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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re A.H. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

I.H.,

Defendant and Appellant.

G046120

(Super. Ct. No. DP018764)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Maria D. Hernandez, Judge. Affirmed.

Teri A. Kanefield, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for the Minors.

* * *

The court found true the allegations of the Orange County Social Service Agency's (SSA) supplemental petition under Welfare and Institutions Code section 387,¹ and ordered custody of the dependent children, A.H. and J.H, to be removed from their father, I.H. On appeal father contends insufficient evidence supports the court's findings he hit mother in the face, kicked her, and pushed her down the stairs outside his apartment. We disagree and affirm the court's order.

FACTS

In an August 10, 2009 petition, SSA alleged then 6-year-old A.H. and 5-year-old J.H. came within the juvenile court's jurisdiction under section 300, subdivision (b). SSA alleged the children's mother had been under the influence of a drug to the point of incapacitation, had hit father with a mop stick in the children's presence, and had been arrested by the police, only to return to the family home a day later in violation of an emergency protective order. Mother had a history of anger management and substance abuse problems. SSA alleged father had failed to protect the children from mother.

At the September 23, 2009 jurisdiction and disposition hearing, the court found true the allegations of the amended petition (to which parents had pleaded nolo

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

contendre) and declared the children to be dependents of the court. The court removed custody of the children from mother and ordered custody to remain vested with father under SSA's supervision and a family maintenance plan.

The maternal grandmother and the maternal aunt helped father by caring for the children on many weekends, buying most of the children's clothes and shoes, often buying food for the children and father, and often bringing the children for medical attention and buying their medicine. The maternal grandmother monitored mother's weekend visits with the children.

SSA recommended that custody of the children remain with father under SSA's continued supervision. The children had expressed their desire to live with the maternal relatives, because the maternal relatives were nice to them, bought them "stuff," and helped A.H. with her homework. A.H. "repeatedly stated[,] 'Tell the judge I want to live with my grandma.'" She reported being afraid of father because he hit her.

Although the social worker believed that father had demonstrated personal growth and improved his parenting ability, she remained unsure about the quality of care, based in part on father's inability to meet the children's academic needs due to his illiteracy. The social worker continued to be concerned about mother's ongoing and long history of substance abuse. While mother acknowledged she was not then in a position to care for the children, she feared for the children's safety in father's care. Mother reported that although she was the one arrested for perpetrating domestic violence against father, she had "experienced significant abuse at the hands of the father during their relationship." "In addition, the mother reports that the maternal relatives provide for the majority of the children's needs, and she feels that the father is not capable of providing adequate care for the children on his own." Mother reported father has threatened to take the children to Mexico upon termination of the dependency case, and she fears she will lose contact with them.

On May 10, SSA filed a section 387 supplemental petition. The children were detained at their maternal grandmother's home, having been taken back into protective custody on May 7. The amended supplemental petition alleged, inter alia, that father completed a domestic violence counseling program, but "failed to benefit from said services in that he engaged in domestic violence in the presence of the children while being the sole caregiver for the" children. In late April "the children . . . were exposed to an act of domestic violence wherein they were present when the father . . . engaged in a verbal and physical altercation that culminated with the father hitting the mother in the face, kicking the mother, and pushing the mother down a flight of stairs. The father's actions resulted in the mother sustaining a back injury, multiple bruises and swelling. Said domestic violence in the presence of the young children places the children at risk of physical harm and emotional distress."

SSA reported that on April 29, mother said she went to father's home to pick up some personal belongings and to take A.H. to a medical appointment as the child had been sent home sick from school. Mother said father argued with her, would not let her take A.H., punched her in the face, kicked her, and pushed her down a flight of stairs in the children's presence. Mother thought J.H. was inside the apartment and did not witness the incident. Mother said A.H. was on the second floor landing outside the apartment, and said to father, "'Stop screaming at my mom. Why are you so mean to her?'" According to mother, father pushed A.H., causing the child to fall back against the wall, hit her head, and fall down. Also according to mother, A.H. saw father hit mother and push mother down the stairs, and then the child ran down the stairs to help mother get up.

On May 1, mother went to the hospital and was diagnosed with a muscle sprain of the back with possible compression fracture and a concussion. That same day, a police officer, responding to a report from hospital personnel, spoke with mother at the hospital. Mother had bruises and minor abrasions. Mother said father punched her in the

face and pushed her down the stairs, she passed out briefly, she got her mother, then walked back to father's apartment where she saw blood everywhere, father's hand bleeding, and that he had punched a hole in a wall. While speaking with mother, the officer noticed she appeared to be under the influence of a narcotic, her eyelids were very droopy, her speech slurred, and she had difficulty staying awake. Mother had taken methadone and Xanax.

