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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B257347
(Los Angeles County
Super. Ct. No. DK04125)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

O.R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Annabelle G. Cortez, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant
and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Father repeatedly and forcefully raped and sexually assaulted his two daughters beginning when they were about eight years old. On appeal, he challenges the sufficiency of the evidence to support taking jurisdiction over his son. We affirm.

FACTS AND PROCEDURE

Notwithstanding father's denials, overwhelming evidence showed that father sexually abused his two daughters Je. and Ja. beginning when they were very young. In January 2011, when mother learned of the abuse she initially believed Je. and Ja. and called the police. Father left the family home. On January 13, 2011, mother signed an affidavit saying "I understand that my children cannot have any contact with their father I will keep them safe with me at all times."

Despite signing this affidavit, mother allowed father to pick the children up at school. Then in August or September 2013, mother allowed father to return to the family home because, according to her, she needed his financial assistance. Mother also began to wonder "who's lying to me" and doubt her daughters' stories.

On March 17, 2014, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code section 300, subdivisions (b), (d), and (j) alleging that Ja. and her brother Jo. were at risk of harm. Je.—then an adult—no longer lived in the family home. At some point, father was arrested and incarcerated.

1. Petition

At the time the petition was filed, Jo. was 17 and Ja. was 15.

The petition alleged that father sexually abused Ja. over a three-year period starting when she was eight years old by raping her, digitally penetrating her, and fondling her. Mother knew of the abuse and failed to protect Ja. DCFS alleged that the abuse of Ja. placed Jo. at risk of physical harm and sexual abuse.

DCFS further alleged that father sexually abused his daughter Je. beginning when she eight years old by raping her, fondling her, and forcing her to fondle his penis. Mother failed to protect Je., and the abuse placed Je.'s siblings at risk of harm.

2. Abuse of Je.

The record shows father regularly had sexual intercourse with Je.—his eldest child—beginning when she was about eight. Wearing a condom, father penetrated Je.’s vagina with his penis. After the intercourse father frequently told Je. to wash herself. Je. screamed when father penetrated her, and he warned her not to let the neighbors hear her. In addition to raping Je., father sucked on her breasts. Father paid Je. to keep silent. The abuse continued until Je. was 12 or 13 years old.

Je. cut herself and attempted suicide. She was concerned when mother allowed father to return to the family home.

3. Abuse of Ja.

The abuse of Ja. occurred during the same time father was abusing Je. Father regularly had sexual intercourse with Ja., beginning when she was about eight. He penetrated her vagina both with his fingers and with his penis, causing her pain. Father forced Ja. to orally copulate him. Father kissed Ja.’s mouth and her belly button. Father fondled her breasts, grabbing and squeezing them.

Jo. walked in on father and Ja. as father was removing Ja.’s clothing. Jo. saw father rape Ja.¹

When examined, Ja. had loss of hymeneal tissue consistent with repeated trauma.

In addition to the sexual abuse, father hit Ja. with a belt, leaving marks on her back.

Ja. cut herself after her mother found out about the sexual abuse. Ja. was in therapy, but her mother warned her to be careful what she reported to the therapist.

4. Jo.

Jo. acknowledged that he observed father sexually assault Ja. He was upset that his sisters were hurt, but did not want to turn against his father.

¹ Father minimizes the evidence of this incident, ignoring Ja.’s statement that Jo. saw “everything” including father “putting his dick in me and everything.”

5. Court Findings

The court sustained the petition and took jurisdiction over Ja. and Jo. Father was given reunification services. Mother did not appeal from the juvenile court's jurisdictional order.

DISCUSSION

Father challenges the sufficiency of the evidence showing that his son Jo. was at risk of harm as a result of the sexual abuse of his sisters. We conclude ample evidence supported the juvenile court's finding.

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, 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].””” (In re I.J. (2013) 56 Cal.4th 766, 773.)

Our Supreme Court's decision in *In re I.J.*, supra, 56 Cal.4th 766 is dispositive. *In re I.J.* considered whether a father's sons were at risk of harm when the father sexually abused his daughter but there was no evidence the father sexually abused or otherwise mistreated his sons. (*Id.* at p. 770.) The abuse in *In re I.J.* included the father's fondling his daughter's vagina, digitally penetrating her, and raping her repeatedly over a three-year period. (*Id.* at p. 771.) The father also orally copulated his daughter's vagina and forced her to watch pornographic movies. (*Ibid.*) The male children were unaware of their sister's abuse and never witnessed it. (*Id.* at p. 771.) The high court found sufficient evidence to support jurisdiction. (*Id.* at p. 780.) It described father's conduct

as “aberrant in the extreme.” (*Id.* at p. 778.) The court held: “The serious and prolonged nature of father’s sexual abuse of his daughter under these circumstances supports the juvenile court’s finding that the risk of abuse was substantial as to all the children.” (*Ibid.*)

Applying *In re I.J.*, the evidence here amply supported the juvenile court’s assumption of jurisdiction over Jo. As in *In re I.J.*, the abuse here was prolonged occurring regularly over many years. Additionally the abuse was extreme and included rape and forced oral copulation. Although in *In re I.J.*, the male siblings were unaware of the abuse of their sister, father in this case raped Ja. in Jo.’s presence, harming Jo. by exposing him to the abnormal sexual conduct. The evidence in this case was even stronger than in *In re I.J.* and overwhelmingly supported the juvenile court’s jurisdictional order.

The only meaningful distinction father identifies between this case and *In re I.J.* is that Jo. was older than the children in *In re I.J.* However, under the totality of the circumstances, the age difference is insufficient to demonstrate error. (*In re I.J.*, *supra*, 56 Cal.4th at p. 774 [juvenile court should “consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm”].) The fact that Jo. is a teenager does not mean there is an absence of any risk to him. After all, Jo. already suffered harm as father raped Ja. in Jo.’s presence. Applying *In re I.J.*, the juvenile court properly sustained the petition as to both Ja. and Jo.

Jurisdiction over Jo. was proper for the independent reason that the court adjudicated mother as failing to protect Jo. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 [“a jurisdictional finding good against one parent is good against both”].)² Jurisdiction is proper under Welfare and Institutions Code section 300, subdivision (b)(1) when a parent fails to protect the children from the conduct of the other parent.

² Father is aggrieved by the court’s finding mother failed to protect Jo. because it is an independent basis for jurisdiction. (See *In re Paul W.* (2007) 151 Cal.App.4th 37, 62 [“a parent is aggrieved by a juvenile court order that injuriously affects the parent child relationship”].)

Substantial evidence supported the juvenile court's finding that mother failed to protect the children. Although mother initially required father to leave the family home and called police to report father's conduct, mother still allowed father to pick the children up from school. Thus she allowed father to be alone with the children notwithstanding her promise to keep him from them. Even more concerning, in 2013, mother allowed father to return to the family home. By allowing father to return home, mother failed to protect her children as she promised to do.

DISPOSITION

The jurisdictional order is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.