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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

In re T. A. et al., Persons Coming  
Under the Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
& HUMAN SERVICES,

Plaintiff and Respondent,

v.

KEVIN T.,

Defendant and Appellant.

C067988

(Super. Ct. Nos.  
JD231070 & JD231071)

This case arises from a fight between mother, Sasha A. and father, Kevin T., during which mother attacked father with a knife and their one-year old son, J.A., was injured. Father appeals the jurisdictional findings under Welfare & Institutions

Code<sup>1</sup> section 300, subdivision (a) and the dispositional orders removing J.A. and his infant sister, T.A., from parental custody. He contends the evidence does not support a jurisdictional finding as against him, because he did not inflict harm on J.A. He further contends the evidence does not support the children being removed from his custody, because his "turbulent history with mother" "never created any risk to the children." We disagree and affirm.

#### FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Mother and father began their relationship in 2008 and over the course of the next two years, it was filled with on-going domestic violence. Among other incidents, mother claimed father assaulted her while she was pregnant with T.A., grabbing, pushing and choking her. As a result of father's numerous relationships with other women and repeated incidents of domestic violence, the parents' relationship was "on again-off again." Mother had most recently kicked father out of the house during the summer of 2010 because of domestic violence, but father returned within two days and remained there until October 9, 2010. That evening, mother and father got into a loud argument which turned physical. Mother attacked father with a knife, intending to kill him. Mother claimed father had been kicking her and trying to strangle her. At some point during the argument, father picked up J.A. Mother tried to hit father

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<sup>1</sup> Further undesignated statutory references are to the Welfare & Institutions Code.

in the head, missed and hit J.A. instead. J.A. sustained scratches and scrapes on his forehead, left eye and chin. Later father left the home with J.A. and left the infant, T.A., with mother. After this incident, father moved back in with his "ex-wife,"<sup>2</sup> Yolanda. Yolanda has an extensive history with Child Protective Services (CPS). Father also has a history of domestic violence with Yolanda.

Father had a 20 year history of violence. In 1991, he was convicted of violating a court order to prevent domestic violence (Pen. Code, § 273.6). In March 1997, he was convicted of felony spousal abuse (Pen. Code, § 273.5, subd. (a)) and two months later was convicted of misdemeanor battery (Pen. Code, § 242). In December 2005, father beat his stepson, A.B.<sup>3</sup> (stepson), with an extension cord and punched him in the chest with a closed fist. A CPS referral for physical abuse to the minor was substantiated. In 2006, father was convicted of misdemeanor spousal abuse (Pen. Code, § 273.5, subd. (a)), criminal threats (Pen. Code, § 422) and damaging power lines. (Pen. Code, § 591). As a result of that conviction, a domestic violence restraining order was issued prohibiting father from contacting his other children or significant others.<sup>4</sup> This

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<sup>2</sup> Yolanda identified herself as father's ex-wife, despite the fact she and father are still legally married.

<sup>3</sup> A.B. is not involved in these proceedings.

<sup>4</sup> The record does not specify which children and partners are protected by this restraining order.

restraining order remained in effect until April 2011. In January 2008, after having stolen a muffin at school, stepson was afraid to go home because father would discipline him by punching him. Stepson reported father punched him three to five times a week as discipline. Yolanda, stepson's mother, refused to pick stepson up from school because she was too afraid of father. A CPS referral for substantial risk to the minor was substantiated. Father was also referred to CPS relative to his other children, S.L. and A.T.<sup>5</sup> In September 2008, S.L. had been left unsupervised at an apartment building. Six months later, S.L. and A.T. were found wandering at a liquor store as father and their mother slept. In March 2010, during a fight about J.A., father yanked an alarm clock out of the wall and attempted to strangle mother with the cord. One month later, it was reported father had been physically and verbally abusive to mother and threatened to hurt J.A. Father had multiple referrals to batterers' treatment and anger management programs. He did not complete any of these programs.

Mother had a significant history of violence against the children, threatening violence against both them and father. She had two older children by Richard F. Those children live with their father. Mother had severe mental health symptoms, a history of drug use and, when not properly medicated, had contemplated killing her older children. She had also tried to

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<sup>5</sup> A third woman, not mother or Yolanda, is the mother of these children. These children are not involved in these proceedings.

kill Richard by stabbing him with a knife. In March 2010, mother reportedly threatened to kill J.A. and more than once had "smothered" J.A.'s face with a pillow when he cried.

