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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re ELIJAH L., a Person Coming Under
the Juvenile Court Law.

B261207

(Los Angeles County
Super. Ct. No. CK99988)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

A.L.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Tony L. Richardson, Judge. Affirmed.

Law Offices of Marissa Coffey and Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel for Plaintiff and Respondent.

A.L. (mother) appeals from a juvenile court judgment assuming jurisdiction of Elijah L. with an order that he remain in mother's custody with family maintenance services. Mother argues that no substantial evidence supports the court's jurisdictional findings that Elijah is a child described by Welfare & Institutions Code section 300, subdivisions (a), (b), and (j). We find that substantial evidence supports the juvenile court's assumption of jurisdiction over Elijah, therefore we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has two children, R.B. (born Dec. 2007) and Elijah (born Sept. 2014).

Prior referrals regarding R.B.

The Department of Children and Family Services (DCFS) received several referrals regarding R.B. over the years. In July 2010 DCFS received a referral alleging that mother was neglecting R.B.'s hygiene and selling marijuana. The referral was closed as unfounded. A referral in May 2012 alleged that mother's boyfriend, Don Y., hit R.B. Mother was cooperative and again the referral was closed as unfounded.

In August 2012, a referral alleged that R.B. disclosed that he was often left home alone, and that R.B. was displaying sexualized behaviors. This referral was closed as inconclusive.

In October 2012, DCFS received an allegation that R.B. had problems at school with aggressive behavior towards other children. When he needed to be disciplined, he would beg the school not to call his mother or he would get hit. R.B. appeared to be afraid of mother. Teachers at the school observed R.B. crying. They observed mother pull R.B into a restroom and close the door, and heard R.B. screaming "Don't hit me." When a teacher opened the door to see what was going on, mother stated: "I can do whatever I want to my child." When the teacher told mother to get out of the bathroom, mother became verbally aggressive with the teachers. The caller contacted police, but mother left.

R.B. told campus police that mother had hit him with a belt. Other school personnel reported that R.B. appeared to be scared of mother and had stated in the past that he was afraid of being hit by mother.

During the ensuing DCFS investigation, mother admitted to hitting R.B in the past. However, R.B. appeared happy and comfortable in mother's home, and did not have any marks or bruises. He recanted on his statement that he had been hit. The referral was closed as inconclusive.

R.B.'s case

In June 2013 DCFS received a referral alleging that mother physically abused R.B. Mother was hitting R.B., who was five years old at the time, for taking a picture of his private body parts and showing it to his father. When maternal grandmother (MGM) intervened to stop the abuse, mother also hit MGM. Mother "socked" R.B. several times, and he vomited. R.B. remained in the room while mother and MGM engaged in a physical confrontation. MGM called the police to report the incident.

The allegations against mother were substantiated, and R.B. was detained. R.B. was placed with maternal great-grandmother (MGGM). DCFS filed a section 300 petition on behalf of R.B. The petition was sustained, and R.B. was placed in MGGM's custody with reunification services to mother. Mother was granted monitored visits. She was ordered to complete a parenting program and participate in a counseling program addressing anger management.

Mother completed a 12-week parenting program on September 28, 2013. Mother enrolled in anger management classes on August 7, 2013, but did not complete the program due to an agreement that she would address anger management issues through counseling.

On January 13, 2014, the DCFS social worker received a telephone call from counselor Reshona Pitts stating that mother had not been consistent in participating in counseling and had failed to keep her appointments. On March 5, 2014, Pitts provided an update. Mother started counseling with Kaitlin Evans. Mother attended three sessions with Evans. Evans then left the center and Pitts was assigned to work with mother. Mother had one session with Pitts on February 5, 2014, but missed the other sessions.

In a progress report dated April 18, 2014, DCFS reported that mother had a total of six counseling sessions between November 12, 2013 and March 17, 2014. DCFS

opined that the number of counseling sessions was insufficient to fully address and ameliorate the issues that brought the family to the attention of DCFS. DCFS concluded that mother had only partially complied with the case plan.

In January 2014 DCFS received a referral that mother used cocaine and ecstasy. The social worker met with mother on February 4, 2014, and asked her to test for drugs. Mother agreed, however she failed to show up for a drug test the following day. Mother began random drug tests in April 2014. She had five negative tests, one positive test for alcohol, and two no-shows between April 15 and August 11, 2014.

DCFS liberalized mother's visits to unmonitored, but reinstated monitored visits when mother tested positive for alcohol on June 20, 2014. In July 2014, the social worker noted that mother was pregnant. Mother said she did not remember drinking, and stated that it was personal with the social worker.

