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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.B., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

G.B.,

Defendant and Appellant.

E054799

(Super.Ct.No. J239711)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,
Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and
Appellant.

Jene-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel,
for Plaintiff and Respondent.

Appellant G.B. (father) appeals the jurisdictional and dispositional orders regarding his son, M.B. (the child). He contends that there was insufficient evidence to support the juvenile court's jurisdictional findings under Welfare and Institutions Code section 300,¹ subdivision (b), and that the court erred in removing the child from his custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Detention

A San Bernardino County Children and Family Services (CFS) social worker responded to a referral alleging caretaker absence on July 1, 2011. The reporting party stated that father was arrested for sexual battery, and there were no family members nearby to take care of the child. Father's neighbor was the alleged victim of the sexual battery. Prior to that referral, CFS had received another referral alleging that father had been observed on multiple occasions outside of the home, yelling and using profanity, and pushing the child to the ground.

On July 6, 2011, CFS filed a section 300 petition on behalf of the child. The petition alleged that the child came within subdivisions (g) (no provision for support) and (j) (abuse of sibling). The petition included the allegations that the whereabouts of the child's mother (mother)² were unknown, that father was incarcerated, and that the child's half-sibling was found to be at risk for abuse by father in 2001, and that the child was at risk of similar abuse.

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² Mother is not a party to this appeal.

In a detention report, the social worker noted her observations of the child playing with toys. She noticed that he was aggressive while playing, kicking and stepping on the toys, and using profanity. The child was three years old at the time.

On July 7, 2011, the court detained the child in foster care.

The section 300 petition was subsequently amended to allege that the child came within subdivisions (b) and (g). It contained the allegations that, while in mother's care, the child was exposed to acts of domestic violence and, thus, the child was at risk of harm; father had "engaged in at least one act of domestic violence in the past placing the child at risk of harm"; and father was incarcerated and left the child without any provisions for support.

Jurisdiction and Disposition

The social worker filed a jurisdiction/disposition report on July 25, 2011, and recommended that the court sustain the amended petition and order reunification services for father (and mother). The social worker was concerned about father's pending sexual assault charge involving his neighbor. The police report stated that father asked the neighbor to come to his house. Once she came inside the house, he grabbed her and sexually assaulted her. The social worker opined the incident suggested that father lacked self-control, and that if true, his behavior was not beneficial for the child. The social worker believed it would be detrimental to return the child to father at that time.

The social worker interviewed father and learned that he had been married twice. His first marriage was to C.B., and it lasted for 12 years before they divorced. Father admitted that he got into an argument with her and "pushed his head into [her] head." The

social worker reported that father had a prior dependency case in 2001 with CFS due to substantiated allegations of abuse. His stepdaughter, R.H., alleged that he hit and kicked her, and that he put duct tape on her mouth. The stepdaughter was removed from the home and refused to return due to the physical and emotional abuse. Father and C.B. received reunification services for over one year, but a permanent placement plan was eventually implemented for the stepdaughter.

Father divorced C.B., and then married mother in 2006.³ Mother and father had the child in 2007 in Tennessee. Father had three other children,⁴ and mother had six other children. The social worker interviewed mother, who said that father emotionally, physically, and sexually abused her. Mother said that, on a daily basis, she was forced to put the child to sleep. Father would then lock the door to the child's room, so that he could sexually abuse mother. Mother said the abuse lasted from 30 minutes to three hours, and that it was sometimes violent. She also said that father physically abused her by head butting her and hitting her arms. Whenever she would call the police regarding the abuse, the police would come and father and mother would "present as an appropriate family." They would then move somewhere else. She said father "controlled everything." Father denied subjecting mother to any abuse. He described mother as "the batterer," and said she "like[d] to play the victim role."

³ Their marriage was apparently invalid, since mother was still married to someone else.

⁴ The record does not clearly identify the mother of father's children, except for the child.

The social worker discovered that the Tennessee Department of Children's Services investigated allegations in 2006 against father regarding, K.B., one of mother's daughters, and found that there was a preponderance of evidence that he "abused or neglected" her. There was an indication that there was a substantial risk of physical injury to K.B. due to the domestic violence between mother and father.

Mother left father in 2009. She suffered from posttraumatic stress and anxiety disorder as a result of the severe abuse she suffered. In November 2009, she filed a complaint against father in North Carolina (where they had apparently moved at some point) to obtain a restraining order. The court there found that father had committed acts of domestic violence against mother, and that the child was exposed to a substantial risk of emotional injury. The court granted the restraining order, finding that it was in the best interest of the child that father stay away from him.

Father subsequently obtained custody of the child in April 2010. Mother said she submitted, under duress, to him having custody of the child.

