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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re K.T., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LONNIE T.,

Defendant and Appellant.

D060657

(Super. Ct. No. J515677B)

APPEAL from a finding and order of the Superior Court of San Diego County,
Ana L. Espana, Judge. Affirmed.

Lonnie T. appeals a finding and order adjudicating his daughter, K.T., a dependent of the juvenile court under Welfare and Institutions Code section 300, subdivision (b).¹
We affirm.

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

Lonnie and C.G. are the unmarried parents of K.T., born November 2008. C.G. has an older son, D.G., who is now 12 years old. This appeal concerns only K.T.² K.T. was declared a dependent of the juvenile court on findings that Lonnie engaged in domestic violence with the mother, and the mother's physical and mental health conditions rendered her incapable of providing adequate care to her children. Lonnie acknowledges that K.T. is a child described by section 300 because of her mother's disabilities.³ He argues the jurisdictional finding that he engaged in acts of domestic violence is not supported by substantial evidence and adversely impacts his ability to maintain or regain custody of his daughter.

FACTUAL AND PROCEDURAL BACKGROUND

On April 18, 2011, the Agency received a referral alleging emotional abuse to K.T. and D.G. due to domestic violence between their parents. The Agency learned that on April 16, Lonnie became upset when he could not find his car keys and began throwing and breaking items in the home. According to C.G., Lonnie "destroyed the living room and kitchen." She and the children took refuge in the bedroom, where she texted a friend to contact police.

² The San Diego County Health and Human Services Agency (Agency) also initiated dependency proceedings on behalf of D.G.

³ The Agency, citing *I.A. (2011) 201 Cal.App.4th 1484*, argues father's appeal should be dismissed as father does not present a justiciable issue. We exercise our discretion to resolve father's challenge to the court's factual findings regarding domestic violence.

Police officers observed that the furniture was thrown about and there were broken items in the apartment. According to the officers, the children appeared "visibly upset and scared" and C.G. was "stressed [and] terrified." Lonnie said he was angry because he could not find his keys and admitted to breaking some items out of anger. Both parents denied any physical violence. Officers helped C.G. and the children leave the apartment. After two days in a motel, C.G. and the children moved to a domestic violence shelter.

On April 18, police officers escorted C.G. to the apartment to allow her to retrieve some of her and the children's belongings. The police officers were called away and asked the apartment manager to monitor the situation. C.G. reported that after the officers left, Lonnie pulled her hair, tried to choke her and threw her to the floor, causing her to hit her head. Lonnie stopped when they heard the apartment manager calling. C.G. said she was having difficulty walking and breathing. She had scratch marks on her chest. When she returned to the shelter, C.G. telephoned 911. C.G. was hospitalized overnight, leaving the children in the care of staff and a roommate at the shelter.

On April 21, the Agency received another referral alleging that C.G. had lost consciousness due to a serious medical condition and was hospitalized. There was no one available to care for the children. C.G. checked herself out of the hospital to avoid having the children placed in protective custody. The Agency met with C.G. and offered voluntary services to her. On May 10, a short time after a meeting with Child Protective Services and shelter staff, C.G. was found unconscious, with indications that she may have attempted suicide. C.G. was again hospitalized, leaving K.T. in the care of D.G. and a roommate at the shelter without making provisions for their support.

The Agency detained the children in protective custody and filed dependency petitions on their behalf. Social worker Jesus Salcido interviewed D.G. on June 13. D.G. said Lonnie and his mother yelled and argued every week. Approximately five months earlier, Lonnie had hit D.G. and had thrown him to the ground. D.G. said, "I'm afraid of the guy."

Salcido interviewed Lonnie on June 14. Lonnie reported that he had "hard arguments" with C.G. but denied physically assaulting her. He denied throwing or breaking items in the house on April 16, and said C.G.'s allegations of domestic violence on April 18 were not true. He denied he ever yelled at or hit D.G. Lonnie refused to participate in any domestic violence classes.

