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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re CYNTHIA D., et al., Persons  
Coming Under the Juvenile Court  
Law.

B278826

(Los Angeles County  
Super. Ct. No. DK12503)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ESTEBAN D., et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant Esteban D.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant Maria P.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, William D. Thetford, Principal Duty Counsel, for Plaintiff and Respondent.

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Appellants Maria P. (Mother) and Esteban D. (Father) appeal from the juvenile court's jurisdictional and dispositional orders regarding their daughter Cynthia and her four younger siblings. Appellants argue the jurisdictional findings under California Welfare and Institutions Code section 300, subdivision (b)(1)<sup>1</sup> are not supported by substantial evidence. Appellants also appeal from the juvenile court's dispositional order removing Cynthia from their custody, arguing the order is not supported by substantial evidence. We disagree and affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

On the evening of September 25, 2015, Cynthia, a teenage girl, attended a high school football game and stayed out past curfew. According to Cynthia, she feared that she would be hit by Father if she returned home late, so she stayed overnight at her older brother's house. When she returned home the following morning, her parents called police and took her to Antelope Valley Hospital for a drug test and sexual assault exam.

Cynthia was interviewed by a nurse at Antelope Valley Hospital and denied that she had used drugs or been sexually assaulted. She said Father was physically abusive and had hit her on previous occasions with his hand, a belt, and shoes. The

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

most recent incident of physical abuse reported by Cynthia had occurred 15 days before, when Father had hit her with a belt on her thighs as punishment for throwing a plastic or styrofoam cup at her sister. The nurse observed a small bruise on Cynthia's thigh.

The hospital referred Cynthia's case to the Department of Children and Family Services (DCFS). DCFS investigated and filed a section 300 petition alleging that Father was physically abusive toward all five children, and that Mother failed to protect them. The petition alleged that all of appellants' children were children described under section 300, subdivisions (a), (b) and (j).

Throughout the DCFS investigation and juvenile court hearings, Cynthia recounted further incidents of abuse by Father. She claimed Father had hit her regularly since kindergarten for infractions such as "failing to wash the dishes, for raising her voice, or for her siblings doing [something] wrong as she is the oldest and responsible for her [siblings'] behavior." She recalled both parents becoming angry with her when she told a kindergarten teacher that Father hit her. She testified Father slapped her on the face with an open hand, pushed her up against a sliding glass door for refusing to cook, and tackled her for refusing to give him her iPod. She stated Father hit her with a sandal with nails in its sole, breaking her skin. She testified Father called her names like "idiot," "stupid," and "useless."

Cynthia testified that Mother was present during "most of" the occasions when Father abused her. Cynthia also stated she witnessed Mother being kicked by Father and that her siblings have been physically and verbally abused by Father. She testified that she observed bruises on one of her siblings resulting from Father's abuse. The juvenile court found Cynthia was

credible in her testimony regarding Father's physical and verbal abuse.

Father admitted that he had hit his children with a sandal when they were younger. He initially denied all other abuse of his children and wife, and specifically denied the September 11, 2015 incident in which he allegedly hit Cynthia with a belt. In his opening brief, Father now admits that he did discipline Cynthia on September 11, 2015. Mother denied she or any of her children have been abused by Father. The four younger siblings also denied that any family members have been abused, apart from one sibling's testimony that she was hit with a sandal.

On September 20, 2016, the juvenile court found that Cynthia and her siblings were children described by section 300, subdivision (b)(1) and exercised jurisdiction over them on that basis. The court ordered Cynthia removed from appellants' custody and placed in foster care. The four younger siblings were placed in the home of appellants, under the supervision of DCFS. This appeal followed.

Because the four younger siblings have continued to live with appellants without incident under DCFS supervision, the juvenile court terminated dependency jurisdiction as to them on March 21, 2017. Since placement in foster care, Cynthia has engaged in negative behavior, such as joining a gang and getting a gang tattoo.

## **DISCUSSION**

### *A. Jurisdictional Findings*

Appellants challenge the sufficiency of the evidence to support the juvenile court's jurisdictional findings under section 300, subdivision (b)(1).

We review the juvenile court's jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We view the record in the light most favorable to the juvenile court, drawing all reasonable inferences from the evidence to support its findings. (*Ibid.*) "[W]e do not . . . reweigh the evidence but merely determine whether there is sufficient evidence to support the findings of the trial court." (*In re Jacqueline G.* (1985) 165 Cal.App.3d 582, 585.)

