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

In re BENJAMIN Z., a Person Coming
Under the Juvenile Court Law.

B270922

(Los Angeles County
Super. Ct. No. DK14150)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

ISAAC Z.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Debra Losnick, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel for Plaintiff and Respondent.

Appellant Isaac Z. (father) appeals from the juvenile court's findings and orders establishing dependency jurisdiction over Benjamin (born Oct. 2013) and placing Benjamin in the home of his mother, Lonje F. (mother).¹ We affirm the juvenile court's orders.

BACKGROUND

Section 300 petition

On May 30, 2015, the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging that father and mother engaged in domestic violence while Benjamin was in the home. Long Beach police officers responded to the family home, where they found mother and Benjamin. Mother's eyes were red and swollen and she had bruises on her face and upper arms.

Mother told the officers that she and father had argued that afternoon because father became jealous when she did not come home immediately after work. Father began to throw picture frames, furniture, food, and other objects around the living room. He entered the bedroom where mother was cleaning, grabbed all of the clothing, and threw them around the room. Benjamin was asleep in another bedroom. Mother became afraid of father and went into the bathroom, but father followed her and began punching her in the head and face with his fists approximately five or six times. When father stopped punching her, mother ran into the bedroom where Benjamin was sleeping, locked the door, and called 911. Father then fled.

The officers provided mother with information on a women's shelter and how to obtain a restraining order. Mother declined to press charges against father.

A Department social worker responded to the family home later that same day. Mother told the social worker that she and father had been married for two months but had been together for four years. Benjamin was their only child.

Mother denied any prior incidents of domestic violence. She said the current incident occurred because father became jealous when she did not return home directly

¹ Mother is not a party to this appeal.

after work. He began throwing objects around the apartment and then followed mother into the bathroom, where he began punching her. She ran into Benjamin's bedroom and locked the door. Father fled when he heard her calling 911. Mother told the social worker that she was not afraid of father but that she would separate from him to avoid further problems.

Benjamin was present in the home with mother. The social worker observed that Benjamin was had no marks or bruises, and was alert and appeared to be happy.

In a follow-up visit with the social worker on June 24, 2015, mother stated that father was staying with a friend in Long Beach. She said she and father had talked since the violent incident and she did not know whether they would reconcile or end their marriage. She stated that she had allowed father to come to her home to visit with Benjamin. Apart from the May 30, 2015 incident, there had been no prior or subsequent incidents of violence with father. The social worker gave mother referrals for domestic violence counseling, parenting classes, individual counseling, resources for domestic violence victims, and information on how to obtain a restraining order.

Father's whereabouts were unknown, and the Department's attempts to reach him by telephone were unsuccessful.

On September 3, 2015, mother told the social worker that she and father had talked and realized they needed to give each other some space. When asked whether father had come to the home, mother said that he had retrieved his clothing and belongings one day while she was at work and that she had allowed him to visit with Benjamin one time.

Later that same day, the social worker visited Benjamin's day care facility and was informed by the day care provider that father had dropped Benjamin off that morning. The provider stated that sometimes both parents dropped off and picked up Benjamin together, and sometimes it was only father. The provider reported that mother was pregnant and due to give birth in March 2016.

The social worker attempted to contact father by telephone on September 14, 2015, and again the following day, but was unable to reach him.

The Department filed a Welfare and Institutions Code section 300² petition on November 6, 2015, alleging that Benjamin was at risk of harm because of father's violent conduct against mother. Neither parent attended the November 6, 2015 detention hearing, at which the juvenile court found a prima facie case for detaining Benjamin from father's custody. The court ordered Benjamin released to mother and accorded mother family maintenance services. Father was accorded family reunification services and monitored visits, not to be monitored by mother.

The Department's social worker made a return visit to Benjamin's daycare facility on November 19, 2015. The daycare provider stated that father picked Benjamin up two to three times a week. The social worker also spoke with mother, who said that she and father were not living together, but that father had been trying to be more helpful. The social worker advised mother that father's contact with Benjamin had to be monitored until the court ordered otherwise. Mother provided a telephone number for father, and the social worker left him a voicemail informing him of the next hearing date.

Mother and father were both present at the November 20, 2015 hearing at which they both denied the allegations of the petition. The juvenile court found father to be Benjamin's presumed father, ordered the Department to provide the parents with referrals for couples counseling, and set an adjudication hearing date of January 26, 2016.

Jurisdiction and disposition

In a November 30, 2015 interview, mother described the incident of domestic violence with father as "a shouting match." She said she called the police because "I didn't want it to go any further than it had. I wanted a breather and he didn't. It was just to have him take some air. He wouldn't leave." Mother stated, "Benjamin wasn't present at this altercation. He was in the bedroom already asleep and the door was semi-closed." Mother told the social worker she had not yet enrolled in any classes or programs. With regard to her relationship with father, mother stated, "We're not getting a divorce. I don't believe in divorce."

² All further statutory references are to the Welfare and Institutions Code.

The social worker interviewed father on December 1, 2015. He had not yet enrolled in any classes or programs. Father described the domestic violence incident as follows: “That night, it was more of a shouting match. I was upset. I got more upset because I threw the remote and broke my new TV. It was more us yelling at each other. That was the main thing of what happened. . . .” As to his relationship with mother, father stated, “Ultimately, we are going to be together forever.”