Welfare and Institutions Code section 300, subdivision (a) petitions were filed on October 25, 2010, and the children were detained. The petitions alleged the children had suffered or were at substantial risk of suffering "serious physical harm inflicted nonaccidentally upon" the children by their parents. As factual support, the petition alleged the injuries were inflicted by mother during a domestic violence incident between her and father. The petition also alleged T.A. was present in the home when the domestic violence occurred and the parents had a history of domestic violence dating back to 1991 for father and 2008 for mother and they continued to engage in acts of domestic violence.

Father applied to the family law court for custody of the children on November 1, 2010. The application was granted, with the requirement mother and father participate in mediation immediately. The family law court was concerned about father's significant history of criminal domestic violence and ordered the mediator to consider third party placement. Mediation was unsuccessful. After interviewing the social worker and father's anger management/batterer's treatment counselor, the mediator concluded the children were at risk with either parent.

Subsequent to these proceedings commencing, mother reported an additional domestic violence incident occurred on November 8, 2010. Father followed her to a bus stop and was arguing with

her. He wanted her to "shut up" so he could get custody of the children. She refused. Father grabbed her wallet and keys from her hands and told her she was not going anywhere. Mother was afraid. When she tried to call a friend, father grabbed her cell phone and smashed it on the sidewalk. Mother sought a temporary restraining order, which was granted. She did not seek to have the restraining order extended upon its expiration in December 2010.

The jurisdictional/dispositional hearing was held on March 9, 2011. Father argued there was no basis for a finding under section 300, subdivision (a), because there was no evidence of continuing violence between the parents and his past domestic violence convictions did not show a current danger to the children. The social worker concluded "the children would be at high risk of abuse or neglect if returned to the parents' care" and recommended services such as counseling, anger management and domestic violence services. Based on the entirety of the record, the court found the section 300, subdivision (a) allegations true as to both children. The children were removed from the parents, visitation was ordered and the parents were provided reunification services.

## DISCUSSION

### I

Father contends the evidence does not support a finding under section 300, subdivision (a) against *him* because he "never nonaccidentally inflicted injury on either of his children." Father does not contend that mother's actions were insufficient to bring the children within the court's jurisdiction.

Jurisdictional findings are reviewed under the substantial evidence standard. We review the record in the light most favorable to the court's determination, drawing all reasonable inferences from the evidence to support the findings and orders and determine whether there is any substantial evidence to support the juvenile court's determination. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574.) Under section 300, subdivision (a), jurisdiction is appropriate where there is substantial evidence, "[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."

Mother previously threatened to kill her older children, the minor's half-siblings, "smothered" J.A.'s face with a pillow when he cried and threatened to kill him. Mother had contemplated killing her older children, attempted to kill their father by stabbing him and intended to kill father by stabbing him during the October 2010 fight. Mother and father have a significant history of domestic violence in front of the children, which includes choking and stabbing each other. J.A.

was injured during a violent argument between mother and father. This is sufficient evidence to support the finding that the children were at risk of serious physical harm inflicted nonaccidentally. Father makes no argument to the contrary. Instead, he argues only that he was not the parent who put the children at risk, and therefore, jurisdiction is not proper as to him. He is wrong.

The purpose of a dependency proceeding is not to prosecute the parents, but to protect the children. (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Accordingly, when the actions of either parent bring the child within the statutory prerequisites of section 300, the juvenile court asserts jurisdiction over the child, not the parents. (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) The conduct of only one parent can create the circumstances triggering section 300 and the court's assertion of jurisdiction over the child. (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1212.) "For jurisdictional purposes, it is irrelevant which parent created those circumstances." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.)

It is uncontested here that mother's actions brought the children within the statutory requirements of section 300. The juvenile court needed no more to assert jurisdiction over the children. (*In re I.A., supra*, 201 Cal.App.4th at pp. 1491-1492.)

## II

Father also challenges the juvenile court's dispositional orders removing the children from his home. He contends it was

mother's conduct that injured J.A., his "turbulent history with mother did not support removal. . . because their conflicts never created any risk to the children", and his past record of "conflict with other individuals did not show a current danger" to the children because they were stale and involved "an older boy who had a different relationship with father." He also contends there were reasonable means of protecting the children, short of removal. We are not persuaded.

"Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.] The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

It is true that father's hand did not inflict the injuries on J.A. But, that is not the dispositive fact in determining whether the children were at risk in father's home. Here, a number of undisputed facts support the determination that the children were at substantial risk of harm if returned to father's custody and there were no reasonable alternatives to

removal. J.A. was injured during the course of a physical fight between mother and father. This was not the first incident of domestic violence between the parents, nor the last. Mother and father both have significant histories with CPS, with allegations of violent behavior. Father has a history of domestic violence against other partners and against his stepchild. A five-year restraining order issued against father, prohibiting him from contacting his other children.

Father's history of violence includes punching and whipping his stepson and sustaining convictions for spousal abuse and battery. His violent criminal history extends back some 20 years. Father has been referred at least twice to batterers' treatment and anger management programs, but has not successfully completed such a program. Even after these children were placed in custody, the parents engaged in domestic violence. Despite continued and repeated incidents of domestic violence between himself and his partners, father maintains these violent relationships. The family law mediator concluded the children were at risk with either father or mother. The social worker also concluded the children were at high risk of abuse or neglect if returned to the parents' care. The juvenile court was entitled to rely on these conclusions and give them great weight. (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 918.) This was sufficient evidence that the children were at substantial risk of harm if not removed from fathers' custody.

Father relies on *In re Basilio T.* (1992) 4 Cal.App.4th 155 to support his claim that the evidence of domestic violence did

not support removal in the absence of physical harm to the children. We disagree that there must be physical injury to the children before the children can be removed and find the reasoning and logic of *In re Heather A.* (1996) 52 Cal.App.4th 183 and *In re E.B., supra*, more persuasive. Living in a house filled with domestic violence is injurious to children, and puts them at substantial risk of both physical and emotional harm. (*In re Heather A., supra*, 52 Cal.App.4th at 194; *In re E.B., supra*, 184 Cal.App.4th at p. 576.)

Contrary to his claim, father's "past record of conflict" also supports the conclusion that the children were at substantial risk. That stepson and these minor children are differently situated as to both age and biological relationship with father does not render the evidence of father's conduct toward stepson irrelevant. (See *In re Cole C., supra*, 174 Cal.App.4th at 917 [physical abuse of older female stepchildren of father placed significantly younger biological son at risk and supported removal of minor].) Father beat and whipped his stepson, a child who was living with him. He punched him often enough that both the child and his mother were afraid to go home. That level of violence committed against a child in father's home is highly relevant in assessing the risk faced by children currently living with father, irrespective of differences in the specific circumstances of their age and relationship to father.

Furthermore, father's history of violence is not "stale." Father sustained criminal convictions in 1991, two in 1997, and

one in 2006. In December 2005, he had a substantiated referral of physical abuse after punching his stepson and whipping him with an extension cord. A domestic violence restraining order issued against him in April 2006 and was in effect until April 2011. As late as January 2008, stepson continued to report he was being punched by father, and both stepson and his mother, father's ex-wife, were afraid of father. Father and mother had been in a relationship since 2008, which father admitted had been filled with repeated incidents of violence. The violence continued even after these proceedings commenced. "[P]ast violent behavior in a relationship is "the best predictor of future violence." Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of these relationships. . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner." [Citation.]" (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 576.) Father's past use of violence in his domestic relationships has continued into the present and has been perpetrated against children in his home. This evidence was relevant to the current risk of harm faced by these children.

There was also sufficient evidence that there were no means of protecting the children short of removal. Since 1991 through 2010, father has committed numerous violent acts against partners and his stepchild. Father has done nothing to address his problems with violence and violent behavior. During the course of these proceedings, father was living either with

mother or with his ex-wife. Both women have significant histories with CPS. Father also has a history of domestic violence with both women. Despite repeated referrals, father has not completed a batterers' treatment or anger management program. Parents had previously been provided informal services, community service referrals and interventions. Parents neither utilized or benefitted from these services. This is sufficient evidence to support the finding that reasonable efforts were made and there were no reasonable means short of removal to protect the children.

DISPOSITION

The jurisdictional findings and dispositional orders are affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

DUARTE, J.