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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re K.K., Jr., a Person Coming Under the
Juvenile Court Law.

B237950
(Los Angeles County
Super. Ct. No. CK 89714)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.I.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Donna Levin,
Juvenile Court Referee. Affirmed.

Janice A. Jenkins, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County
Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

The court found K.K., Jr., born in April 2010, a dependent child of the court and ordered the child placed in the home of his mother, M.I. (hereafter mother), under the supervision of the Los Angeles County Department of Children and Family Services (DCFS). Mother appeals, contending that the evidence is insufficient to support the aforesaid orders. We affirm.

FACTS

1. The Trial Court's Findings

The trial court found that on June 19, 2011, the child's father, K.K., Sr. (hereafter father), threw a vase, striking mother's leg in the child's presence, bruising her leg. Father grabbed mother's arm and shook her, leaving his hand prints on her arms. The court further found that in October 2010 father pushed mother while she was holding the child. The court concluded that father's violence endangers the child's physical health and safety in terms of subdivision (b) of Welfare and Institutions Code section 300.¹

The court went on to find that father uses marijuana, which prevents him from taking care of the child, testing positive for marijuana on August 12, 2011. On several occasions in 2011, father was under the influence of marijuana while the child was in his care. Mother knew of this and failed to protect the child. This endangered the health and safety of the child in terms of section 300, subdivision (b).

2. The Factual Bases of the Findings

Mother testified at the jurisdiction/disposition hearing that the child dropped a glass of juice; she started to clean it up, but father grabbed her by the arm and then threw a vase at her. She gave a more elaborate statement to a police detective in which she stated that father got angry with her, grabbed her by the arm and shook her back and forth. When she was able to pull away and tried to run away, he threw the vase at her. Mother locked herself in the bedroom for her protection.

Mother also testified that father pushed her while she was holding the child. She tried to minimize it during the hearing by saying it was "just a little push." But, on

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

another occasion to the DCFS emergency response person, who appears in the record as “R.,” she said that father pushed her on her side, causing her to fall to the floor while holding the child. She left the home because of this and stayed away for four weeks.²

Father admitted his marijuana use but claimed that he used it to medicate pain from migraines and a torn ligament and to stimulate his appetite. Mother told DCFS that father did smoke marijuana when the child was in the house.

DISCUSSION

1. There Is Substantial Evidence That the Child Was Affected by Domestic Violence

Father pushed mother while she was holding the child, causing her to fall with the child. This shows that father’s violence directly imperiled the child. *In re Daisy H.* (2011) 192 Cal.App.4th 713, 718, cited by mother, holds that there must be a risk of physical harm to the child before domestic violence warrants a jurisdictional finding. There is no question that what father did created a substantial risk of serious physical harm to the child. But even from a more general perspective, domestic violence is detrimental to the child. “It is clear to this court that domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] 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.* (1996) 52 Cal.App.4th 183, 194.)

The trial court reasonably could have rejected mother’s testimony that “the push was not so violent as to cause [mother] to lose her balance.” The DCFS detention report actually quotes mother as saying “[h]e pushed me on my side and I fell to the floor with the [child] in my arms.” That mother tried to minimize the incident in her testimony during the jurisdictional hearing only reduces her credibility.³

² Father and mother were together for three years. The last year was filled with tensions and ultimately degenerated into a custody battle.

³ The DCFS noted that father had threatened mother with getting her and her family deported and with taking the child away from her.

We also disagree with mother there was no “ongoing pattern of engaging” in domestic violence. The DCFS reported that father “engaged in physical domestic violence with mother.” In fact, mother reported four domestic violence incidents. Moreover, there is no requirement that there must be a “pattern” of domestic violence before the court will intervene. One incident in which the child is thrown to the floor with his mother is one incident too many.

Mother states there is no evidence that the child was ever actually harmed. On a more general level, it is of course true that fortunately the child has not been injured. While this makes this case less damning for the parents than some, it is nonetheless clear that father posed enough of a danger that the trial court could not ignore the risks to the child that the father’s erratic and violent behavior created. It is far preferable to act to prevent harm than to wait for it to happen.

2. Father’s Use of Marijuana Poses a Risk to the Child

We find somewhat improbable mother’s argument that “there is simply no evidence of a specific defined risk of harm to the child” from father’s use of marijuana. It is not that father’s use of marijuana is disputed or only occasional. It is undisputed that he uses and grows marijuana plants in his house and also undisputed that he uses it several times a day. An adult who is impaired by a controlled substance has no business being in the vicinity of a child, especially a small child. That there is one appellate decision that held that using marijuana *once* while pregnant is insufficient to show that the child, once given birth, was endangered (*In re David M.* (2005) 134 Cal.App.4th 822, 829-830) does not mean that, in the case at bar, it makes no difference that father uses marijuana several times a day.

Contrary to mother’s claim that there is no evidence to support the finding that the failure to supervise the child resulted in failure to protect him from the conduct of the custodian with whom the child has been left, DCFS reported that mother informed DCFS that the child was not safe with father because of his drug use.

In sum, we find there is sufficient evidence that shows the child’s health and safety were endangered and that the jurisdictional finding should therefore be affirmed.

Finally, we need not address the trial court's finding that father endangered the child when, admittedly, he drove off with the child who was not in a car seat. This finding goes only to father, who is not a party to this appeal.

DISPOSITION

The orders are affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.