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

In re KENNETH F., a Person Coming Under the
Juvenile Court Law.

MADERA COUNTY DEPARTMENT OF
SOCIAL SERVICES/CHILD WELFARE
SERVICES,

Plaintiff and Respondent,

v.

DAVID F.,

Defendant and Appellant.

F073269

(Super. Ct. No. MJP014545)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Thomas L. Bender, Judge.

Mara L. Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Regina Garza, County Counsel, and Miranda P. Neal, Deputy County Counsel, for Plaintiff and Respondent.

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*Before Kane, Acting P.J., Franson, J., and Smith, J.

INTRODUCTION

Pursuant to Welfare and Institutions Code¹ section 300, subdivisions (b) and (c), 13-year-old Kenneth F. was removed from the custody of his father, David F. (Father), and placed in foster care after the juvenile court found that Kenneth was at substantial risk of suffering serious physical harm or illness and serious emotional damage. Father challenges all of the jurisdictional findings made in this case; requests reversal of the disposition order removing Kenneth from his home; and requests this court remand the case with directions to return Kenneth to Father's care. We decline to do so and affirm.

FACTS AND PROCEDURAL HISTORY

On July 31, 2015, Kenneth called his mother (Mother), with whom he was not living, to report that he did not feel safe with Father. Mother called the Madera Police Department and requested a welfare check. Officer Majors went to the location, an old Victorian on "D" Street in Madera, for the welfare check. Majors found the home totally dark, with no apparent power to the house, and an elevated front porch with no stairs to access the porch. Majors used his flashlight to walk around the side of the house, where he saw a handicap ramp. A man, William Miller, came outside and asked what Majors was doing on the property.

Majors asked Miller if the minor, Kenneth, lived at the home, and Miller responded affirmatively. Majors asked to speak with Kenneth. Miller went inside and returned shortly with Kenneth. Majors noted that Kenneth "was noticeably uncomfortable and afraid" when Majors began to speak with the minor. Kenneth indicated he was hungry, there was no food in the home, no power to the house, and no hot water. Kenneth said Father told him to take a bath, but Kenneth didn't want to

¹References to code sections are to the Welfare and Institutions Code unless otherwise specified.

because there was no hot water. Majors asked Kenneth if he had a choice, would he want to stay at the home on “D” Street; Kenneth responded “no.”

As Majors was speaking with Kenneth, Father came outside. Father was “loud and irate” and became even more so when Majors explained he had come out to do a welfare check on Kenneth. Father began to yell at Majors and said he had custody of Kenneth; Majors responded that Father needed to calm down. Majors explained that if conditions in the home warranted it, he would take Kenneth into protective custody. Father responded, “then take him.” Father began to “glare angrily” at Kenneth and stated, “I hope you’re happy Kenny.”

Majors took Kenneth to his patrol vehicle, where he noticed that Kenneth was barefoot and “extremely dirty.” Kenneth told Majors he tried to get along with Father but always “seemed to make him angry.” Kenneth stated Father had hit him in the past.

Because of the size and lack of power in the home, Majors called for assistance and Sergeant Esteves responded. Father was “very angry and irate by this point.” Father told the officers the home on “D” Street was a “temporary living arrangement” and that there was a CPS case open on two children living in the home. Esteves and Majors confirmed there was no power to the home. There were electrical cords “strewn all over the house and in the hallways” that ran to three generators “powering what appliances were operating in the house.”

Majors noted the home was “extremely dirty, completely dark and unkempt,” with numerous other individuals in the home. When asked, Father did not know how many people were living in the home. Majors saw “some canned food” but it was “very little.”

After arriving at the police station, Kenneth told Majors that the home on “D” Street was not temporary, it was his and Father’s “regular home.” Kenneth said he and Father went back and forth between the “D” Street house and a shop Father owned; the conditions at the shop were worse than at the house, and Kenneth stated he developed health problems when staying at the shop. Kenneth indicated that Father got custody of

him because Father falsely claimed the home of a friend, Linda, was Father's home. During the previous school year, Father sent Kenneth to live with Linda, who made sure he attended school regularly. Father photographed the home and claimed it was the home he was providing for Kenneth.

