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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re H.P., et al., Persons Coming Under
the Juvenile Court Law.

B258593

(Los Angeles County
Super. Ct. No. DK04671)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Amy M. Pellman, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyrn R. Harrison, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

A.C. (mother) appeals from the dependency court's jurisdictional findings regarding her five children, H.P. (born 2000), B.C. (born 2004), M.C. (born 2006), A.W. (born 2011), and K.W. (born 2012). Mother does not challenge the court's jurisdictional findings based on substance abuse by A.W. and K.W.'s father (father), mother's failure to protect the children from father, or her failure to properly supervise them, but she contends the court erred in sustaining allegations of domestic violence as an additional basis for jurisdiction pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Initial Investigation and Detention

This case came to the attention of the Department of Children and Family Services (DCFS) as a result of a 911 call on April 5, 2014 reporting a domestic altercation between mother and father.² The reporting party stated that father was "high on heroine" and "so loud and boisterous" during a dispute with mother that a neighbor called 911. A.W. and K.W., mother's two youngest children, were present during the altercation. The incident report from the Burbank Police Department indicates that there was "a lot of yelling, screaming, and cursing" coming from the residence. Responding officers observed that mother was upset and had been crying, that two small children (A.W. and K.W.) were running around inside the residence, and that father had fresh needle marks on his arms. Mother and father admitted that they had been arguing but denied any physical violence. The officers arrested father for possession of drug paraphernalia, which they had recovered from his possessions during a search of the home.

¹ Statutory references herein are to the Welfare and Institutions Code unless otherwise indicated.

² Adam W. (father), the biological father of A.W. and K.W., is not a party to this appeal. Jeffrey B., alleged biological father of H.P., and Michael C., biological father of B.C. and M.C., are non-offending and are also not parties to the appeal.

DCFS received a second referral on April 8, 2014 alleging general neglect by mother and father. The caller reported that mother and father (who had been released) “continue to get high while locking themselves in the room with the children.” The caller also stated that A.W. and K.W. were discovered alone in a bedroom on April 6, 2014 with heavily soiled diapers.

The investigating Children’s Social Worker (CSW) arrived at the family’s residence on April 8, 2014 and spoke with father, who was watching A.W. and K.W. Father admitted to heroin use but denied any domestic violence. Mother returned home with the older children a few hours later. She claimed to be “shocked” that father was using drugs and stated he was a good father and treated all of the children well. She denied using drugs or leaving the children unattended. She stated that she had a prescription for “Narco” for a bulging disk in her back. Mother related one domestic violence incident, when the family lived in Oklahoma, where father slapped her because he believed she was cheating on him.

The CSW also interviewed the three oldest children. H.P. denied any physical abuse but stated that she did not like father because she saw him slap mother once in Oklahoma. B.C. and M.C. denied any domestic violence or physical abuse by father and reported feeling safe and comfortable in the home. The CSW also spoke to the maternal great aunt (great aunt), with whom the family had been living for several months. Great aunt reported that she was very concerned for the children’s well being, that mother “leaves the home for hours” and that she believed mother might be using drugs. The CSW contacted B.C. and M.C.’s father, Michael C., who stated that he “has always had concerns” about father, that mother had been using prescription drugs for a long time, and that there was domestic violence between mother and father.

Mother, father, and great aunt agreed to a safety plan requiring father to leave the home and refrain from contact with the children. Mother also agreed not to leave the children unattended. On April 11, 2014, great aunt contacted the CSW and reported that mother had left H.P., then 13, with all four younger children and had admitted to using someone else’s urine to pass her drug test.

DCFS received an additional referral for general neglect on April 15, 2014. B.C. and M.C. (then nine and eight years old) were alone at a park waiting for mother for two hours. Mother claimed she was late because her car broke down.

The children were detained pursuant to an expedited removal order on April 17, 2014. In addition to the allegations detailed above, the request for removal order noted that mother had repeatedly violated the safety plan by allowing father to be in the home, lying to DCFS about his presence, and leaving the children without appropriate supervision, and that father had failed to appear for several scheduled drug tests. H.P. was placed with great aunt, B.C. and M.C. were placed with their father (Michael C.), and A.W. and K.W. were placed with their paternal aunt.

