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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re K.L. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.L. et al,

Defendants and Respondents;

K.L. et al.,

Appellants.

E061299

(Super.Ct.Nos. J250357, J250358,
J250359, J250360 & J253581)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lily L. Sinfield,
Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Appellants.

Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and
Respondent B.L.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and Respondent P.G.

Jean-Rene Basle, County Counsel, and Kristina M. Robb, Deputy County Counsel, for Plaintiff and Respondent.

Appellants are the five siblings—Ki.L., T.L., D.L., Ka.L. and N.L.—who are the subjects of the dependency matters out of which this appeal arises. The children challenge in part the juvenile court’s jurisdictional findings; the court found they each came within Welfare and Institutions Code¹ section 300 in various respects, but declined to order the section 300 allegations amended to reflect that three of them—Ki.L., T.L., and D.L.—come within section 300, subdivision (e), as their counsel had requested.² The children argue that the juvenile court erred, because undisputed evidence established that Ki.L., T.L., and D.L. were under five years old, and had suffered severe physical abuse attributable to their parents—defendants and respondents P.G. (father) and B.L. (mother)—satisfying the elements of a section 300, subdivision (e) jurisdictional finding. We affirm.

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² Section 300, subdivision (e) provides a child is within the jurisdiction of the juvenile court if “[t]he child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.”

I. FACTS AND PROCEDURAL BACKGROUND³

The four oldest children in this case were first referred to San Bernardino County Children and Family Services (CFS) on July 11, 2013. On that date, Ki.L was approximately three and a half years old; T.L.—two and a half years old; D.L.—one and a half years old; and Ka.L.—nine months old. N.L. had not yet been born. The referral came in connection with the death of their nine-month-old sibling, the twin of Ka.L., while in the care and custody of mother and father. Mother and father reportedly discovered Ka.L.’s twin was missing on the morning of July 11, 2013. After searching the home, she was located already deceased, wrapped in a sheet and lying under a table.⁴ During the investigation of her death, a police officer obtained information that earlier on the same date, July 11, 2013, Ka.L had been found outside the home by relatives, having exited on her own through a broken and unsecured door. Based on concerns regarding lack of supervision, dirty and unsecure conditions in the household, and the

³ An exhaustive summary of the factual and procedural history of this case is unnecessary to disposition of this appeal, and impractical due to the voluminous nature of the record. Our discussion here is therefore limited to matters necessary for context or directly relevant to appellants’ claim of error.

⁴ A later autopsy report, dated December 3, 2013, would state a diagnosis of “Sudden Unexplained Infant Death,” noting no evidence of physical trauma, negative postmortem blood toxicology results, and an “unremarkable” postmortem metabolic profile. Although the infant appeared to be “well-developed” and “well-nourished,” her length and weight were both less than fifth percentile for her age, indicating a “failure to thrive.” The report noted she was the smaller of twins, had been small for gestational age at birth, and found no evidence of any “disease process” that would account for her small size, but opined that “a normal child should have gained more weight by the age of 9 months.”

circumstances of the death of their sibling, the four children were taken into protective custody and placed in foster care.

On February 5, 2014, after various procedural complications irrelevant to the present appeal, third amended detention petitions were filed with respect to the four children, alleging they each came within section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The section 300, subdivision (b) allegations were that the children had “sustained physical injuries including but not limited to: human bite marks, abrasions, scissor injuries, burns, scratches and scars from untreated eczema” (capitalization omitted), while in the care of mother and father. The petitions alleged the four children were at substantial risk of neglect within the meaning of section 300, subdivision (j), based on the circumstance that their sibling had been found deceased while in the care and custody of mother and father, and another sibling had been found outside the home unsupervised while in the care and custody of mother and father.

A third amended detention report with respect to the four children, dated February 5, 2013, summarizes the information gathered by CFS. Among other things, the report states that, after being taken into protective custody, the surviving infant twin, Ka.L., was found to be medically healthy, with the only concern being that she was being fed solid foods and cow’s milk. Forensic medical exams of Ki.L, T.L., and D.L., conducted on July 15, 2013, revealed a variety of physical injuries, including those later listed in the detention petition allegations described above. A jurisdiction and disposition report, filed February 25, 2014, recommended that the allegations be found true, and that reunification services be provided to both parents.

