Filed 7/20/12 In re A.H. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re A.H. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.H. et al., Defendants and Appellants.	B236022 (Los Angeles County Super. Ct. No. CK57697)

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant E.H.

John Cahill, under appointment by the Court of Appeal, for Defendant and Appellant J.H.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, William D. Thetford, Deputy County Counsel for Plaintiff and Respondent.

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E.H. (mother) and J.H. (father) appeal from the juvenile court's jurisdictional and dispositional findings and order filed on August 25, 2011, adjudging their six children dependants of the court under Welfare and Institutions Code section 300.[1] We conclude that the court's findings that father hit seven-year-old daughter A.H. in the face and that parents gave her excessive amounts of alcohol are supported by substantial evidence. So is the court's disposition, which allowed mother to move into the home where the children were placed. We affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

The six children subject to this order are A.H. (born in 2003) and her five brothers: Wi.H. (born in 2004), B.H. (born in 2006), J.H. (born in 2008), Wa.H. (born in 2009), and E.H. (born in 2010). We previously reviewed the family's long involvement with the Department of Children and Family Services (DCFS) in *Jeffrey H. v. Superior Court* (June 13, 2006, B189786 [nonpub. opn.]) and *In re B.H.* (July 31, 2009, B211691 [nonpub. opn.]).

The family's dependency history goes back to 1998, when mother's son from a prior marriage was subject to a dependency case in Orange County. Father, who was mother's companion at the time, was convicted of willful cruelty to the child, and mother failed to reunite. In 2005, the juvenile court sustained a petition as to A.H. and Wi.H. based on father's earlier abuse of their half sibling. During the pendency of the case, the parents abducted the children to Nevada. The case was closed in 2007 after the parents complied with all court orders. In 2008, a petition was sustained as to the four oldest children, based on the parents' failure to treat B.H.'s anemia. We affirmed the findings as to B.H. and reversed as to his siblings. The case was closed over DCFS's objection in January 2010.

Referrals made in 2009 alleged that the children played unsupervised, the parents often fought loudly, father antagonized the neighbors, and police had been called several

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

times. A social worker observed that the children appeared healthy, but was not allowed to speak to them. In May 2010, the parents did not allow police to enter the family home to investigate a report that father slapped and threw A.H. into the house. When the officers eventually breached the door, they found no evidence of physical abuse. A.H. told the officers that father repeatedly instructed her to tell them that he never hurts the children.

In April 2011, the parents were arrested on obstruction charges stemming from the May 2010 incident. An anonymous neighbor told the social workers who responded at the time of the arrest that she had seen A.H. with a black eye a month earlier. A.H. reportedly told the neighbor's daughter that father had punched her in the eye. The children were taken into protective custody.

A.H. denied physical abuse and explained the black eye resulted from having been hit by her brothers. When the social worker reminded her, "I thought you said it was your dad," A.H. stated, "Oh yeah it was. I think it was my dad. He put some ice on my black eye. I remember that I was this age when it happened. He punched me on the eye." A.H. added, "He punched me several times. Oh I meant once." She was reluctant to elaborate because the social worker would "write it down." Nevertheless, she provided the following explanation, "My little brother spilled juice and then Way-Way was running towards me. My dad said I wasn't holding the baby right." When the social worker asked if this was the reason she was punched, A.H. said, "Yes, because I wasn't holding the baby right. My dad just put ice."

A.H. stated she was homeschooled and took care of her brothers all day, made the beds, cooked, and cleaned the floors. She said she always drank beer when she was "on a break from work." She claimed her parents gave her dark beer to drink and listed Boston Lager, Y-L, and Irish Red. She was "not allowed to hold the baby after drinking beer." A.H. elaborated, "I kind of feel dizzy only when I drink wine. I have drank the raspberry and blackberry wine. . . . When I drink beer I don't get dizzy. I just drink it every other day. . . . I drink with my mom and dad. . . . I just drink beer if I am really thirsty. Then I

feel dizzy but not tired. I'm not a tired girl." A.H. added that mother "only drinks when she is not holding the baby."

The dependency petition filed on April 28, 2011, alleged in relevant part that father had given A.H. a black eye, the parents had allowed her to drink wine and beer on a weekly basis, and mother nursed the two youngest children while under the influence of alcohol. The children were detained.

A dependency investigator interviewed A.H., who said the parents never hit the children and disciplined them through timeouts. A.H. reported she had seen her parents drink beer and wine many times, that father drank "a little bit everyday [*sic*]," and mother drank every afternoon but less than father. A.H. also said she "had a little bit of beer everyday [*sic*], just the dark beer like Samuel Adams." She confirmed that mother would not allow her to carry her baby brothers after drinking beer and that drinking wine made her dizzy. A.H. reported that Wi.H. also drank beer but did not like it and that Wa.H. "loves beer! Sometimes he would cry for beer, and my mom would tell me let him get some." According to A.H., only B.H. was not allowed to drink beer or wine because "he would be cursed." The family drank wine only to celebrate the Sabbath. The parents sometimes acted "silly" after drinking. In a subsequent interview, A.H. reaffirmed that the parents gave her beer to drink during her breaks from household work. She did not crave alcohol in foster care.

