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

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

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.R.,

Defendant and Appellant.

F066540

(Super. Ct. No. 516433)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

Mark R. (father) challenges the sufficiency of the evidence to support the juvenile court's jurisdictional and dispositional orders regarding his son, Mark, Jr. (the child). Finding substantial evidence to support the orders, we affirm.

FACTS

When the child was born in December 2011, his mother, Jennifer H. (mother), tested positive for methamphetamine. In the ensuing investigation, the Stanislaus County Community Services Agency (agency) received information that father had engaged in acts of domestic violence against mother. The agency later obtained information that father had also engaged in aggressive behavior towards members of mother's family, including her elderly grandfather and infirm mother.

When a social worker went to mother's grandparents' house on December 28, 2011, mother answered the door and the social worker observed mother had a black eye. Mother told the social worker she and father had not been getting along and described father as controlling. When asked about the black eye, mother hesitated and then said she bit father's face because he was holding onto her and the baby, and was not letting her leave the home. After she bit his face, father hit her in the eye.

Mother subsequently agreed to stay away from father and to a plan of voluntary family maintenance services, which included substance abuse treatment, parenting classes, and domestic violence classes for victims. However, when a social worker went to discuss these services with mother in January 2012, father was found in the home with mother. From that time on, mother "had limited contact with the agency and did not engage in voluntary services. The case was closed for non-compliance" in April 2012.

When the child was nine months old, the agency received a referral alleging domestic violence and possible drug use by the parents. In investigating the referral, the agency learned that on September 26, 2012, father had been arrested on charges of making criminal threats. According to the police report, mother told an officer that father had called her that morning and threatened to kill her and the child. Father said he was

going to stab the child because he was angry at her. He then held the child up to the phone and mother could hear the child screaming. Mother thought father was angry with her for leaving him, and she feared for her life and the life of the child. Mother also reported that father had been physically violent in the past during arguments.

When the police went to father's home, they found the child lying in a crib in the living room. The child was physically unharmed. In father's bedroom, the police found a knife "stabbed into the wall" and took photographs of it. Father admitted he called mother that morning but denied making threats against her or the child and said he would never hurt the child.

During interviews with social workers in early October 2012, father excused and minimized the threats he made to mother, explaining he was upset because he had just heard mother had been unfaithful. Father also indicated that since the incident mother had allowed him to have "constant contact" with the child, causing the agency to be concerned that mother was not adequately protecting the child.

Father denied current substance abuse but spoke of serving a 10-year prison sentence in Arizona for drug possession. He also admitted he had previously been arrested due to domestic violence.

Both parents refused to submit to a drug test and were advised that failure to test would be considered a positive test.

The child was placed in protective custody on October 14, 2012, and the agency filed a Welfare and Institutions Code section 300¹ petition on his behalf.

At the jurisdiction/disposition hearing on January 3, 2013, father testified there had been "no domestic violence at all" in his relationship with mother. When father got angry with mother he would "just use a stern voice."

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

Father admitted he threatened to kill mother for sleeping with somebody else. However, he insisted he did not mean the threat literally. Father also denied threatening to kill or stab the child, and claimed the child was asleep in another room when he called mother.

Father testified the knife the police reportedly found stabbed into his bedroom wall was not “in the wall” but “on the wall.” Father explained the knife was part of a decorative wall hanging, comprised of a shield and two knives, which had been “a gift from Madrid, Spain.”

Father also denied reports of aggressive behavior towards mother’s relatives. Father denied hitting her grandfather and breaking a window at his residence. According to father, mother’s grandfather actually hit him on “multiple occasions” and mother was the one who broke the window.

After closing arguments, the juvenile court found by a preponderance of the evidence that the child was a person described by section 300, subdivision (b), and found by clear and convincing evidence there would be a substantial danger to the child’s physical and emotional health if he were to be returned home, and there were no reasonable means by which he could be protected without removal from the parents’ physical custody.

The court provided a detailed explanation for its rulings, which included the following observations:

“The Court does find that the parents do have a history of substance abuse, but it is really more the domestic violence that this Court is very concerned about.

“The Court is very concerned that the mother has continued to refuse to separate herself from the father and has minimized the extent that the— of the domestic violence.

“[Father] denies threats were made, which really brought this to the attention of the Court. And threatening to kill either [mother] or the child,

and says that the knife involved was simply decorative and something that one displays on the wall, the Court does not accept that nor does the Court find that testimony credible by one iota.

“The police are not going to simply take a photograph of a decorative piece on the wall. The police report specifically indicates that the knife was stabbed into the wall, and that’s why the picture of the knife was taken by the police department, and the Court finds that much more credible.

“The Court also believes that there has been a history of domestic violence. Whether the mother bit the father in the face or whatever happened, she opened the door and had a black eye, which indicates that clearly there was an episode of domestic violence that occurred on that occasion referred to in the report.

“And the Court also believes that the violence and [father’s] inability to control his temper is an ongoing issue that presents a serious risk, not only to the mother, but to the child. [Father] has a problem maintaining his composure in a number of situations. [¶] ... [¶]

“The parents need to understand that domestic violence presents a severe and dangerous risk to their son. I believe that [father] did threaten to kill the mother. I’m not saying that he intended to carry out those threats, but she was scared enough to call the police. I believe that he was extremely angry, which is how the knife ended up stabbed into the wall, and that thankfully he didn’t hurt the child. I’m not saying he definitely would have, but it presents a danger to the child.

“Children are psychologically, emotionally, mentally, and physically harmed by domestic violence. It impairs their growth, it impairs their security, it impairs their brain development. And this is not an isolated incident. It is an ongoing pattern that has to cease.”

DISCUSSION

I. Sufficiency of the Evidence Supporting the Jurisdictional Finding

Father contends there is insufficient evidence to support the juvenile court’s decision to establish jurisdiction over the child. Father acknowledges he engaged in “inappropriate conduct” but argues there is no substantial evidence that, at the time of the jurisdiction hearing, the child was at substantial risk of suffering serious physical harm in his custody. We disagree.

“In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) In making this determination, “[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Rather, we give the respondent “the benefit of every reasonable inference” and resolve all conflicts in favor of the juvenile court’s decision. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

In this case, the juvenile court assumed jurisdiction over the child pursuant to section 300, subdivision (b). Subdivision (b) provides a basis for juvenile court jurisdiction if there is a substantial risk a child will suffer serious physical harm or illness “as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent ... to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.”

Relying in part on the absence of evidence he physically injured the child during the September 26, 2012, incident, father suggests the juvenile court’s finding that his behavior posed a substantial risk of harm to the child was based on mere speculation. We disagree. The record discloses substantial evidence supporting the court’s finding that this was not an isolated incident but reflected father’s ongoing inability to control his temper. The court also reasonably found that father had a history of domestic violence, which was evidenced by the December 2011 incident in which he reportedly blackened mother’s eye while he was holding his infant son. The record also contains evidence from which the court could infer father’s recent death threats occurred in the child’s immediate presence. In light of evidence that father has difficulty controlling his anger and had engaged in acts of physical and verbal abuse in front of the child, the juvenile

court here could reasonably conclude that father's conduct currently posed a substantial risk of serious physical harm to the child.

II. Sufficiency of the Evidence Supporting the Jurisdictional Order

Father also contends there is insufficient evidence to support the juvenile court's decision to remove the child from his care. Again, we disagree.

Pursuant to section 361, subdivision (c)(1), the juvenile court may remove a dependent child from his parents' custody upon clear and convincing evidence of a substantial danger to the child's physical health or well-being if there are no other reasonable means to protect the child. Such an order "is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citations.]" (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735.)

Denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision, and it is appropriate for a juvenile court to consider a parent's level of denial when determining a risk to the child if placed with that parent. (See *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.) Certainly, a parent does not have to agree with a false accusation and should not be punished for attempting to explain why he or she was wrongfully suspected. The court may, however, conclude a parent's denials reflect an underlying resistance to the treatment needed to effect the behavior changes that will ensure the child's safety. (*Ibid.*)

Here, father incredibly testified to a complete absence of domestic violence in his relationship with mother. This level of denial supported the inference he was unlikely to change his behavior without court supervision and it would be detrimental for the child to remain in his care. The record also contains evidence that mother minimized father's

abuse and, in the past, had failed to avail herself of the voluntary family maintenance services offered by the agency and abide by her agreement to stay away from father. In light of the parents' denials and minimization of father's abuse, and evidence of father's inability to control his temper and abusive behavior in different situations, the juvenile court could reasonably find the potential detriment to the child was too serious to risk keeping him in the parents' care.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

HILL, P. J.

WE CONCUR:

CORNELL, J.

FRANSON, J.