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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MADELINE S., et al., Persons Coming
Under the Juvenile Court Law.

B258392

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK99588)

Plaintiff and Respondent,

v.

NICHOLAS S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
Debra L. Losnick, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and
Appellant, Nicholas S.

Office of the County Counsel, Mark J. Saladino, County Counsel,
Dawyn R. Harrison, Assistant County Counsel and Jessica Paulson-Duffy, Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father, Nicholas S., appeals from the juvenile court's finding jurisdiction over his daughter, Madeline, and son, G., pursuant to Welfare and Institutions Code¹ section 342 and 300. Father also asks that all dispositional orders premised on these findings be vacated. Specifically, father argues that no substantial evidence supports the juvenile court's findings of physical and sexual abuse. We affirm because the jurisdiction was supported by substantial evidence that there was a substantial risk that both children would suffer serious physical harm as a result of father's physical and sexual abuse of Madeline.

FACTS AND PROCEDURAL BACKGROUND

On May 16, 2013, a report was received that two small children had been left alone in a vehicle and that a child was being hit by an unknown female. Law enforcement arrived at a gas station and saw two children unattended in the car. The vehicle's hatchback door was open, there was trash inside of the vehicle and the interior of the car smelled strongly of urine. The car contained spoiled food and there were ants crawling around the child safety seats and on the baby.

A female adult soon approached the car and immediately stated that the children were hers. Mother had watery and blood shot eyes and smelled strongly of alcohol. As there were no other adults at the scene, the officer concluded that mother had been driving this car with the children while intoxicated. Mother became combative as the officers attempted to place her in their squad car. Mother was arrested for public intoxication, child endangerment and resisting a peace officer and taken to jail. Efforts by law enforcement and social workers to locate father were unsuccessful.

Upon investigation, the Los Angeles County Department of Children and Family Services (DCFS) uncovered an open referral generated due to mother's alleged driving under the influence. Two weeks earlier, mother drove off with her two children from her mother's home (where she had been staying) after drinking eight beers.

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

There were a number of other referrals involving this family alleging general neglect due to homelessness, domestic violence incidents in the presence of the children, ongoing drug addiction and emotional problems, and, in one instance, Madeline falling out of a window at a domestic violence shelter. Mother and father both had criminal records. Father had a felony conviction for possession of controlled substances and mother had a felony conviction for unlawful taking or driving of a vehicle and four misdemeanors related to drug use.

DCFS filed a petition seeking detention due to mother placing the children in a detrimental and endangering situation, mother's substance abuse and emotional problems and father's assault on the mother.

In October 2013, the juvenile court found jurisdiction over Madeline and G., sustaining allegations that mother had attacked the maternal grandmother in the children's presence and that father's substance abuse endangered the children. The children were placed in their maternal grandmother's home and DCFS was ordered to provide the parents with reunification services.

Father complied with the case plan and, in December 2013, DCFS liberalized father's supervised visitation to allow unmonitored day visits.

Shortly after father's unmonitored visitation began, Madeline disclosed to her grandmother that father had poked her butt and peed on her.

DCFS investigated the allegations and interviewed Madeline, her preschool teachers and the maternal grandparents. Madeline repeated that her father was sticking his fingers in her and had peed on her. Madeline had made a similar disclosure to her therapist and to a detective who interviewed her. Madeline also disclosed to an investigating social worker that father hit and slapped her head and kissed her vagina.

In March 2014, DCFS filed a section 342 petition, petitioning the court to find jurisdiction over the children pursuant to section 300, subdivisions (a), (b), (d) and (j),

and alleging that both children were at substantial risk of serious physical harm based on father's alleged physical and sexual abuse of Madeline.²

DCFS conducted further interviews regarding the section 342 petition. Madeline reported that her father had taken both of his hands and "boxed" her ears and hit her on the top of her head on a single occasion. Madeline also reported that her father had touched her vagina with his finger and that he took his "pee pee out." Madeline's similar reports to her therapist were confirmed.

Father denied having struck either his son or daughter or to having sexually abused his daughter. We note that during this investigation period, Madeline falsely accused her father of fondling her during a visit with father monitored by DCFS.

At the July 16, 2014 jurisdictional hearing, Madeline testified. Madeline testified affirming that father had touched her vagina, urinated on her and hit her in the head and ears. Regarding the sexual abuse, Madeline stated that father kissed her and touched her with his finger and pointed to her vaginal area. She testified that these events had happened at her father's house in the living room and that her brother saw what father had done. Madeline testified that her father had touched her in her pee pee area "[j]ust one time." Madeline agreed that she had told her grandmother and her therapist about what her daddy had done. And, she testified that her grandparents had told her to tell the truth to her therapist, Claire, and that she had always done so. Madeline identified her "daddy" as father Nick and that she called only Nick "daddy."

Madeline also testified that father hit her on her ears and head. Madeline demonstrated the slap for the court, loudly slapping both sides of her head near her ears. And, although she denied hurting herself during the demonstration, Madeline stated that

² Section 342 provides that "[i]n any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition. . . . [¶] All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section."

father slaps harder than she. Madeline testified that this abuse occurred when she lived with father, before she was placed with her grandparents and that it happened only once.

Madeline's therapist, Claire Greene, testified at the hearing. Ms. Greene testified that Madeline disclosed that her father had made "pee pee" on her tummy and had acted out this action with dolls. G. also told Ms. Greene that father peed on Madeline, but opined that he could have overheard that observation. Madeline spontaneously disclosed sexual abuse at a number of her therapeutic sessions with Ms. Greene. Ms. Greene testified that Madeline reported substantially similar sexual abuse at approximately thirty of her thirty-six sessions.

Ms. Greene did not think that Madeline had been coached and testified that Madeline denied that anyone had told her to say that father peed on her. Moreover, the therapist observed that coached children tend to be less demonstrative than Madeline and make their disclosures with less emotion than Madeline displayed. Ms. Greene also testified that while children Madeline's age may lie, they usually do not lie about sexual abuse because they are not familiar with the subject matter.

Detective Lanquist of the Ventura County Sheriff's Department also testified. Detective Lanquist interviewed Madeline twice. He recalled that Madeline told him that father touched her in the bathroom and had urinated on her in the living room with G. present.

Andrea Dacoco, a social services worker, testified. It was she who decided to allow father to have unmonitored visitation with the children in December 2014. Ms. Dacoco testified that Madeline had disclosed that father had urinated on her and had grabbed her vagina and stuck his finger in her.

Gene Ishizuka, a social worker assigned to the family since May 2014, also testified. He spoke with the DCFS employee who monitored father's recent visit with Madeline after which she claimed that father touched her. That social worker did not report any inappropriate touching at that visit. Mr. Ishizuka also testified that father and maternal grandmother disagreed about the appropriateness of giving the children raw milk, but that was the only ongoing conflict about which he was required to intervene.

Mr. Ishizuka had been required to caution father to refrain from discussing case issues with his children.

Additional witnesses at the hearing included father's sponsor, Charles H., who testified that father was sober and working on a 12-step program. Charles H. testified that he'd never witnessed any inappropriate conduct between father and his children.

The paternal grandfather also testified. He was an approved monitor for father's visits and had monitored visits at a number of public locations. Paternal grandfather noted that the children were affectionate toward their father and that he had never observed any inappropriate conduct. Paternal grandfather described father as follows: "[W]hen he's good, he's good. And, when he's bad, he's bad."

The juvenile court heard closing arguments from all counsel. The children's counsel argued for the petition to be sustained:

"It simply and easily comes down to whether the Court believes Madeline or not. Yes, there are some discrepancies in Madeline's disclosures, but I think it's important to not forget that she's four years old. [¶] Madeline actually said it best in her forensic interview She says . . . 'I'm just a little kid.' 'Kid's can't explain it.' 'I can explain a little.' 'I'll explain it a little.' And, Madeline did explain it certainly well enough.

"She made statements to the E.R. worker, to the grandmother, to the services worker, to the therapist, to the Ventura County law enforcement, the D.I., to the forensic interviewer at Northridge Hospital that her father pee-peed on her and touched her.

"Here at court[,] Madeline testified that her Daddy did bad stuff to her. When questioned further, she did give more detail. She testified that her father touched her in her privates. He put his finger in her. He pee-peed on her tummy. She felt bad about it. And[,] he also slapped her ears. And she demonstrated by hitting both of hers, both of her ears with her hands very loudly. She said, 'It hurt.'

“Madeline was able to tell us about the sex abuse and that this happened at her father’s home in his living room by her father. Madeline has never identified anyone else as doing these things to her. She didn’t call anyone else ‘Daddy.’ Daddy’s name is Nick. Nick is her father. She knew where it happened, when it happened. She knew it happened in her father’s home. She described the bedrooms in her father’s home. She described the fact that her dad doesn’t have a backyard. She explained it as well as a four year old could.