B. Section 300 Petition and Detention Hearing

On April 22, 2014, DCFS filed a petition under section 300, subdivision (b), alleging that the children were placed at risk of physical harm due to father's substance abuse and mother's failure to protect the children (paragraphs b-1 and j-1), mother and father's history of domestic violence (paragraph b-3), and mother's failure to provide "appropriate adult supervision" (paragraph b-4). Specifically, count b-3 alleged that mother and father "have a history of engaging in violent altercation. On a prior occasion, [father] struck the mother in the presence of [H.P.]. The mother failed to protect the children in that the mother allowed [father] to reside in the children's home and have unlimited access to the children. Such violent conduct on the part of [father] against the mother and the mother's failure to protect the children endanger the children's physical health and safety and place the children at risk of physical harm, damage, danger and failure to protect."³ In a Last Minute Information filed on April 22, 2014, DCFS reported that father, B.C., and M.C. all stated mother had asked B.C. and M.C. to urinate in plastic bags to use for her drug test.

³ We omit full details regarding the remaining allegations, as mother challenges only count b-3 on appeal.

The dependency court found a prima facie case was established for detaining all five children pursuant to section 300, subdivisions (a), (b), and (j). Michael C. requested, and was granted, presumed father status as to H.P. (his step-child). The court released H.P., B.C, and M.C. to his custody. The court detained A.W. and K.W. and continued their placement with their paternal aunt.⁴ The court further granted monitored visits to mother and father for A.W. and K.W.

C. Adjudication

DCFS filed its jurisdiction/disposition report (jurisdiction report) on June 2, 2014. In support of the domestic violence allegations in count b-3, the report included statements by several of the children. H.P. stated that she saw mother and father fight “just once” when mother was trying to get her keys from father. Father “wouldn’t give it to her and he just hit her.” H.P. stated that mother then called the police and father was arrested. B.C. stated that he saw mother and father fight once, about two or three years ago, when father pushed mother “into a wall when she was pregnant,” and that father was arrested. M.C. told the CSW she had seen mother and father get into verbal fights three or four times.

Michael C. reported that he was aware of a past incident of domestic violence between mother and father in Arizona in 2010 and that father was arrested as a result. He stated that father hit mother and also hit H.P. once in the face.

In a Last Minute Information filed June 2, 2014, DCFS indicated that mother was arrested on May 30, 2014 on a felony charge.

The adjudication hearing was held on June 2, 2014. Counsel for mother argued that there was insufficient evidence to sustain count b-3 alleging domestic violence, as the statements from the children supported only a single incident in Oklahoma three years prior. Counsel for father and the children agreed; father’s counsel also asked to address any domestic violence issues in individual counseling. Counsel for DCFS disagreed that it was a “one-time act,” noting statements from the children suggesting multiple incidents

⁴ They were subsequently placed in a foster home.

of violence, as well as evidence of verbal arguments including the incident that precipitated police involvement in this case. The court sustained counts b-1 and j-1 (substance abuse), b-3 (domestic violence), and b-4 (failure to supervise) as to all five children.⁵ As to count b-3, the court noted that the undisputed incident of violence was “extremely serious” and that there was evidence “that these parents were using drugs [] as well as engaging in some domestic violence.”

In a supplemental report filed July 7, 2014, DCFS indicated that mother had been released from jail on June 2, 2014 but her whereabouts were unknown. DCFS recommended termination of jurisdiction as to H.P., B.C., and M.C., with a family law order granting Michael C. legal and physical custody and monitored visitation to mother. With respect to A.W. and K.W., DCFS recommended family reunification services to mother and father.

At the contested disposition hearing on July 7, 2014, the court terminated jurisdiction over the three older children and awarded sole legal and physical custody to Michael C., with monitored visitation for mother. The court removed A.W. and K.W. from mother and father’s custody and placed them under the supervision of DCFS, with an evaluation for placement with their paternal grandmother. The court further ordered family reunification services for mother and father, including substance abuse programs and drug testing, parenting classes, individual counseling, and monitored visits.

Mother timely appeals the court’s jurisdictional findings as to count b-3.