CPS social worker Augustine met with Kenneth after he was in protective custody. Kenneth indicated he had eaten some Top Ramen noodles for dinner that evening, but nothing more because no food was available. Kenneth indicated there were times when he went without food for a day or two because Father ran out of money.

CPS social worker Davila went to the home on "D" Street to meet with Father. Davila found broken and missing windows, no stairs to the front porch, and the front door blocked. Davila also saw that the roof and porch supports were sagging. She gained entrance to the house through a back door when a female tenant allowed her inside. Davila noticed several holes in the back porch as she crossed to enter through the back door. Once inside, Davila smelled a strong odor of propane. Davila could hear generators running and smell exhaust fumes in the home. She saw that several of the rooms were under construction.

The tenant told Davila that Father was upstairs and led Davila to the stairway. The stairway was very dark because there was no power in the home. Davila asked Father if she could see the food he kept in the home; Father said he did not store food at the home because the power was off. Davila told Father a report had been received that Kenneth was often hungry. Father's response was, "If I feed him every time [he] is hungry, I would be cooking 24/7." Father indicated he stayed at his shop with Kenneth but would not allow Davila access to the shop to determine its suitability as a living arrangement.

Davila noted that Father only referred to Kenneth in negative terms and told her the situation came about because Kenneth wanted to "play his X-Box" and not do his chores.

Later, Davila spoke with Kenneth. Kenneth indicated he did not want to live with Father and preferred foster care. Kenneth indicated Father had hit him in the past; he was afraid of Father; and the home had bed bugs, no power, and no hot water. Kenneth stated he has gone for two days before without food; Father would run out of money and could not buy food. Kenneth reported that Father always had soda, even when there was no food.

When a team decisionmaking meeting was held with both parents and the social worker, Father walked out of the meeting before it concluded, stating that “the entire situation is a concoction” of Mother and Kenneth.

The detention report filed August 4, 2015, had attached to it copies of the report prepared by Majors after the welfare check; pictures of the home on “D” Street; and a copy of documentation from a Tulare County court case recommending Mother’s visits be restricted to limited, supervised visits. The report also detailed the conversations and recent events with Father and the social workers, in addition to listing the prior CPS history of Father. There had been multiple referrals to CPS about Kenneth’s welfare since 2003, alleging general neglect of Kenneth by Father. The allegations had been deemed “[i]nconclusive.”

Both parents were asked to complete a form and provide information about Kenneth’s health needs. Mother reported that Kenneth had asthma and needed an inhaler; had seasonal allergies; previously had been diagnosed with ADHD, but had outgrown most of his “inability to focus”; and that he required speech therapy.

Father also filled out a form regarding Kenneth’s health needs. Father reported that Kenneth received “special help” in “speaking class.” In response to the question of whether Kenneth had any special needs, Father wrote: “He needs to be able to focus on his work and to learn what life is about without his constant need to make up lies [and embellish] the truth without a need or cause—he simply lies” In response to the

question of whether Father thought Kenneth might have a disability, Father wrote that Kenneth was “unable to tell the truth.”

In response to a question about whether Father had any medical problems or disabilities, Father wrote: “The inability to understand why I am here answering this form and why I see my son under supervision by [authorities].” Father also wrote that Kenneth’s mother’s “medical issues and her influence on my son are my greatest fear of her personality influencing his mental development in [a] negative way.”