The jurisdiction/disposition hearing took place over three days, beginning on October 11, 2011. CFS changed its recommendation to returning the child to father's custody under a family maintenance plan. Mother testified first. She disagreed with the department's recommendation, stating that it was "a very dangerous situation," and that father was "very violent, very controlling." She testified that, during a period of three years (2006-2009), father hit her, choked her, pulled her hair, and slapped her. He also sexually abused her every day of their marriage. She testified that she sustained several injuries, including bruises, lacerations, a broken wrist, and perinatal damage. Mother said the sexual abuse

occurred while the child was locked in his room. However, she recalled being emotionally and verbally abused in front of the child. The last incident of sexual abuse occurred in November 2009. Mother further testified that father said his ex-wife left him because of abuse, and that his stepdaughters also accused him of sexual abuse. In addition, she testified that father was verbally abusive toward the child. Father yelled and screamed at him, and forced him to stay in his room all the time.

Father testified on his own behalf. He disagreed with mother's testimony that his stepdaughters accused him of sexual abuse. Father denied all of mother's allegations of abuse, and said there was never any violence. However, he said mother attacked him twice. Father said that his stepdaughter, his neighbor, and mother were all lying when they alleged that he abused them. He also denied ever screaming at the child or calling him names. He then acknowledged that he head butted his ex-wife one time. However, he later said that they "both hit heads" when his ex-wife got up out of a chair. Father testified that none of his children had ever been removed from him. When questioned about the current allegations of sexual battery made against him by his neighbor, father said the charges had been dropped, and he did not know why CFS even had the child.

The child's current foster mother also testified at the hearing. She said that the child had a terrible temper and used profanity a lot. When the child first came to her home, the foster mother described him as a "wild boy," who would not listen. She talked to father about him, and father said, "Well, the only way I can get him to do anything is to scream at him." The foster mother also testified that, following his visits with father, the child would

become “uncontrollable.” He said, “no,” to everything, and he would act like “a little dictator” and command her to do things.

In addition, at the hearing, counsel for CFS informed the court that, on the same day that CFS received the referral regarding the neighbor’s allegations against father, there was another referral by an anonymous party. The party reported that he/she saw father push the child and cause him to fall to the ground. Father then called the child a “crybaby,” and cursed at him. However, by the time CFS received the referral, law enforcement apparently had already become involved, so CFS did not investigate the incident.

Counsel for the child disagreed with the social worker’s recommendation to maintain the child with father. Rather, she agreed with the social worker’s original recommendation to provide reunification services to him. Counsel for father requested that the court dismiss the petition; she argued that there was no basis for jurisdiction since the allegations of abuse were very remote, and there was no evidence indicating there had been any ongoing abuse by father toward mother. She also reiterated father’s denial of any and all abuse of mother and the child. The department asked to dismiss the allegations under section 300, subdivision (g), and continued to recommend family maintenance for father.

The court found true the allegations under section 300, subdivision (b), declared the child a dependent of the court, removed him from father’s custody, and placed him in the custody of CFS. The court ordered father to participate in reunification services.

ANALYSIS

I. The Court Properly Took Jurisdiction of the Child

Father argues that there was insufficient evidence to support the court's jurisdictional findings. He points out that the evidence may have established that mother and father were violent with each other when they lived together, and that father was violent with a previous spouse; however, the evidence failed to prove any current or future risk to the child. We disagree.

A. Standard of Review

“On appeal, the “substantial evidence” test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term “substantial evidence” means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575 (*E.B.*.)

“It is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.] “Issues of fact and credibility are questions for the trial court.” [Citations.] It is not an appellate court’s function, in short, to redetermine the facts.’ [Citations.] Under the substantial evidence rule, we ‘must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not

having sufficient verity to be accepted by the trier of fact.’ [Citation.]” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140 (*S.A.*))

B. The Evidence Was Sufficient

The court here found the following allegations true under section 300, subdivision (b): 1) while in mother’s care, “the child was exposed to acts of domestic violence thus placing the child at risk of harm”; and 2) father had “engaged in at least one act of domestic violence in the past placing the child at risk of harm.”

Relying on *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*), father argues there was no evidence that domestic violence was ongoing or that there was substantial risk that the child was at risk of harm. He asserts that the last abuse occurred in November 2009, when mother left father. Furthermore, since then, the child was living with father only, and there was no longer any violence between him and mother. He concludes that, by the time of the October 2011 trial, there was “no reliable evidence of any current abuse or past abuse that would support a reasonable inference the abuse would recur.”