DISCUSSION

A. Justiciability

Mother acknowledges that because she does not contest all jurisdictional findings against her or those against father, the dependency court’s jurisdictional orders will not be reversed regardless of the outcome of this appeal. As a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support

⁵ Count b-3 was amended to strike the sentence alleging that mother failed to protect the children by allowing “father to reside in the children’s home and have unlimited access” to them.

jurisdiction and render moot a challenge to the other findings. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) We nonetheless retain discretion to consider the merits of a parent's appeal (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493), and often do so when the finding "(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [Citation]." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; see also *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1064-1065; but see *In re I.A., supra*, 201 Cal.App.4th at p. 1494 [no review where father failed to suggest any way in which jurisdiction finding could affect a future dependency or family law proceeding].)

We agree with mother that merits review is warranted here. The finding that mother exposed her children to a substantial risk of physical harm as a result of domestic violence is pernicious. As mother notes, this finding appears to have led the court to order that she address domestic violence issues in her individual counseling sessions and could potentially impact the current or future dependency proceedings. Under these circumstances, we find it appropriate to review mother's appeal on the merits.

B. Standard of Review

We review jurisdictional findings to see if substantial evidence, contradicted or uncontradicted, supports them. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (citation omitted).) "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the [juvenile] 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.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

C. Substantial Evidence Supports Court B-3

Section 300, subdivision (b), provides that a child comes within the jurisdiction of the juvenile court as a dependent when “[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 . . . to adequately supervise or protect the child. . . .” DCFS has the burden of proving by a preponderance of the evidence that the children are dependents of the court under section 300. (§ 355, subd. (a); *In re I.J.*, *supra*, 56 Cal.4th at p.773 (citation omitted).)

“The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) Thus, courts have largely held that “past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ [Citations.]” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; see also *In re J.N.* (2010) 181 Cal.App.4th 1010, 1023 [same].) In other words, section 300, subdivision (b) “effectively requires a showing that at the time of the jurisdictional 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 Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) Domestic violence between a child’s parents may support the exercise of jurisdiction if there is evidence that the violence harmed the children or placed them at risk of harm, and “the violence is ongoing or likely to continue.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (*Daisy H.*)) Thus, “domestic violence in the same household where children are living . . . is 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.)

Mother argues that the dependency court erred in sustaining count b-3 based on a single incident of domestic violence occurring over three years ago. She contends that the evidence cannot support a finding that, at the time of the jurisdictional hearing, her children currently faced a substantial risk of harm from domestic violence. We disagree. First, although mother argues that the evidence establishes only a single incident of domestic violence, where mother admitted that father slapped her when the family lived in Oklahoma, the record suggests otherwise. H.P. admitted witnessing an incident in Oklahoma and stated that she had never liked father as a result. B.C. told DCFS that he had witnessed an incident when he was about six or seven years old, when father pushed mother “into a wall when she was pregnant.” Notably, whether the children were describing one or two incidents, the domestic violence occurred in their presence and resulted in police involvement. Michael C. (father of B.C. and M.C.) also stated that he was aware of a past domestic violence incident between mother and father in Arizona in 2010 and that father had also hit H.P. in the face on one occasion.

Moreover, the evidence was sufficient to establish a substantial risk that domestic violence between mother and father was ongoing or likely to recur. Although mother reportedly called the police following at least one of the past incidents, she and the children continued to live with father until they were removed by DCFS. Indeed, according to the CSW, mother repeatedly violated the safety plan by allowing father to return to the family’s residence and watch the two youngest children, and then lied about it to DCFS. Mother also continued to minimize father’s conduct, telling the CSW that he was a good father and she was “shocked” that he was using drugs. Further, this case began with a fight between mother and father in which their yelling, screaming, and cursing caused a neighbor to call the police. This incident occurred in the presence of their two youngest children. These facts distinguish this case from *Daisy H.*, *supra*, 192 Cal.App.4th 713, cited by mother. In *Daisy H.*, the evidence established a single incident occurring seven years prior to the dependency petition, in which father pulled mother’s hair and choked her. (*Id.* at p. 717.) There was no evidence that the choking incident occurred in the presence of any of the children, they denied ever witnessing any other

physical abuse, and the parents were separated at the time the petition was filed. (*Ibid.*) Here, by contrast, mother and father remained together (at least until mother's incarceration) and there was undisputed evidence that domestic violence had occurred in the presence of several of the children.⁶ Thus, we find there is sufficient evidence that DCFS met its burden with respect to count b-3.

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.

⁶ Mother's argument that none of the children were actually physically harmed is beside the point. Section 300 requires only a "substantial risk" of abuse. "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." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)