On August 4, 2015, the Madera County Department of Social Services filed a dependency petition on behalf of Kenneth, alleging that he fell within the provisions of section 300, subdivisions (b) and (c). The petition alleged that Father had failed to provide adequate care, protection, shelter, and food for the child in that there was a lack of food in the home and, on occasion, Kenneth had been without food for a day or two; the home was without electricity; a propane tank was incorrectly attached to a stove, generating fumes; there was no hot water; there were numerous broken windows, the front door was blocked, and the home was under construction; and Father had allowed unsupervised, overnight visits with Mother in violation of a court order. The petition alleged that these facts placed Kenneth at substantial risk of physical harm, abuse, or neglect. The petition also alleged that Kenneth was at risk of suffering serious emotional damage in that Father spoke negatively to and about Kenneth and spoke negatively of Mother to Kenneth.

Kenneth was detained. Father was about 66 years old at the time of detention; Mother was about 44 years old.

A jurisdiction report was filed on August 27, 2015. The department recommended that the allegations of the petition be sustained. An addendum report for the jurisdictional hearing subsequently was filed, which set forth the events that occurred during a scheduled visitation on August 27, 2015.

On August 27, 2015, Father was at the CPS offices for a scheduled visitation with Kenneth. The front office staff informed social worker Rios that Father was “humiliating and discussing the case” with Kenneth. Rios went to the front office, introduced herself to Father, and stated she needed to speak with Kenneth. Rios took Kenneth aside and asked about the visitation. Kenneth told her that Father “was calling him a liar,” said he was going to court only “to have the label of being a child abuser removed,” and “that everything that is happening is [Kenneth’s] fault.” Kenneth stated he did not feel his Father wanted him, did not want to return to Father’s care, and felt “sad” when Father “talk[ed] to him in a humiliating manner.”

Rios then asked to speak with Father privately. Father told Rios, “this is bullshit,” and that Kenneth needs to know “he will be in CPS for another five years!” Rios attempted to speak with Father about the types of conversations he could and could not have during visitation, but Father walked out stating, “the court will hear about this! I’m leaving!”

The contested jurisdiction hearing took place over several days. The juvenile court accepted into evidence all the social study reports and their attachments. Social worker Davila told the juvenile court that Father was not interested in referrals or accepting services. Father also refused to drug test. Father stated, “I said I wasn’t really interested in any of the referrals because I don’t feel that I should be in court in the first place.”

Davila testified to the information she had about the house on “D” Street and her assessment of the living arrangements at that home. After her inspection of the home, Davila generated a CPS referral for the other children living there.

Davila noted the “strong smell” of “exhaust fumes”; the boarded front door; the lack of electricity and extension cords strewn around the floor; broken windows; and no edible food. Davila noted that the kitchen was solely for the use of the tenants, and when she asked Father to show her the food he kept in the home, he showed her a location on

the second floor. There were a few spices, but no edible food. Davila could hear what sounded like a motor running behind a closed door; there were two rooms closed off to which she was not allowed access.

In addition to the home on “D” Street, Father owned apartment buildings. Davila had suggested to Father that perhaps one of the apartments would be a suitable home for Kenneth and Father.

Davila testified that Kenneth told her he had gone without food for one or two days at a time and that this occurred “regularly.” At the time Kenneth was placed in protective custody, he smelled as though he hadn’t bathed in several days and his hair was very disheveled.

With respect to the prior CPS investigations that were found to be inconclusive, Davila stated that CPS always offers services when an investigation is done; Father never accepted services. Father continued to refuse to engage in services. Mother and Father were each alleging in the current dependency case that the other used drugs.

On cross-examination, Davila testified she found no spoiled food, animal feces, or soiled diapers in the “D” Street house.

Rios testified she used an assessment tool to help assess the risk factor of Kenneth returning to Father’s care; the assessment was updated periodically. The assessment showed that the risk factor “is still high.” In part, this was because of the inappropriate visit that Rios observed. Rios testified that, during visits with Father, Kenneth was “very sad, very de-humanized.” Kenneth was “very timid” around Father. In his foster care home, Kenneth did not exhibit any anxiety or depression.

Father testified. When asked about Kenneth’s statement that they ran out of food on occasion and he didn’t get enough to eat, Father stated, it was “because it was my attempt to try to teach him that if you receive X amount of money per month and you spend all of it at the first of the month ... that you have less money to spend. Therefore,

you need to balance the budget” Father also stated that “[Kenneth] needs to understand that you cannot live your life just on whim, just spend money and don’t think about the future.” Father stated he was eligible for food stamps but “hadn’t picked them up in two or three months”

When asked if he spoke to Kenneth in negative terms, Father responded, “Perhaps I have.” Father denied ever speaking negatively about Mother to Kenneth or around Kenneth. Father denied that Kenneth was anxious, fearful, or depressed. He also denied ever hitting Kenneth to discipline him.

Father claimed the “D” Street house had hot water from a propane water heater. Father testified he and Kenneth had been staying at the shop and at the “D” Street house while Father renovated the house. Father did not believe there were unsafe conditions in the “D” Street home.

Father acknowledged that Mother was allowed only weekly supervised visits per court order, but that he had allowed longer unsupervised visits. Father allowed Kenneth to go on a camping trip with Mother.

At the conclusion of the evidentiary portion of the contested jurisdiction hearing on November 6, 2015, the juvenile court adjourned to review all the evidence. The juvenile court reconvened on November 30, 2015. At that time, the juvenile court stated it had reviewed the evidence, the petition, the detention report, the jurisdiction report, and the addendum reports.

The juvenile court noted, “it always comes down to some credibility issues,” and stated, “I think Kenneth was actually more credible than his [F]ather in this case.” The juvenile court noted that Father was not cooperative with the officers showing up for the welfare check or with CPS. The juvenile court noted that, as to the subdivision (b) allegations, the observations of the police officers, CPS, and Kenneth as to no hot water, lack of food, broken windows, exhaust odor of propane, holes in the flooring, and the general condition of the home, substantiated the allegations of the petition.

As for the subdivision (c) allegation, the juvenile court pointed out talking about Mother in a negative manner to Kenneth as one fact supporting the allegation. The juvenile court invited comment on the subdivision (c) allegation, and counsel for the department stated that Kenneth expressed fear of his Father and the inappropriate manner in which Father acted during visitation.

The juvenile court found the allegations of the petition to be true.

A disposition report was filed January 27, 2016. The department recommended that Kenneth be declared a dependent, that he remain in foster care, and that both parents be provided reunification services.

At the contested disposition hearing, Father's attorney stated that Father was interested in receiving services, wanted to "repair the relationship with his son," and was willing to do therapy and parenting classes. Rios testified to the department's recommendations and stated that Kenneth was willing to participate in services with Father. Kenneth testified, indicating he agreed with the department's recommendation of providing reunification services to both parents.

The juvenile court adopted the department's recommended findings and orders, including declaring Kenneth a dependent, removing him from Father's custody, and ordering that both parents receive reunification services.

Father filed a timely notice of appeal on February 19, 2016.

DISCUSSION

Father challenges the section 300, subdivisions (b) and (c), findings made by the juvenile court and the disposition order.

Standard of review

Jurisdictional findings are reviewed for substantial evidence; we do not reweigh the evidence or exercise independent judgment. (*In re D.C.* (2015) 243 Cal.App.4th 41, 51.) The standard of review for a disposition order is also substantial evidence. (*In re*

I.J. (2013) 56 Cal.4th 766, 773.) An appellate court does not substitute its judgment for that of the juvenile court. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 918.)

The appellant, in this case Father, has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) Evidence from a single witness can be sufficient to support the findings. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Jurisdiction may rest on a single finding. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.) The juvenile court's jurisdictional findings are based on a preponderance of the evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) The substantial evidence standard is a difficult hurdle to overcome; if there is any substantial evidence, an appellate court must affirm. (*D.M., supra*, at p. 1128.)