The social worker stated that mother and father offered explanations for each of the injuries observed in the medical exams of the children. These explanations included T.L.'s "chronic" biting of his siblings; T.L. inflicting carpet burns on himself "by rubbing it for self-soothing"; T.L. cutting his sister with a scissors; one child having a rash from pajamas that were too small; children scratching themselves due to dry patches of skin; one child being scratched by a relative's dog; and scratches from the siblings fighting among themselves. With respect to the events of July 11, 2013, father reported that the night before there had been five adults and four teenagers, in addition to mother, father, and the five children, in the apartment. No one knew who left the door unhinged and opened, allowing Ka.L. to leave the home unsupervised. The parents also could offer few details regarding how Ka.L.'s twin came to be discovered deceased, wrapped in a sheet and lying under a table. The social worker reported that "mother and father both stated that they should have used better parenting skills and that they did allow too many people to participate in the care of the children. The father stated 'now we know we should have done things different.'" The parents had moved—mother stated "I never want to return there. I wanted a fresh start; we left everything at the apartment including our clothes and the kids['] stuff.'" Further, the social worker observed that the mother was pregnant, due to deliver in March 2014.

On March 4, 2014, CFS filed a section 300 petition with respect to N.L., who was born in late February 2014. The petition alleged N.L. came within section 300, subdivision (j), because of the death of her older sibling while in the care and custody of mother and father. In the detention report, however, CFS recommended N.L. remain in

the custody of mother and father, based on positive reports from nursing staff at the hospital where N.L. was born, and the social worker's interviews with the parents and observations regarding their new living arrangements.

An amended section 300 petition with respect to N.L. was filed on March 5, 2014. The petition dropped the allegations relating to the death of N.L.'s older sibling, but added allegations relating to the injuries observed on her surviving siblings, and the incident when Ka.L. was found outside of the home unsupervised. The recommendation regarding maintenance of N.L. had also changed: the detention report recommended removal, based on the issues involving her siblings, and the circumstance that she had not been taken to a scheduled pediatrician appointment. Nevertheless, at a detention hearing regarding N.L. held on March 11, 2014, the court ordered N.L. to remain in the custody of mother and father, with CFS to supervise and report. The court found a prima facie case had been made that N.L. came within section 300.

In a jurisdiction and disposition report regarding N.L., dated April 10, 2014, CFS recommended that the amended section 300 petition be sustained, and that N.L. remain in the physical custody of mother and father, under continued in-home supervision.

On April 17, 2014, counsel for the children filed a motion to amend the section 300 allegations to add, among other things, allegations that Ki.L., T.L., and D.L. come within section 300, subdivision (e). Specifically, counsel proposed adding allegations that, while in the custody of mother and father, Ki.L., T.L., and D.L. "were severely physically abused, resulting in numerous unexplained injuries, including but not limited

to bruises, burns, cuts, human bite marks, belt, strap and loop marks in various stages of healing, as evidenced by numerous scars, which are consistent with physical abuse.”

A contested jurisdiction and disposition hearing with respect to all five children was held, beginning on May 5, 2014. The court reserved ruling on the children’s motion to amend the section 300 allegations until after the evidence was received. During the hearing, among other things, evidence was presented regarding the source and nature of the injuries that form the basis of the proposed section 300, subdivision (e) allegations. Both father and mother testified, attributing the various scars, burns, and other marks observed on the children to various accidental or otherwise innocent sources, or expressing a lack of knowledge as to the source of the injuries. Mother was specifically asked whether either she or father ever hit the children with a belt, cord, or any other kind of implement (a suspicion raised in particular by some of the linear “pattern” scars observed on some of the children); she answered in the negative.

A social worker testified that she believed, after her investigation, the children’s various injuries included some that were self-inflicted or the result of accidents, but she had concerns that some of the injuries might have been intentionally inflicted with an item like a belt. She was not able to identify any specific person or persons who had inflicted such injuries. Nevertheless, based on her conversations with the parents and Ki.L., the only child old enough to be verbal at the time, she did not believe any of the injuries that she believed to have been intentionally inflicted were inflicted by the parents. Over three separate conversations, Ki.L. denied to the social worker that

anybody, including her parents or grandparents, had used a belt on her, indicating that disciplining “was time out, or she got yelled at.”