Elijah's detention

Mother gave birth to Elijah September 2014. DCFS received a call from the hospital social worker because mother disclosed that she had an open case with DCFS concerning R.B. Elijah had been admitted to neonatal intensive care due to breathing problems, which were resolving. The hospital had no concerns about mother, who was appropriate with Elijah. Neither mother nor Elijah had been tested for drugs.

Two DCFS social workers met mother at the hospital. Mother claimed not to have used alcohol or drugs during the pregnancy, despite the positive alcohol test. Mother indicated that she would be living with her adult sister, Ebony L., following her discharge in a few days. Mother provided Ebony's telephone number. Mother said that Elijah's father was Emmanuel Y.; however the hospital social worker said the father was Don V. Mother said she decided to leave the father alone because the DCFS social worker on R.B.'s case had been asking too many questions about the father.

The DCFS social worker confirmed with Ebony that mother was living in her home. Ebony indicated that she would be able to provide support for mother. She said mother was fully capable of caring for the child. Ebony then said she was at work and needed to end the call.

On Monday, September 8, 2014, a social worker went to Ebony's home. No one was there. The social worker called mother's cell phone, but there was no answer and no voicemail. The social worker sent a text message to mother. The social worker then called R.B.'s caregiver, MGGM who said she told mother that the apartment where mother and Ebony were supposedly staying was no longer available, as MGGM had rented it. She indicated that the locks on the apartment had been changed and mother and the baby could not return. MGGM was not aware of mother's whereabouts. The social worker called Ebony, who supposedly shared the residence with mother, and left a message. The social worker continued calling mother but reached a recording saying the person is not able to receive the phone call, but to try again later.

On September 10, 2014, the social worker again called Ebony. Ebony answered the phone, and when the social worker identified herself and asked where mother was, Ebony hung up the phone. The social worker called back and left a message.

The social worker continued to call mother's telephone numbers and also sent an email to mother on September 16, 2014. The social worker visited two potential addresses that she found for mother, but was still unable to locate mother.

In a detention report dated September 22, 2014, DCFS noted that mother had not cooperated with DCFS's efforts to assess Elijah's safety, as her whereabouts were unknown since she left the hospital. DCFS recommended that the juvenile court order the child detained at large and issue a protective custody warrant. DCFS also noted that mother was not in full compliance with her case plan in R.B.'s case because she had attended only six sessions of counseling to address anger management and she tested positive for alcohol while she was pregnant.

Section 300 petition on behalf of Elijah

On September 22, 2014, DCFS filed a petition on behalf of Elijah pursuant to section 300, subdivisions (a), (b), and (j) alleging that Elijah was at risk due to mother's inappropriate physical discipline of R.B., mother's physical altercation with MGM in R.B.'s presence, and mother's use of alcohol while pregnant with Elijah.

On the same date, DCFS provided a Last Minute Information report indicating that DCFS had, on that morning, obtained new contact information for mother. The social worker had made telephone contact with mother, who was at the doctor's office with Elijah. Mother agreed to meet the social worker at her residence and provided the address. Mother stated that she was living with R.B.'s paternal step-grandmother, Joann B. She had not been in touch with MGGM or Ebony and did not know that the social worker was looking for her. Mother had not received the voice mail or texts because she did not have a telephone. DCFS rescinded its request for a protective custody warrant but continued to recommend that Elijah be detained.

Mother intended to live with Joann for the next couple of months, until Elijah became old enough for child care. Joann spoke with the social worker and said she was glad mother took her up on the offer to live with her. Joann said mother could stay with her as long as she desired.

The social worker informed mother that R.B. had disclosed that mother stayed with R.B. and R.B.'s father, Ron B., during an unmonitored overnight visit in a motel. Mother admitted that she had done so on Labor Day weekend as she had nowhere else to go. Mother claimed to be unaware that Ron B. could not supervise visits, when asked by the social worker. Mother was also informed that she needed to continue drug testing and counseling to continue to address anger management, as six sessions was insufficient. Mother responded that she was willing to participate in additional services.

DCFS noted that it was considering liberalizing mother's visits with R.B. due to mother's negative drug tests. DCFS found no current safety threat to Elijah in mother's home, and recommended that the juvenile court release Elijah to mother contingent upon mother residing in a DCFS-approved setting with family maintenance services to monitor Elijah's safety and mother's continued compliance with services.

Detention hearing

At the continued detention hearing on September 23, 2014, the juvenile court ordered Elijah released to mother on the condition that mother live in a DCFS-approved setting, return negative drug tests, allow unannounced house calls, and comply with court

orders. At the request of mother's counsel, the court ordered DCFS to assess the matter for a section 301 informal services contract.

