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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re N.K., et al., Persons Coming
Under Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.L.,

Defendant and Appellant.

B295096

(Los Angeles County Super.
Ct. No. 18CCJP06094)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jean M. Nelson, Judge. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother appeals the juvenile court's jurisdictional findings over her infant and nine-year-old sons. The court sustained one count under Welfare and Institutions Code section 300, subdivision (b)(1) for failure to protect them from the infant's father's domestic violence, and made dispositional orders.¹ Mother argues there is no evidence of a current risk of harm to the children because father's domestic violence was too remote in time to support jurisdiction. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has two sons (born 2009 and 2018) by two different fathers (Jerry and Ivan). This is mother's second dependency case.

1. Mother's Prior Dependency Case

Jerry, the older child's father, perpetrated domestic violence against mother in 2014, which resulted in a sustained section 300 petition on behalf of the child against mother and Jerry. In that case, the court found that Jerry repeatedly struck mother, physically assaulted mother, pushed mother, threatened to kill her and their son, and drove erratically with the child in the car while threatening to crash it, and that Mother failed to protect the child from the risk of harm created by Jerry's domestic violence. During the pendency of that case, the Department of Children and Family Services (DCFS) discovered that mother maintained ongoing contact with Jerry, despite the court's restraining order barring such contact, and permitted Jerry to have access to the child. The child was removed from mother's custody for six months.

¹ All subsequent statutory references are to the Welfare and Institutions Code.

In the 2014 case, the court ordered mother to complete several programs, including a domestic violence support group for victims, and individual counseling to address violence on children, codependency, and the impact of substance abuse by parents on children. Mother completed her domestic violence program and parenting, but only partially complied with individual counseling. The juvenile court eventually ordered mother to have full custody of the child and closed the case in 2015. From that point on, the older child had no contact with Jerry.

2. Mother's Present Dependency Case: Domestic Violence with Ivan

After the 2014 case was resolved, mother began a relationship with Ivan, with whom she had her second child. Ivan shared an apartment with his grandmother in the same apartment complex where mother resided. Mother was employed as a resident manager of the apartment complex. The office where she conducted management business was a small, nine-by-six-foot room attached to mother's apartment. On February 3, 2018, while the mother was two months pregnant with her second child, mother and Ivan pushed each other. When mother fell to the ground, Ivan got on top of the mother and repeatedly struck her face with his fists. Mother sustained redness and bruising to her face. When the altercation occurred, Mother's nine-year-old son was in mother's office. Ivan was arrested and convicted of infliction of corporal injury on a cohabitant on February 4, 2018. In February 2018, the criminal court issued a three-year protective order protecting mother. Ivan was released from jail on August 25, 2018. On August 27, 2018, mother and Ivan appeared in court and requested the court to modify the protective order. The court admonished mother and Ivan for

violating the protective order and denied their request to modify it.

On September 4, 2018, DCFS received a referral from an anonymous caller about ongoing domestic violence between mother and Ivan. The caller stated that mother allowed Ivan back into her home and the domestic violence resumed in the presence of the children. The caller had heard mother screaming.

On September 7, 2018, the investigating social worker made contact with mother at her apartment. The social worker observed men's clothing in mother's closet and mother said they were "from before," and Ivan was no longer living there. Mother said when Ivan was released from custody in August 2018, she had allowed him contact with their infant child because she believed it was important for Ivan to see his son, but she now realized that was a mistake. Mother stated that Ivan visited the baby during the day. She denied that he stayed overnight or that there had been any recent domestic violence. She also claimed that Ivan was attending domestic violence classes at Downey Calvary Chapel, even though he had not been ordered by the court to attend.

When the social worker spoke to Ivan, he said he was residing with his grandmother and had requested a peaceful contact order so that he could visit his son, but it was denied by the court. Ivan denied he had violated the restraining order by having contact with mother and the infant. When the social worker asked Ivan about the Downey Calvary Chapel domestic violence program mother mentioned, Ivan answered that he had not heard of the program. Ivan said he wanted to enroll in a program but had not yet found or contacted one.

The social worker admonished the parents about a safety plan and violating the restraining order. The parents signed a

safety plan agreeing to have no contact until further order of the court.