According to A.H., her parents often screamed at each other. Father would make mother cry, which caused A.H. to cry. She saw father slap mother once.

Mother told the dependency investigator that the children were disciplined with timeouts and they drank kosher grape juice to celebrate the Sabbath. She denied letting the children drink alcohol, and claimed that the parents occasionally drank kosher beer.

The criminal case against the parents was dismissed and they were released from jail in June 2011. They complained about the children being placed in four different foster homes, not receiving sibling visits or kosher meals, and the older children being allowed to go to public school and summer camp. Father claimed to have filed lawsuits

against the social workers and the DCFS. He reportedly was belligerent and intimidating during monitored visits with the children.

The dependency investigator interviewed the family's former neighbor, R.P., who claimed to have seen A.H. with a black eye. When R.P.'s daughter asked A.H. about it, A.H. replied in English, "We hit each other." The daughter translated in Spanish that "her father and her hit each other." R.P. also claimed she saw Wi.H. with a black eye, and she had seen father drinking.

The maternal grandmother also was interviewed. She described father as violent and abusive, and she believed the parents used metamphetamine and alcohol.

In August 2011, all six children were placed together in the home of a family friend in San Diego.

At the jurisdictional hearing, the court sustained mother's objections to R.P.'s statements and the earlier anonymous statement alleging that A.H. said father had given her the black eye. The court explained that it would not base its findings solely on these statements.

At the hearing, mother testified that the parents never use physical discipline, and A.H.'s black eye resulted from being hit in the eye with a toy by one of her brothers. Mother denied drinking alcohol while pregnant with any of the children other than a weekly glass of wine to celebrate the Sabbath. She claimed to have taken a religious vow to completely abstain from alcohol while pregnant with B.H. But she also admitted that she was under DCFS supervision during that pregnancy, had to participate in treatment programs, and test for alcohol. Mother testified the children were allowed a sip of wine on the Sabbath, and father occasionally would allow A.H. a sip of beer, but not on a daily basis.

Father denied ever hitting the children. He confirmed the children were allowed one sip of wine on the Sabbath, while he would drink one or two glasses of wine. He admitted allowing A.H. and Wi.H. to sip beer "[b]ecause I can. Because it's within the law." The court noted that at one point during father's testimony, his attorney

communicated with him with a nod. The court also noted that father was hostile to the entire court proceeding.

The court sustained three counts in the petition: count a-1, alleging father gave A.H. a black eye by hitting her with his fist and mother failed to protect her, placing her and her siblings at risk of physical harm; and counts b-2 and j-2, alleging that the parents allowed A.H. to drink beer and wine on a weekly basis, endangering her physical health and safety and placing her siblings at risk of physical harm. The record is inconsistent as to count b-4, which alleged that mother nursed Wa.H. and E.H. while under the influence of alcohol. The court initially stated that the count was sustained but later said it was dismissed. The court dismissed counts b-1 and j-1, which were based on the same allegation as count a-1. It also dismissed counts b-3 and b-5, alleging mother and father had a history of alcohol abuse, and count b-6, alleging that the home was heated with a propane canister.

After the children were declared dependants of the court, father became disruptive and was ordered escorted out of the courtroom. The court ordered reunification services, parenting education, and individual counseling for the parents, as well as anger management therapy for father. The children were ordered to counseling and to be assessed for fetal alcohol syndrome.[2] The court allowed mother to move into the caretaker's home and gave father monitored visits.

The parents timely appealed.

DISCUSSION

The parents challenge the dependency court's jurisdictional and dispositional findings. On appeal, these findings are reviewed for substantial evidence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574.) Substantial evidence is relevant evidence that "is reasonable in nature, credible, and of solid value. [Citation.]" (*Id.* at pp. 574–575.) Issues of credibility are resolved by the trier of fact. (*Id*. at p. 575.) Conflicts in the

[2] There is some indication in the record that the children have facial features consistent with fetal alcohol syndrome.

evidence are resolved on appeal in favor of the prevailing party. (*Ibid*.) The juvenile court's order will not be reversed '"unless it exceeds the bounds of reason."' (*Ibid.*)

I

A. Count a-1

Section 300, subdivision (a), provides that jurisdiction may be assumed if "[t]he 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 or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm."

