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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ISAAH A., Person Coming
Under the Juvenile Court Law.

B286792

(Los Angeles County
Super. Ct. No. CK92866)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS A.,

Defendant and Appellant.

APPEAL from jurisdictional and dispositional orders of the
Superior Court of Los Angeles County. Steff R. Padilla,
Commissioner. Affirmed.

Christine E. Johnson, 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.

I. INTRODUCTION

Luis A. (Father) appeals from jurisdictional and dispositional orders entered pursuant to Welfare and Institutions Code¹ section 300, subdivision (b)(1) and section 361, subdivision (c)(1). Father argues there was no substantial evidence to support jurisdiction over his son, Isaiah A. (the child). Father also argues the juvenile court erred in its dispositional order removing the child from Father's physical custody. We affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Juvenile Court Proceedings

The five-year-old child was the subject of prior section 300 petitions by the Los Angeles County Department of Children and Family Services (DCFS). On April 3, 2012, the juvenile court sustained a petition pursuant to section 300, subdivision (b)(1), that Father and T.O. (Mother) had engaged in a violent altercation in the child's presence, which endangered the child's

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

physical health and safety.² Father was ordered to participate in domestic violence classes, anger management classes, individual counseling, and parenting.

On August 5, 2015, the juvenile court sustained a second section 300, subdivision (b)(1) petition, finding that Mother's heroin use rendered her unable to care for the child and endangered the child's physical health and safety. On February 3, 2016, the juvenile court terminated jurisdiction over the child and granted Father sole physical custody and both parents joint legal custody. Mother was ordered to participate in drug and alcohol testing and treatment, parent education, and individual counseling.

B. DCFS Referral

On June 5, 2017, DCFS received a child abuse referral alleging physical and emotional abuse of the child by Father. The caller alleged Father hit his brother, G.C., causing Father's minor sister K.C. to become scared and try to intervene. The caller stated the child visited Mother three days a week every other week. The caller reported the child was hesitant to go home to Father because he was being hit by Father. The caller stated Father hit the child because the child misbehaved at Mother's home.

Earlier, on May 31, 2017, in a companion DCFS referral, a caller stated that the paternal grandmother called law enforcement after K.C. told her about Father and G.C. fighting.

² The child's minor sister was also a subject of the prior petition. The proceedings involving her are not pertinent to this appeal.

The caller spoke with K.C. at Father's home. K.C. told caller that when she tried to intervene, Father pushed K.C. onto the floor, causing her to fall and hit her head on the corner of the couch. While K.C. was on the ground, Father hit her on the left side of her head with his right fist. Afterwards, Father dared K.C. to call the police. Father then left the home. Father subsequently self-surrendered to law enforcement on June 6, 2017.

On June 8, 2017, social worker Valadez spoke telephonically with paternal grandmother. Paternal grandmother stated Father was incarcerated and she was watching the child until Father's release. Paternal grandmother agreed to meet with Valadez on June 9, 2017.

On June 9, 2017, Valadez spoke with Mother by telephone. Mother told Valadez that paternal grandmother dropped off the child at Mother's home and asked Mother to hide the child from DCFS. Paternal grandmother told Mother that DCFS might remove the child and she did not want DCFS to have access to the child. Mother did not want to get into trouble and was willing to transport the child to meet Valadez.

On June 9, 2017, Valadez spoke with paternal grandmother by telephone. Paternal grandmother stated she would be able to meet with Valadez on June 15, 2017. Paternal grandmother did not want Valadez to question the child because the child was not present at the time of the incident between Father and K.C.

Valadez met with maternal grandmother, Mother, and the child. Mother stated that per a family order, she was to have "3 hour monitored visits/week." However, Father had permitted Mother to have unmonitored visits with the child for three consecutive days every other week. Mother stated that since Father's arrest, the child had been living with paternal

grandmother. Mother did not feel comfortable with paternal grandmother taking care of the child because paternal grandmother was a heavy drinker. Mother repeated that paternal grandmother had asked Mother to hide the child from DCFS. Mother stated she had been sober for a year and a half, but had not yet completed a drug program.

Mother stated the child was at Father's home when Father had the physical altercation with G.C. G.C. told Mother that Father had hit G.C. and their minor sister K.C. while the child was in Father's care. On June 2, when Mother was driving the child back to Father's home, the child cried and told her that he did not want to go back because Father hit him.

On June 9, 2017, Valadez interviewed the child. The child told Valadez that he had previously witnessed Father pushing G.C., but denied seeing Father hit G.C. during the May 31, 2017 incident. The child learned from paternal grandmother that Father had hit K.C. in the head. Paternal grandmother told the child that law enforcement wanted to speak with him. Law enforcement went to paternal grandmother's home and asked her about the child. Paternal grandmother told law enforcement the child was visiting Mother, but the child was in paternal grandmother's bedroom at the time. The child stated Father hit him with an open hand on the buttocks when the child misbehaved. The child denied being hit with any objects, or having any marks or bruises. Valadez did not see any marks or bruises. The child also stated paternal grandmother was frequently drunk. He stated, "I know that she's drunk because she says 'I'm drunk' and throws up sometimes." The child denied paternal grandmother took care of him when she was drunk.

Valadez determined that because Father was incarcerated, the child would be placed in the home of maternal grandmother.

C. Section 300 Petitions and Detention Hearing

On June 14, 2017, DCFS filed a section 300 petition. DCFS alleged the child had suffered, or there was a substantial risk the child would suffer, serious physical harm inflicted nonaccidentally under section 300, subdivision (a). In count a-1, DCFS alleged Father was incarcerated and failed to make an appropriate plan for the child. Father left the child in the care of paternal grandmother, who abused alcohol. This failure to make an appropriate plan endangered the child's physical health and safety. DCFS also alleged, in count b-1, that the same conduct alleged in count a-1, constituted a failure to protect the child, under section 300, subdivision (b)(1).³

In count b-2, DCFS alleged that in May 2017, Father abused his minor sister K.C. by striking K.C.'s head with his fists in the child's presence, causing K.C. pain. DCFS alleged Father's physical abuse of his minor sister occurred in the child's presence and therefore placed the child at risk of suffering serious physical harm, damage, danger, and physical abuse, as defined by section 300, subdivision (b)(1).

³ DCFS also alleged that on or about June 9, 2017, paternal grandmother took the child to Mother's home, even though Mother had failed to reunify with the child. At the jurisdiction and disposition hearing, the juvenile court struck this allegation as untrue, finding paternal grandmother took the child to maternal grandmother's home.

At a June 20, 2017 detention hearing, with both parents present, the juvenile court found a prima facie case to detain the child under section 300, subdivisions (a) and (b)(1). The child was ordered detained with maternal grandmother.

D. Jurisdiction/Disposition Report

On July 11, 2017, social worker Mason interviewed Father by telephone. Father denied the allegations against him.

On July 24, 2017, Mason interviewed the child. The child stated Father hit G.C. and K.C. in the face. The child also stated paternal grandmother took him to maternal grandmother's home to hide him from social workers. The child had been present at paternal grandmother's house at the time of the altercation between Father, K.C., and G.C. The child was scared and stated: "I was yelling at them then I ran to the hallway." The child stated he had seen Father fight three times, once with G.C., once with paternal grandmother, and once with Father's girlfriend. The child did not want to go back to Father because Father hit him in "the face, mouth, and butt." The child stated Father used a belt to hit him.

Mason interviewed maternal grandmother by telephone on July 24, 2017. Maternal grandmother stated that Father planned for the child to stay with Mother during Father's incarceration. Maternal grandmother was in the front room when paternal grandmother arrived to drop off the child. Maternal grandmother saw paternal grandmother tell the child not to tell anyone that he was at the house during the fight, and not to tell the social workers anything if they talked to him.

Maternal grandmother stated she was concerned for the child's safety when he was in Father's care. She stated that two weeks prior to the child being detained, Father dropped him off in the middle of the day at maternal grandmother's house. Father told her that the child did not need a shower that day. Maternal grandmother had the child try on some shorts. She saw long linear marks, about four inches wide, on his buttocks. Maternal grandmother told Mother, who spoke with Father. Father became upset and told Mother not to question him about his personal business, and if she did so again, the child would receive a spanking. Maternal grandmother further reported that a year earlier, the child began having anxiety about being taken back to paternal grandmother's house. The child told maternal grandmother Father spanked him.

E. August 9, 2017 Jurisdiction and Disposition Hearing

At the jurisdiction and disposition hearing, paternal grandmother testified, among other things, that Father no longer lived at her home.

The juvenile court dismissed count a-1.⁴ The court sustained counts b-1 and b-2 as alleged. The court declared the child a dependent under section 300, subdivision (b)(1). The court found removal from Father's physical custody was necessary to protect the child under section 361, subdivision (c). For Mother, the court ordered random, on-demand, weekly drug

⁴ The court also dismissed count b-3, which DCFS had filed on July 11, 2017, alleging that Mother's history of drug abuse endangered the child.

testing, a 12-step program, and monitored visitation three times a week for two hours. Father was ordered to attend a parenting program, anger management, individual counseling to address case issues, and monitored visitation, for three hours twice a week.⁵

III. DISCUSSION

A. *Legal Standard*

“We review the juvenile court’s jurisdiction findings and disposition order for substantial evidence. [Citations.] Under this standard ‘[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.’ [Citations.]” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) We look “to see if substantial evidence, whether contradicted or uncontradicted, supports the findings.” (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.) “Appellant has the burden to show that the evidence was not sufficient to support the findings and orders. [Citation.] The reviewing court

⁵ During the hearing, the juvenile court orally stated that Father was permitted monitored visitation for “three hours two times per week.” The written order provided Father with monitored visitation three times a week for two hours. “Where there is a conflict between the juvenile court’s statements in the reporter’s transcript and the recitals in the clerk’s transcript, we presume the reporter’s transcript is the more accurate.” (*In re A.C.* (2011) 197 Cal.App.4th 796, 800.)

may not reweigh the evidence or express an independent judgment. [Citation.]” (*Ibid.*)

B. Substantial Evidence Supports Juvenile Court’s Jurisdictional Finding Under Section 300, Subdivision (b)(1)

For a child to be found a dependent of the court under section 300, subdivision (b)(1), the court must find: “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 his or her parent or guardian to adequately supervise or protect the child” Under section 300, subdivision (b)(1), DCFS must demonstrate three elements by a preponderance of the evidence: “(1) one or more of the statutorily-specified omissions in providing care for the child (inability to protect or supervise the child . . .); (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561.) These findings are determined as of the date of the jurisdictional hearing. (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383.)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We will focus our discussion here on count b-2.

Father contends the child was not present at the time of the May 31, 2017 incident between Father, G.C., and K.C., citing statements from the paternal grandmother and the child. The

child, however, stated he witnessed the incident. Although the child initially stated that he did not see Father push G.C., the juvenile court may accept as true only part of a witness's statements and disregard the rest. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) Mother also reported that G.C. told her the child was in Father's care at the time of the incident.

Father next argues the incident with K.C. was isolated and unlikely to recur because Father no longer lived at paternal grandmother's home. There was substantial evidence to the contrary. Father had a history of violence. He had engaged in a violent altercation with Mother in 2012, in the child's presence, which led to the first section 300 petition concerning the child. The child stated he had observed Father engage in three physical fights. Father's history of violence also included acts against the child. The child stated that Father had struck him. Maternal grandmother reported seeing linear marks on the child's buttocks. When Mother asked Father about this, Father threatened to spank the child if Mother questioned Father about his personal business. Both Mother and maternal grandmother reported the child had anxiety about returning to Father's care because of the hitting. Moreover, Father's denial of the allegations indicated Father was unwilling or unable to correct his problems, which increased the likelihood of a repeat incident. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge"].) Accordingly, substantial evidence supported the juvenile court's finding that count b-2 should be sustained. Because the juvenile court had jurisdiction over the minor under count b-2, we need not consider whether there was substantial evidence to support

the trial court's jurisdiction under count b-1. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

C. No Prejudicial Error Regarding Court's Removal Order Under Section 361, Subdivision (c)(1)

“A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody.” (§ 361, subd. (c)(1).) “‘The parents 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.’ [Citation.] The court may consider a parent's past conduct as well as present circumstances.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

Father asserts the juvenile court failed to apply the correct burden of proof when removing the child from his custody, citing the juvenile court's failure to state it applied a clear and convincing evidence standard. Father also contends the record is silent as to whether reasonable efforts were made to prevent the child's removal from Father's custody. At the jurisdiction and disposition hearing, the juvenile court stated: “The court finds pursuant to Welfare and Institutions Code 361(c) continuance in the home of the father is contrary to the child's welfare.” We

presume the juvenile court is aware of and followed applicable law. (*In re Julian R.* (2009) 47 Cal.4th 487, 499.) Generally, orders will be upheld if the evidence supports implied findings. (*In re Andrea G.* (1990) 221 Cal.App.3d 547, 554-555.)

Father contends the juvenile court was statutorily required to state the facts supporting the removal of the child from the child's home. However, a claim of error is forfeited on appeal if it is not raised below. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1346.) Because Father failed to object during the dispositional hearing, he is precluded from raising this argument on appeal.

Even if Father had not forfeited his argument, we would reject it on the merits. Section 361, subdivision (e) provides, "The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home The court shall state the facts on which the decision to remove the minor is based." (See *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810-811 [analyzing § 361, subd. (d), now codified at subd. (e) by Stats. 2017, ch. 829, § 4.5]; Cal. Rules of Court, rule 5.695(a)(7).) Any error in failing to comply with section 361, subdivision (e), will be deemed harmless if "it is not reasonably probable such finding, if made, would have been in favor of continued parental custody." [Citations.] (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218) (*Ibid.*)

Even if we assume error, Father has not demonstrated that he was prejudiced in this case. As discussed previously, Father failed to acknowledge any wrongdoing. Father had a history of violence, including against Mother, his minor sister K.C., his brother G.C., and the child. Considering both past conduct and

present circumstances (*In re N.M., supra*, 197 Cal.App.4th at p. 170), we do not find it was reasonably probable that a ruling more favorable to Father would have occurred if findings had been stated.

IV. DISPOSITION

The jurisdictional and dispositional orders are affirmed.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.