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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.L. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L.,

Objector and Appellant.

B283042

(Los Angeles County
Super. Ct. No. DK10914)

APPEAL from orders of the Superior Court of Los Angeles
County. Julie Blackshaw, Judge. Affirmed.

Marcus Gomez, under appointment by the Court of Appeal,
for Objector and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and Kimberly Roura, Deputy County
Counsel, for Defendant and Respondent.

The dependency court sustained jurisdiction over J.L.'s (mother) four youngest children, ages 14, 12, 10 and 6, and ordered them removed from her custody. On appeal, mother challenges the assertion of jurisdiction over her 10-year-old daughter, and argues there was no substantial evidence she physically abused that child. Mother also appeals from a restraining order protecting father and the three youngest children from her. She argues there was no substantial evidence she was a threat. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and M.D. (father) have four children together: 14-year-old Anna, 12-year-old Isabel, 10-year-old Kelly, and 6-year-old Anthony.¹ Mother and father broke up in 2013. The children stayed with mother but had visits with father.

On August 27, 2016, mother was arrested for child abuse of the 14-year-old, Anna. Anna told a social worker that mother had pinned her down and punched her five times in the face. Anna's face was bruised, she had a laceration on her lip, and there were scratches on her arms. Mother admitted she had slapped and punched Anna.

The Department of Children and Family Services (Department) interviewed the three younger children.² They all said mother hit them on their arms or hands. Father said that

¹ To protect the minors' privacy, we use pseudonyms instead of their actual names.

² Mother also has a 16-year-old son. We do not mention him further because he was dismissed from the petition and is not involved in this appeal.

mother hit all the children, and that the children were afraid to talk about the abuse. When the children visited father on the weekends, they always cried when the visits were over because they did not want to return to mother's home.

A petition was filed alleging mother physically abused the children. The juvenile court detained the children, releasing the three younger children to father and placing Anna with paternal grandparents. Mother was granted monitored visits.

In October 2016, father moved ex parte for a temporary restraining order protecting him and the three younger children from mother. Father submitted a declaration stating that (1) the children's school informed him that mother had tried to make contact with Isabel and Kelly, (2) he had seen mother driving by his house, (3) mother had texted Isabel that she should set up a Facebook account so that mother could call her via the Facebook application, and (4) mother had called and texted father daily demanding to talk to the children. The court issued a temporary restraining order.

Further evidence of mother's abuse of the children was submitted to the court in advance of the jurisdiction and disposition hearing. Isabel said mother had spanked her and pulled her hair. According to the school nurse, Isabel had disclosed that mother hit her, and she was scared of mother. Kelly told the social worker that mother "hits us" with "anything" including "her hand, a belt, a spatula [and] a shoe." Mother hit them "anywhere" on their bodies. Kelly was scared of mother and did not want to live with her. Anthony said mother spanked him, and he had seen mother and Anna fight "with their hands."

Father's girlfriend said Isabel and Kelly had told her that mother hit them "with anything she can get a hold of," and that mother had hit Isabel with a phone cord.

On February 23, 2017, the court sustained the petition, removed the children from mother's care, and placed the three younger children with father. The court also issued a three-year restraining order protecting father and the three younger children from mother. Mother appealed.

DISCUSSION

1. Substantial Evidence Supports the Judgment

Mother challenges the findings that she physically abused Isabel. She argues that the findings were not supported by substantial evidence because father's girlfriend's statement about Isabel being hit with a phone cord was unreliable hearsay. We disagree.

The juvenile court sustained two sets of allegations against mother: the first alleged that mother's abuse of the older child, Anna, placed all the children at risk; and the second alleged that mother had physically abused all four dependents. The juvenile court sustained both sets of allegations under Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).³

Under section 300, subdivision (a), a child comes within the jurisdiction of the juvenile court when she "has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally . . . by the child's parent or guardian." Subdivision (b) provides for jurisdiction when the

³ Undesignated statutory references are to the Welfare and Institutions Code.

parent has failed or is unable “to adequately supervise or protect the child” resulting in the child having suffered, or being put at risk of suffering serious physical harm. Subdivision (j) addresses the risk that a child will be abused or neglected as a result of the child’s sibling being abused or neglected.

On appeal, mother does not challenge the finding that her physical abuse of Anna placed the younger siblings at risk of serious physical harm, or the findings that she physically abused Kelly and Anthony. Mother only challenges the finding that she physically abused Isabel.

The Department contends that this argument is moot because mother does not challenge the juvenile court’s alternative bases for taking jurisdiction over Isabel—that mother’s abuse of Anna placed Isabel at risk. Mother has not responded to this argument.

