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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re D.H., JR., a Person Coming Under the Juvenile Court Law.	B238041 (Los Angeles County Super. Ct. No. CK89762)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.H., SR., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Melinda White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

D.H., Sr. (Father), appeals from the November 17, 2011 jurisdictional order and the December 2, 2011 dispositional order of the juvenile court. The court adjudged minor D.H., Jr. (D.H.), a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect).[1] Father challenges the sufficiency of the evidence to support the court's jurisdictional findings. B.L. (Mother) is not a party to this appeal. We conclude the jurisdictional findings are supported by substantial evidence, including Father's leaving a revolver at D.H.'s home, Father's gun-related criminal history, and Father's making of false statements regarding an incident in which D.H. discharged a loaded gun and wounded a six-year-old relative. We affirm the jurisdictional and dispositional orders.

BACKGROUND

On September 21, 2011, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivision (b) on behalf of D.H., born in 2008, and Stephanie S., born in 2004. Father is not the parent of Stephanie S., who is not a party to this appeal. On October 28, 2011, DCFS filed a first amended petition. As amended and sustained, paragraph b-1 of the petition alleged under section 300, subdivision (b) that on September 17, 2011, Mother placed the minors in a dangerous situation when D.H. and his six-year-old maternal uncle, K.L., played with a loaded gun inside the family home, resulting in the gun discharging and inflicting a gunshot wound to K.L.'s hand and elbow. Mother gave misleading information to medical personnel regarding the gunshot wound. Under section 300, subdivision (b), the amended and sustained petition alleged in paragraph b-2 that Mother has a seven-year history of substance abuse and is a current abuser of marijuana, alcohol, and cocaine, which rendered her incapable of providing regular care for the minors. On prior occasions in 2011, Mother was under the influence of marijuana and alcohol while the minors were in her care. Under section 300, subdivision (b), the amended and sustained petition alleged in paragraph b-3 that Father had a criminal history of carrying a loaded

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

firearm and being a felon in possession of a firearm. Father provided false statements regarding the September 17, 2011 incident and "has had a thirty-two revolver" at D.H.'s home.

The events giving rise to the petition are as follows. On September 17, 2011, DCFS received a referral that six-year-old maternal uncle K.L. had suffered a gunshot wound to the left hand and forearm while being baby-sat by Mother. The treating nurse and physician stated that a bullet had hit K.L.'s left palm and traveled through his forearm and the wound was not from an electrical burn. Mother, however, had called 911 and told paramedics that K.L. had been playing alone outside her home when he touched something that burned his hand.

On September 18, 2011, DCFS and police officers interviewed Mother at home. Mother informed DCFS that D.H. currently was at Father's home, and although she disclosed Father's phone number, she refused to disclose his address and the address and phone number of maternal great-grandmother, with whom Stephanie S. was residing. Mother said that on the previous day, D.H., but not Stephanie S., had been home when K.L. was injured. K.L. had been playing outside with neighborhood children who were jumping over a fence. When K.L. came inside with a bleeding left palm and elbow, Mother called 911 for an ambulance, reported that K.L. had been burned, and was instructed to bandage the wound. Mother told DCFS that K.L. might have touched a hot, loose wire while playing. Mother denied having any firearms in the home and that K.L. had suffered a gunshot wound in her home. She also denied taking drugs or having a drinking problem. Mother allowed DCFS and the police officers to inspect the bedroom, but did not give them permission to touch anything. DCFS noted that there were clothes piled on the floor of the bedrooms.

In a subsequent interview with DCFS, Mother said that D.H. was not at home when K.L. was injured. Mother said she was on her cell phone and smoking a cigarette outside while K.L. and Mother's 11-year-old brother James were playing inside her home. She went inside when she heard K.L. crying. K.L. and James told her that K.L. had touched something hot. Mother said James told the paramedics that the

neighborhood kids "grabbed it and ran down the street" and that if K.L. had shot himself, the weapon must have come from outside. She said that her boyfriend "went to jail with his gun."

K.L. initially told DCFS that he had touched something in an alley that had hurt him and that Mother told him to say that because "'we did not want to go to jail.'" Later, K.L. told DCFS that D.H. had found a "'grey and black'" gun from beneath his clothes in his bedroom and shot him. He stated that Mother had put the gun there.

K.L.'s mother, maternal great-aunt, told DCFS on September 18, 2011, that she was at work when "'they'" told her that K.L. had been burned. When she went to Mother's home, James told her that K.L. had been shot. K.L. told her that when D.H. found a gun under some clothes in an open closet he raised his hands and was then shot by D.H. Mother told K.L. to lie about what had happened to him and to say that he had been burned. Maternal great-aunt stated that Mother's boyfriend, a gang member who had been arrested the previous week, kept a gun at Mother's house. Mother said she was going to, but did not, dispose of the gun. Maternal great-aunt stated that Mother had been using marijuana for the past seven years, she had seen Mother under the influence two weeks previously, Mother sometimes passed out from alcohol, and gang members frequented Mother's home. Maternal great-grandmother reported to DCFS that she was caring for Stephanie S. and was willing to bring her to the DCFS office even though Mother had instructed her not to cooperate with DCFS.