“She was interviewed eight times. Madeline was three and four years old, and she is mostly consistent. Was she exact? No, she was not. Was it substantially similar? Yes it was.”

The Court found Madeline’s statements to be “pretty clear” and that she was “very consistent with the fact that she said her father peed on her tummy. He hit her, slapped her ears, and hit her on her head That he kissed and touched her vaginal area.”The Court also found grandmother to be completely credible and didn’t think she had any axe to grind with father.

The Court sustained jurisdiction over the children pursuant to section 300, subdivisions (a), (b), (d) and (j). The court sustained allegations that father had intentionally abused Madeline, pursuant to subdivision (a), when he struck her ears and head. The Court also sustained two counts under subdivision (b), finding that father touched Madeline’s vagina and urinated on her, and struck Madeline in the head. The Court further found that Madeline had been sexually abused pursuant to subdivision (d) because father had touched Madeline’s vagina and urinated on her. The Court found jurisdiction over G. pursuant to subdivision (j), concluding that there was a substantial risk that G. would be abused and neglected based on father’s sexual and physical abuse of Madeline. The court made dispositional orders, granting father monitored visitation and ordered father to complete sexual abuse counseling and individual counseling to address case issues with a licensed therapist.

DISCUSSION

A. Standards of Review

Father appeals the court's jurisdictional findings and disposition orders, arguing that substantial evidence did not support the court's finding that he physically or sexually abused Madeline or that G. was at risk of harm from father's sexual abuse of Madeline.

We review the juvenile court's jurisdictional findings and disposition orders for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences must be logical, reasonable and supported by evidence; the inferences cannot be the product of speculation or conjecture. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "[I]ssues of fact and credibility are questions for the trier of fact." (*Ibid.*) The juvenile determination will not be disturbed unless it exceeds the bounds of reason. (*Ibid.*)

In addition, "[w]e review an order setting visitation terms for abuse of discretion. [Citations.] We will not disturb the order unless the trial court made an arbitrary, capricious, or patently absurd determination. [Citation.]" (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

B. Substantial Evidence Supports the Court's Finding that Father Sexually Abused Madeline

Father contends that insufficient evidence supports the court's jurisdictional findings based on his sexual abuse of Madeline by touching her vagina and urinating on her. Father contends that Madeline's statements were "not reasonable, credible or of solid value" because her reports had inconsistencies and because Madeline falsely accused father of molesting her at a monitored visit.

We disagree. The testimony adduced at trial from witnesses, including the testimony of Madeline herself, provides substantial evidence to conclude that father sexually abused Madeline. At trial, Madeline testified that father urinated on her stomach. She testified that these events occurred at father's house in the living room and that her brother witnessed the sexual abuse. Madeline stated that she told her grandmother and therapist about what father had done. She testified that her grandparents told her to tell the truth to her therapist and that she had always done so.

Madeline's therapist testified that Madeline disclosed to her that father had made "pee pee" on her stomach and had touched her vagina. The therapist testified that Madeline acted out this event with dolls during her therapy session. Madeline spontaneously disclosed the sexual abuse at approximately thirty of her thirty-six sessions. The therapist determined that Madeline had not been coached based on her observation that coached children tend to be less demonstrative than Madeline and made their disclosures with less emotion than Madeline displayed while discussing the abuse at therapy sessions. The therapist also testified that while children of Madeline's age may lie, they usually do not lie about sexual abuse because they are not familiar with the subject matter.

We conclude that Madeline's and the therapist's testimony constitutes substantial evidence of the court's finding of sexual abuse. Father's contentions amount to a dispute regarding Madeline's credibility. Yet, issues of fact and credibility are the sole province of the trier of fact. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) We may not substitute our or father's assessment of the credibility of the witness in place of the trial court's assessment.

C. *Substantial Evidence Supports the Court's Finding that Father Physically Abused Madeline*

On review, the correctness of the overall jurisdictional ruling, not that as to a particular subset within it, is the matter under review. (*In re La Shonda B.* (1979) 95 Cal.App.3d 593, 599-600.) Thus, it does not matter whether the juvenile court's additional jurisdictional findings regarding father's physical abuse of Madeline were

correct. “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.) Where a dependency petition alleges multiple grounds for jurisdiction, a reviewing court can affirm if any one of the statutory bases are supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Thus, because substantial evidence supports the court’s finding of sexual abuse of Madeline, it is not necessary to consider separately the nature or sufficiency of the evidence on the physical abuse count.