“As long as there is one unassailable jurisdictional finding,” the juvenile court may still assert jurisdiction over a dependent child. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) Although this court retains discretion to consider the merits of mother’s appeal—for example, when the ruling could be prejudicial to mother in future dependency proceedings—no argument has been on this point. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) We conclude mother’s challenge to this jurisdictional findings is moot.

Even if we were to consider this challenge on its merits, we would find substantial evidence to support the finding. Under section 355, hearsay evidence contained in the Department’s written reports to the court is “admissible and constitutes

competent evidence on which a finding of jurisdiction” may be based. (§ 355, subd. (b).) Mother cites to *In re Cindy L.* (1997) 17 Cal.4th 15 for the proposition that hearsay must be reliable, however, that case does not deal with section 355. *Cindy L.* addresses a judicially-created hearsay exception prior to the effective date of the current section 355. (*Id.* at p. 28, fn. 6 [“Because the present case occurred before the 1996 amendments to section 355 went into effect, we need not decide whether the amended section 355 obviates the need for the child dependency exception.”].)

There was also additional evidence supporting the sustained findings: Isabel said mother hit her on her arm, spanked her, and pulled her hair; Isabel told the school nurse that mother hit her and she was scared of mother; father said mother hit all the children and had hit Isabel with a phone cord; and Kelly said mother hit all of the children.

2. *Substantial Evidence Supports the Restraining Order*

Mother contends there was no substantial evidence she was a threat to the children or father such that the restraining order was warranted. We disagree.

Welfare and Institutions Code “section 213.5, subdivision (a) provides that, once a juvenile dependency petition has been filed, the juvenile court may issue a temporary restraining order protecting the dependent child from any caregivers of the child.” (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 211.) The statute provides for two types of restraining orders: “(1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for

a maximum of 25 days []; and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years [].” (*In re Jonathan V.* (2018) 19 Cal.App.5th 236, 241.)

Under section 213.5, the court may issue an order “enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace” of any child or parent. (§ 213.5, subd. (a).)

We review the court’s issuance of a restraining order for substantial evidence. (*Cassandra B., supra*, 125 Cal.App.4th at pp. 210–211.) “[W]e view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences to uphold the juvenile court’s determination.” (*Id.* at p. 210.)

Mother contends, without citing any authority, that for her telephone calls and texts to qualify as evidence in support of a restraining order, such communications must meet the criteria set forth under Penal Code section 653m. This section of the Penal Code criminalizes use of the telephone with the “intent to annoy,” and excludes telephone use made “in good faith.” (Pen. Code, § 653m, subd. (a).) As noted above, section 213.5 refers directly to Penal Code section 653m, and explicitly provides that the court may enjoin a parent from “telephoning, *including but*

not limited to, making annoying telephone calls as described in section 653m of the Penal Code.” (§ 213.5, subd. (a) (emphasis added).)

Section 213.5 does *not* require the trial court to find evidence of any particular kind of behavior before issuing a restraining order. While evidence that the restrained person has engaged in the conduct the restraining order targets is sufficient to support the issuance of the order, such evidence is not necessary. (*In re B.S., Jr.* (2009) 172 Cal.App.4th 183, 193.) Accordingly, there is no requirement that a parent’s harassing phone calls or texts meet the criteria of Penal Code section 653m in order to support the issuance of a section 213.5 restraining order.

Mother also argues there was no evidence the children were threatened by her phone calls, texts, driving by father’s home, and attempts to contact the children through the school, and therefore, there was no substantial evidence supporting the restraining order. According to mother, her actions did not cause the children or father to experience “a reasonable apprehension of fear.”

It was reasonable for the court to conclude the children were afraid of mother. The evidence was that mother had hit them, and they all cried at the end of visits with father when they had to return to mother’s home. After the children were detained and mother was ordered only monitored visitation with the children, she drove by father’s home, contacted Isabel directly, and attempted to contact Isabel and Kelly through the school. This evidence showed that mother was attempting to have

unmonitored contact with the children. Given mother's history of physically assaulting the children, mother's attempts at unmonitored conduct suggested that the children's safety might be in jeopardy without the protection of a restraining order.

Although the evidence did not suggest that father was afraid of mother, it did show that mother had harassed father with daily phone calls and texts demanding access to the children. This was sufficient to support the restraining order enjoining her from contacting father "except for visitation as indicated" in the order.

DISPOSITION

We affirm the judgment and restraining order.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

HALL, J.*

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