The social worker’s supervisor also testified. She agreed that some of the injuries appeared to be inflicted or intentional, causing concern that the children had suffered physical abuse. She also agreed, however, with the decision not to include section 300, subdivision (e) allegations, based on information, in particular from Ki.L., that the parents were not the “intentional cause” of the injuries sustained by the children.

A doctor who examined the children in April 2014 testified as to her observations. The doctor indicated that a number of the injuries that Ki.L., D.L., and T.L. had suffered appeared to be, or at least raised suspicions of being, intentionally inflicted injuries. Specifically, the doctor observed a patterned burn on D.L.’s arm, consisting of three rectangular scars lined up in a row, which looked like a branding burn. D.L. also had a healed burn on her abdomen and another possible burn injury on the underarm area of her upper arm, unusual locations for accidental injuries. The doctor testified that T.L. had more injuries than would typically be seen on a child of his age, with linear, patterned scars on the outer portion of his thigh being of “particular concern.” This injury was consistent in appearance with an injury from a high-force impact with a linear object. As to Ki.L., the doctor noted two “loop-mark” scars on her back, which were indicative of possible abuse, and specifically of being hit with a belt or a looped cord. Ki.L. also had human bite marks on her back—the doctor testified it was difficult to determine whether

they were from an adult or child.⁵ The doctor noted linear scars on Ki.L.'s cheek were "not typical," but could not say specifically how they occurred, though it was "suspicious" for abuse. Additionally, the doctor reported Ki.L. had stated, upon being asked what happens when she gets in trouble, that "Dad hits with a belt," specifying that "[t]he belt is blue."

In making its jurisdictional findings, the court found that the five children each came within section 300 in various respects, and granted in part the children's motion to conform the section 300 allegations to proof. However, the court denied the children's motion with respect to the proposed section 300, subdivision (e), allegations at issue in this appeal.

After a contested disposition hearing, the court declared all the children dependents of the court, ordered reunification services for mother and father, and ordered the four older children maintained at the home of a relative, while N.L. remained in the care of mother and father, with CFS to supervise and report.

II. DISCUSSION

A. Standard of Review

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' [Citation] 'Proof by a preponderance of evidence must be adduced to support a finding that the minor is a

⁵ During a previous medical exam, on July 15, 2013, Ki.L. had reported that many of her injuries, including the bite marks and some of the linear scars, were caused by T.L.

person described by Section 300' at the jurisdiction hearing.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

Generally, we review the juvenile court’s findings with respect to whether a child comes under section 300, subdivision (e), under the substantial evidence standard of review. (*In re E.H.* (2003) 108 Cal.App.4th 659, 669 (*E.H.*.) However, when a party challenges on appeal a ruling that it failed to carry a burden of proof, the substantial evidence standard is inappropriate, and ““the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law.

[Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.””⁶

(*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465-466 (*Sonic*).

⁶ None of the parties correctly articulated the appropriate standard of review, causing them to make a number of arguments that are not pertinent. CFS, for example, argues (unpersuasively) that there was insufficient evidence in the record to support a section 300, subdivision (e) allegation, and the children argue that “even when viewed in the light most favorable to the judgment, the parents’ testimony does not amount to substantial evidence supporting the court’s decision not to apply section 300, subdivision (e).” These arguments simply miss the point. CFS is not required to show that no substantial evidence exists in the record that could support a section 300, subdivision (e) allegation, only that the evidence did not *compel* such a finding. (*Sonic, supra*, 196 Cal.App.4th at pp. 465-466.) Similarly, the children’s argument is conceptually incorrect, because it in essence is an attack on the evidence supporting the party who had no burden of proof. (*Ibid.*)

B. Analysis

The children contend that the trial court erred by finding that the evidence did not prove to a preponderance of the evidence that Ki.L., T.L., and D.L. came within section 300, subdivision (e), and denying their motion to amend the section 300 allegations on that basis.⁷ We find no error.

A section 300, subdivision (e) finding requires three elements to be proven : “(1) there is a minor under the age of five; (2) who has suffered severe physical abuse as defined in section 300, subdivision (e); (3) by a parent or any person known to the parent if the parent knew or reasonably should have known that the person was physically abusing the minor.” (*E.H.*, *supra*, 108 Cal.App.4th at p. 668.) “Severe physical abuse” in the meaning of section 300, subdivision (e), includes, as relevant to this appeal, “more than one act of physical abuse, each of which causes bleeding, deep bruising, [or] significant external or internal swelling” (§ 300, subd. (e).) “[W]here there is no identifiable perpetrator, only a cast of suspects, jurisdiction under subdivision (e) is not automatically ruled out. A finding may be supported by circumstantial evidence” (*E.H.*, *supra*, at p. 670.)

