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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re ISADORA H., a Person Coming Under the Juvenile Court Law.	B278320 (Los Angeles County Super. Ct. No. DK18884)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. KEITH H., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Sherri S. Sobel, Juvenile Court Referee. Reversed.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Keith H., father of 10-year-old Isadora H., appeals from the juvenile court's October 3, 2016 jurisdiction findings and disposition order declaring Isadora a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b)(1).[1] Keith contends substantial evidence does not support the juvenile court's jurisdiction finding that his arrangements for Isadora's care and supervision put her at substantial risk of suffering serious physical harm. We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition*

In March 2016 Keith and Isadora's mother, Monique B., agreed to a stipulated family court order granting Keith legal and physical custody of Isadora and giving Monique care of Isadora during Isadora's summer break and other specified periods. In August 2016 the Los Angeles County Department of Children and Family Services received a report that, in the previous two months, while Monique and Isadora were on vacation in Mexico, Isadora told Monique that she (Isadora) did not live with her father when he had custody of her, but lived with a babysitter who made fun of her, called her "clumsy," made her take cold showers, and forced her to do household chores. Isadora also

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[1] Statutory references are to the Welfare and Institutions Code.

reportedly had scratches and bruises on her face, knees, buttocks, and neck, and did not know how she got them.

According to the report, when Monique and Isadora returned from their vacation, Keith met them at the airport in Los Angeles to take custody of Isadora, but Monique refused to let Isadora go with him. A heated dispute ensued, and airport police officers responded. Monique explained to the officers she did not want Isadora to go with Keith because of what Isadora told her while they were in Mexico. The officers privately questioned Isadora, who denied feeling unsafe with her father or being "touched or abused by anyone in any way." Having concluded Monique was violating the March 2016 family court order, the officers returned Isadora to Keith's custody.

When the Department investigated, Keith explained Monique had agreed to give him full custody of Isadora after abruptly informing him she was moving to Mexico to live with a boyfriend. Because Keith and his wife worked odd hours (he as a firefighter, she as a hairdresser) and had a minor daughter with autism who required their close supervision, Keith asked a family friend, Cecille P., to help care for Isadora at her house. As a result, during Keith's custody periods Isadora lived mostly with Cecille, in the home Cecille shared with her brother and his wife, although Keith brought Isadora to live with him whenever he had days off from work.

Interviewed by a child social worker, Isadora said Cecille yelled at her and called her "clumsy," but no one in Cecille's home ever hit her or threatened to hit her. Isadora said Cecille made her wash her clothes, which bothered her. Concerning the report that Cecille made her bathe with cold water, Isadora said she knew nothing about that. Asked about the reported scratches

and bruises, Isadora explained she got a scratch on her face when she fell out of a hammock while playing with her cousins and she got marks on her neck, buttocks, and legs "from playing, cuz I fall a lot." Asked if she was sure no one at Cecille's house was hitting or hurting her, Isadora said she was sure.

The Department also interviewed Cecille and visited her home. She said no one in her home used any form of corporal discipline with Isadora and any report Isadora had to shower with cold water was untrue. She denied calling Isadora names or yelling at her, other than to get her attention when it was time to eat or when Isadora could not hear her from another room. Cecille said that, to teach Isadora responsibility, she showed her how to make her bed and separate clothes when doing laundry, but that Isadora did not actually do laundry.

After discussing the situation with Keith and Monique, the Department proposed a plan to which they agreed: Keith would move Isadora into his home and arrange for her care there, and the Department would file a non-detain petition in the juvenile court. That same day, Keith moved Isadora into his home.

In August 2016 the Department filed a non-detain petition, alleging Isadora came within the jurisdiction of the juvenile court under section 300, subdivision (b)(1).[2] In the only count at issue

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[2] A child comes within the jurisdiction of the juvenile court under section 300, subdivision (b)(1), if, as relevant here, "[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 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 . . . ."

on this appeal,[3] the Department alleged Keith "made an inappropriate plan for the child's care and supervision by leaving the child in the care of an unrelated adult . . . . The child's caretaker frequently called the child clumsy and screamed and yelled at the child, causing the child to feel sad. The father knew of the emotional abuse to the child by the caretaker and failed to protect the child. The father's failure to make an appropriate plan for the child and failure to protect the child endanger[ ] the child's physical health and safety and place[ ] the child at risk of serious physical harm . . . ." In a non-detain report, the Department described the results of its investigation in the case to that point. At the initial hearing on the petition, the juvenile court ordered Isadora released to Keith at his residence, with weekend visits for Monique and unannounced home visits by the Department.

B. *The Jurisdiction Findings and Disposition Order*

On October 3, 2016 the juvenile court held the jurisdiction and disposition hearing. The court admitted into evidence the Department's non-detain report, a jurisdiction/disposition report, and a last-minute information. The latter two included statements from interviews conducted in September 2016 with Isadora, Keith, Cecille, and Monique.

In her interview Isadora did not initially want to answer questions about the time she spent in Cecille's home: "I was left with somebody, I don't want to answer that. . . . She's [referring

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[3] In a separate count the juvenile court later dismissed, the Department also alleged Monique failed to protect Isadora within the meaning of section 300, subdivision (b)(1).

to Cecille] a bad life. You don't want to know. . . . It's just too bad for a day I just met you." Eventually, however, Isadora said she "liked 'nothing' and disliked 'everything, I didn't like anything.'" "Just mean to me for no reason," she continued, "[y]ell at me, ground me[,] and forced me to do stuff that's not good. . . . Everybody yelled at me." Asked what she was forced to do, she said, "I don't want to say it. They make me late for field trips and make me do laundry." Nobody helped her or showed her how to do laundry, she added, "'just told [her] how much soap' to use." Asked if Cecille "'forced' her to bathe, eat food she didn't like, and make her bed," Isadora answered yes. Asked whether anyone called her names, she said, "Yeah, clumsy. At 3, 5 or 4, I have to wake up and they tell me what to do and they go back to sleep. I had to clean my room and stuff and they didn't help me at all. My mom would help me when I was tired and change me and give me cereal." Isadora said she felt "sad and mad," and referring to the people living in Cecille's house, she said, "I wanted to punch them because it gets me cranky."

In his interview Keith denied anyone yelled at Isadora when she was staying with Cecille. He said Cecille merely raised her voice to get Isadora's attention when Isadora was playing video games. He said Cecille kept him informed of Isadora's behavior and enforced rules he established. He stated that Isadora told him a "couple of times" she did not like staying with Cecille, but that her only specific complaints were the adults in the house did not smile and were quiet and Cecille was "mean" because she made Isadora "change her clothes." Keith attributed Isadora's complaints to her disliking "'simple issues of parenting and regimentation' because 'it was different from [her mother's] home.'" Keith was receptive to the interviewer's suggestion

Isadora might feel abandoned by his leaving her with Cecille, but he stated "he would have preferred being told this before instead of the 'accusatory' approach used during the [Department's] initial investigation."

Cecille, in her interview, denied she or anyone else in her home yelled at Isadora, although she did sometimes raise her voice when Isadora sat near the television and Isadora could not hear her because the television was loud. Cecille said the only time she called Isadora "clumsy" was when Isadora fell out of the hammock and Cecille told her, "'[N]ext time you have to be careful[;] don't be clumsy.'"

In her interview Monique largely repeated information she had initially reported to the Department, including that when she took custody of Isadora in June 2016 Isadora had unexplained bruises. Monique also said Isadora told her that at Cecille's house she would shower with cold water, she had to wake up early to get ready for school and make her bed without help, the adults in the house would "call her clumsy and dumb all the time," and she "had to eat food that was still frozen and would feel hungry because she couldn't eat the food."

At the jurisdiction hearing, counsel for Keith urged the court to dismiss the petition. She argued that, even assuming what Isadora said about her time in Cecille's home was true, those facts did not establish Isadora was at a substantial risk of serious physical harm or illness, as required by section 300, subdivision (b). Moreover, counsel for Keith argued, any risk of physical harm or illness that might have existed no longer existed because Isadora now lived with Keith.

Counsel for Isadora joined with the Department in urging the court to sustain the petition because "the plan that the father

made for the child was extremely inappropriate." Counsel for Isadora argued: "We still don't know fully what was happening in the babysitter's home. The child does not want to disclose it. I don't know why the child doesn't want to disclose it. But any child that doesn't want to disclose means there is obviously something that happened."

The juvenile court sustained the petition under section 300, subdivision (b)(1), based on the allegations concerning Keith's "inappropriate plan" for Isadora's care, and dismissed all other allegations. In explaining its decision, the court stated: "Now I have no reason to believe that [Isadora] is not safe in the home of her father now. I do however believe that [Keith] needs to understand that there's a whole bunch of manipulation going on here from everybody, and that this kid is smart enough to take advantage of it. On the other hand, that doesn't mean we discount what appears to be a positively horrendous situation for her in [Cecille's] home. It was not a healthy environment for that child and she should not have go back there in any way."

At disposition the juvenile court declared Isadora a dependent of the court under section 300, subdivision (b), placed her with Keith and Monique, with Keith's home as her primary residence, and ordered family maintenance services for Keith and Monique. Keith timely appealed.

C. *The Review Hearings*

In April 2017 the juvenile court held a six-month review hearing (§ 364) at which the court determined continued jurisdiction was necessary because conditions existed justifying jurisdiction under section 300. At a subsequent review hearing on July 25, 2017, however, the juvenile court found the conditions

justifying jurisdiction under section 300 no longer existed and were not likely to exist if the court withdrew jurisdiction. The court therefore terminated jurisdiction "with a juvenile custody order, awarding parents joint legal custody, father sole physical custody, with unmonitored visitation for the mother as detailed in the juvenile custody order." The court stayed its order terminating jurisdiction "to 9/27/17 pending receipt of juvenile custody order." On September 29, 2017 the juvenile court vacated its stay of the July 25, 2017 order and terminated jurisdiction.

DISCUSSION

A. *Keith's Appeal Is Not Moot*

After the July 2017 review hearing, the Department filed a motion in this court to dismiss Keith's appeal as moot on two grounds. First, the Department suggests Keith effectively waived his right to continue challenging the initial jurisdiction findings on this appeal by not also appealing the juvenile court's April 2017 determination that continued jurisdiction was necessary because conditions existed justifying jurisdiction under section 300. This argument lacks merit. "Only in the event of an unambiguous stipulation to the jurisdictional findings would we find a waiver of [the] right" to challenge those findings. (*In re Jennifer V.* (1988) 197 Cal.App.3d 1206, 1209; see, e.g., *In re Dani R.* (2001) 89 Cal.App.4th 402, 405-406 [appeal challenging jurisdiction findings dismissed as moot in part because the parents' stipulation to the court's findings that it would be detrimental to return their child to them and that continued placement was appropriate and necessary based on the parents'

progress in alleviating the causes that necessitated the child's placement amounted to "an unqualified admission" substantial evidence supported the initial jurisdictional findings].) As the Department concedes, nothing in the record suggests Keith stipulated to the juvenile court's April 2017 finding concerning continued jurisdiction or to any other finding or disposition that would amount to an admission that substantial evidence supported the initial jurisdiction findings. Even assuming Keith's decision not to appeal the April 2017 finding were in some sense "inconsistent with" his appeal of the initial jurisdiction finding, as the Department suggests, that is not enough to render his appeal moot. (Cf. *In re Dani R.*, at p. 406 [parents' stipulations mooted father's appeal because they "directly contradict[ed]" his contentions on appeal].)

Second, the Department argues Keith's appeal is moot because the juvenile court has now (as of September 29, 2017) terminated jurisdiction. "As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but 'must be decided on a case-by-case basis.'" (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) "'An issue is not moot if the purported error infects the outcome of subsequent proceedings.'" (*Ibid.*)

As Keith points out, dismissing an appeal operates as an affirmance of the underlying judgment or order (see *In re C.C.*, *supra*, 172 Cal.App.4th at p. 1489), which here includes a finding Keith failed to protect Isadora and placed her at substantial risk of serious physical harm. That finding, if erroneous, could have non-speculative "severe and unfair consequences" for Keith in

future family law or dependency proceedings. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716; see *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [appeal challenging jurisdiction findings was not moot after the juvenile court terminated jurisdiction because the appellant would be collaterally estopped from challenging those findings in a family law court proceeding].) And relevant future family law proceedings between Monique and Keith are not a mere theoretical possibility. In fact, as noted below, reversing the judgment in this case may result in vacating the juvenile court's subsequent orders, including its July 25, 2017 custody order, leaving the family court's March 2016 custody order in effect. Numerous statements in the record suggest Monique will challenge that order because she does not "agree with" it, claims to have been "tricked into signing the paperwork," and was unaware of what it actually said. Therefore, Keith's appeal is not moot, and the Department's motion to dismiss the appeal is denied.[4]

B. *Substantial Evidence Did Not Support the Juvenile Court's Jurisdiction Finding*

1. Standard of Review

"'We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support

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[4] If Keith wants to challenge any part of the juvenile court's July 25, 2017 and September 29, 2017 orders, he must appeal from those orders. A prompt appeal from the July 25, 2017 order would still be timely because the court stayed the order until September 29, 2017.

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. [Citation.] "However, substantial evidence is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, '[w]hile substantial evidence may consist of inferences, such 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].' [Citation.] '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.'"" (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763; see *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 920 ["'[s]ubstantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value'"].)

2. There Was No Substantial Evidence of a Substantial Risk of Serious Physical Harm

"Jurisdiction under section 300, subdivision (b) requires proof that the child suffered or is at substantial risk of suffering '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 . . . .'" (*In re Daisy H.*, *supra*, 192 Cal.App.4th at p. 717, quoting § 300, subd. (b); see *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763 [section 300, subdivision (b), requires evidence the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's (1) inability to provide regular care or (2) failure or

inability to adequately supervise or protect the child].) "As appellate courts have repeatedly stressed, "'[s]ubdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.'"" (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 111; accord, *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 673.) And that risk "must exist at the time of the hearing." (*Maggie S.*, at p. 673; see *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1318.)

As Keith notes, the Department did not allege, and the juvenile court did not find, Isadora actually suffered serious physical harm or illness as a result of Keith's leaving her in Cecille's care. Rather, the allegation the juvenile court found true was that leaving Isadora in Cecille's care put Isadora "at risk of serious physical harm." There was no evidence, however, Isadora was at substantial risk of serious physical harm while in Cecille's care. Isadora repeatedly denied anyone in Cecille's home hit her or hurt her, and no evidence suggested Isadora's scratches and bruises were anything other than what she said they were: what the Department characterized as the "benign injuries" of a child at play. Requiring a child to do chores and eat food she does not like is not enough for jurisdiction under section 300, subdivision (b). And although the Department alleged the circumstances Isadora complained of—being yelled at and called "clumsy"—were "emotional abuse," section 300, subdivision (b), "does not provide for jurisdiction based on "'emotional harm.'""

(*In re Jesus M.*, *supra*, 235 Cal.App.4th at p. 112; accord, *In re Daisy H.*, *supra*, 192 Cal.App.4th at p. 718.)[5]

Moreover, even assuming there was a substantial risk of serious physical harm to Isadora while she lived with Cecille, no such risk existed at the time of the jurisdiction hearing because by then Isadora no longer lived with Cecille; she lived with Keith. And as the juvenile court noted at the jurisdiction hearing, the court had "no reason to believe that [Isadora] is not safe in the home of her father now."

Nevertheless, citing one court's observation that "[a] parent's past conduct is a good predictor of future behavior" (*In re T.V.* (2013) 217 Cal.App.4th 126, 133), the Department argues that even at the time of the hearing Isadora was at substantial risk of serious physical harm because Keith might have returned Isadora to Cecille's care if caring for Isadora in his home proved difficult. A jurisdiction finding under section 300, subdivision (b), however, "may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur." (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993; see *ibid.* ["[t]o establish a defined risk of harm at the time of the hearing, there 'must be some reason beyond mere speculation

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[5] "Section 300, subdivision (c) provides for assertion of jurisdiction where the child is suffering or at risk of suffering 'emotional damage,' but only if it is 'serious' and 'evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others.'" (*In re Jesus M.*, *supra*, 235 Cal.App.4th at p. 112, fn. 13, quoting § 300, subd. (c).) The petition here did not include an allegation under section 300, subdivision (c), and on appeal the Department concedes the "gravamen" of the allegations purportedly supporting jurisdiction "is not that Isadora suffered 'emotional damage.'"

to believe the alleged conduct will recur'"]; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384 ["[a] parent's '"[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue'"].) The juvenile court had no evidence before it that Keith was likely to return Isadora to Cecille's care, and the court expressed no concern for that possibility. Indeed, the evidence was to the contrary. Having moved Isadora to his home, Keith stated he would hire a babysitter to drive her to and from school, or even retire from his job if necessary, to care for Isadora. The possibility he might return Isadora to Cecille's care was too speculative to establish a substantial risk of harm at the time of the hearing.

DISPOSITION

The juvenile court's October 3, 2016 jurisdiction findings and disposition order are reversed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.