Jurisdiction/disposition report

A jurisdiction/disposition report dated October 23, 2014, included mother's description of the incident leading to R.B.'s case as follows: she stated that MGM always spoiled R.B., who had a picture of a penis on the phone. When mother became angry, R.B. said "it's not me." Mother said "Is someone touching you?" Then MGM came out and they "got into it." MGM asked why R.B. was crying. According to mother, MGM was interfering. Mother stated, "[R.B.] kept lying, so I grabbed him by the shirt and said 'Stop lying to me.'" MGM called mother a bitch and grabbed mother, and mother hit MGM. Mother said it was her reflexes.

Mother also admitted to hitting R.B. with a belt "a long time ago." She explained, "it hurt my little heart to hit him with a belt. He had taken a cup of water and dumped the water over and over outside of the bathtub."

Mother said she finished her parenting classes. She started taking anger management classes, but then was told she needed to address anger management through counseling. Mother said she completed counseling, having attended six sessions total. Mother was incredulous about the positive test for alcohol. She claimed that she does not drink.

Mother would not agree to an informal services contract, because she believed the case would be dismissed. She was eager to reunify with R.B.

DCFS assessed that Elijah was not in immediate danger in mother's home as mother was cooperative. DCFS recommended that the juvenile court take jurisdiction over Elijah with the child released to mother's custody.

Adjudication hearing

The adjudication hearing took place on October 23 and 24, 2014. The court admitted into evidence the reports from Elijah's case and the two most recent status reports from R.B.'s case. The court also took judicial notice of all prior sustained petitions, case plans, and minute orders from R.B.'s case.

The social worker testified that in her experience, six sessions of counseling addressing anger management is not sufficient. In addition, the social worker had inquired of the supervisor of mother's therapist if she thought six sessions of individual therapy was sufficient for an individual who is having anger problems. The supervisor responded that it was not sufficient.

Mother called an expert regarding mother's positive test for alcohol. He testified that it was possible for a urine sample to test positive for alcohol at a level of 0.02 percent without the individual having consumed an alcoholic beverage. However, most positive urine tests would be the result of consuming alcohol.

At closing argument, DCFS argued that the juvenile court should sustain the petition and place Elijah in mother's custody. Counsel for Elijah joined with DCFS and argued the petition should be sustained. Mother's counsel argued that the court should dismiss the petition.

The juvenile court dismissed the count regarding mother's use of alcohol, noting there was no history of an alcohol problem and that mother tested negative with the exception of one test. Based on the expert testimony, the court could not find more than a 50 percent chance that the allegations were true and thus could not sustain the count by a preponderance of the evidence.

The court sustained the following allegations:

a-1, b-2, j-1: "On occasions, the child Elijah[]'s mother . . . used inappropriate physical discipline against the child's sibling, [R.B.] . . . including using a belt on the sibling's buttocks and on 06/06/2013, mother's physical discipline included but was not limited to grabbing the sibling by the sibling's shirt. The child's sibling is a current dependent of the Juvenile Court due to the mother's physical discipline of the sibling. The mother has not yet completed her Juvenile Court ordered services to address the family's problems. Such physical abuse of the child's sibling by the mother endangers the child's physical health, safety and well-being, creates a detrimental home environment, and places the child at risk of physical harm, damage and physical abuse."

a-2, b-3, j-2: "On 6/06/13, the child Elijah[]'s mother . . . engaged in a verbal and physical altercation with the child's maternal grandmother,

Kim B[.], in the presence of the child's sibling, [R.B.] . . . in which the mother and maternal grandmother struck each other. The child's sibling is a current dependent of the Juvenile Court due to the altercation between the mother and maternal grandmother. The mother has not regularly participated in Juvenile Court ordered counseling and services to address the family's problems. Such violent conduct on the part of the mother and maternal grandmother endangers the child's physical health and safety and places the child at risk of physical harm and damage.”

The court explained that due to Elijah's young age he was not able to take care of himself, and due to the allegations of inappropriate physical abuse, it was necessary to be extra careful.

The court declared Elijah a dependent child and ordered that he remain in mother's custody. Family maintenance services were ordered for mother, including individual counseling to address anger management, among other things.

Mother filed a notice of appeal on October 24, 2014.

DISCUSSION

I. Standard of review

On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, “after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.]” (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378). Substantial evidence is evidence that is reasonable, credible, and of solid value. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. [Citations.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the

juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

II. Substantial evidence supports the juvenile court's findings

The allegations against mother were sustained under section 300, subdivisions (a), (b), and (j). As set forth below, substantial evidence supported the assertion of jurisdiction over Elijah in this case.

A. Section 300, subdivision (j)

Section 300, subdivision (j) provides that a child comes within the jurisdiction of the juvenile court if "[t]he child's sibling has been abused or neglected, as defined in subdivisions (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

Here, Elijah's sibling, R.B., was the victim of physical abuse by mother, and was also witness to a physical altercation between mother and MGM. Allegations pursuant to section 300, subdivision (b) were sustained by the juvenile court in R.B.'s case. Mother had not completed her case plan, and R.B. had not been returned to mother's custody. Mother continued to have monitored visits with R.B. due in part to her failure to complete individual counseling for anger management.