As amended, count a-1 was sustained solely on the allegation that father hit A.H. in the face giving her a black eye. The allegation was initially based on an anonymous statement, which the parties assume was made by the family's former neighbor, R.P. When she was reinterviewed, R.P. stated that A.H. told her daughter, "We hit each other," and the daughter translated into Spanish that father and A.H. hit each other. The court sustained mother's section 355 objection to these statements, contained in the social worker's reports, and stated that it would not base its findings solely on them.

Section 355 does not bar hearsay evidence at a jurisdictional hearing, but if a timely objection is made, the evidence must be corroborated by direct or circumstantial evidence, however slight, from which the truth of the hearsay statement can be reasonably inferred. (*In re B.D*. (2007) 156 Cal.App.4th 975, 983–984.) A.H. provided such evidence when she explained that father punched her because she was not "holding the baby right." Mother argues that A.H.'s statement was inherently inconsistent because A.H. initially stated that her brother hit her and only agreed with the social worker's suggestive remark, "I thought you said it was your dad who hit you." Father adds that the social worker's suggestion was false as it was based on the anonymous neighbor's reporting a statement A.H. never made.

The parents essentially ask us to reweigh the evidence. But under the substantial evidence standard of review, "we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) We cannot weigh the evidence, judge its effect or value, resolve conflicts in it, or resolve conflicts in the reasonable inferences that could be drawn from it. (*Id*. at pp. 52–53.)

Father assumes A.H. never said her father hit her because R.P.'s daughter mistranslated A.H.'s actual statement, "We hit each other." This assumption requires us to draw a series of inferences in his favor: that the neighbor's initial anonymous report, like R.P.'s statement, was based on a mistranslation of what A.H. actually said; that R.P., who apparently does not speak English, correctly understood what A.H. said in that language; and that the pronoun "we" refers to someone other than father and A.H. We cannot resolve conflicts in the evidence on appeal, nor can we draw inferences in his favor.

The weight to be given to the statements A.H. made to the social worker is a matter for the trier of fact, and even slight evidence is sufficient to corroborate the neighbor's statement. (*In re B.D.*, *supra*, 156 Cal.App.4th at pp. 983–984.) While some of A.H.'s responses appear to have been at least in part prompted by the social worker's suggestive statements and questions, A.H. did not simply agree that she previously said father hit her. After saying, "I think it was my dad," A.H. added, "I remember that I was this age when it happened. He punched me on the eye." She then volunteered that she was punched several times, only to correct herself that she was punched only once. The inconsistencies in her response support an inference that she was trying to protect father. This inference additionally is supported by her stated reluctance to elaborate because the social worker would "write it down," as well as by her 2010 statement to police that father coached her to say he never hurts the children. Whether by themselves or in conjunction with the neighbor's statements, A.H.'s statements to the social worker were substantial evidence that father caused her black eye.

The court's ruling ultimately must be reasonable in light of the whole record. (*In re David M.* (2005) 134 Cal.App.4th 822, 829.) The record in this case is replete with evidence of father's anger management issues, beginning with his conviction of child cruelty, allegations of domestic violence and prior abuse of A.H., and his belligerence during the current dependency proceedings.[3] On this record, the court's taking jurisdiction over the children under section 300, subdivision (a) was reasonable.

So long as findings relating to one parent's actions are supported by substantial evidence, jurisdiction over the children is proper, regardless of whether any of the petition's allegations relate to the other parent. (*In re John S.* (2001) 88 Cal.App.4th 1140, 1143.) But since allegations against mother are relevant to the court's disposition order and may be relevant to future orders (see *ibid.*), we address her challenge to the jurisdictional finding that she failed to protect A.H.

In sustaining count a-1, the court apparently did not believe mother's testimony that father never physically disciplines the children and that A.H. was hit in the eye by one of her brothers. In light of the family's dependency history and allegations in the record that father hits the children and has slapped mother, the court could reasonably conclude that mother was aware of father's anger management issues and was willing to cover for him rather than protect the children.

B. Counts b-2 and j-2

Generally, a single jurisdictional finding is sufficient, and if it is supported by substantial evidence, we need not address the challenge to the other findings. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) But we have discretion to do so for the benefit of a parent. (See *ibid.*; see also *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) We consider counts b-2 and j-2 because of mother's additional challenge to the court's

[3] The parents represent that the juvenile court was inclined to dismiss count a-1 and only sustained it because father disrupted the court proceedings. But the court was prepared to sustain identical allegations under count b-1. Thus, its change of mind does not indicate that it considered the evidence supporting count a-1 insufficient.

dispositional ruling. Since respondent takes the position that count b-4 was dismissed, we do not consider the parents' challenge to that count.

Under section 300, subdivision (b), the court may assert 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 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." A jurisdictional finding under this subdivision 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."' (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) Jurisdiction under subdivision (j) requires proof that "[t]he child's sibling has been abused or neglected, . . . and there is substantial risk that the minor will be abused or neglected . . . ."