On May 2, an officer spoke with J.H., who told the officer that during an argument, father hit mother. A.H. had already left for school and was not interviewed. The officer also interviewed father. Father said mother never came upstairs and he spoke to her in the carport. She had arrived with two female friends, and was slurring her speech and having trouble keeping her balance. She was bleeding and said she got into a gang fight in Santa Ana. The officer looked in the apartment and saw no blood on the wall or any damage to the wall. Father had no fresh injuries to his hands, only small cuts and abrasions which appeared to be caused by construction work.

A neighbor told the police she did not see mother get pushed down the stairs. The neighbor said that around 11:00 a.m. that day, mother stumbled into the neighbor's apartment. Mother was disoriented and appeared to be under the influence of alcohol or narcotics. She had blood on her hands and said "she needed a towel to wipe off the blood caused from her menstrual cycle." Mother asked to borrow a kitchen knife in order to open father's apartment. The neighbor refused to lend mother a knife. Mother then took a ladder from her storage shed to climb into father's second story apartment. Mother did not follow through with using the ladder, left the neighbor's apartment, and remained in the neighborhood until 5:00 p.m. The neighbor heard mother and father arguing and it sounded like father was not going to give mother the children due to her intoxication level. The neighbor did not witness anything as she stayed in her apartment.

On May 3, an emergency response social worker met with mother and observed her "to have swelling and bruising on her left eye and cheekbone, a large bruise

above her left breast, a large bruise on her right outer thigh, bruising and small red marks on her right forearm, and bruising and swelling on her left forearm and elbow.”

On May 4, the children’s school told SSA that A.H. was in school on April 29, “when she allegedly witnessed the incident between the parents.”

Also on May 4, the emergency response social worker interviewed the two children. J.H., when asked if he would tell the truth, said, “Will you tell my dad?” The social worker said she could not promise not to tell father. J.H. said he gets timeout, but is never hit or spanked. J.H. said “he was at the top of the stairs and saw the father push the mother[,] then the mother rolled down the stairs. The child also stated that his sister was there too, standing behind him by the wall. The child didn’t want his father to know that he said something because he was afraid his father would hurt him, however, the child denied that his father has hurt him before.” SSA “noted that the stairs were narrow and steep. It is unclear if the child could have actually seen the father push the mother or if the mother fell on her own given where the child was standing, behind the father.

That same day, the emergency response social worker interviewed A.H. A.H. said she is never left unsupervised and denied any knowledge of substance abuse in the home. She said she gets timeout but no longer gets “smacked” because the court told father not to smack her anymore and father is afraid. The social worker told A.H. that mother said A.H. saw father push mother down the stairs. A.H. said, “That’s not true.” The child said “she didn’t know that mother was hurt and she didn’t see anything.”

The emergency response social worker also interviewed father on May 4. Speaking in an extremely loud voice, father denied pushing mother down the stairs. “The father stated that the mother came by Friday to pick the children up for their weekend visit with the maternal grandmother but it was ‘too early’ so he told her that they weren’t home. [The social worker] asked what time it was and the father stated that it was 4 pm. The father admitted [that J.H.] was actually in the apartment but [A.H.] was not home. “The father claimed that the mother was with some people, two women and one man, and

probably on drugs and maybe one of them did it.” “The father reported that the aunt came back around 6 pm and picked the children up.”

On May 7, at the maternal grandmother’s home, the children’s regular, ongoing social worker “spoke with each child privately. Both children stated that they were in the house when the mother came to the door in the morning to pick up the children for a doctor appointment. [A.H.] said that she and [J.H.] were standing near . . . the front door of their upstairs apartment and heard the parents argue and saw the father push the mother down the stairs. [A.H.] said[,] ‘I yelled at him to stop. I ran down the stairs and picked her up. She runned in the car. My dad screamed at me to get in the house.’ The [social worker] asked [A.H.] why she did not disclose to the [emergency response] social worker what she had seen. [A.H.] said[,] ‘I was scared of her. I wanted you to be there. I didn’t even know her. She was a stranger. I was afraid she would tell my dad’ and ‘I was finding your phone number to call you. I looked everywhere. I didn’t saw your number.’ [A.H.] said the father told them not to tell and he said he would buy us something but he never does. The children then went to school. [¶] [J.H.] said ‘I saw my father push my mother down the stairs. I said stop to my dad. The police came.’ [J.H.] also stated[,] ‘My dad hits me and screams at me and says bad words, like stupid and it’s none of your damn business and bitch and bitchass.’”

When the social worker phoned father to inform him the children were detained at the maternal grandmother’s home, father was very angry and yelled, ““The children weren’t even there.”” ““She just fell down the stairs. That family hates me! They hate me!””

On May 11, the court ordered the children to be detained.

