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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re YVETTE E., et al., Persons Coming Under
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MICHELLE E.,

Defendant and Appellant.

F064944

(Super. Ct. No. 12CEJ300006-1)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Fresno County. Timothy A. Kams,
Judge.

Caitlin U. Christian, under appointment by the Court of Appeal, for Defendant and
Appellant.

* Before Cornell, Acting P.J., Gomes, J. and Detjen, J.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Plaintiff and Respondent.

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Michelle E. (mother) appeals from the jurisdictional findings and consequent dispositional orders that removed her 13-year-old daughter Y.E., 12-year-old son R.E., and three-year-old son Et. E. (collectively the children) from her legal and physical custody. Mother contends the juvenile court erred in finding jurisdiction over the children pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ We disagree and affirm the juvenile court's findings and orders.

FACTUAL AND PROCEDURAL BACKGROUND

Mother, the children, and their presumed father, Ruben E. (father), came to the attention of the Fresno County Department of Social Services (Department) after mother and father were arrested on various charges following a January 5, 2012, shoplifting incident. On that date, Ralph Cuevas, a loss prevention officer at a Hanford Wal-Mart, noticed that father and his 16-year-old stepson Er. P., both of whom Cuevas recognized from a previous theft incident, had a prepaid phone in their shopping cart. Cuevas saw father cut the package open with a pocket knife and give the hard plastic phone cover to Er., which Er. discarded on a shelf. Father concealed the phone, the phone charger and the instructions, and the two walked out of the store without paying for the phone, which was valued at \$35. Cuevas called Hanford Police Department Officer Frank Ghiglia to report the theft. Cuevas approached father outside the store, but father and Er. ran to a tan-colored car, got in, and drove away. Father was driving the car, Er. was in the front passenger seat, and mother and the children were in the rear seat.

Ghiglia located the car and followed it. The driver of the car made an erratic lane change without using a turn signal. Father continued to look back at Ghiglia in the

¹ Undesignated statutory references are to the Welfare and Institutions Code.

driver's side mirror. Father made another lane change and closely followed the vehicle in front of him, keeping only about a half a car length between them. Ghiglia estimated they were traveling at approximately 70 miles per hour. The car continued to make erratic movements in the lane. When the car came to an abrupt stop, three doors opened. Ghiglia got out of his patrol car. Knowing the driver was a fleeing felon and fearing the occupants were trying to run from the car, Ghiglia drew his weapon and ordered them to stop. Father looked back towards Ghiglia and cursed and yelled at him for pointing a gun at him. Ghiglia ordered everyone to get back into the car and close the doors. Father started throwing objects out of the driver's side of the car. Other officers arrived to assist. All of the occupants except the children were handcuffed and placed in the back of patrol vehicles.

Ghiglia saw a large claw hammer wedged between the driver's seat and driver's door. Two black colored folding knives protruded from between the center console and the front passenger seat. A cell phone was found wedged between the rear passenger seats, while the battery, charger and instructions were found in the passenger side door panel. Cuevas, who came to the scene, identified the items as being from the discarded packaging he found at the Wal-Mart. Cuevas positively identified father and the front passenger, Er., as the suspects he saw stealing from the store. Cuevas also identified mother as having been with father, Er. and the children at the Wal-Mart, and stated the entire family previously had been caught stealing and fled from him when he was working temporarily at the Selma Wal-Mart.

Ghiglia spoke separately with Er., mother and father, after reading them their *Miranda*² rights. Er. and father both denied stealing anything from the store. Mother said she did not know what took place at the Wal-Mart, as she was just sitting with her children in the parking lot, and she did not understand why their car was stopped. She

² *Miranda v. Arizona* (1966) 384 U.S. 436.

said that when Ghiglia's patrol car was behind their vehicle, father panicked and handed her the cell phone, which she wedged in the seat. She tried to hide the phone because she did not want father to get into trouble.