Counts b-2 and j-2 are identical. They allege that the parents caused A.H. to drink beer and wine on a weekly basis, thus endangering her health and safety and placing her and her siblings at risk of physical harm.

Mother claims that the parents allowed A.H. one sip of wine or beer occasionally, mostly in observance of the Sabbath, and did not allow her to become intoxicated or drink more than a sip. She then argues that the parents' religious practice cannot be a basis for jurisdiction. A.H.'s description of her alcohol consumption was very different from that given by her parents. Conflicts in the evidence and credibility issues are resolved by the trier of fact. (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 575.) The juvenile court was entitled to disbelieve the parents and believe A.H.

While A.H. stated that the family drank wine only on the Sabbath, she reported that her parents gave her beer during her breaks from household work either every day or every other day. She was able to name at least four brands of beer and distinguished between dark and light beer. A.H. claimed she drank a little, but she never said she only took a sip, and she stated she drank beer when she was really thirsty. She also said that

drinking wine or beer made her dizzy, and she was not allowed to carry her baby brothers after drinking beer.

A.H.'s statements establish that at seven years of age she regularly drank beer with her parents, and her beer drinking was not tied to any religious practice. That she drank beer to quench her thirst implies she drank more than a sip, and her feeling dizzy after drinking indicates that she felt the influence of alcohol. That she was not allowed to carry her baby brothers after drinking supports the inference that the parents were aware of the influence alcohol had on her.

"The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) Courts have declined to hold that isolated alcohol use by parents provides sufficient basis for jurisdiction. (See e.g. *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1397.) But this is not a case of an adult's single lapse of judgment after drinking. When parents give a seven-year-old girl alcohol on a daily basis in amounts that they know affect her physically, it is reasonable to conclude that the child's alcohol consumption borders on substance abuse. That A.H. does not appear to have an alcohol addiction or any documented health or developmental problems is not dispositive. "Juvenile dependency law in general does not require a child to be actually harmed before [DCFS] and the courts may intervene. [Citation.]" (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 3.) '"The purpose of dependency proceedings is to prevent risk, not ignore it."' (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104, quoting *In re Eric B.* [(1987)] 189 Cal.App.3d 996, 1004.)

A.H.'s statements provide substantial evidence that her brothers are at risk as well. A.H., who is the oldest of the six children, claimed that she spent her days taking care of her siblings, and she drank beer while taking breaks. Although she was not allowed to carry her youngest brothers after drinking beer, there is no evidence that she was relieved of any of her other chores. The record contains allegations by neighbors that the children are often seen unsupervised by an adult. The court could reasonably conclude that

leaving the boys in the care of a seven-year-old girl who is under the influence of alcohol exposes the children to substantial risk of harm. Additionally, A.H. reported that the parents allowed her to give beer to Wa.H. because he loved beer so much that he would cry for it. Wa.H. was less than two years old when he was detained. It can be inferred that A.H. had free access to alcohol and was allowed to ration it out, and that the parents regularly gave the children alcohol regardless of age.

The evidence supports the court's jurisdiction under section 300, subdivisions (b) and (j).

II

Father's challenge to the disposition is solely based on his claim that the jurisdictional findings are not supported by evidence. Mother additionally argues that removing the children from her custody was not supported by the evidence.

Section 361, subdivision (c) allows dependent children to be removed from the home where they live at the time the petition is filed only if "'there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and there are no "reasonable means" by which the child can be protected without removal. [Citation.]"' (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528.) Such reasonable means include removing the offending parent from the home while allowing the nonoffending parent to retain custody of the children if the parent demonstrates a plan for protecting the children from future harm. (§361, subd. (c).)

Mother argues that everyone agreed only father has an anger management problem. She complains that the court did not even consider maintaining the children in her custody with the aid of an order that father leave the home.

Substantial evidence supports the court's disposition order. Mother initially denied that the children were given alcohol on the Sabbath, and she later maintained that their alcohol consumption was largely based on the family's religious practices, plus an occasional sip of father's beer. But A.H. testified she drank beer with both parents, and mother allowed her to give beer to her baby brother. Under counts b-2, and j-2, mother

was an offending parent as much as father. Considering the discrepancies between mother's and A.H.'s statements about the black eye and the alcohol consumption, the court could conclude that mother was willing to cover up father's, as well as her own, transgressions.

Additionally, the record indicates that father dominates the family and believes he needs to save the children from being "stolen." In light of the family dynamic and its dependency history, which includes abduction of the children during a dependency proceeding and father's continued defiance of authority, the court could conclude that, on her own, mother might not comply with an order that requires father to leave the home. In allowing mother to live with the children in the caretaker's home, the court expressed precisely this concern. It admonished mother, "I do not want [father] to cause you to lose your ability to remain in the home with your children. Are we clear?" The juvenile court's order, allowing mother to live with her children in the caretaker's home, was reasonable under the circumstances.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.