The social worker spoke with the nine-year-old child, who confirmed that Ivan had recently been to the home to see the infant. The nine-year-old said Ivan was nice to him and there had not been any recent instances of domestic violence. The child knew of, but did not witness, the February 2018 domestic violence between mother and Ivan. He said that he had been in his mother's office when the physical altercation between mother and Ivan occurred. The child told the social worker that he did not have any worries about his or his brother's safety. When the child was asked about his father, Jerry, the child said he did not want to have contact with him and had been disregarding the texts and calls from him. The child reported he had no recent contact with Jerry, and he did not know where Jerry lived.

DCFS recommended that the minors be detained from their fathers and released to mother. Mother assured the social worker that she had learned her lesson from her prior child welfare case and would not put her children at risk of harm going forward.

3. Section 300 Petition

On September 21, 2018, the DCFS filed a four-count section 300 petition on the children's behalf. The court subsequently dismissed three of the counts and we do not discuss them further. The petition eventually was sustained under subdivision (b)(1) as follows:

The children[s] . . . mother . . . and the mother's male companion, [Ivan], father of the [infant,] have a history of engaging in violent physical altercations. On 02/03/18, while the mother was pregnant with the [infant], the mother and [Ivan] pushed each other. The mother fell to the ground. [Ivan] got on top of

the mother and repeatedly struck the mother's face with [Ivan]'s fist. The mother sustained redness and bruising to the mother's face. [Ivan] was arrested and convicted of Inflict Corporal Injury:

Spouse/Cohabitant. [Ivan] violated a criminal protective order by having contact with the . . . mother. The mother failed to protect the children by allowing [Ivan] to frequent the children's home and to have unlimited access to the children. The [older child] was a prior dependent of the Juvenile Court due to the domestic violence between the child's father, Jerry . . . and mother and the mother's failure to protect the child. Such violent conduct on the part of the [Ivan] towards the mother and the mother's failure to protect the children endanger the children's physical health and safety and place the children at risk of serious physical harm, damage[,] danger[,] and failure to protect.

4. Detention

On September 24, 2018, the court detained the children from their respective fathers and released the children to mother. The court found Jerry to be the older child's presumed father and Ivan to be the infant's biological father. The court ordered monitored visitation for the fathers. The court confirmed with counsel that there were restraining orders against the fathers in effect and admonished the parents to abide by them.

5. Further Investigation

In October 2018, DCFS interviewed the nine-year-old and mother. The child was well-groomed, dressed appropriately, and reported to be doing well in school. He reiterated that he was in the office when the February 2018 altercation occurred between Ivan and Mother and he did not know what happened. The child

said mother and Ivan sometimes argued “a little bit,” but “not bad,” and he had never seen them hit each other. The child stated that Ivan is nice to him and mother, and that he felt safe around Ivan. The child said that he had not seen Ivan in the home since the altercation occurred. The boy stated he felt safe with his mother and wanted to continue living with her.

In a conversation with the social worker, mother admitted to a violent past relationship with Jerry, but said she had grown and changed a lot since then. She explained the February 2018 violence with Ivan was the only altercation she had with him. Mother reassured the social worker that if Ivan wanted to see their baby, she would not allow him to do so without a court order.

This time, Ivan did not make himself available to be interviewed by the social worker, and did not respond to the DCFS’s attempts to contact him. Ivan did not visit with his son. The older child had begun weekly visitation with his father, and the visits had gone well.

6. Adjudication

At the January 9, 2019 jurisdiction hearing, mother’s trial counsel joined in the request by Ivan’s counsel for dismissal of the domestic violence subdivision (b) count, arguing that the February 2018 altercation was “too attenuated” in time to present a current risk of harm to the children. Counsel argued supervision of the juvenile court was not necessary for the protection of the children, given the amount of time that had passed (nearly a year), the lack of any subsequent altercations, and the dearth of evidence showing that mother and Ivan continued to be in a relationship.

The court disagreed, noting that the February 2018 incident was serious and presented an “ongoing risk” until the parents addressed their domestic violence issues. The court

acknowledged: “the parents’ counsel makes note that no further domestic violence occurred, but at least half of [the time following the incident,] the father was incarcerated. When he was released, the mother admitted she continued to have contact with him, indicating that the parents are not willing to address domestic violence and they had that contact in violation of the criminal protective order, which is the most restrictive order. . . .”