Mother argues that there is no substantial risk that Elijah will be abused as his sibling was under section 300, subdivision (b). She argues that Elijah never suffered any harm or illness at the hands of mother, and was never neglected or left unprotected. Mother states that no incidents of anger or inappropriate physical conduct have taken place since the time R.B. became a dependent of the juvenile court, and further, mother has participated in services to prevent such behavior.

Mother has failed to show that there is no substantial risk that Elijah will be abused as R.B. was. R.B. was very young when the physical abuse by mother took place. R.B. was only four years old when teachers at his school heard him screaming, "Don't hit me" inside the school bathroom. The teachers reported that R.B. had expressed fear of mother hitting him in the past. Mother later admitted to using a belt to discipline R.B. In

June 2013, when R.B. was only five years old, mother punched R.B. several times to the point that he vomited. Mother, angry when MGM tried to stop the abuse, then hit MGM.

In addition, the reasons for mother's abuse were highly inappropriate. She struck R.B. repeatedly after finding a picture of R.B.'s penis on a cell phone. When R.B. told mother it was not him, she told him to stop lying and physically abused him. And in a previous incident, when R.B. was even younger, mother struck him with a belt for dumping cups of water out of the bathtub. Mother showed no current understanding that this was an inappropriate response to a young child playing in the bathtub.

Mother was ordered to engage in counseling to address issues involving anger. Mother began attending counseling, and attended three sessions with a trainee in November and December 2013. After that trainee left the program, mother continued with three further sessions in February and March 2014. There was testimony at the hearing that this was insufficient to address mother's anger management issues.

Mother argues that over a year had passed since the last incident in which she physically abused R.B. and got into a physical altercation with MGM. However, for most of that time mother has been restricted to monitored visits with R.B. Thus, the passage of time alone is not evidence that there is no substantial risk of harm to Elijah.

Mother cites *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*), for the proposition that past acts do not in themselves, provide a basis of jurisdiction. However, *Rocco M.* does not address the situation where, as here, the parent is currently involved in reunification services to reunify with a sibling. Mother cites no case suggesting that in this situation, there is no current risk to a younger sibling. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387 [evidence insufficient to support a finding that child who was sexually abused by family acquaintance was at substantial risk of future serious physical harm at the time of the hearing]; *In re Carlos T.* (2009) 174 Cal.App.4th 795 [where 11-year-old girl became pregnant by her father, and mother had been aware of the abuse, and father also sexually abused the girl's brother, children were still at risk even though father was incarcerated and neither parent had visited the children in over two years]; *In re Brison C.* (2000) 81 Cal.App.4th 1373 [child caught in bitter custody dispute did not

come within statutory definition of a dependent child where there was no evidence that child was at risk of suffering severe emotional damage].)

Mother's physical abuse of Elijah's brother R.B., and her open dependency case regarding R.B., provide sufficient evidence of a substantial risk of similar harm to Elijah. The juvenile court thus did not err in assuming jurisdiction over Elijah under section 300, subdivision (j).

B. Section 300, subdivisions (a) and (b)

We have determined that the juvenile court did not err in assuming jurisdiction over Elijah pursuant to section 300, subdivision (j). Thus, we need not address whether jurisdiction is appropriate under subdivisions (a) and (b). (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 [where multiple grounds for jurisdiction are pled, we may affirm the juvenile court's finding of jurisdiction under only one of the statutory bases for jurisdiction and need not consider whether the other grounds are supported by the evidence].) However, we briefly address the juvenile court's findings under section 300, subdivisions (a) and (b), and find no error in the court's decision.

Section 300, subdivision (a) provides that a child is within the jurisdiction of the juvenile court where the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." Mother inflicted physical harm on Elijah's brother, and had not successfully reunified with him. As set forth above, a substantial risk of serious physical harm to Elijah remained due to the nature of mother's prior physical abuse of R.B. and her failure to adequately address anger management in counseling. This evidence is sufficient to support the juvenile court's finding that Elijah was a child described under section 300, subdivision (a).

Section 300, subdivision (b) provides that a child is within the jurisdiction of the juvenile court where the 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." Mother failed to protect Elijah's brother from physical aggression when she inappropriately physically

disciplined him herself and when she subjected him to physical violence between herself and MGM. Mother had not successfully reunified with Elijah's brother at the time of the jurisdictional hearing. For the reasons discussed above, this is sufficient to support the juvenile court's finding that Elijah was a child described under section 300, subdivision (b).

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT