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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.R., A Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.R.,
Objector and Appellant.

B283111

(Los Angeles County
Super. Ct. No. DK20528)

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

Elizabeth C. Alexander, under appointment by the Court of
Appeal, for Objector and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel and Stephanie Jo Reagan, Deputy
County Counsel, for Defendant and Respondent.

A.R. (father) appeals from the jurisdictional finding that his one-year-old daughter was at risk of suffering serious physical harm inflicted non-accidentally by him. Although there was significant testimony of domestic violence between the parents, father argues that the juvenile court's finding is not supported by substantial evidence because daughter was merely a bystander. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2016, mother told a staff member at her transitional housing facility that father had choked her in the parking lot. Father was banned from the property. After mother threatened staff, she was asked to move out of the facility. While she was packing her belongings, father forced his way in to the lobby, and started arguing with mother. He was holding daughter, who was 10 months old at the time. Law enforcement arrived, and father threatened he was going to shoot the staff. Mother pushed father and grabbed daughter from him. The police officers escorted the family off the property.

In October 2016, mother was driving a car with father and daughter as passengers. Father was feeding daughter with a bottle when mother told him the child did not want to be fed. Father became angry and began to strangle mother while the car was moving. Mother lost control of the car and collided with another vehicle. Father refused to exit the car. Mother drove to the police station, and told a police officer she was afraid for her life. The officers observed the skin on her neck was red. Law enforcement arrested father, and issued mother a temporary restraining order.

When a social worker from the Department of Children and Family Services (Department) spoke with mother and father,

they denied there was domestic violence between them. Mother and father subsequently refused to return the social worker's calls, and evaded the social worker's attempts to meet with them. The Department filed a petition alleging daughter was at risk of harm due to mother and father's domestic violence, including the incident when father "choked mother's neck with father's hands." The family had four prior referrals in 2016. At the detention hearing in December 2016, the court detained daughter.

The jurisdiction hearing was continued to February 2017. Mother and father continued to deny that any domestic violence had occurred. Mother and father now claimed that mother had gone to the police station in October to report domestic violence by a prior boyfriend, not by father.

Mother pled no contest to the petition. Father asked for the petition to be dismissed. The court sustained the allegations against mother and father under Welfare and Institutions Code section 300, subdivision (a).¹ At the subsequent disposition hearing, the court removed daughter from parental custody, authorized monitored visits, and ordered reunification services. Father timely appealed.

DISCUSSION

Father argues there was no substantial evidence the domestic violence between him and mother placed daughter at risk of suffering serious physical harm inflicted non-accidentally by him. He contends that "since [daughter] had suffered no

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

injuries, she was not at substantial risk of any future injury.” We disagree.²

Section 300, subdivision (a) provides for jurisdiction when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent [A] court may find there is a substantial risk of serious future injury based on [1] the manner in which a less serious injury was inflicted, [2] a history of repeated inflictions of injuries on the child or the child’s siblings, or [3] a combination of these and other actions by the parent . . . which indicate the child is at risk of serious physical harm.” “The child need not have been actually harmed in order for the court to assume jurisdiction. [Citation.]” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598 (*Giovanni F.*)). We review the juvenile court’s jurisdictional findings for substantial evidence. (*Ibid.*)

Father’s argument that section 300 subdivision (a) requires a child to have suffered an injury is not supported by the statute.

² Father also briefly argues the petition was inadequate because it “did not allege any potential harm to [daughter] might be done non-accidentally.” The petition alleged that the domestic violence presented a risk of serious physical harm under section 300, subdivision (a), and that the October 16, 2016 incident in which father was arrested for domestic violence was a basis for jurisdiction. The petition was not required to explain that daughter could have been injured when father strangled mother while she was driving. We conclude these allegations gave father sufficient notice of “ ‘ “*specific factual allegations* against him . . . with sufficient particularity to permit him . . . to properly meet the charge.” ’ [Citations.]” (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1036–1038.)

The first sentence of section 300, subdivision (a) provides that the statute applies when a child “has suffered *or* there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally” Although father contends that the second sentence limits the circumstances under which the court may find a “substantial risk” of harm to the three enumerated scenarios, we agree with *In re Marquis H.* (2013) 212 Cal.App.4th 718 that the second sentence is permissive, not mandatory.

The *Marquis H.* court explained: “We do not read section 300, subdivision (a), as prohibiting the exercise of jurisdiction in situations other than those specified in the second sentence of the statute. In our view, the permissive language of the second sentence merely sets forth scenarios in which the statute may apply. . . . ‘[T]he Legislature could not be expected to foresee and codify every mode of physical abuse which may place a child at substantial risk of physical harm by an abusive parent.’ ” (*Marquis H.*, *supra*, 212 Cal.App.4th at p. 726.)

Father also argues that domestic violence is only a basis for jurisdiction under subdivision (b) of section 300, not subdivision (a). Subdivision (b) provides for jurisdiction where a parent’s neglect puts a child at risk. Father cites to *In re Heather A.* (1996) 52 Cal.App.4th 183 for the proposition that “domestic violence in the same household where children are living *is* neglect.” (*Id.* at p. 194.) While we do not dispute that holding, it is not exclusive.

Other courts have held that domestic violence can place a child at substantial risk of harm under section 300, subdivision (a). The court in *Giovanni F.* found that the father’s driving with one hand while hitting and choking mother with the other placed the child, a passenger in the car, at substantial risk of serious

physical harm inflicted non-accidentally by father. (*Giovanni F.*, *supra*, 184 Cal.App.4th at pp. 600-601.) Here, similarly, father choked mother while she was driving in a car with daughter as a passenger. Father only stopped choking mother when their car collided with another vehicle. As in *Giovanni F.*, the violence in the car was sufficient, by itself, to support jurisdiction under section 300, subdivision (a). (*Ibid.* [holding that the father’s “violence in the car would have been sufficient, by itself, to support jurisdiction under section 300, subdivision (a).”].)

DISPOSITION

The judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

STRATTON, J.