The court further explained that its main concern was “mother’s protective capacity.” The court stated that mother had a history of relationships involving domestic violence, first with Jerry and then with Ivan. The court found that mother has not “confront[ed] the issues of domestic violence. She minimizes domestic violence that she had with [Ivan]. She did that with [Jerry]. She is not being honest with herself or [DCFS] or the court about those issues, and this is consistent with the domestic violence psychology, which is to blame either yourself or to minimize what happened. That poses a risk because parents obviously are still in contact and the mother convinced herself that this is not a problem.” The court also observed that Ivan had done nothing to address the domestic violence and had been uncooperative with DCFS.

The court sustained the domestic violence allegation under section 300, subdivision (b). The court declared the minors dependents of the juvenile court, removed them from the custody of their fathers, and released them to mother with family maintenance services. The court ordered mother to abide by the criminal protective order, participate in a domestic violence program, a support group for victims, and individual counseling to address case issues.

Mother filed a timely notice of appeal from the juvenile court’s jurisdiction and dispositional orders on January 10, 2019.

DISCUSSION

Mother argues that the court erred in finding jurisdiction over her children pursuant to section 300, subdivision (b), asserting there is no current risk of harm to the children. We review the juvenile court's jurisdictional findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences " 'must be "a product of logic and reason" and "must rest on the evidence" [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, italics omitted.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "[I]ssues of fact and credibility are questions for the trier of fact." (*Ibid.*)

Section 300, subdivision (b) authorizes jurisdiction if 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, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left" (§ 300, subd. (b)(1).) "Although 'the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm' [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's

protection. [Citations.] A parent's past conduct is a good predictor of future behavior." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) "The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

Here, there was substantial evidence of a present risk of harm to the children. Mother and Ivan engaged in domestic violence while the older son was in an adjacent room and while mother was pregnant. This violence placed the children "in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [the victimized parent] falling against them." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Even where the children may not suffer physical abuse during incidents of domestic violence, "[d]omestic violence impacts children . . . , 'because they see and hear the violence and the screaming.'" (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 134.) Based on the likelihood of physical abuse, courts have concluded that "domestic violence in the same household where children are living is neglect; it is a failure to protect [the child] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect causes the risk." (*In re Heather A.*, at p. 194; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, p. 1470, fn. 5 ["Both common sense and expert opinion indicate spousal abuse is detrimental to children."].)

The juvenile court could have reasonably found that the violence here was sufficiently recent to support jurisdiction. The court had before it mother's history with domestic violence abusers and her repeated failure to comply with court protective orders. In mother's previous relationship with Jerry, she allowed

Jerry back into her home and allowed Jerry access to their son in violation of a court order. This poor judgment caused her temporary loss of custody of her older son in the first dependency proceeding. Mother's poor decision-making manifested itself again when she violated the court's protective orders banning contact with Ivan and allowed Ivan into her home with full access to the children. This occurred even after the parents were admonished by the trial court for violating the order, when they attempted to have the protective order lifted in August 2018. Mother's attitude and repeated failure to protect her children from domestic violence amply supported the trial court's jurisdictional finding.

Mother likens her case to *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*). The *Daisy H.* court reversed the juvenile court's jurisdictional findings because the domestic violence, which had occurred seven years earlier, was too remote. Evidence in *Daisy H.* showed no present threat of violence as the children were well cared for, the parents had been separated for several years, and no new domestic violence had been reported. (*Id.* at pp. 716-717.) *Daisy H.* is inapt because the domestic violence at issue in the present case occurred more recently, mother had limited protective capacity, and the danger to the child remained.

Mother argues *In re M.W.* (2015) 238 Cal.App.4th 1444 (*M.W.*) also supports reversal of jurisdiction. In *M.W.*, the appellate court reversed jurisdiction based on domestic violence where the allegation was based on a single incident of domestic violence between the parents that had occurred more than seven years before the jurisdictional hearing and there was no other evidence of altercations between the parents. (*Id.* at p. 1454.) This case, too, is beside the point: jurisdiction against mother here was predicated on a domestic violence that occurred less

than a year earlier and in the context of mother's historic failure to appreciate the dangers to her children from domestic violence. Comparatively, one year bears little relationship to seven years. And this one year must be viewed in the context that father was incarcerated during much of that time, and that despite father's failure to address his domestic violence, Mother allowed father to have contact with the children. Unlike *M.W.*, substantial evidence supports the court's jurisdictional finding based on current danger.

DISPOSITION

We affirm the juvenile court's judgment.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.