Father, mother and Er. were arrested. Ghiglia contacted Child Protective Services (CPS) to report the incident and placed a protective hold on the children. While waiting for CPS to arrive, Ghiglia continued to search the car for illegal items and found 19 gift cards from various stores inside father's wallet.

The social worker who responded to the referral interviewed mother and father separately at the jail. Mother did not know why father went into the Wal-Mart and father did not know why he was incarcerated. He claimed he had vandalized the Wal-Mart, because he was upset with them for not accepting a return. The social worker also interviewed Er., who first claimed he did not know where father went while inside the store, but later admitted he and father were walking around the store together. He claimed they were just looking around and left the store without purchasing anything. Er. did not know why they were pulled over.

The social worker spoke with R. and Y. about the incident, but they did not really know what happened. They said father and Er. were inside the Wal-Mart about 20 minutes. They denied that either father or Er. brought a new item into the car. They were scared when the police were chasing them, when the police told them to get out of the car, and when the Department took them from their parents. They said that they usually did not go into stores with father and would stay in the car with mother while father shopped. The children were detained and placed with their paternal grandmother.

The Department filed a petition, which was amended twice. The operative petition alleged that the children came within the provision of section 300, subdivision (b), as they had suffered, or there was a substantial risk they would suffer, serious physical harm or illness as a result of the failure or inability of mother and father to adequately supervise or protect them. The petition alleged in count b-1 that mother failed to provide

adequate care and supervision for her children on January 5, 2012, in that (1) she was present in a vehicle father was driving when he put the children in harm's way by driving in a reckless manner, failing to yield to a police traffic stop, and leading police on a high speed chase, (2) she admitted to police that she aided father by concealing the stolen cell phone in the vehicle to avoid his arrest, (3) when father drove in a reckless manner, it was to avoid being arrested for crimes he allegedly committed before the police chase, and (4) father was arrested for burglary, conspiracy, child endangerment, contributing to the delinquency of a minor, being under the influence of a controlled substance, and possession of burglary tools. The petition alleged in count b-2 that father put the children in harm's way with his reckless driving, failing to yield to a police traffic stop, and leading police on a high speed chase to avoid being arrested.

A contested jurisdictional hearing was held. Cuevas testified that when he saw father walking past him in the Hanford Wal-Mart on the day of the incident, he recognized father as someone he had dealt with in the Selma Wal-Mart a few months before. Father had some merchandise, including a prepaid cell phone package, on the top part of the shopping cart, which was being pushed by a teenage boy. Father ripped the cell phone package open by using an object with which he was making a cutting motion and handed parts of the packaging to the teenager, who placed the parts on a shelf. Father put the phone in his right, front pocket; he and the teenager left the shopping cart in another part of the store, and they walked quickly toward the exit. Cuevas saw the rest of the phone's empty packaging in the abandoned cart.

Cuevas tried to get father's attention as he and the teenager walked into the parking lot, but father did not turn around and kept on walking quickly away. The two got into a four door sedan parked in the lot; Cuevas got a partial license plate number. Father got into the driver's side, while the teenager got in on the passenger side. Cuevas could not see if anyone else was in the car because it had tinted windows and he was not close enough to see inside.

Cuevas called Officer Ghiglia twice, once when Cuevas was inside the store and again when Cuevas was outside. After father's car left the parking lot, Cuevas saw a police car follow the car. About 10 to 15 minutes later, Ghiglia contacted Cuevas and asked him to come to a location in Lemoore. When he got there, Cuevas recognized father and the teenage boy. He also recognized mother based on a prior incident that happened in Selma. Ghiglia asked Cuevas to go into the car and identify the items that had been taken. Cuevas found the phone's charger and instructions inside the passenger side door panel where the teenage boy had been sitting, and the phone wedged in between the seats in the rear passenger back seat.