Section 300, subdivision (b)

Subdivision (b) of section 300 provides that a minor comes within the jurisdiction of the juvenile court if “[t]he 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 his or her parent or guardian to adequately supervise or protect the child, ... or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment”

The minor need not have been actually harmed before removal is appropriate; the focus of the statute is on averting harm. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.) A parent's past conduct, as well as present circumstances, may be considered by the juvenile court. (*Ibid.*)

Here, the officer conducting the welfare check, Majors, found electrical cords “strewn all over the house and in the hallways” that ran to three generators “powering what appliances were operating in the house.” Majors noted the home was “extremely dirty, completely dark and unkempt” with numerous other individuals in the home. When asked, Father did not know how many people were living in the home.

Social worker Davila noted the “strong smell” of “exhaust fumes,” the boarded front door, the lack of electricity, extension cords strewn around the floor, broken windows, and no edible food. Davila noted that the kitchen was solely for the use of the tenants, and when she asked Father to show her the food he kept in the home, he showed her a location on the second floor. There were a few spices, but no edible food. Davila could hear what sounded like a motor running behind a closed door; there were two rooms closed off to which she was not allowed access.

Davila testified that Kenneth told her he had gone without food for one or two days at a time and that this occurred “regularly.” At the time Kenneth was placed in protective custody, he smelled as though he hadn’t bathed in several days and his hair was very disheveled.

At the time of his detention, Kenneth was living in a home without electricity or hot water; there was no edible food in the house; the home was extremely filthy and in disrepair; Kenneth himself was very dirty and unkempt; and Father did not know how many others were living in the house on “D” Street. There were generators, electrical cords, an improperly connected propane tank, and noxious fumes in the home. Kenneth had asthma and required an inhaler. These facts provide substantial evidence upon which the trial court could find that Father was not providing adequate food or shelter for Kenneth, and that Kenneth was at substantial risk of serious physical harm or illness.

As for Father’s contention that any failure to provide adequate food or shelter was merely the result of poverty, and not willful or negligent, the record demonstrates otherwise. When Father was asked about Kenneth’s statement that they ran out of food on occasion and he didn’t get enough to eat, Father did not state that he had insufficient funds for adequate food. Instead, Father testified that the lack of food was “because it was my attempt to try to teach him that if you receive X amount of money per month and you spend all of it at the first of the month ... that you have less money to spend. Therefore, you need to balance the budget” Father also stated that, “[Kenneth] needs

to understand that you cannot live your life just on whim, just spend money and don't think about the future." Father stated he was eligible for food stamps but "hadn't picked them up in two or three months" Father clearly had access to funds for adequate food but willfully or negligently failed to provide adequate food.

Regarding the lack of adequate shelter and Father's decision to house Kenneth in a building with no hot water, no electricity, broken and missing windows, a sagging roof and porch supports, an improperly connected propane tank attached to a stove, and electrical cords strewn about and attached to generators, this was not the result of a lack of other available shelter. In addition to the home on "D" Street, Father owned apartment buildings. Davila had suggested to Father that perhaps one of the apartments would be a suitable home for Kenneth and Father. Father willfully or negligently failed to provide adequate, suitable shelter for Kenneth, choosing to house Kenneth in a home in extreme disrepair and under construction, when other options were available.

Section 300, subdivision (c)

We concluded there is substantial evidence supporting the section 300, subdivision (b), finding and a single finding supports jurisdiction; however, we also will address the subdivision (c) jurisdictional finding.

Section 300, subdivision (c), provides in part that a child comes within the jurisdiction of the juvenile court if the child is suffering, or is at risk of suffering, serious emotional damage as a result of the conduct of the parent. To sustain a section 300, subdivision (c) finding, there must be evidence of abusive conduct posing a current danger to the child. (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 559-560.) Substantial evidence supports the juvenile court's finding.

During the welfare check conducted by Majors, Father told Majors, "then take him" and began to "glare angrily" at Kenneth and stated, "I hope you're happy Kenny." Kenneth told Majors that he tried to get along with Father, but always "seemed to make him angry." Kenneth stated Father had hit him in the past.