The juvenile court held a contested jurisdictional and dispositional hearing on August 10 and 12, 2011. The court admitted the Agency's reports in evidence, and heard testimony from D.G., then 11 years old; Elliott Shaffer, a detective with the family protection unit; Veronica A., the manager of the apartment complex in which Lonnie lived; Salcido; Martha Palfox, the social worker's supervisor; and Lonnie.

D.G. testified that his mother told him that Lonnie had choked her. He saw bruises on her collarbone, and other marks under her chin and on her chest. She was limping and looked like she was hurt. He insisted on calling the paramedics and the police officer. His mother told the police officer what had happened. D.G. also described an incident that had occurred approximately six months earlier in which Lonnie grabbed him by the shirt, hit him and threw him on the ground.

Detective Shaffer testified he interviewed C.G. about the April 18 incident on April 23. C.G. said she was kneeling to find a pair of shoes under the bed. Lonnie came up behind her and lifted her by her hair, which she was wearing in a pony tail, pulled her to her feet, grabbed her by the throat and pushed her down, causing her head to hit the floor. He released her when they heard the apartment manager call out. Detective Shaffer said C.G. did not have any injuries that were consistent with having been choked. He did not arrest Lonnie.

Veronica, the apartment manager, said the police officers who were escorting C.G. to get her belongings from Lonnie's apartment on April 18 were called away on an emergency. They asked her to stand at the door to Lonnie's apartment. The apartment was approximately 500 square feet. It had one bedroom that was approximately 10 feet from the doorway in which she was standing. Lonnie was cooking in the kitchen. He was calm. C.G. was in the bedroom. She asked Lonnie to help her find something. The parents were in the bedroom together for less than a minute. Veronica did not hear any thumping or yelling. She could not see into the bedroom.

After Lonnie left the bedroom, C.G. stayed at the apartment for approximately 15 minutes. When C.G. left, she was carrying her belongings to her car. She was not limping. There were no marks on her. Veronica stayed at the apartment until C.G. went to another apartment in the complex to get her children. C.G. said something to her when she left. Veronica did not remember the comment because she "was stuck in another world" and just wanted to leave.

Lonnie testified that C.G. came home from the hospital on April 15. He told her he was going fishing the next day. On April 16, Lonnie could not find his car keys. Lonnie then rented a car. He left the rental car keys on the kitchen counter while he put his fishing gear in the car. When he returned, he could not find the rental car keys. While he was searching for them, a bottle of hot sauce fell from a cabinet and broke, and a plate broke when he lifted the dish drain. Lonnie threw the pillows off the couch and moved the living room furniture to find the keys. He did not yell at the mother or the children.

On April 18, Lonnie was cooking in the kitchen. C.G. called him into the bedroom when she was unable to find her medication. He walked into the doorway of the bedroom, she found her medication and he turned around and walked out. Lonnie said he never became violent with C.G. He admitted he "cuss[ed] toward her." Lonnie said he never pushed or hit D.G.

The juvenile court sustained the petition filed on behalf of K.T. under section 300, subdivision (b) by clear and convincing evidence. The court stated that the police reports concerning the April 16 incident validated the mother's reports about Lonnie's behavior. The court did not find Lonnie's testimony to be credible, noting that Lonnie had admitted to police that he was angry and had broken items in the home. With respect to the April 18 incident, the court found D.G.'s testimony to be "quite credible." In addition, D.G. was very detailed in the description of Lonnie's physical violence toward him, which Lonnie denied.

The juvenile court removed K.T. from the custody of her parents and ordered a family reunification plan. Lonnie's case plan included therapy, a parenting education program and a 52-week domestic violence program. The court ordered C.G. to undergo a psychological evaluation.

DISCUSSION

Lonnie contends the juvenile court erred when it sustained the allegations of domestic violence. He argues the evidence against him was not reliable. Lonnie maintains that if the false allegations of domestic violence are upheld, he will not be able to successfully complete a domestic violence program in which he is required to admit conduct that did not occur, and he will not be able to reunify with his daughter.

