical exam revealed no findings for sexual abuse.

Mother reported that she had gone to the police because she found Sofia masturbating with a toy in the bath. Mother asked the child where she learned to do that. Sofia replied that father taught her. With further questioning, Sofia disclosed to mother that father usually touches her vagina under the pajamas and that it happens when the child is alone with father in bed. Sofia explained that father puts his hand under her underwear and “ ‘my father pokes me.’ ” Father has done this at least three times.

The child is alone with father on Thursdays when mother goes to night school. When mother returns home, she always finds the child in bed with father. Mother finds that strange because father is very strict about not allowing Sofia to sleep in the marital bed.

Father denied the allegations.

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

Law enforcement issued an emergency protective order for mother and Sofia. The social worker placed Sofia in protective custody and released her to mother.

The Department filed a petition alleging that father sexually abused Sofia by fondling and digitally penetrating the child's vagina, causing the child pain (§ 300, subds. (b) & (d)), and that Sofia's parents have a history of engaging in violent altercations in the child's presence. (*Id.*, subd. (b).) The juvenile court detained Sofia from father and granted father monitored visits in a therapeutic setting.

The Department's jurisdiction report reflected that Sofia was re-interviewed. First, the social worker ascertained that the child appeared to know the difference between the truth and a lie. After being asked to identify body parts on a diagram of a girl, Sofia made the following statement: " 'Nobody touched me in my bottom (meaning vaginal area). Sometimes I clean myself when I take a shower. I miss my daddy very much. My daddy used to help me clean myself. No he never touched me.' "

In her re-interview, mother explained that when she entered the bathroom, Sofia put the toy behind her back. When mother asked Sofia where she learned to do that, Sofia responded that she was " 'scared' " and did not want the " 'cops to take [her] away.' " Sofia explained that her father did this when she goes to bed, and she demonstrated with her index finger what looked like a poking motion. Sometimes it hurts her, Sofia said. Mother also noted that recently when mother would try to clean Sofia's vagina, Sofia was wary and often said, " 'don't hurt me' " or that her vagina hurt.

The police report attached to the jurisdiction report reflected the same information. In addition, Sofia stated to the police that father has poked and rubbed her on her vagina area with his fingers, over her clothing.

Father's attorney advised him not to provide any more statements to the Department.

At the adjudication hearing, the juvenile court found true the allegation in the petition that father sexually abused the child and that father and mother have a history of engaging in violent altercations in the child's presence in which father choked mother and pushed mother in Sofia's presence. (§ 300, subds. (b) & (d).) As for disposition, the

juvenile court removed Sofia from father's custody (§ 361, subd. (c)) and placed her with mother. The court ordered, as reunification services, that father undergo counseling to address case issues and sex abuse counseling for perpetrators, among other things. The court awarded father monitored visitation at the Department's offices. Father filed his timely appeal.

CONTENTIONS

Father contends the evidence is insufficient to support the juvenile court's jurisdiction and disposition orders.

DISCUSSION

1. *Sufficient evidence supports the jurisdictional finding.*

Father contends there is insufficient evidence to support the juvenile court's finding that father sexually abused his daughter. The juvenile court's finding at a jurisdictional hearing that a child is described by section 300 must be supported by a preponderance of the evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

A child who falls within the following description is within the jurisdiction of the juvenile court and may be adjudged a dependent child of the court under section 300, subdivision (d): "The 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"

Penal Code section 11165.1 defines sexual abuse as "sexual assault" including, inter alia, "[t]he intentional touching of the genitals or intimate parts . . . or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose." (Pen. Code, § 11165.1, subds. (a), (b)(4).) The record here contains sufficient evidence to support the juvenile court's jurisdiction order.

Mother found Sofia masturbating. Sofia, who knows the difference between truth and a lie, told mother that it was father who taught her how. The child also disclosed that

father has poked her vagina under her pajamas at least three times. Mother has come home to find Sofia and father in bed together, notwithstanding father is strict that Sofia not share a bed with them. Sofia told the police that father poked her in her “ ‘pee hole’ ” and that it hurt. Furthermore, Sofia has complained about pain or fear of pain when mother has tried to clean Sofia. In short, the child was consistent about the fact that father poked her in the vagina and it hurt her.

Although Sofia was inconsistent about whether father touched her over or under her clothing, this is a distinction without a difference as either way, the touching falls within the definition of sexual abuse in Penal Code section 11165.1.

Father cites contradicting statements to support his contention the evidence of sexual abuse is insufficient to support the jurisdictional finding. He points to Sofia’s denial to the social worker that father poked her as she bathes herself. He notes that Sofia’s own attorney did not believe there was sufficient evidence of sexual abuse. He also observes that the court acknowledged difficulties children have in being consistent about the details of their accusations. Finally, father asserts mother was motivated to create a story about abuse because of the parents’ separation.

However, “ ‘[i]n reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . we determine if substantial evidence, *contradicted or uncontradicted*, supports them. “In making this determination, we 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.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ [Citation.]” [Citation.]’ [Citation.]” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773, italics added.)

Here, as we have explained, a preponderance of the facts supports the jurisdictional finding and order sustaining the petition under section 300, subdivision (d). We need not address father's additional contention the evidence is also insufficient to support the findings as to the allegations under section 300, subdivision (b). "The reviewing court may affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds." (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

2. *Sufficient evidence supports the disposition.*

"[T]he burden of proof is substantially greater at the dispositional phase than it is at the jurisdictional phase if the minor is to be removed from his or her home. [Citations.] [¶] This heightened burden of proof is appropriate in light of the constitutionally protected rights of parents to the care, custody and management of the children. [Citation.] [¶] . . . 'In furtherance of these principles, the courts have imposed a standard of *clear and convincing* proof of parental inability to provide proper care for the child and resulting detriment to the child if it remains with the parent' [Citation.]" [Citation.]' [Citations.]" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) "Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt." (*Id.* at p. 695.)

On appeal, we continue to "review the record in the light most favorable to the [juvenile] court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard." (*In re Isayah C., supra*, 118 Cal.App.4th at p. 695, italics omitted.)

Father contends, because "he did not sexually abuse his daughter" that there was insufficient evidence of a danger to Sofia's physical harm "based on the Department's allegations concerning domestic violence" or based on "the parents' relationship." Father overlooks that the juvenile court found that father did *sexually abuse* Sofia, and she claims he hurt her. This is sufficient evidence from which to find by clear and

convincing evidence the existence of a substantial danger to Sofia’s physical health, safety, or physical or emotional well-being” if she were returned to father’s custody.

We grant father’s request to take judicial notice of the order issued by the juvenile court while this appeal was pending. On May 11, 2015, the court ordered Sofia placed with both parents under the Department’s supervision, under which Sofia stays with each parent on alternating weeks. This order renders moot father’s contention under section 361, subdivision (c).

DISPOSITION

The orders are affirmed.

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ALDRICH, J.

We concur:

KITCHING, Acting P. J.

EGERTON, J.*

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