There is no dispute that Ki.L., T.L., and D.L. were under the age of five during the relevant time period. And we may assume, for present purposes, that the injuries

⁷ Section 361.5, subdivision (b)(5) authorizes the court to deny reunification services to a parent when the child has been brought within the court’s jurisdiction under section 300, subdivision (e). (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 846.) Therefore, the circumstance the children were found to be within the jurisdiction of the juvenile court based on other subdivisions of section 300 does not render moot the children’s disagreement with the juvenile court’s section 300, subdivision (e) findings.

observed on the children would fall within section 300, subdivision (e), if they were caused by acts of physical abuse, rather than an accidental or otherwise innocent cause. The question then becomes whether the evidence compelled the juvenile court to conclude that the injuries were caused by physical abuse by the parents, or by someone known to the parents if they knew or reasonably should have known of the abuse. (*E.H.*, *supra*, 108 Cal.App.4th at p. 668.)

We answer this question in the negative. As discussed above, there was at least some evidence that father abused the children, particularly Ki.L.'s reported statement that he disciplines her with a blue belt, combined with the children's injuries consistent with being hit by such an instrument. But this evidence was not uncontradicted or unimpeached: mother specifically testified that neither she nor father hit the children; Ki.L. herself had previously denied being hit by her parents or grandparents. It at least arguably could be inferred from the nature and number of the children's injuries that either parents or someone in the household was abusing the children, and that the parents must have either themselves perpetrated, or else knew or reasonably should have known that somebody else was perpetrating such abuse. But we see nothing in the record *compelling* that inference—equally arguable is the conclusion that, although the evidence showed a possibility of abuse attributable to parents, either as direct perpetrators or based on their actual or constructive knowledge of the abuse, that evidence did not rise to a preponderance of the evidence.

The contrast between the evidence in this case and the facts described in *E.H.*, *supra*, 108 Cal.App.4th at p. 659, is instructive. In that case, an infant suffered “multiple

rib fractures, fractures of the wrist, femur, feet, hands, and hip,” with indications that the injuries ranged from one to six weeks old. (*Id.* at p. 661.) Further, the evidence established that the child “was never out of her parents’ custody and remained with a family member at all times.” (*Id.* at p. 670.) In those circumstances, the court of appeal reasoned, “the only reasonable conclusion which may be drawn from the evidence is that [the mother and father] *reasonably* should have known [the child] was being physically harmed by someone in the house.” (*Ibid.*) Here, in contrast, the evidence did not establish that the children were never out of their parents’ custody, or that the children were always with a family member. Even assuming abuse, therefore, nothing in the record *compels* the conclusion that the abuse was at the hands of someone known to the parents (even if the evidence in the record also could have supported a different conclusion). Further, nothing in the record *compels* the conclusion that the parents, lacking the expert knowledge of a doctor experienced in forensic medical examinations, could not have reasonably believed the children’s injuries all were from various accidental or otherwise innocent sources (even if the evidence also could have supported a different conclusion).

Appellate counsel for the children suggests in briefing that at the very least, whatever injuries the children suffered at the hands of T.L. constitute abuse by someone known to the parents, bringing the children within section 300, subdivision (e). T.L., however, was a toddler during the relevant time period. We find no support in case law or in reason to conclude that a toddler is capable of inflicting “abuse” within the meaning of section 300, subdivision (e). A child that young certainly may inflict injuries on

another person, but the term “abuse” implies a degree of intentionality and moral culpability that would be inappropriate to apply to the acts of a toddler.

We decline to express an opinion as to whether we would have reached the same conclusions as the juvenile court. It suffices, for present purposes, to observe that the evidence presented did not compel the conclusion that the elements of section 300, subdivision (e) had been proven to a preponderance of the evidence. We therefore find no error in the juvenile court’s denial of the children’s request to amend the section 300 allegations to include allegations pursuant to subdivision (e).

III. DISPOSITION

The order appealed from is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

CODRINGTON

J.