SSA’s jurisdiction/disposition report filed on June 9 reported that on June 7, A.H. stated she wanted to remain in her maternal grandmother’s home and did not want to live with father because he spanks her and she is scared of him. A.H. “reported that she never told anyone that she did not see what took place” when father pushed

mother down the stairs. J.H. stated he wanted to stay in the maternal grandmother's home and live with mother. He did not want to live with father because father hits him. J.H. "stated that he did not see his father push his mother down the stairs, but went to the window and saw his mother on the floor at the base of the stairs. He then indicated that his sister told him that his father pushed their mother down the stairs. His sister was outside by their father when the incident took place."

Father stated that mother "did not fall at his house, but arrived intoxicated and began yelling at the bottom of the stairs that he had pushed her down the stairs." He had just come home from work, when he received a phone call from mother saying she was there to pick up the children for her visit with them. Father opened the door, saw mother down the stairs, and told her she could not pick up the children until 6:00 pm. This was around 5:00 p.m., while the children were at the babysitter's home; the babysitter brings the children home around 5:45 p.m. Mother began yelling and cussing at father, so he closed his door.

The maternal grandmother stated that if the children do not reunify with their parents, she is willing to be considered for adoption. As to the incident, she said she had taken mother to father's apartment, and waited in the car. After 20 minutes, she walked toward the apartment and heard father yelling at mother because he wanted mother to take A.H. to a doctor in Huntington Beach but mother wanted to take the child to a doctor in Santa Ana. "When she arrived, she found her daughter on the ground in front of the stairs. She asked the children's mother what had happened and was informed that the children's father had thrown her down the stairs. [Father] denied this. [¶] [The grandmother] indicated that both children were home at the time of the incident. [A.H.] was standing outside on the second floor landing. [The grandmother] asked [A.H.] what had taken place, but her father sent her inside before she could answer."

In an addendum to the jurisdiction/disposition report, SSA reported that on June 21, mother stated she had not seen father since the day of the incident, but "then

remembered that about a week and a half ago, she was walking down the street in Santa Ana and out of nowhere [father] appeared[,] grabbed her hair from behind and held a knife to her throat.” According to mother, father then called her a whore, cussed at her, and accused her of being with other men, whereupon people started passing by and father dropped the knife which fell on and cut mother’s foot.

On October 12, the trial on the supplemental petition began. SSA’s reports were admitted into evidence. The parties waived their right to cross-examine the social worker.

Father’s counsel argued that SSA had closed its investigation into the April 29 allegations as unfounded on May 5, but later filed the supplemental petition and detained the children based on the children’s disclosures made on May 7. Counsel viewed these disclosures as “extremely suspicious.” Counsel pointed out discrepancies in the mother’s accounts of the incident and the fact she waited two days before going to the hospital and was abusing drugs during this period. Counsel argued the children’s stories “radically” changed once they were living at the maternal grandmother’s house. Counsel argued the children were “young [and] impressionable” at ages seven and eight, and were “being coached” to make the allegations. He mentioned statements made by the maternal grandmother that the children do not want to visit father. Counsel argued the children cannot be removed from father’s custody simply because they do not want to live with him. Counsel asked the court to dismiss the supplemental petition or to return the children to father’s care under a family maintenance plan.

Minors’ counsel pointed out the children had been subject to more than 12 child abuse reports concerning the parents. She noted father had been arrested on numerous occasions for violence. She argued that it made perfect sense for the children to make disclosures in the safe haven of their maternal grandmother’s house that they had been afraid to make in father’s home.

SSA's counsel argued father continues to demonstrate anger management problems and that there were inconsistencies in his descriptions of the event.

On October 18, the court found true the allegations of the supplemental petition by a preponderance of the evidence. The court found inconsistencies "in everybody's statements." The court found the inconsistencies in the children's statements to be logical due to their fear of father and A.H.'s unfamiliarity with the emergency response social worker. The court was familiar with the children based on the proceeding where the children testified outside the parents' presence and which resulted in the court's no corporal punishment order. The court found the children to be credible. The court found the children were in fear of father, both emotionally and physically, and ordered conjoint therapy for father with the children to build trust. The court also found father continues to suffer from anger management problems and needed additional parenting and domestic violence classes. The court found insufficient evidence that mother suffered a fractured spine and struck this allegation from the supplemental petition. The court found that under section 361, subdivision (c)(1), vesting custody with parents would be detrimental to the children. The court declared the children to be continued dependents of the court, removed custody from the parents, and ordered reunification services for both parents.

DISCUSSION

Substantial Evidence Supports the Court's Findings Father Hit Mother in the Face, Kicked Her, and Pushed Her Down the Stairs

Father argues insufficient evidence supports the court's finding true the supplemental petition's allegations he hit mother in the face, kicked her, and pushed her down the stairs. He contends the statements given by mother and the children were not credible in nature or of solid value.

SSA counters that father “improperly asks this Court to overturn the trial court’s weighing of the evidence and findings of credibility and substitute his version of events instead.”