Social worker Davila noted that Father only referred to Kenneth in negative terms. Later, Davila spoke with Kenneth. Kenneth indicated he did not want to live with Father and preferred foster care. Kenneth indicated Father had hit him in the past, and he was afraid of Father.

After Kenneth was taken into protective custody, Father was asked to fill out a form regarding Kenneth's health needs. In response to the question of whether Kenneth had any special needs, Father wrote: "He needs to be able to focus on his work and to learn what life is about without his constant need to make up lies [and embellish] the truth without a need or cause—he simply lies" In response to the question of whether Father thought Kenneth might have a disability, Father wrote that Kenneth was "unable to tell the truth." In response to a question about whether Father had any medical problems or disabilities, Father wrote: "The inability to understand why I am here answering this form and why I see my son under supervision by [authorities]."

On August 27, 2015, Father was at the CPS offices for a scheduled visitation with Kenneth. The front office staff informed social worker Rios that Father was "humiliating and discussing the case" with Kenneth. Kenneth told social worker Rios that Father "was calling him a liar," said he was going to court only "to have the label of being a child abuser removed," and "that everything that is happening is [Kenneth's] fault." Kenneth stated he did not feel his Father wanted him, did not want to return to Father's care, and felt "sad" when Father "talk[ed] to him in a humiliating manner."

Father told Rios, "this is bullshit," and that Kenneth needs to know "he will be in CPS for another five years!" Rios attempted to speak with Father about the types of conversations he could and could not have during visitation, but Father walked out stating, "the court will hear about this! I'm leaving!"

Social worker Rios testified that, during visits with Father, Kenneth was "very sad, very de-humanized." Kenneth was "very timid" around Father. In his foster care home, Kenneth did not exhibit any anxiety or depression.

Social worker Davila testified that, with respect to the prior CPS investigations that were found to be inconclusive, CPS always offers services when an investigation is done; Father never accepted services. Father continued to refuse to engage in services in the current dependency case.

When asked if he spoke to Kenneth in negative terms, Father responded, “Perhaps I have.”

Here, Father acted inappropriately toward Kenneth in front of Majors during the welfare check; Father acted inappropriately toward Kenneth during supervised visitation, necessitating that visitation be canceled; when filling out a medical form on Kenneth, Father described Kenneth as unable to tell the truth and used only derogatory terms to describe Kenneth; Kenneth was afraid of Father; and, Kenneth stated he always seemed to make Father angry and Father hit him. Kenneth was timid and anxious around Father; Kenneth was not this way with his foster family.

Father’s opening brief dismisses this evidence as the normal friction between a teenage boy and his father. Not so. This is consistently inappropriate behavior by Father that places Kenneth at substantial risk of severe emotional damage if allowed to continue unchecked, and the juvenile court so found. The minor need not be actually harmed; the focus of the statute is on *averting* harm to the minor. (*In re John M.*, *supra*, 212 Cal.App.4th at p. 1126.) Substantial evidence supports the section 300, subdivision (c), finding.

Disposition order

The disposition order removed Kenneth from Father’s care and ordered reunification services to both parents. A juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a disposition order in accordance with this discretion. (*In re A.L.* (2010) 188 Cal.App.4th 138, 142-146.)

To remove a minor from the parent’s care at disposition, the juvenile court must find that there is a substantial danger to the physical health, safety, protection, or

emotional well-being if the minor were returned home. (§§ 342, 361, subd. (c)(1).) The parent need not be dangerous, and the minor need not actually be harmed before removal is appropriate; the focus is on avoiding harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)

As we noted, there is substantial evidence supporting the section 300, subdivision (b) and (c) findings, all of which remained unaddressed because Father had consistently refused services during the dependency. Father also was consistent in his belief that his actions and conduct were not inappropriate; he had no awareness that his actions gave rise to the dependency case and instead blamed Kenneth.

Here, the juvenile court removed Kenneth from Father's home and ordered reunification services. Such a disposition protects Kenneth's interests. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

DISPOSITION

The jurisdictional findings and disposition order are affirmed.