We first address the court's findings with respect to the eldest child, Cynthia. A juvenile court may properly find jurisdiction over a child who has suffered, or who is at substantial risk of suffering, serious physical harm due to a parent's failure to protect the child. (§ 300, subd. (b)(1).) Here, the juvenile court exercised jurisdiction over Cynthia based upon a finding that Father had used "inappropriate physical discipline" against her, placing her "at risk of serious physical harm." The court also sustained a finding that Mother had failed to protect Cynthia from this abuse. Cynthia testified that her father had hit her with a belt and shoes, slapped her, pushed her, and tackled her. She testified that this violent behavior had occurred repeatedly since she was in kindergarten. The juvenile court expressed doubts about the veracity of Cynthia's testimony on some issues, but accepted her testimony regarding physical abuse as accurate.

Mother raises Cynthia's credibility as an issue on appeal, arguing that inconsistencies in Cynthia's testimony "raise questions as to whether Cynthia was a victim of abuse." "[I]ssues of fact and credibility are questions for the trier of fact. [Citations.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds

of reason.” (*In re E.B.* (2010) 184 Cal.App.4th 568, 575.) Here, the juvenile court’s credibility determination was based upon Cynthia’s emotional affect during her testimony. This court, having access only to the written record of the proceedings, is not in a position to reevaluate the credibility determination of the juvenile court. We accept the juvenile court’s determination that Cynthia was credible regarding Father’s abusive behavior.

Appellants argue that the physical discipline in this case fell within Father’s right to reasonably discipline Cynthia. Section 300 provides that dependency law does not “prohibit the use of reasonable methods of parental discipline.” (§ 300, subd. (j).) The juvenile court found Father’s discipline of Cynthia had been “inappropriate,” and therefore did not fit within the exception for reasonable parental discipline.

“Whether a parent’s use of discipline on a particular occasion falls within (or instead exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of punishment was reasonable or excessive. [citations.]’” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641 (*D.M.*).)

Cynthia’s testimony provides numerous examples of unreasonable parental discipline by Father. She testified that Father beat her with a belt on her thighs, leaving a bruise, for throwing a plastic or Styrofoam cup at her sister. Cynthia recounted an instance where Father pushed her up against a sliding door for refusing to cook and subsequently tackled her when she would not give him her iPod. She testified that she was hit for coming home 30 minutes late from a friend’s house. She

stated that she had been hit throughout her life for infractions such as “failing to wash the dishes, for raising her voice, or for her siblings doing [something] wrong as she is the oldest and responsible for her [siblings’] behavior.”

The juvenile court reasonably found that these incidents failed to meet the three-pronged test for reasonable discipline enumerated in *D.M., supra*, 242 Cal.App.4th at page 641 (describing the requirements of a genuinely disciplinary *purpose*, *necessity*, and reasonable, nonexcessive *severity*).

First, the record supports a finding that some of Father’s physical discipline of Cynthia lacked a genuinely disciplinary purpose. One relevant disciplinary purpose that has been recognized as legitimate is “to arrest troubling behavior patterns.” (*Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 91 [evaluating parental discipline in the criminal context].) Father’s physical discipline of Cynthia for the actions of her siblings could not have been aimed at arresting troubling behavior patterns because it was not performed in response to Cynthia’s behavior and Cynthia lacked control over her siblings’ behavior.

Second, there is substantial evidence that Father’s physical discipline of Cynthia was unnecessary, i.e., not “warranted by the circumstances.” (*D.M., supra*, 242 Cal.App.4th at p. 641.) Cynthia stated Father often resorted to violence first and that hitting was his “way of solving problems.” Some of the infractions for which she was physically punished, such as not doing a chore or arriving home 30 minutes late, were not serious enough to warrant physical punishment, especially where Father did not first attempt other less severe punishments or give Cynthia a chance to explain or reform her behaviors.

Third, the juvenile court could have reasonably concluded that the physical discipline Father used was excessive. Section 300 only explicitly excuses reasonable and age-appropriate spanking on a child's bottom. (See § 300, subd. (a).) Here, Father hit, tackled, and pushed Cynthia. He also beat her with a belt on her thighs, leaving a bruise. These forms of punishment are clearly more severe than spanking. The juvenile court reasonably found that they crossed the line from reasonable to excessive.

Appellants argue that Father's discipline of Cynthia was reasonable because Cynthia joined a gang, smoked marijuana, got a tattoo without permission, allegedly lied to the juvenile court and performed poorly in school. There is no evidence in the record that Father disciplined Cynthia for any of this conduct. In fact, Father only admitted to hitting his children with a sandal when they were younger and hitting Cynthia with a belt for throwing a cup at her sister. He denied abusing Cynthia on any other occasion. Some of Cynthia's negative behavior, such as joining a gang and allegedly lying to the court, occurred after she was removed from her parents and was living in foster care.

As to the one incident of physical discipline that Father now admits, which involved hitting Cynthia with a belt for throwing a cup at her sister, the juvenile court was entitled to find it was not reasonable discipline. Physical punishment was not necessary to teach Cynthia not to throw things at her sister. The level of force used was excessive, because Father hit her with a belt, leaving a bruise that was still visible two weeks later. (See *In re A.E.* (2008) 168 Cal.App.4th 1, 4 ["[C]hildren are not to be hit with hard objects, especially to the point of leaving black and blue bruises"].) Either of these conclusions would support



the court's determination that the physical discipline was unreasonable under the test enumerated in *D.M.*, *supra* 242 Cal.App.4th at page 641.

Appellants compare this case to cases involving “incorrigible” children, *In re Precious D.* (2010) 189 Cal.App.4th 1251, (*Precious D.*), disapproved of by *In re R.T.* (2017) 3 Cal.5th 622 (*R.T.*), and *Priscilla A.*, *supra*, 11 Cal.App.5th 551, disapproved of by *In re R.T.* (2017) 3 Cal.5th 622. In those cases, appellate courts reversed findings of dependency jurisdiction where the parents had not been found unfit and the problems faced by the children were due to their own incorrigible behavior. (See *Precious D.*, *supra*, at p. 1261; *Priscilla A.*, *supra*, at pp. 562-564.)

These cases are distinguishable. The grounds for dependency jurisdiction in both cases were the risks to the children's health and safety posed by their own incorrigible behavior. (*Precious D.*, *supra*, 189 Cal.App.4th at p. 1258; *Priscilla A.*, *supra*, 11 Cal.App.5th at pp. 558-559 [noting that the juvenile court made no finding with respect to father's fault, focusing only on child's behavior].) Here, most of Cynthia's incorrigible behavior began *after* the jurisdictional finding, when she was in foster care. So the risks caused by her incorrigible behavior were not the basis of the jurisdictional findings; Father's physical abuse was.

A crucial element in both *Precious D.* and *Priscilla A.* was that the parents had not abused or neglected their children. (*Precious D.*, *supra*, 189 Cal.App.4th at p. 1261; *Priscilla A.*, *supra*, 11 Cal.App.5th at pp. 562-564.) Here, Father has abused Cynthia by repeatedly engaging in unreasonable physical discipline. It is difficult to lay all of the blame for the incorrigible

behavior on Cynthia, who has been subjected to physical and verbal abuse since early childhood. Further, *Precious D.* and *Priscilla A.* have been disapproved of by the California Supreme Court, which held in *R.T.* that a finding of parental unfitness is unnecessary to find jurisdiction under subdivision (b)(1). (*R.T.*, *supra*, 3 Cal.5th at pp. 626-630.) Under *R.T.*, even if Father was not at fault, jurisdiction could still be proper based on the risk to Cynthia from her own incorrigible behaviors and Father's inability to protect her from herself. (*Ibid.*) As stated above, we are not convinced that Cynthia was an incorrigible child at the time of the jurisdictional hearing, so whether Father was fit or unfit, *Precious D.* and *Priscilla A.* are inapplicable to this case.

In sum, Cynthia's testimony regarding Father's physical abuse provided substantial support for the jurisdictional finding that she was a dependent child under section 300, subdivision (b)(1). We affirm the jurisdictional finding with respect to Cynthia.

Appellants also seek reversal of the juvenile court's jurisdictional findings as to Cynthia's four younger siblings. DCFS contends that the appeal is moot because the juvenile court terminated jurisdiction over them on March 21, 2017. "[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error." (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) We will exercise our discretion to review jurisdictional findings when they "could potentially impact the current or future dependency proceedings" or appellants' parental rights. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) Here, the finding that Father physically abused and Mother failed to protect the younger siblings may affect appellants' parental

rights in future dependency proceedings. (See *In re D.P.* (2014) 225 Cal.App.4th 898, 902 [finding that mother intentionally harmed her daughter could negatively impact her in future dependency hearings, rendering jurisdictional findings reviewable].) Father has also argued that he will face negative practical consequences as a result of being listed in the child abuse index. For these reasons, we exercise our discretion to review the jurisdictional findings for substantial evidence.

Substantial evidence supported the juvenile court's findings that the younger siblings were children described by section 300, subdivision (b)(1). That statute concerns children who have suffered, or are at substantial risk of suffering, serious physical harm due to a parent's failure to protect them.

The juvenile court sustained DCFS petition count b-1 which alleged that the physical abuse of Cynthia created a detrimental home environment for her siblings and placed them "at risk of serious physical harm, damage, danger, physical abuse and failure to protect." Courts have repeatedly found that abuse of one child can place the child's siblings at risk of serious harm. (See *In re Y.G.* (2009) 175 Cal.App.4th 109, 116 [holding parental abuse of another child can create a substantial risk of harm under § 300, subd. (b)(1)]; see also *In re Edward C.* (1981) 126 Cal.App.3d 193, 203 [analyzing § 300, subd. (a) and finding that a court can reasonably infer that an abusive parent will substitute other children as objects of abuse if main target is removed from home].)

In addition, Cynthia testified that her siblings had been physically and verbally abused by Father. She testified that she had observed bruises on one of her siblings resulting from Father's abuse. One of the siblings recounted being hit by Father

with a sandal. Father admitted that he had hit his children with a sandal. Based on Father's abuse of Cynthia and his past abuse of the siblings, there was ample reason for the finding that the siblings were at risk of future abuse.

Taken as a whole, the record contains a sufficient basis on which the juvenile court could have reasonably exercised dependency jurisdiction over the siblings. We affirm the jurisdictional findings as to Cynthia's siblings.

B. *Removal from Parental Custody*

Appellants argue that the juvenile court's order removing Cynthia from their custody was not supported by substantial evidence.

"In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent." (§ 361, subd. (a)(1).) A dispositional order regarding child custody will not be disturbed unless it is arbitrary, capricious, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) "[J]urisdictional findings are prima facie evidence that the child cannot safely remain in the home." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

1. *Risk of Harm*

A child should not be removed from parental custody "unless the juvenile court finds [by] clear and convincing evidence. . . [t]here 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." (§ 361(c)(1).)

In this case, the juvenile court's dispositional order was based on findings, supported by substantial evidence, that Cynthia experienced repeated unreasonable physical discipline from Father. It is reasonable to infer this repeated behavior would continue if Cynthia were returned home. A parent need not be dangerous and a child need not have been actually harmed before removal is appropriate. (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) Here, Father was dangerous and Cynthia was actually harmed by him.

The emotional well-being of a child also is considered when issuing a removal order. (§ 361, subd. (c)(1).) Here, Cynthia was repeatedly insulted by Father, who called her an "idiot," "useless," and "stupid." The juvenile court found there was a "verbally abusive environment" in the home. Evidence of verbal abuse, coupled with evidence of Father's physical abuse of Cynthia, constituted substantial evidence that she faced a continued risk from remaining in parental custody.

## 2. *Less Restrictive Means*

To remove a child from parental custody, a juvenile court must find "there are no reasonable means by which the minor's physical health can be protected without removing the minor." (§ 361(c)(1).) Although the court must consider alternatives to removal, it has broad discretion in fashioning appropriate dispositional orders. (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 918.)

As the evidence summarized in the previous section indicates, Cynthia faced a continued risk if allowed to remain in parental custody. The court concluded reunification services were necessary before Cynthia could be safely returned to parental custody. Because further services were necessary to

protect Cynthia, there were no less restrictive means to keep her safe short of removal. The dispositional order was a reasonable exercise of the juvenile court's broad discretion.

We are concerned about the negative behavior that Cynthia has engaged in during her foster care placement, particularly her involvement with a gang, and like the juvenile court, we express the hope that Cynthia can safely "go home soon," but, finding no error in the juvenile court's findings and orders, we affirm.

### **DISPOSITION**

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.