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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re SKYLER J., a Person Coming
Under the Juvenile Court Law.

B284469
(Los Angeles County
Super. Ct. No. DK21605)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles
County, Debra Losnick, Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel, and Julia Roberson, Deputy County Counsel, for
Plaintiff and Respondent.

T.A. (Mother) appeals from jurisdictional and dispositional orders of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (b)¹ with respect to her daughter, Skyler J. The court found jurisdiction under allegations that Skyler was at serious risk of injury due to violent altercations in her presence. On appeal, Mother challenges only the sufficiency of the evidence to support jurisdiction under subdivision (a) (nonaccidental serious physical harm). We find the evidence sufficient to support the court's finding and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Initial Investigation and Detention

The family consists of Mother, S.J. (Father), and Skyler (born February 2015).² The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in January 2017, when the department received a referral alleging that on January 2, 2017, Father went to Mother's home, asked her to go outside to talk, and shoved her against the wall after she would not allow him in the home. Skyler was asleep inside the home at the time. According to the reporting party, Father and Mother had been separated for about

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

² Father is not a party to this appeal.

four months at the time of the incident. Mother called the police after the incident and said that she had a restraining order against Father.

DCFS received a second referral on January 4, 2017. The reporting party stated that on December 26, 2016, a relative of Mother's (later identified as a paternal cousin, Kristy) tried to attack Father's new girlfriend (Dominique S.) with a bat. According to the reporting party, Mother and Kristy drove away at a high rate of speed and attempted to ram Dominique's vehicle. Dominique saw Skyler in the car with Mother.

A caseworker went to Mother's home to interview her and noticed that the front iron door was bent and two windows at the front of the home were broken. Mother told the caseworker that she kicked Father out of the house because he was cheating on her. After she kicked him out, Father broke into the house and stole her television. Mother also said that Father's girlfriend had come over and broken the windshield of her car while Mother and Skyler were in the car. A police report in the record indicated that Kristy called the police to report vandalism by Father, who used a metal bar to bend the door and used rocks to break windows. A second police report indicated that Father broke into the house and stole two televisions.

The caseworker interviewed Father, who said that after his cousin Kristy moved in with Mother, Mother stopped allowing him to see Skyler. Father denied breaking into Mother's home.

On January 9, 2017, Kristy told the caseworker that Mother contacted her because Father broke into the house and beat Mother up. Skyler was at day care at the time. Mother told Kristy to call the police.

Donna W., Dominique's grandmother, told the caseworker that Mother and Kristy came to Donna's home and threw Father's clothing on the front lawn. She also stated that she believed Mother and Kristy vandalized her car. A group including Donna, Dominique, and Father went to Mother's home to confront Mother and Kristy, leading to the incident when Kristy attacked Dominique with a bat. According to Donna, Mother and Kristy fled in a car when they heard police sirens. Donna did not see Skyler in the car.

Dominique told the caseworker that Mother and Kristy threw Father's clothes on Donna's lawn and vandalized Donna's car. She went with Donna and Father to confront Mother, but Mother would not get out of her car, so they hit the windshield of the car. Dominique stated that she did not see Skyler in the car at the time, although Donna reported that Dominique saw Skyler in the car. Mother and Kristy followed Father, Dominique, and Donna to a Rite Aid, where Kristy got out of the car with a bat, but Father chased her to take the bat away. Dominique acknowledged that Father broke into Mother's house, but his motive was to see Skyler.

A December 18, 2016 police report stated that Father punched Kristy on her shoulder during an argument about Mother. Kristy was six months pregnant at the time.

Maternal Grandmother told the caseworker that Skyler was in her care until Mother could find a new home and show that Father would not be involved in her life. She asked that her address remain confidential because Father did not know where she lived.

DCFS filed a petition alleging jurisdiction under section 300, subdivisions (a) (nonaccidental serious physical harm) and (b) (failure to protect). The petition alleged that Skyler was at risk of serious physical harm based on violent altercations between Mother and Father (allegations (a)(1) and (b)(1)) and on Father striking Kristy with his fist (allegations (a)(2) and (b)(2)).

The allegations were identical for both subdivisions. Allegations (a)(1) and (b)(1) stated, “The child []’s mother . . . and the father . . . have a history of engaging in violent altercations in the presence of the child. On or about 01/09/2017, the father repeatedly struck the mother’s legs. On a prior occasion, the father choked the mother. On 01/02/2017, the father forcefully pushed the mother’s shoulders. On a prior occasion, the father threatened the mother. The mother failed to protect the child in that the mother allowed the father to reside in the child’s home and have unlimited access to the child. The violent conduct by the father against the mother, and the mother’s failure to protect the child, endangers the child’s physical health and safety, creates a detrimental home environment, and places the child at risk of serious physical harm, damage, danger and failure to protect.” Allegations (a)(2) and (b)(2) stated, “The child []’s father . . . has a history of violent and assaultive behavior. On 12/18/2016, the father repeatedly struck the paternal cousin [Kristy]’s shoulder with the father’s fist, causing redness to the paternal cousin’s shoulder. The father’s violent and assaultive behavior endangers the child’s physical health and safety, creates a detrimental home environment, and places the child at risk of serious physical harm, damage, and danger.”

In February 2017, the juvenile court ordered Skyler removed from Mother and Father and detained with Maternal Grandmother.

March 2017 Jurisdiction/Disposition Report

On March 3, 2017, Mother told a DCFS investigator that she had not had contact with Father since January 2017. Mother acknowledged that Father previously had choked her and threatened to kill her. Mother stated that Skyler was at day care and thus not at home during the incident when Father hit Kristy. Mother was participating in a domestic violence program and a parenting class.

Maternal Grandmother stated that Father had been abusing Mother since 2015. She said that Mother had made six or seven police reports. She had never seen Father strike Mother, but she had seen threatening emails Father sent Mother when Mother was trying to obtain a restraining order. Mother served Father with a restraining order on March 4 or 5, 2017.

Kristy had moved out of Mother's home because she no longer wanted to be involved in her affairs.

The investigator was unable to contact Father, who was incarcerated and scheduled to be released on April 24, 2017. The matter was reset to April 21, 2017.

The investigator interviewed Father on April 20, 2017. Father stated that he was incarcerated because of Mother's allegations of domestic violence. He denied hitting Mother, breaking her windows, or stealing her televisions. He also denied hitting Kristy.

April 21, 2017 Jurisdiction/Disposition Hearing

At the hearing, counsel for Mother asked the court to strike the allegations that Mother failed to protect Skyler, arguing that Mother and Father were not living together and that Mother had obtained a temporary restraining order.

The court found the allegations of the petition to be true and found Skyler to be a person described by section 300, subdivisions (a) and (b). The court declared Skyler a dependent and placed her in DCFS custody. The court ordered reunification services, classes, counseling, and monitored visits for Mother and Father. Mother timely appealed.

DISCUSSION

Justiciability

DCFS contends Mother's appeal is not justiciable, citing the general rule that "a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings. [Citation.] We nonetheless retain discretion to consider the merits of a parent's appeal [citation], and often do so when the finding '(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) "could have other

consequences for [the appellant], beyond jurisdiction” [citation].’
[Citations.]” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*)).³

Mother contends that the jurisdictional findings under subdivision (a) are prejudicial to her in future dependency or administrative actions and because of “civil implications.” Mother cites reporting requirements to law enforcement agencies for willful harm to a child as an example of potential prejudice to her. (See Pen. Code, § 11165.3 [requiring report to Department of Justice for “the willful harming or injuring of a child”].)

Findings of nonaccidental harm to children carry a heavy stigma, “are pernicious,” and could have other consequences for Mother. (*M.W.*, *supra*, 238 Cal.App.4th at p. 1452.) We therefore exercise our discretion to review her claims as to the juvenile court’s finding under subdivision (a) of section 300 even though its finding under subdivision (b) independently supports jurisdiction. (See *In re Jonathan B.* (2015) 235

³ We disagree with DCFS’ argument that Mother forfeited the issue. As DCFS concedes, “a ‘challenge to [the] sufficiency of the evidence . . .’ may be made on appeal although no objection was made in the trial court. [Citation.]” (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561; see *In re R.V.* (2012) 208 Cal.App.4th 837, 848 [a claim of insufficient evidence “is not forfeited even if not raised in the juvenile court”]; *In re Brian P.* (2002) 99 Cal.App.4th 616, 623 [“The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the [forfeiture] rule.”].) Nor is DCFS’ argument that Mother lacks standing to challenge the (a)(2) finding well-taken. Mother clearly has standing to challenge a finding that her child was at serious risk of harm because of Father’s assault on Kristy. That the allegation was based on Father’s conduct toward Kristy rather than Mother does not mean Mother is not aggrieved by the finding that she placed her child at harm and failed to protect her.

Cal.App.4th 115, 119 (*Jonathan B.*) [“Because the finding that mother intentionally hurt and neglected her children may be used against mother in future dependency proceedings, we reach the merits of mother’s appeal.”]; *In re D.P.* (2015) 237 Cal.App.4th 911, 917 [where appellant did not challenge findings under subdivisions (b) and (j), the court exercised discretion to address section 300, subdivision (c) finding (serious emotional damage) because it “could potentially affect future dependency proceedings”]; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015 [addressing subdivision (i) finding (act of cruelty) despite lack of challenge to subdivision (b) finding “because the ruling could be prejudicial to [mother] if she is involved in future child dependency proceedings”].)

Subdivision (a) Finding

Jurisdiction under section 300, subdivision (a) requires that “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).) “Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) . . . [citations], section 300,

subdivision (a) may also apply.’ [Citation.]” (*In re M.M.* (2015) 240 Cal.App.4th 703, 720.)

There is no evidence that Skyler suffered “serious physical harm inflicted nonaccidentally.” (§ 300, subd. (a).) DCFS thus was required to show by a preponderance of the evidence that she was at “substantial risk” of suffering “serious physical harm” inflicted nonaccidentally. (§ 300 subd. (a); see *Jonathan B.*, *supra*, 235 Cal.App.4th at p. 119.) “A juvenile court need not wait until a child is seriously abused or injured before it takes jurisdiction under section 300, subdivision (a), and the court may consider past events in deciding whether a child currently needs its protection. [Citation.]” (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138.)

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find

[that the order is appropriate].” [Citation.]” [Citation.]’ [Citation.]”
(*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)).

The petition does not allege that Skyler was present during any of the incidents on which the petition was based. The only incident in the record that could support a finding of a substantial risk of serious physical harm inflicted nonaccidentally is the incident in which Mother attempted to ram her car into the car holding Father and Dominique.

When questioned about the incident for the March 2017 jurisdiction/disposition report, Mother did not deny attempting to ram her car into the car containing Father and Dominique. Although the report does not indicate whether Skyler was in the car at the time, Dominique reportedly saw Skyler in the car.

The evidence of this incident is sufficient to sustain jurisdiction. Driving with a small child in the car at a high rate of speed and attempting to ram another vehicle is nonaccidental conduct that creates a substantial risk of serious physical harm to the child. (See *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 600 [father’s nonaccidental conduct of “driving with one hand on the steering wheel, and using his other hand to hit and choke [mother] . . . placed [the child], a passenger, at substantial risk of suffering serious physical harm”]). Skyler was not injured, but the juvenile court reasonably could find that she was placed at substantial risk of injury by Mother’s conduct. (See *I.J.*, *supra*, 56 Cal.4th at p. 773.)

Mother contends that the cases sustaining jurisdiction under subdivision (a) where the child has not suffered harm are incorrectly decided. We disagree. The statute states that jurisdiction lies if “[t]he

child has suffered, *or there is a substantial risk that the child will suffer*, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian.” (§ 300, subd. (a), italics added.) The statute thus permits jurisdiction if the child has not suffered harm.

DISPOSITION

The order appealed from is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.