However, reaching the merits of father’s contention, his argument fails. A juvenile court may find a substantial risk that a child will suffer serious physical harm not only when a parent has already caused a child serious physical harm, but also in those circumstances in which a parent’s actions demonstrate that a child will suffer serious physical harm in the future. A substantial risk of serious future injury can be based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child, or a combination of these and other actions by the parent that indicate that the child is at risk.

In this case, Madeline testified and demonstrated how father struck her on the head and ears. Madeline testified that father slapped harder than she did in her demonstration. Madeline consistently reported this abuse to her therapist. Madeline testified to two occasions when father struck her on the head. And, while Madeline was unable to remember certain specifics of the abuse on cross-examination, she testified that she remembered it. Given father’s limited unmonitored access to Madeline, these two actions must be given great import.

Father’s reliance on *In re Isabella F.* (2014) 226 Cal.App.4th 128 is misplaced. In that case, a mother accidentally scratched her nine-year old daughter’s face. This happened when mother was trying to spank her daughter on the buttocks with her hand while her daughter was having a total meltdown. Mother and daughter agreed it was an isolated incident and the mother demonstrated to the satisfaction of the juvenile court that the child was not at risk.

In this case, by comparison, father's abuse of Madeline was not an isolated or accidental event. Madeline testified that she was struck more than once and that it hurt and that father's slap was harder than hers. In addition, in this case, father denies slapping the child and has not demonstrated that he has learned (or even considered) alternate, more appropriate means of disciplining his children. Father's striking of his daughter's ears and head with significant force was highly inappropriate. Accordingly, substantial evidence supports the juvenile court's finding that Madeline remained at risk of serious physical harm. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133 ["A parent's past conduct is a good predictor of future behavior."].)

We conclude that Madeline's testimony and re-enactment of father's slapping her constitutes substantial evidence in support of the court's finding of physical abuse. "We cannot reject the testimony of a witness that the trier of fact chooses to believe unless the testimony is physically impossible or its falsity is apparent without resorting to inferences or deductions." (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) In other words, we do not disturb the trial court's determinations unless it exceeds the bounds of reason. (*In re Savannah M., supra*, 131 Cal.App.4th at p. 1393.)

D. *Substantial Evidence Supports the Court's Finding of Jurisdiction as to G.*

When a child's sibling has been abused or neglected, as defined in section 300 subdivisions (a), (b), (d) or (e), and there is a substantial risk that the child will similarly be abused or neglected, the child is subject to juvenile court jurisdiction under section 300, subdivision (j). In evaluating whether there is substantial evidence of abuse, the juvenile court considers "the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child. (§ 300, subd. (j).) In evaluating whether the child is in present need of the juvenile court's protection, the court may consider past events. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169).

As explained above, there is substantial evidence that father sexually abused Madeline. “Cases overwhelmingly hold that sexual abuse of one child may constitute substantial evidence of a risk to another child in the household – even to a sibling of a different sex or age” (*Los Angeles County Dept. of Children & Family Services, supra*, 215 Cal.App.4th at p. 968.) This court has previously explained that where “a child has been sexually abused, any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse.” (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1347.) Here, G. is only a year younger than four-year-old Madeline. The helplessness inherently associated with G.’s tender age and the severity of the risk of sexual abuse are highly probative that father posed a substantial risk of harm toward his son. Moreover, this risk of sexual abuse was further bolstered by testimony from Madeline and the therapist that G. witnessed father’s sexual abuse of Madeline.

The evidence of father’s molestation of Madeline, as well as G.’s age and vulnerability provide substantial evidence supporting the court’s jurisdictional finding under section 300, subdivision (j). We therefore affirm the court’s judgment finding jurisdiction over G.

E. *The Court Did Not Abuse Its Discretion in Ordering Monitored Visitation and Counseling for Father*

Father argues that because the court erred in finding jurisdiction under the section 342 petition, we must vacate the juvenile court’s dispositional orders stemming from those findings. and asks that they be vacated. As discussed above, we find substantial evidence in the record to support the challenged jurisdictional findings regarding father’s abuse of his children. We therefore affirm the dispositional orders requiring monitored visitation and additional counseling for sexual abuse perpetrators and individual therapy for father as they are properly based on the court’s jurisdictional findings (See § 362, subd. (d) [“The juvenile court may direct any reasonable orders to the parents or guardians of the child who is the subject of any [dependency] proceedings . . . as the court deems necessary and proper to carry out this section The program in which the parent or guardian is required to participate shall

be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.”].)

DISPOSITION

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

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JONES, J.*

WE CONCUR:

EDMON, P. J.

KITCHING, J.

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