DCFS's background check on Father revealed that in 2007, he was convicted of two felonies, burglary and carrying a concealed weapon with a prior conviction; in 2009, he was found to be in violation of probation for possession of marijuana; in 2010, he was convicted of the felony of being a felon in possession of a firearm; and in 2011, he was convicted of driving without a license. At the time of the shooting, Father was on probation for carrying a concealed weapon. Father's home presented no obvious safety risks. Father told DCFS that "'[t]he part about [D.H.], I know for a fact, that's not true. Because he was with my brother at a football game at that time.'" Father denied that he was aware Mother had a gun in the house or of her association with gang members. He

was aware that Mother had used marijuana. Father was on the telephone with Mother when K.L. "came up bleeding and she said I'll call you back." He believed that K.L. might have found a gun while playing outside because Mother resided in a gang neighborhood. He did not know if Mother had a boyfriend in a gang. Father admitted that he had carried weapons in the past for protection. He stated that he had a "'32 revolver. It would be at my boy's house. It wouldn't be at my house.'"

On November 1, 2011, Mother pleaded no contest to the amended allegations in the first amended petition. At the contested adjudication hearing on November 17, 2011, the juvenile court sustained the paragraph b-1 and b-2 allegations of the first amended petition. The court admitted into evidence a letter written on behalf of Father by the Venice Community Housing Corporation that stated Father began participating in the Venice YouthBuild program on August 1, 2011, and was enrolled in classes, life skills counseling sessions, and construction training programs with an anticipated end date of August 1, 2012. The letter stated that Father had been a responsible student, and based on his "self-reports," appeared to be a caring and appropriate father to his son. After argument, the court sustained the paragraph b-3 allegation against Father. The court stated that Father's history of criminal activity, including at least two felony convictions for carrying loaded firearms and being a felon in possession of firearms, was "not too stale."

At the disposition hearing on December 2, 2011, the court placed D.H. with paternal grandfather and ordered family reunification services for Father, consisting of participation in individual counseling to address underlying issues contributing to his criminal behavior and felony convictions regarding possession of firearms, and his role in ensuring that D.H. resided in a safe environment. The court ordered monitored visitation for Father. The court also ordered services and monitored visitation for Mother. Father appeals.

DISCUSSION

There is sufficient evidence to support jurisdiction under section 300, subdivision (b)

Father contends that there is insufficient evidence to support jurisdiction under section 300, subdivision (b). We disagree

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if "[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 . . . ."

"A jurisdictional finding under section 300, subdivision (b) requires: '"(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." [Citation.]' [Citations.] The third element 'effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).' [Citation.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) DCFS has the burden of showing specifically how the minor has been or will be harmed. (*Id.* at p. 136.)

The juvenile court's jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) "'"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]"' [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of

speculation or conjecture cannot support a finding. [Citation.]" (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

We conclude that substantial evidence supports the juvenile court's assertion of jurisdiction over D.H. Father had a gun-related criminal history and left a .32-caliber revolver at D.H.'s house, even though he was not there to supervise him and knew that Mother lived in a "'gang neighborhood" and used marijuana. D.H. found a loaded gun and shot K.L. And after K.L. was shot, Father made false statements concerning D.H.'s whereabouts on the day of the shooting.

Nevertheless, Father contends that his two-year-old felony conviction is too remote to establish jurisdiction and there was no evidence that the firearms he was convicted of possessing were loaded, citing *In re Sergio C.* (1999) 70 Cal.App.4th 957. But *In re Sergio C.* does not assist Father. In that case, the appellate court reversed the juvenile court's jurisdictional finding because there was insufficient evidence of the father's alleged history of prior convictions in that his misdemeanor "arrests were for being in the wrong places with the wrong people, and there were no convictions." (*Sergio C.*, at p. 959.) Here, on the other hand, Father suffered three prior felony convictions, for felony burglary, carrying a concealed weapon with a prior conviction, and being a felon in possession of a firearm. And he was on probation for carrying a concealed weapon at the time of the incident. Whether the evidence showed that weapons he carried were loaded does not affect our conclusion that substantial evidence supports the court's finding of jurisdiction.

Father also contends that his statement that his gun "would be at my boy's house" did not mean the gun was at D.H.'s house, but probably referred to a friend's house. As previously stated, issues of fact and issues of credibility are for the trier of fact, and we cannot substitute our judgment for that of the juvenile court. Nor are we persuaded by Father's arguments that there was no evidence that Father ever harmed D.H. and there was no causal link between Father's behavior and any physical harm to D.H. As discussed, Father left a revolver at D.H.'s home. D.H. shot K.L., and although D.H. was not physically harmed, he easily could have been the victim rather than the shooter. And

Father's subsequent false claim that D.H. was not at the home when the shooting occurred shows an unwillingness to take responsibility for the welfare of D.H., supporting the finding that D.H. was at substantial risk of serious harm.

We conclude that there is sufficient evidence to support jurisdiction under section 300, subdivision (b).

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.