Supplemental petitions are governed by section 387 and request the court to change a previous order by removing a child from the physical custody of a parent and directing placement in a foster home. (§ 387, subd. (a).) The supplemental petition must state facts sufficient to show “that the previous disposition has not been effective in the . . . protection of the child” (*Id.*, subd. (b).) “[N]o new jurisdictional facts are alleged in a section 387 petition; no different or additional grounds for the dependency are urged. Section 387 petitions concern only changes in the level of placement for a child already adjudicated dependent.” (*In re John V.* (1992) 5 Cal.App.4th 1201, 1211.)

The substantial evidence standard of review applies to a court’s ruling on a section 387 petition. (*In re A.O.* (2004) 120 Cal.App.4th 1054, 1061.) Nonetheless, father urges us to review the court’s findings de novo because only documentary evidence was presented at the hearing on the supplemental petition. The cases he relies on to support his proposal, however, are inapposite, being cases which state de novo review is appropriate when the facts or evidence below were undisputed and the trial court decided a pure question of law. (*Dolan-King v. Rancho Santa Fe Assn.* (2000) 81 Cal.App.4th 965, 974 [where decisive underlying facts are undisputed, reviewing court confronted with questions of law]; *City of El Cajon v. El Cajon Police Officers’ Assn.* (1996) 49 Cal.App.4th 64, 71 [appellate court independently interprets contract unless the interpretation turns upon the credibility of extrinsic evidence]; *Excess Electronix v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 705 [reviewing court interprets lease de novo where no extrinsic evidence and no disputed facts].) Such was not the case here, where the facts concerning the incident were greatly disputed.

Applying the substantial evidence standard of review, we conclude the court’s findings are supported by sufficient evidence. Father emphasizes inconsistencies

in the evidence, but as the court pointed out, everyone's statements contained inconsistencies. The court found the children to be credible and to have a logical reason for changing their stories. Nonetheless, we will address father's individual arguments.

Father contends A.H. could not have witnessed the incident because school records show she was in school on April 29. But A.H. had stated to the social worker that she and J.H. went to school *after* the incident. Thus, there was evidence that the children were home at the time of the incident. The record does not disclose what specific hours the school reported A.H. was in school. Inconsistently, father reported the incident occurred around 4:00 or 5:00 p.m., and that J.H. was in the apartment, but A.H. was not home. The maternal grandmother apparently did not specify what time the incident occurred, but stated the children were home. Mother told the police the incident occurred on April 27 at around 11:00 a.m. Although the evidence was conflicting, there was substantial evidence the incident occurred at a time when A.H. was home.

Father questions why J.H., in the safety of the maternal grandmother's home, changed his story to say he did *not* witness the event, but rather ran to the apartment window, saw his mother at the bottom of the stairs, and heard from A.H. that father pushed mother down the stairs. Father asserts this recantation cannot be attributed to the child's fear of father. J.H. is young, and regardless of why he clarified what he saw, the court found him to be credible. His accounts were consistent in that he always claimed to be at the apartment at the time of the incident, regardless of how much he actually saw.

As to the court's finding that the children were credible, father argues the children did not testify as to what happened on April 29; rather, the evidence was documentary. But father's counsel asked the trial court at the October 2011 hearing on the supplemental petition to consider "the entire file." Doing so, the court found the children to have expressed to her "their very genuine and credible representations of fear of corporal punishment" on April 14 (prior to the incident at issue). At the October 2011

hearing, the court expressly found the children to be credible. Father questions A.H.'s credibility by noting the child told the court that her bruises washed off with water. This misstatement speaks less to the child's credibility than to her understanding of what constitutes a bruise.

Father contends that his version of the April 29 incident had no major inconsistencies, whereas mother's and the children's stories did. To the contrary, father told the police he spoke to mother in the carport, but later told SSA he merely opened his apartment door and called down to her. And, inconsistently with everyone else's account, he stated the incident occurred around 4:00 or 5:00 p.m. At one point, father said only J.H. was home at the time of the event; at another he said neither child was home. In one account, father stated mother was with two women and one man; in another he said she was with two women. Except for father's angry outburst that mother "just fell" down the stairs, his other reports suggest she never came up the stairs to the landing outside his apartment.

Father maintains mother's accounts of father punching a hole in the wall of his apartment and holding a knife to her throat on a Santa Ana street are unbelievable. Considering these accounts together with her actions at father's neighbor's apartment and her heavy use of drugs, he argues her reports of the incident are inherently improbable. But A.H. confirmed father pushed mother down the stairs. As to father hitting mother's face, mother had swelling and bruising on her face. As to father kicking mother, evidence from one witness is sufficient. (Evid. Code, § 411.)

Thus, substantial evidence supports the court's finding father hit mother in the face, kicked her, and pushed her down the stairs.

DISPOSITION

The postjudgment order is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.