Neither parent attended the January 26, 2016 adjudication hearing. After hearing argument from counsel, the juvenile court sustained the section 300 petition,³ declared Benjamin a dependent of the court, and ordered him placed with mother under the Department’s supervision. The court accorded mother family maintenance services and ordered her to participate in conjoint counseling with father and individual counseling to address domestic violence and case issues. The juvenile court accorded father family reunification services and ordered him to participate in conjoint counseling with mother, as well as individual counseling to address case issues and domestic violence. The court granted father monitored visits, specified that mother was not to serve as the monitor, and gave the Department discretion to liberalize the visits.

This appeal followed.

DISCUSSION

I. Father’s arguments are cognizable

Father contends there was insufficient evidence to support a finding under section 300, subdivision (a) that Benjamin was at substantial risk of suffering serious physical, nonaccidental injury. The Department contends we need not address father’s argument because jurisdiction over Benjamin exists based on mother’s conduct as well, and mother

³ The sustained allegation provided as follows: “On 5/29/15, the child, Benjamin[’s] mother . . . and the father . . . engaged in a violent altercation in the child’s home in that the father repeatedly struck the mother’s head and face with the father’s fist, causing bruising to the mother’s face and upper arms. The mother’s eyes were red and swollen. The violent conduct by the father against the mother endangers the child’s physical health and safety, and places the child at risk of serious physical harm, damage and danger.”

did not appeal. In support of its position, the Department cites *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, and other cases for the proposition that a reviewing court can affirm the juvenile court's finding of jurisdiction over a child if any one of the statutory bases enumerated in the petition is supported by substantial evidence. In the instant case, because the only conduct alleged in the petition is that of father, we are not persuaded by the Department's argument that we should refrain from addressing the merits of father's appeal.

II. Applicable law and standard of review

Section 300, subdivision (a), allows a court to assume dependency jurisdiction over a child when "[t]he 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." "Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a) may also apply." (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) In reviewing an allegation of domestic violence, "application of section 300, subdivision (a) is appropriate when, through exposure to a parent's domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent." (*Giovanni F.*, at pp. 598-599.)

We review father's challenge to the sufficiency of the evidence supporting the jurisdictional findings under the substantial evidence standard. Under this standard, we must review the record in the light most favorable to the juvenile court's findings to determine whether there is any substantial evidence, contradicted or uncontradicted, to support them. (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) In doing so, we must also draw all reasonable inferences from the evidence to support the court's findings and orders and recognize that issues of fact and credibility are within the province of the juvenile court. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 (*Heather A.*))

III. Substantial evidence supports the jurisdictional findings and orders

Father claims the jurisdictional findings are unsupported because Benjamin was not physically injured during the parents' altercation and there was no evidence of injury

that might be inflicted upon him nonaccidentally in the future. Section 300 does not require that a child suffer actual physical harm. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Subdivision (a) of section 300 also encompasses circumstances creating a “substantial risk” of harm. ““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.’ [Citation.]” (*I.J.*, at p. 773.)

Father further contends the evidence is insufficient because the “nonaccidentally” language of section 300, subdivision (a) requires a child to have been deliberately injured by a parent’s action. Section 300, subdivision (a) does not require the parent to have intended the child to suffer serious physical harm or to be at substantial risk of such harm. The term “nonaccidentally” indicates a volitional act; the statutory language does not require a specific intended consequence.

The evidence showed that Benjamin was at substantial risk of serious physical harm inflicted nonaccidentally by father. Father and mother were involved in a physical altercation on May 29, 2015, while Benjamin was present in the home. Father began throwing picture frames, furniture, and other objects around the home. He admitted that he broke a television set. The police report noted that the home appeared to have been “ransacked as if a struggle had occurred in almost every room in the apartment.” Father punched mother in the face with a closed fist repeatedly five or six times, inflicting bruises on her face and her arms as she attempted to ward off the blows. Although Benjamin was asleep in an adjacent bedroom, the door was open, and he could have woken, walked into the room where the parents were fighting, and been struck by the picture frames, furniture, and other objects father intentionally threw around the apartment. ““Children can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg” [Citation.]’ [Citation.]” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941, quoting *Heather A.*, *supra*, 52 Cal.App.4th at p. 194.)

There is also substantial evidence to support a finding that Benjamin was at continuing risk of harm. Mother and father stated their intention to remain together. Both parents minimized the violent incident, describing it as “yelling” and “a shouting match” when in fact father threw objects around the home and punched mother in face several times. Neither parent appeared at the adjudication hearing, and there was no evidence that either had enrolled in any services at the time of the hearing. The parents did not demonstrate that they appreciated the severity of the risk their conduct presented to Benjamin, nor did they take any steps to address the issues that resulted in the juvenile court’s assumption of jurisdiction.

Substantial evidence supports the jurisdictional findings and orders.

IV. Dispositional order

Father contends the dispositional order must be voided because the juvenile court lacked the authority to remove Benjamin from his custody. The juvenile court did not, however, remove Benjamin from father’s custody. The court ordered Benjamin placed with mother, his custodial parent at the time the section 300 petition was filed, and accorded mother family maintenance services.

Father was a noncustodial parent. He did not live with Benjamin at the time the petition was filed, or at the time of the adjudication hearing. Father has established no legal basis for reversing the dispositional order.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST