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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re P.R. et al., Persons Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TIMOTHY R.,

Defendant and Appellant.

B239576

(Los Angeles County
Super. Ct. No. CK88309)

APPEAL from an order of the Superior Court of Los Angeles County,
Timothy Saito, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Frank J. DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father, Timothy R., appeals from a dependency court order declaring his daughter, P.R., and his son, T.R., dependents of the court under Welfare and Institutions Code section 300 (section 300), subdivision (b). Father contends there is no substantial evidence that his minor children suffered or are at substantial risk of suffering serious physical harm such that dependency jurisdiction is appropriate. We conclude that dependency jurisdiction was properly asserted, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Background

Minors P.R. and T.R. were ages two and one, respectively, at the time they came to the attention of the Department of Children and Family Services (DCFS) in May 2011. They were living with Mother, Antoinette C., at the home of the paternal grandmother.¹ Father, to whom Mother was never married, visited the family regularly, and he and Mother continued to have a relationship.

An anonymous caller alleged that Mother was emotionally and sexually abusing the children. In addition, according to the caller, Mother allegedly had mental health issues and had said that she might hurt herself and the children. The caller stated that the children were neglected by both parents. T.R. was said to have fallen off the bed at least four times, causing what the caller believed to be developmental delay. The caller had seen Father hold T.R. up in the air and let him fall on the bed while playing with him. The caller also stated that both parents abuse drugs.

Mother and Father denied all allegations of abuse. Mother also denied any desire to harm herself or the children; she stated that she loved the children and her life revolved

¹Because Mother is not a party to this appeal and the dependency court did not sustain any jurisdictional findings as to her, our description of the record pertaining to Mother is not as detailed as it is as to Father.

around them. Both parents denied that T.R. had ever fallen off the bed and Mother stated he was never left unattended. The parents asserted that the children were always under Mother's care and that the paternal grandmother watched them when needed. Father visited the family twice a week. Mother admitted she had been diagnosed with schizoid-effective disorder in July 2010, that she was on medication for that condition, and that she participated in counseling and a life skills support group. She denied any current drug use and agreed to submit to a drug test. She said that Father smokes marijuana, but that the children were not present when he was under the influence. Father denied past or current experience with drugs or alcohol and agreed to take a drug test. Drug tests administered to the parents were negative as to Mother and positive as to marijuana use for Father.

The DCFS social worker who initially examined the children observed no marks or bruises, and a physician who conducted a forensic examination on the children found no indication of abuse or neglect. When the social worker visited Mother and the children the following month, she observed no signs of abuse or neglect and concluded that the children were doing well and developing age appropriately in all areas. They did not appear to have any mental or emotional problems, and were observed to be smiling in response to others and making eye contact.

At a June 2, 2011 team decision-making meeting, Father claimed to have a medical marijuana prescription but was unable to show proof, and he refused to agree to random drug testing or to participate in services. DCFS filed a dependency petition alleging one count under section 300, subdivision (b), specifically charging that Father had a history of substance abuse and was a current user of marijuana, rendering him incapable of providing regular care for the children. No allegations were included as to Mother.

At the detention hearing, Father's counsel asked that the children not be detained from Father, arguing that only a small amount of marijuana had been found in his drug test and that Father had a medical marijuana card. The court found a substantial risk to

the children if they remained in Father's custody, and detained them from his care. Father was granted visitation, to be monitored by a DCFS-approved monitor. At a subsequent hearing, Father's counsel indicated that Father had provided a copy of his medical marijuana card. DCFS was ordered to investigate and provide a supplemental report.

The social worker visited the paternal grandmother's home and was concerned about its "deplorable" condition and the fact that the children were unbathed and dirty. Mother indicated that she was still in a relationship with Father and did not intend to separate from him.

DCFS filed a last minute information for the court listing the following concerns: (1) Father had not maintained contact with DCFS; (2) Father and Mother had been arrested together, for an unknown reason; (3) Mother maintained a filthy, deplorable, and cluttered home; (4) Mother appeared not to regularly bathe the children; (5) Mother was allowing Father to have unmonitored visits with the children; (6) Father had not drug tested; (7) Mother minimized Father's substance abuse issues; and (8) Father had been seen at Mother's home early one morning and appeared to have just woken up. DCFS also filed a first amended petition adding a new count under section 300, subdivision (b), specifically alleging that Mother's home was found to be in a filthy, hazardous, and unsanitary condition, and the children were found to be dirty and emitting a foul odor.

On August 8, 2011, DCFS detained the children from Mother and the court found a prima facie case for detention. The children were released to Mother several weeks later, on the condition that she live with the maternal grandmother. Father was granted visitation rights in a neutral setting, monitored by a DCFS approved monitor, and was ordered not to visit the home.

Approximately one month later, Mother told the dependency investigator about an incident in which Father kicked in the door of the maternal grandmother's home, where she and the children were living. Mother stated, "My mom trying to say the door was kicked in but I left. I didn't see him kick the door in. I know he came over there and he

wanted the EBT card^[2] and when he left, I left. Truthfully, I didn't see him do it. I asked him if he kicked my mom's door and he said he didn't do it. My kids weren't there. I was already leaving the house. I had somewhere to go. . . . I'm not trying to protect [Father] or [maternal grandmother] but she didn't see it. She don't know how her door got broken. They want me to get a restraining order on him but he's not hitting me or abusing me. " Mother said her children were at Chuck E. Cheese with the maternal grandmother at the time of the incident. Mother claimed that the maternal grandmother ordered her out after the incident. Mother and the children then moved into their own rental residence.

The maternal grandmother reported the following about the door incident: "My daughter was here by herself. She said [Father] came up on the side door through the garage. He asked for the debit card. She gave it to him. She canceled it. He kicked my front door in. He broke my front door. I called the police and they asked if I saw him do it but I wasn't home. [Mother] had left and went to find a place [to live] so he would not come back here. The kids were with me. I took them to Chuck E. Cheese. I know she's not with him no more after what happened to my door." The grandmother said that Mother chose to leave her home so that Father would not return there again. She stated that she would allow Mother and the children to return to her home. She denied any knowledge of domestic abuse between Father and Mother.

On September 23, 2011, the court granted Father's *Marsden* request due to a breakdown of communication between him and his attorney, and continued the matter so that Father could obtain private counsel.

Soon thereafter, DCFS filed a second amended petition adding two identical counts under section 300, subdivisions (a) and (b). First, it was alleged that Father

²EBT is an abbreviation for Electronic Benefits Transfer, the electronic system for delivering food stamp benefits. The card had been issued to Mother and Father was not entitled to use it for his own purposes.

“engaged in a violent confrontation in which [he] arrived at the maternal grandmother[’s] home, where mother and the children were residing at the time, and proceeded to kick the door in the home, causing the door to bust open, allowing [him] unauthorized access to the home. Such violent altercation(s) on the part of the children’s father against the children’s home endangers the children’s physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger.” Second, the petition alleged that Father “has a history of domestic violence and engaging in violent altercations including, but not limited to forcing his entry into mother’s home, and the children’s residence . . . and engaging in a violent confrontation at Children’s Court on 09/23/2011 wherein [Father] assaulted his Counsel at counsel table located inside Department 405 of Children’s Court in front of a fully occupied court room that included mother’s presence. Further, [Father] had to be restrained by law enforcement [to] prevent him from physically assaulting his attorney. Such violent conduct on the part of the children’s father against the children’s mother and father’s attorney endangers the children’s physical and emotional health and safety and places the children at risk of severe physical and emotional harm, damage and danger.”

DCFS also reported to the court that when the caseworker was visiting Mother’s home, P.R. told her, “My daddy just left and he said he’s gonna get you.” The following day, when the caseworker arrived at Mother’s home, P.R. yelled from the window, “Get away from my house, social worker!” The caseworker ascertained that Mother was allowing Father to have visits with the children without the knowledge of DCFS. In addition, by moving out of the maternal grandmother’s home without alerting DCFS, Mother had violated a court order. As a result, DCFS once again detained the children and placed them in foster care. The court granted Mother unmonitored visits, but Father’s visits remained monitored.

The adjudication hearing was continued several times. In the interim, Father was arrested and taken into custody for driving a vehicle without the owner’s consent. DCFS

also learned that Mother had not taken her psychotropic medication for approximately one month.

DCFS filed a third amended petition that included the same allegations under section 300, subdivisions (a) and (b) as to Father and Mother, with an additional allegation under subdivision (b) as to Mother stating that she had demonstrated numerous mental and emotional problems, including a diagnosis of bipolar disorder and schizophrenia, and had failed to take psychotropic medications as prescribed for one month.

The contested adjudication began on February 14, 2012, with both parents present. The court received into evidence, without objection, the DCFS reports filed between June 15, 2011, and February 14, 2012. The social worker and Mother testified that Mother was back on her psychotropic medication, that she had not exhibited any symptoms of illness while off her medication, and that her home environment was clean and safe. Father presented no evidence, but his attorney argued there was no evidence of an assault by Father on his former attorney, and that attorney had denied any such incident occurred. As for the allegation that Father kicked in the door at the maternal grandmother's home, counsel argued that, first, there was no evidence that it was Father who kicked in the door, and, second, even if he had done it, no one was home, and thus it could not be considered a violent confrontation with anyone; at most, it was breaking in to gain access. Counsel further argued that no nexus had been shown between Father's positive test for marijuana and abuse or neglect of his children.

The dependency court dismissed all counts as to Mother, finding in particular that DCFS had failed to present evidence that Mother's mental problems affected her care of the children, and finding that the issues with the dirty home environment had been ameliorated.

As to Father, the court found that DCFS had failed to present sufficient evidence to show that Father's marijuana usage endangered the children. The court also dismissed the count under section 300, subdivision (a), which alleged that Father engaged in a

violent confrontation by kicking in the door. And, citing a lack of evidence, the court dismissed that count under section 300, subdivision (b) alleging that Father had a history of domestic violence and had assaulted his counsel.

The court concluded section 300 subdivision (b) did present a basis for jurisdiction as to count (b)(3). As originally alleged, count (b)(3) charged that Father engaged in a violent confrontation by kicking in the door. The court amended the count and broadened it to state that Father “has anger management issues – not limited to an incident on or about 9-2-11 where [Father] arrived at the maternal grandmother[’s] home, where mother and the children were residing at the time, and proceeded to kick the door in the home, causing the door to burst open, allowing [Father] unauthorized access to the home. Such anger management issues on the part of the children’s father against the children in the home endangers the children’s physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger.” The court sustained the count as amended.

The court stated that it found “a pattern of anger management issues that [Father] exhibited in this case with regards to allegations of outbursts in court, with regards to the children indicating that my dad said that to the social worker that he’s gonna get you.” Further, the court found that even though Mother and the maternal grandmother had not been present during the door incident, the evidence pointed to Father as the perpetrator. The court concluded that Mother moved out of the maternal grandmother’s home because she was scared or anxious that Father would return there.

The court found by clear and convincing evidence that there would be a substantial danger to the children if they were not removed from Father’s custody. Father was ordered to attend a parenting program and individual counseling for anger management. The court determined that domestic violence was not an issue and thus declined to order Father to attend domestic violence counseling. Father was granted monitored visitation, with DCFS given discretion to liberalize. The children were placed with Mother, who was ordered to participate in parenting classes and counseling.

Father timely appealed. On appeal, he challenges only the jurisdictional findings and makes no separate argument challenging the disposition order.

DISCUSSION

To assert jurisdiction over a minor the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) DCFS bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court's jurisdiction. (*Ibid.*) "On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value." (*Ibid.*) "A mere 'scintilla' of evidence is not enough. [Citation.]" (*In re B.T.* (2011) 193 Cal.App.4th 685, 691.) Any inferences we draw must be reasonable and logical; "'inferences that are the result of mere speculation or conjecture cannot support a finding [citations].'" (*Ibid.*)

Dependency jurisdiction may be asserted under section 300, subdivision (b) where DCFS establishes that "[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, 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." (§ 300, subd. (b).)

The issue here is whether, in the absence of evidence of past harm suffered by the children, DCFS has shown a "substantial risk that the child will suffer, serious physical

harm or illness.” (§ 300, subd. (b).) Our focus is on whether DCFS has proffered substantial evidence that “at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future.” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.)

The dependency court concluded that Father’s pattern of “anger management issues” put the children at substantial risk of physical and emotional harm. The court cited Father’s outbursts in court, the fact that his daughter repeated that Father said he was “gonna get” the social worker, and Father’s act of violence in kicking in the door of the maternal grandmother’s home. Nevertheless, under section 300, subdivision (b), the risk of *emotional* harm to the children is not sufficient to assert jurisdiction. Father’s action in breaking down the door to the maternal grandmother’s home, where Mother and the children were residing, led to the grandmother excluding them from the residence. The grandmother later allowed them to return, adding that “I just want my daughter to get away from him.”

We agree with the dependency court that sufficient evidence supported the conclusion that Father broke down the door of the residence at which mother and the children were living, even though it happened they were not there at the time. Breaking down the door of another person’s residence in order to gain access demonstrates a high propensity of violence. This, coupled with Father’s threat to “get” the social worker, convinced the trial court that the assertion of jurisdiction was necessary for the protection of the children. The children and their mother were not at the home at the time, but Father did not know whether they were there or not. Indeed, he had no right to be there since he was permitted to be with the children only in a monitored situation. The trial court found Father to be prone to violent physical outbursts, and in need of anger management. This evidence is sufficient to support the assertion of dependency jurisdiction. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [domestic violence at household where children are living causes risk of physical harm to children].)

DISPOSITION

The jurisdiction and disposition orders are affirmed.

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EPSTEIN, P. J.

I concur:

SUZUKAWA, J.

WILLHITE, J.

I respectfully dissent.

In my judgment, DCFS did not present substantial evidence that Father's "anger management issues" put his minor children at substantial risk of future physical harm.

Evidence of a parent's emotional problems does not support jurisdiction under section 300, subdivision (b) where "there [is] no evidence linking these alleged mental disturbances to physical harm or a risk of physical harm to the children." (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 718; see *In re Janet T.* (2001) 93 Cal.App.4th 377, 389.) In this case, DCFS does not allege that Father behaved violently towards his children in the past. Further, none of Father's conduct relied upon to justify asserting dependency jurisdiction suggests a substantial risk that he would behave violently towards them in the future.

First, the record does not document much by way of courtroom outbursts by Father. The dependency court found insufficient evidence to support the count in the dependency petition based on the alleged assault by Father on his counsel in court, and DCFS concedes that evidence of such an incident "remains outside the record." In any event, the minor children were not present for any courtroom incidents and it is not alleged, and has not been shown, that Father's anger or frustration in court was directed either at them or Mother.

Second, with respect to P.R.'s statement to the social worker that "my daddy just left and he said he's gonna get you," it is apparent that Father was angry with DCFS and shared his emotions too freely with his young child. A day later, P.R. yelled, "Get away from my house, social worker" when the social worker approached the home, also suggesting that she had picked up on one or both of her parents' antipathy towards DCFS. Even assuming Father intended to follow through on his threat to "get" the social worker whom he viewed as trying to keep him from his children, this does not mean that he had any violent tendencies towards the children.

Finally, with respect to the incident involving the door at the maternal grandmother's home, I agree that sufficient evidence supported the conclusion that Father was the perpetrator. However, it is undisputed that neither Mother nor the children were in or around the home at the time. The children were at Chuck E. Cheese with their grandmother. Even if we view Father's act of kicking in the door as exhibiting anger towards *Mother* over access to the EBT card benefits,¹ physical violence between a child's parents may support the exercise of jurisdiction under section 300, subdivision (b) only if there is evidence that the violence directly harmed the child physically or placed the child at risk of physical harm. (*In re Daisy H.*, *supra*, 192 Cal.App.4th at p. 717 [concluding there was insufficient evidence to support a finding that domestic violence between the parents placed children at current substantial risk of physical harm; although record contained evidence that father had pulled mother's hair and choked her some years before dependency petition was filed, the children showed no signs of physical abuse and denied witnessing any physical abuse by father towards mother, and there was no evidence that hair-pulling and choking incidents occurred in the children's presence].)

"Certainly, it is possible to identify many possible harms that *could* come to pass. But without more evidence than was presented in this case, such harms are merely speculative." (*In re David M.* (2005) 134 Cal.App.4th 822, 830 [reversing jurisdictional finding where there was no evidence of a "specific, defined risk of harm" to children resulting from father's mental problems]; see also *In re James R.* (2009) 176 Cal.App.4th 129, 137 ["Perceptions of risk, rather than actual evidence of risk, do not suffice as substantial evidence."].) Because "[a]ny causal link between [Father's] mental state and

¹Notably, the dependency court declined to order Father to attend domestic violence counseling because it found no evidence of domestic violence.

future harm to the minors was speculative” (*In re James R.*, *supra*, 176 Cal.App.4th at p. 136), I conclude that dependency jurisdiction was inappropriately exercised in this case.

WILLHITE, J.