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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.S., a Person Coming Under the
Juvenile Court Law.

B255850

(Los Angeles County
Super. Ct. No. DK03755)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.R.,

Defendant and Appellant.

APPEAL from orders of the Juvenile Court of Los Angeles County. Robert S. Draper, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel and Melinda A. Green, Deputy County Counsel for Plaintiff and Respondent.

No appearance on behalf of Minor.

* * * * *

L.R. (mother) appeals the juvenile court's jurisdictional findings concerning her daughter, L.S. Mother notes that there was a pending family court case when the juvenile dependency petition was filed. She argues that the family court was the proper forum for resolution of all of the issues presented in this case; thus, the juvenile court should have dismissed the petition in favor of family court jurisdiction. We do not agree, and so affirm the juvenile court's jurisdiction order.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (DCFS or the Department) investigated a referral it received from a mandated reporter on January 15, 2014 questioning the safety of 12-year-old L.S. and her half brother, 15-year-old E.M. A second half brother, S.R., turned 18 within days of the referral and was thus not assessed as a minor; mother's adult son, Sh.R., also lived at the residence.

L.S. reported that her mother called her "snitch" and "estupida" (stupid) and curses at her. She stated that, in the past, mother said that L.S. should have been aborted, or told her that she was adopted. L.S. stated that she cut herself with a "sharpener blade" a year prior but stopped when friends told her academic counselor about it. She denied concerns about substance abuse and stated that she does not feel unsafe in the home with her brother Sh.R.

When S.R. was interviewed on January 29, 2014, he stated that L.S.'s father, V.S. (father) would yell at mother over the phone and call her names. He confirmed that L.S. had been found to be cutting herself in February of 2013, stating that it was after she had broken up with her boyfriend. Both S.R. and E.M reported feeling safe with mother. They also reported mother and L.S. called each other names. S.R. believed father was negatively influencing L.S.'s behaviors.

On February 6, 2014, L.S. was determined to be a danger to herself and was placed on a 72-hour hold. Mother agreed to allow L.S. to go to father's house when she left the hospital. She did not want to actually relinquish legal custody. L.S.'s

hospitalization was terminated early when it was determined there were no concerns about her safety.

The Department reported that a social worker carefully examined L.S.'s arms and wrists and found no evidence she had been cutting herself. L.S. had no scars or other marks. Father claimed to have seen bruises on L.S. from being hit by her older half brother Sh.R. L.S. stated that she had no such marks. Sh.R. admitted to putting L.S. in a bear hug and carrying her away when she was misbehaving.

DCFS filed a juvenile dependency petition on behalf of L.S. on February 21, 2014, alleging she was at risk of harm as described in Welfare and Institutions Code¹ section 300, subdivision (c) due to mother's emotionally abusive behavior.

In its detention report of February 21, 2014, DCFS reported that E.M. remained with mother and was safe there; he was not included in the dependency petition. L.S. had been taken from her mother in Los Angeles and detained in her father's home in Indio. Mother had physical custody of L.S. pursuant to a 2003 family court order. The 2003 order gave father unmonitored visits four days per week. Mother returned to family court on January 29, 2014 seeking full legal custody of L.S. and to reduce father's visitation.

At the February 21, 2014 detention hearing, the juvenile court ordered that L.S. continue to be released to father, and ordered family maintenance services for the parents and monitored visits for mother. The adjudication hearing was set for March 19, 2014.

On March 21, 2014, DCFS filed an amended petition, adding an allegation under section 300, subdivision (b) that L.S.'s adult sibling Sh.R. physically abused her by using his hands to hit her on the buttocks, arms and back causing bruises. The petition further alleged that mother was aware of the abuse, failed to take action to protect the child, and threatened that if the minor reported the abuse she would be detained from the family home.

In a DCFS report dated March 21, 2014, the Department reported that L.S. began cutting herself in the fourth grade after hearing her parents' constant arguments. L.S.

¹ Further statutory references are to this code.

reported that her brothers regularly insulted her in front of their mother, who said nothing. Mother had told L.S. that she was a product of a rape, and should have aborted her. Mother denied these allegations, but admitted telling L.S. not to trust father, and threatening L.S. that she would cut off contact with her if L.S. went to live with father. Mother suggested that L.S.'s self-cutting was for attention, not due to mother's treatment of her daughter.

L.S.'s new therapist reported that L.S. presented with symptoms of depression, cried easily and appeared irritated. L.S. disclosed to the therapist that her adult sibling was physically abusive, but did not disclose any other abuse. L.S.'s school counselor reported that mother failed to take any responsibility for L.S.'s behavioral problems and instead blamed various teachers and others for L.S.'s negative behaviors. L.S. disclosed that mother often mistreated her at home, and expressed sadness that mother purposely humiliated her in front of her friends.

With respect to the physical abuse by her brother Sh.R., L.S. reported that he assumed the role of being her "boss." Sh.R. physically abused L.S. by hitting her with an open hand on her arms and buttocks, and by pushing her and pulling her hair. L.S. reported that mother "would kinda permit it and kinda not." When interviewed earlier by the social workers, L.S. had not disclosed the abuse because mother told her if she did she would be taken away and mother would get in big trouble. Sh.R. denied hitting L.S. but said he would restrain her in a "bear hug" when she was arguing with mother. He did this around 25 times a month due to L.S.'s behavioral problems. Sh.R. did not think his disciplining of L.S. was inappropriate, and said mother approved of it. L.S.'s older brothers were responsible for caring for L.S. when mother went out on the weekends.

After L.S. moved in with father, mother would not cooperate in allowing L.S. to retrieve her belongings. L.S. was distraught that mother refused to meet with her or answer her phone calls. Mother informed the social worker that she would not provide father with any of L.S.'s clothing, saying he was responsible for buying L.S. what she needed.

At the adjudication hearing on April 22, 2014, DCFS recommended that the juvenile court sustain the petition, that L.S. remain placed with father, and that mother receive enhancement services. L.S.'s counsel argued that the court should sustain the petition based only on the subdivision (b) allegations. L.S. wished to remain with father and have more visitation with mother. Father's counsel requested that he be deemed nonoffending in the petition.

The juvenile court sustained the petition under subdivisions (b) and (c) of section 300.² The court removed L.S. from mother and ordered both parents to participate in services.

Mother timely appealed the juvenile court's jurisdictional findings.

² As sustained, the petition states:

b-1: On or about 2013, the child L[.S.]'s adult brother, Sh[.R.] physically abused the child by striking the child on her buttocks, arms and back with his hands resulting in the child [having] bruises. Such physical abuse was excessive and caused the child/children unreasonable pain and suffering. Further, the child's mother, L.R[.] knew of the physical abuse and told the child not to disclose said physical abuse and threatened that if the child disclosed the abuse she would be detained from the family home. The child's mother failed to take action to protect the child when she knew or [sic] that the child was being physically abused by the adult brother, Sh[.R.]. Such physical abuse of the child by the child's adult brother and failure to protect by the child's mother endangers the child's physical and emotional health, safety and well-being, creates a detrimental home environment and places the child at risk of physical and emotional harm, damage, danger, physical abuse and failure to protect.

c-1: The child L[.S.]'s mother, L[.R.], emotionally abused the child by calling the child demeaning and derogatory names and telling the child that the child should have been aborted. The mother told the child that she is the product of rape of the mother by the child's father, V[.S.]. The mother speaks negatively of the father to the child and implies to the child the father will sexually abuse the child. The mother threatens to have no contact with the child if the child decides to live with father. The mother threatens to stop the child's visits with the father. The emotional abuse of the child by the mother has resulted in the child exhibiting depression and self mutilation behavior requiring ongoing psychological therapeutic intervention. Such ongoing emotional abuse of the child on the part of the mother place[s] the child at substantial risk of suffering serious emotional damage as evidenced by aggressive behavior towards herself.

DISCUSSION

Mother contends that the jurisdictional and dispositional findings and orders should be reversed, as this is simply a custody dispute between two parents who live in different cities and a 13-year-old girl who is caught in the middle of the parents' conflict. Mother explains, "Parents often come into conflict in these situations. They say things they don't mean, sometimes to their children as well as each other. The Family Court is more than capable of dealing with the issues between these parents, resolving the core custody issue, and making sure that the parents provide L.S. with the services she needs. This case should have been dismissed by the juvenile court."

Section 300, subdivision (b) provides in pertinent part that a child may be declared a dependent of the court when "[t]he 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 by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." (§ 300, subd. (b).) "Thus, '[t]he three elements for jurisdiction under section 300, subdivision (b) are: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the [child], or a "substantial risk" of such harm or illness.'" [Citations.]' (*In re B.T.* (2011) 193 Cal.App.4th 685, 691–692.)" (*In re John M.* (2012) 212 Cal.App.4th 1117, 1124.)

This court reviews the juvenile court's findings for sufficiency of the evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649; *In re David M.* (2005) 134 Cal.App.4th 822, 828.) In so doing, we are to consider the evidence in the light most favorable to the prevailing party and to resolve all conflicts in support of the trial court's order. (*Ibid.*) However, "substantial evidence" is

not just any evidence. Substantial evidence must be “considerable in amount, value or the like: firmly established, solidly based It must be reasonable in nature, credible, and of solid value . . .” (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644.) It must be sufficient to support the conclusion of the trial court. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.) The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record. (*Ibid.*)

L.S. reported that her adult brother Sh.R. had assumed the role of her “boss.” Sh.R. had hit L.S. with an open hand and pulled her hair. Mother witnessed the assaultive behavior and did not intervene, thereby placing L.S. at risk of serious physical harm. Mother admitted that she could not control L.S. and sought Sh.R.’s assistance in disciplining L.S. The juvenile court properly concluded that mother’s reliance on her son to discipline L.S. placed the child at risk of harm. Sh.R. stated that he did not think his discipline was inappropriate, and that mother approved it. Sh.R. admitted to physically disciplining L.S. 25 times in a month by placing her in a “bear hug” and moving her away from mother. L.S. lived in the home with two other brothers, E.M. and S.R., who had a history of treating her poorly. Mother sometimes left L.S. in the care of her brothers.

In short, the record shows that mother and L.S.’s brothers had a history of ganging up on L.S., both verbally and physically, and that L.S. felt isolated in her home. Thus, the juvenile court properly sustained the count under section 300, subdivision (b).

Section 300, subdivision (c) provides that a child comes within the jurisdiction of the juvenile court when that child is, or is at substantial risk of, suffering serious emotional harm. As the court in *In re Alexander K.* (1993) 14 Cal.App.4th 549 explained, this subdivision “thus sanctions intervention by the dependency system in two situations: (a) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment.” (*Id.* at p. 557.) If the allegation involves parental fault, DCFS bears the burden of proving (1) serious emotional harm; (2)

offending parental conduct; and (3) causation. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379.)

Mother frequently belittled L.S., cursed at her and called her names, including “snitch,” “estupida,” and “puta” (whore). She lied to the child, telling her both that she was the product father’s rape of mother, and that she had been adopted. Mother also told L.S. she should have been aborted. Mother threatened that she would cut off all contact with the child if L.S. went to live with her father. Mother admitted that the conflict present in the home caused L.S. to become “hysterical.” Not surprisingly, the child reacted negatively to this treatment. L.S. began cutting herself when she was in the fourth grade. Due to the problems at home, L.S. struggled academically and was often sad, angry, and crying in her school counselor’s office. Clearly, L.S. exhibited signs of emotional trauma as a result of mother’s emotionally abusive behavior. Thus, the juvenile court properly sustained the petition based on the section 300, subdivision (c) allegations.

Mother also argues in her brief on appeal that formal removal of L.S. from her care was not necessary where mother had already agreed to L.S.’s release to father’s custody. However, mother did not object to the propriety of the juvenile court’s decision to remove L.S. from her custody. Mother’s counsel’s only objection with regard to disposition was to inform the juvenile court that mother had already “done a number of parenting courses, and, unless it is going to be anything different than what she already completed, mother is opposed to completing any additional parenting courses.” Mother also requested transportation assistance and stated she would participate in counseling if ordered to do so. Thus, mother waived the argument that the juvenile court erred in removing L.S. from her care by not raising the issue in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2 [party forfeits right to challenge a ruling on appeal by failing to object in the trial court].)

Mother likens the facts of this case to those in *In re Brison C.*, *supra*, 81 Cal.App.4th 1373, where the court found that a child’s distress over the divorce of his parents was insufficient to establish juvenile court jurisdiction. The analogy simply does

not hold. L.S. has never known a conflict-free home. The family court awarded mother custody of L.S. when she was an infant, and the parents have been fighting about her ever since, to the great emotional detriment of their child. The record makes clear that mother was perfectly content to continue indefinitely the conflict with father rather than to resolve it, and to continue to subject L.S. to her brothers' abusive behavior. She "agreed" to let L.S. live with father only when she had no other choice. In short, there is no evidence in the record to support mother's assertion that the long-standing custody issues could have been resolved in the absence of the juvenile court's jurisdiction.

DISPOSITION

The judgment is affirmed.

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GOODMAN, J.*

We concur:

MOSK, Acting P.J.

KRIEGLER, J.

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