Cuevas testified about the previous contact he had with the family at the Selma Wal-Mart sometime before September 2011. Cuevas was on duty when he noticed father, mother, the teenage boy, and the children, in a toy aisle. The children were playing around in the aisle. Cuevas saw father place two to three items that looked like toys in mother's purse, which was sitting in the bottom basket of the shopping cart, as mother watched. The purse was a "good size purse, like a tote." The items fit inside the purse so they could not be seen. After concealing the items, the family left the aisle, headed toward the front of the store and purchased some merchandise they had in the shopping cart. Cuevas did not see them purchase any of the items that were placed in the purse. Once the family stepped outside the exit doors, Cuevas approached mother, identified himself, and asked her if she had paid for the items in her purse. Mother said she did not know what he was talking about and kept walking. The family got into their car, which was the same one he saw on January 5, 2012, and drove out of the parking lot at a higher speed than most cars in the parking lot. Cuevas contacted the Selma police department.

The Department submitted on Cuevas's testimony, the detention and jurisdiction reports, along with the various attachments and exhibits that were introduced, which included photographs of the stolen cell phone and the CLETS report for the parents.

Mother's attorney called Ghiglia as a witness. Ghiglia started heading toward the Hanford Wal-Mart after receiving a call from Cuevas, who told him the entire family previously had been caught stealing and fled from him at the Selma Wal-Mart. When Cuevas called a second time, Ghiglia was a block away from the store. Ghiglia saw a vehicle that matched the description Cuevas gave, a four-door sedan, getting onto the freeway. Ghiglia activated his emergency lights and siren so he could maneuver safely through an intersection, but turned them off once he was on the freeway. A few miles later, he saw the car and followed it, staying two seconds behind. Since Ghiglia had a student Explorer in the car with him, he did not pursue the car or pull it over. Instead, he followed the car and waited for other units to make a traffic stop. The cars were not going at a high speed.

The two cars traveled three to four miles before father got off the freeway. During that time, Ghiglia saw father looking back at him through the driver's side mirror. Ghiglia treated father as a fleeing felon because he was told father had burglarized the Wal-Mart; he did not know anything about father's criminal record at that time. Ghiglia saw silhouettes of the other occupants through the tinted back window, but he could not tell how many there were, or their ages or sex. Ghiglia saw the car randomly making "small jerking movements" as he was following it. The car's driver, however, was following the rules of the road. Given the time it took Ghiglia to catch up to the car and the speed he traveled to do so, he believed father's car had exceeded the speed limit before he caught up to it. At times, father left less than a two second gap between himself and the truck in front of him, which Ghiglia considered dangerous.

Father's car exited the freeway. Ghiglia called for backup. When he saw that the car was going to stop in front of a house, he activated his emergency lights. As the car stopped abruptly, three of the car's doors opened and father got out. Concerned that the occupants might flee into the house, Ghiglia exited the patrol car, pulled out his weapon, and pointed it at father. Ghiglia ordered him to get back in the car, and ordered the car's

occupants to shut the doors and stay inside. Father was very aggressive and hostile; he was cursing and not complying with commands. Ghiglia would not have drawn his weapon if everyone had stayed inside the car.

Once the occupants complied, Ghiglia ordered them out one at a time. Ten to 15 seconds after making the stop, backup units from the Lemoore and Hanford police departments, as well as the sheriff's department, arrived; there were a total of five or six officers. Mother had been sitting in the car's rear right seat; the children also had been sitting in the rear seat. After Ghiglia told mother the stolen phone was found wedged where she was seated, she said she did not know how the phone got there. When Ghiglia told her it would be physically impossible for father to reach back and wedge the phone in the seats, mother said she would be truthful and admitted that at some point after Ghiglia pulled up behind them on the freeway, father said they were going to arrest him and passed her the phone, which she tried to hide. Mother could not tell him why the family had gone to the Wal-Mart or what they intended to purchase there, and claimed that father did not tell her why they were there. She said she stayed in the car with the children. Ghiglia had the car impounded because father was driving on a suspended license.

The children were frightened and upset. At one point, 12-year-old R. was crying; Ghiglia asked 13-year-old Y. to try to console him. Father was not trying to console the children. Ghiglia believed father was under the influence of a controlled substance, as he exhibited extreme agitation, sweating, rapid speech, rapid eye flutter and rapid pulse. Father was arrested for being under the influence, burglary, conspiracy, child cruelty or endangerment, contributing to the delinquency of a minor, and possession of burglary tools. The child cruelty or endangerment charge was based on father's actions at the traffic stop, which caused Ghiglia to draw his weapon for his own safety, and because small children were unbuckled in the back seat. While Ghiglia was not able to see if the children were buckled in, it would be mathematically impossible for all of them to have

seat belts on since the back seat had three seat belts and there were four people sitting there. Therefore, Ghiglia concluded the seat belts could not have been used properly. A child seat was in the back seat, which Ghiglia believed was fastened in with one of the car's seat belts. Ghiglia discovered 19 gift cards in father's wallet, which he testified could be obtained by returning stolen property and getting cash back in the form of a gift or debit card. Ghiglia saw the family leaving the court's parking lot after the morning court session; father, whose license was suspended, was driving the car, which looked similar to the car in the January 5 incident. Social worker Micah Curtis, who had been assigned to the case three weeks before the hearing, also testified. He agreed that, based on Officer Ghiglia's testimony, father did yield to the police traffic stop and did not lead the police officer on a high speed chase. In Curtis's opinion, involving children in felony criminal activity is not appropriate care.

Mother and father had each completed an Addiction Severity Index (ASI) assessment. During the assessment, mother reported that she had been charged with shoplifting/vandalism three times, which resulted in convictions, and she had been incarcerated three months in her life. Father told his assessor that he has an anger problem when he feels threatened, takes medical marijuana and has used cannabis for four years and cocaine for 13 years, and that he has a valid driver's license. The assessor reported that father was very evasive when answering questions regarding substance abuse and appeared to minimize such abuse. Father said he had been charged with shoplifting/vandalism once, drug charges twice, weapons offenses twice, burglary and larceny once, and assault once, but claimed none of these resulted in convictions. Father said he had been incarcerated 60 months in his life. Father denied stealing anything from the Wal-Mart and thought the police over-exaggerated things by following him and arresting him and Er. in the presence of mother and the children. The assessor recommended father complete an intensive outpatient substance abuse treatment program and that father participate in a domestic violence assessment due to his quick temper.

Curtis had reviewed the CLETS reports for mother and father. Father's report showed the following convictions: (1) 2001 – the sale of marijuana/hash and driving without a license; (2) 2002 – possession of marijuana for sale; (3) 2003 – evading a police officer and disregarding safety; (4) 2006 – assault with a firearm on a person, possession of a controlled substance while armed, and a prison enhancement, for which father was sentenced to five years, eight months in prison; and (5) 2011 – giving false information to a peace officer and hit and run/death or injury.

After hearing argument, the juvenile court issued its ruling. The court rejected the “suggestion” in the second amended petition that a high speed chase occurred on January 5, 2012, but found the parents did not protect the children adequately and placed the children at risk of serious harm through their actions. The court considered all of the evidence in support of the petition, which included: mother's criminal history, which is replete with multiple theft convictions; the theft offense at the Selma Wal-Mart involving both parents in the children's presence, which alerted Cuevas to father's and Er.'s activities in the Hanford Wal-Mart; even though there was not a high speed chase, there was reckless driving which included speeding and following another vehicle very closely within a two second count on the highway; father's actions once he stopped the car compounded the reckless driving and caused the officer to draw his gun; and the traffic stop was not routine, but was a high risk felony traffic stop which caused weapons to be drawn and placed the children in grave danger. The court found the parents engaged in a pattern of conduct with the children present which certainly called for police action and endangered their safety and well being. Accordingly, the court found jurisdiction under section 300, subdivision (b), and found both counts of the second amended petition true.

The Department subsequently recommended the children remain placed with their paternal grandmother, and mother and father be given family reunification services. At the dispositional hearing, the juvenile court found the children were described under

section 300, subdivision (b), made them dependents, ordered their removal from mother's and father's custody, and gave mother and father reunification services.

DISCUSSION

Mother contends insufficient evidence exists to support the juvenile court's findings that the children are dependents of the court pursuant to section 300, subdivision (b) (failure to protect).

Standard of Review

“When the sufficiency of the evidence to support a finding or order is challenged on appeal . . . , the reviewing court must determine if there is any substantial evidence – that is, evidence which is reasonable, credible and of solid value – to support the conclusion of the trier of fact. [Citations.] In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. [Citations.] The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence.” (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) “If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm.” (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

“At a jurisdictional hearing, the juvenile court “shall first consider . . . whether the minor is a person described by Section 300, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him or her within the jurisdiction of the juvenile court is admissible and may be received in evidence. However, proof by a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300.” [Citation.] [¶] ‘While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.’ [Citation.] Thus previous acts of neglect, standing alone, do not establish a substantial risk of harm; there

must be some reason beyond mere speculation to believe they will reoccur.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564-565 (*Ricardo L.*).

The Section 300, Subdivision (b) Finding

The juvenile court found jurisdiction under section 300, subdivision (b). As relevant here, that subdivision provides a minor comes within the juvenile court’s jurisdiction if: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of her or her parent . . . to adequately supervise or protect the child, . . .” As this court has explained, “[t]he statutory definition consists of three elements: (1) neglectful conduct by the parent of one of the specific forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” (*Ricardo L., supra*, 109 Cal.App.4th at p. 567.) Mother contends no evidence was presented that there was a substantial risk the children would suffer serious physical harm or illness because (1) father may have sped and closely followed another car, and (2) the parents stole. She asserts there was insufficient evidence to support the finding that father drove in a reckless manner, argues speeding is an insufficient basis for dependency jurisdiction, and argues that while stealing may constitute a lapse of judgment, it “does not generally pose a substantial risk the children will suffer serious physical harm.”

Where a petition is sustained based on several allegations, each allegation need not independently support jurisdiction; the court can take jurisdiction on evidence of a “pattern of behavior” resulting in a substantial risk of harm to the children. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1650.) Here, considering the allegations that the children were put in harm’s way when father drove in a reckless manner with the children in the vehicle to avoid arrest, mother concealed the stolen cellular phone in the vehicle to help father avoid arrest, and father and mother were both arrested on a variety of charges, including child endangerment, we find substantial record evidence to support the juvenile court’s conclusion that the parents’ pattern of conduct endangered the children’s safety

and well being, placing them at substantial risk of physical harm. (See *In re Cheryl E.* (1984) 161 Cal.App.3d 587, 600 [we consider all the allegations in the petition in context and as a whole in reviewing the juvenile court's findings].)

This pattern is exemplified by mother's criminal history, which included multiple shoplifting convictions, the theft at the Selma Wal-Mart in which both mother and father participated in the children's presence, the theft at the Hanford Wal-Mart, and the 19 gift cards that suggest father engaged in other shoplifting incidents. These incidents show a pattern of criminal behavior that placed the children at risk of serious physical harm, as evidenced by father's behavior following the theft of the cellular phone – he sped away from the scene with the children in the back seat, drove in an erratic manner while Ghiglia followed him in the patrol car, and, when Ghiglia drew his weapon as father got out of the car, father became belligerent. The totality of father's behavior placed the children in grave danger. Contrary to mother's assertions, the risk of physical harm was not based solely on father's reckless driving or solely on his or mother's thefts, but rather on the sequence of events, which culminated in father's and mother's arrests, and together endangered the children.

Mother characterizes the theft and ensuing traffic stop as a "lapse in judgment," and asserts there is no evidence to show that, even if the traffic stop placed the children at risk of harm, that event was likely to reoccur. She argues jurisdiction improperly was based on this isolated instance of past conduct which cannot be used to establish a risk of future abuse, citing *In re J.N.* (2010) 181 Cal.App.4th 1010 (*J.N.*) and *In re B.T.* (2011) 193 Cal.App.4th 685 (*B.T.*), in which the appellate courts reversed the juvenile court's jurisdictional findings. Both cases are clearly distinguishable.

In *J.N.*, the children were injured when their intoxicated parents were involved in an automobile accident. (*J.N.*, *supra*, 181 Cal.App.4th at pp. 1014–1015.) The appellate court reversed the juvenile court's assertion of jurisdiction because there was no evidence that the parents otherwise abused or neglected their children, nor was there a finding that

the parents had an ongoing substance abuse problem. In addition, the parents recognized their harmful conduct and were remorseful. (*Id.* at pp. 1022, 1026.)

In *B.T.*, the juvenile court found the child was at risk of sexual abuse and neglect because the child was the product of a sexual relationship between the mother, who was an adult, and her neighbor's son, who was a minor. (*B.T.*, *supra*, 193 Cal.App.4th at p. 687.) Apart from the mother's poor judgment in having sexual relations with a minor, the mother in *B.T.* had an exemplary track record of childrearing, had no prior criminal record, there was no evidence of any past abuse of her other children, and there was no evidence that her lapses in judgment would continue. (*Id.* at pp. 687, 692–693.) The Court of Appeal reversed because there was no evidence the child had been injured, and mother's unlawful sexual relationship with a minor did not constitute evidence that she would sexually abuse the child. (*Id.* at pp. 694–696.)

In contrast to these cases, here the record contains substantial evidence that, at the time of the jurisdictional hearing and as a result of mother's and father's failure to adequately supervise and protect the children, the children were at risk of serious physical harm. While juvenile court jurisdiction may not be justified by isolated instances of neglect or abuse (see *J.N.*, *supra*, 181 Cal.App.4th at p. 1025), we disagree that jurisdiction in this case was based on an isolated incident. The parents had a history of committing thefts while the children were in their custody. As shown by the sequence of events that occurred on January 5, 2012, engaging in such behavior can place the children at serious risk of physical harm should police pursue them or store security personnel intervene. The juvenile court reasonably could find, without speculation, that the children could again be placed in harm's way given mother's and father's criminal histories and their willingness to involve the children in their criminal conduct.

Mother asserts it was a series of misinterpretations on Ghiglia's part that ultimately led him to draw his weapon and the response was unreasonable given that father stole only a \$35 cell phone. She reasons that, even if she and father stole again, it

is unlikely a high risk traffic stop would ensue since the responding officer would have to engage in a “series of misinterpretations” that would cause the officer to believe the situation posed a significant threat. The juvenile court, however, specifically found that it was father’s actions that caused Ghiglia to draw his weapon. This finding is supported by the evidence. Accordingly, mother’s argument essentially asks us to reweigh the evidence, which we cannot do. (*In re Walter E.* (1992) 13 Cal.App.4th 125, 139-140.) Moreover, it is not necessary that the exact same harm can occur, but only that the children are at risk of the same type of harm. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394 (*Savannah M.*)) Continuing to engage in criminal behavior with the children present can subject them to potential harm from bystanders, police, or security personnel. It is this type of harm that the juvenile court reasonably could find was likely to reoccur.

The ultimate test is whether it is reasonable for the juvenile court to make the ruling in question in light of the whole record. (*Savannah M., supra*, 131 Cal.App.4th at pp. 1393-1394.) Even if the evidence is not overwhelming, given the deference that must be accorded to a juvenile court’s factual findings, there was substantial evidence to support the jurisdictional finding of a substantial risk of serious harm pursuant to section 300, subdivision (b). (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 169.)

DISPOSITION

The jurisdictional findings and dispositional orders are affirmed.