In *Daisy H.*, *supra*, 192 Cal.App.4th 713, the court found that “[p]hysical violence between a child’s parents may support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm. [Citations.]” (*Id.* at p. 717.) In that case, the mother told the social worker that in 2007, two years before the petition was filed, the father pulled her hair and choked her. The mother’s later statements and court records indicated that these events actually occurred in 2002, seven years before the petition was filed. (*Ibid.*) When interviewed by the social worker,

none of the mother's children showed signs of physical abuse, and they denied ever witnessing their father abuse their mother. (*Ibid.*) The reviewing court found that the evidence was insufficient to support a finding that domestic violence between the parents placed the children at a current risk of physical harm, since the violence occurred "at least two, and probably seven, years" prior, and there was no evidence of any ongoing violence between the parents, who subsequently separated. (*Ibid.*)

We find *Daisy H.* to be distinguishable because, in the instant case, there was not just one isolated incident. Rather, the evidence showed that father and mother had a volatile relationship for a period of *three years*, during which father hit her, choked her, pulled her hair, slapped her, and sexually abused her. Moreover, unlike *Daisy H.*, where the court found that the violence occurred "probably seven" years prior to the jurisdiction hearing, the violence with mother here occurred just two years prior.

Moreover, father's past violent behavior was an ongoing concern. "[P]ast violent behavior in a relationship is "the best predictor of future violence."" (*E.B., supra*, 184 Cal.App.4th at p. 576.) Thus, even though mother and father were separated by the time of the jurisdiction hearing, father's history of abuse was evidence that his violent behavior could continue with others. There was evidence indicating that father had been abusive with others, including his ex-wife and his stepdaughter. Furthermore, he was recently arrested and charged with sexually assaulting his neighbor.⁵ With regard to the child, there were recent allegations that father had been observed on multiple occasions yelling, using

⁵ That charge was later dismissed.

profanity, and pushing the child around.⁶ At the jurisdiction hearing, mother testified that father was “very violent, [and] very controlling.”

We note father’s argument that mother “did not present as a credible witness at trial,” and that “evidence from such an unreliable source is not reasonable, credible [or] solidly valuable.” However, as a reviewing court, we have “no power to judge the effect or value of, or to weigh the evidence [or] to consider the credibility of witnesses” and must defer to the trier of facts determinations on such matters. (*S.A., supra*, 182 Cal.App.4th at p. 1140.)

Ultimately, the evidence of past occurrences showed a pattern of abusive behavior that apparently has not been corrected. Viewing the record in the light most favorable to the juvenile court’s determinations, as we must, we conclude that the evidence amply supports the court’s jurisdiction order. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

II. The Court Properly Removed the Child from Father’s Custody

Father next contends that the court erred in ordering that the child be removed from his custody. He claims that the court “ruled that it needed more information before [the child] could safely be returned home,” and that this request for information improperly “placed the burden on [him] to prove [the child] could be safely returned to his care.” He argues that this shift in burden constituted an abuse of discretion. These claims are groundless.

⁶ Father argues that the department “never investigated the complaint, at least to the extent that [he] and his son were determined to be involved.” However, counsel for CFS informed the court that it was determined that the complaint did concern father and the child.

A. Background

At the jurisdiction/disposition hearing, the court explicitly stated that continuance in the parents' home was contrary to the child's welfare, and that "[c]lear and convincing evidence shows that the child should be removed from the physical custody of the parents." The court declared the child a dependent of the court, removed him from father's custody, and placed him in the custody of CFS. The court proceeded to discuss other matters, including reunification services, visitation, and placement with mother. The court stated, "That will conclude the matter. Thank you."

Father's counsel then inquired about the next hearing date, and the court replied that it was April 12, 2012. The court went on to say, "We need counseling for the father? Perhaps—I mean, he's only three, but if the counselor thinks that there should be conjoint counseling—we need to figure out what is going on. And I need more information. Right now I don't think it's safe for the child to go home. That's why I ruled the way I did. Okay? But the social worker has work to do to reunify this family." The child's counsel immediately clarified the court's order by stating, "So the Court is ordering an immediate referral for the child for therapy?" The court replied, "Yes."

B. The Court Did Not Place a Burden of Proof on Father

Father's claim that the court asked for more information and thereby placed the burden on him to "prove [the child] could be safely returned to his care" has no basis. The record clearly shows that the court had already ordered the child's removal when it stated the need for additional information. The court was stating that it needed more information

before it would consider ordering conjoint counseling. The need for information had nothing to do with the child’s removal.

We further note that the court’s principal concern in determining the appropriate disposition of a minor “is a disposition consistent with the best interests of the minor. [Citation.]” (*In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1112, superseded on other grounds as stated in *In re Katrina C.* (1988) 201 Cal.App.3d 540, 548.) In light of the evidence before the court, its removal order was certainly consistent with the child’s best interest.

DISPOSITION

The juvenile court’s jurisdiction and disposition orders are affirmed.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

KING
J.