At the time of the jurisdictional hearing, the court considers only whether the child is described by one or more subdivisions in section 300. Under section 300, subdivision (b), the Agency must show that the parent's neglectful conduct has caused the child to suffer serious physical harm or illness, or creates a substantial risk that the child will suffer such harm or illness. (Cf. *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) The Agency has the burden of proving by a preponderance of the evidence that a child is a person described by section 300. (§ 355, subd. (a).)

In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden of showing that there is no evidence of a sufficiently substantial

nature to support the findings or orders. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 (*Dakota H.*)) We draw all legitimate and reasonable inferences in support of the judgment. (*Candari v. Los Angeles Unified School Dist.* (2011) 193 Cal.App.4th 402, 408.)

To the extent the court's findings rest on an evaluation of credibility, the findings should be regarded as *conclusive* on appeal. (*Estate of Fries* (1965) 238 Cal.App.2d 558, 561.) Here, the juvenile court concluded that D.G.'s testimony was credible and Lonnie's testimony was not credible. To warrant rejection of the statements of a witness who has been believed by the trier of fact, it must be physically impossible for the statements to be true or their falsity must be apparent without resorting to inferences or deductions. (*People v. Friend* (2009) 47 Cal.4th 1, 41.) Lonnie does not meet that standard on review.

The record shows that on April 16, 2011, police officers arrived at the parents' home in response to a call that C.G. required assistance. They observed that the "[h]ouse was overturned and things broken, [and there was] [f]urniture thrown about." Police also noted that C.G. was stressed and terrified, and the children were "visibly upset and scared." Lonnie admitted to police that he had broken some household items in anger. Lonnie acknowledged he had "hard arguments" with C.G. Thus, the court could reasonably reject Lonnie's testimony at the jurisdictional hearing that he did not break any items or overturn furniture in the home while he was searching for the missing rental car keys, and he was only yelling at himself.

With respect to the April 18 incident, a judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result if it had believed other evidence. (*Dakota H.*, *supra*, 132 Cal.App.4th at p. 230.) Here, the juvenile court noted that C.G. made consistent statements about the domestic assault to a police officer and D.G. The court credited D.G.'s testimony, who said he noticed that his mother was limping and in pain, and had marks on her chest when she returned from Lonnie's apartment. The court implicitly disregarded the testimony of the apartment manager, who reported that she could not see into the bedroom while the parents were in it, was stressed by the situation, did not want to be there and "was stuck in another world." Although reports of C.G.'s account of the April 18 incident varied slightly, those variations may have been due to deficiencies in the reporters' accounts or to the passage of time between interviews. Immediately following the incident, D.G. and a police officer observed that C.G. had sustained injuries in her chest area and was in pain. Further, D.G.'s description of the manner in which Lonnie grabbed his shirt and pushed him down is similar to C.G.'s description of him grabbing her and pushing her to the floor, and supports the evidence about the April 18 incident.

The power of the appellate court begins and ends with a determination whether there is *any* substantial evidence, contradicted or uncontradicted, to support the conclusions of the trial court. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 447.) We conclude there is

substantial evidence to support the finding that K.T. is a child described by section 300, subdivision (b) because of incidents of domestic violence between her parents.⁴

DISPOSITION

The finding and order are affirmed.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

IRION, J.

⁴ We need not consider Lonnie's speculative argument that he will not be able to successfully complete a domestic violence program and reunify with K.T. Lonnie will have the opportunity to bring any new evidence to the attention of the Agency or the court in evaluating whether his court-ordered case plan is reasonably designed to ameliorate the problems that led to K.T.'s dependency case. We also note that any complaints Lonnie may have about his case plan will be immaterial if he does not visit K.T., which he failed to do from the time she was detained in protective custody on May 16, through August 12, the date of the jurisdictional hearing.