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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re G.R., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.R., et al.,

Defendants and Appellants.

B277016

(Los Angeles County
Super. Ct. No. CK95703)

APPEAL from orders of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and Appellant I.R.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant A.T.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

The Los Angeles County Department of Children and Family Services (the Department) alleged 16-year-old G.R. and 12-year-old R.R. needed the protection of the juvenile court because of their parents' history of domestic violence and their father's alcohol abuse. We consider whether substantial evidence supports the juvenile court's decision to assume jurisdiction over the girls and to remove the younger of the two from her father's physical custody.

I. BACKGROUND

I.R. (Father) and A.T. (Mother) are the parents of both girls. Years before the events encompassed by this appeal, Mother and Father had completed parenting classes and participated in a domestic violence support group as part of voluntary family maintenance efforts initiated by the Department.

Later, in March 2016, the Department received a referral through a child abuse hotline that R.R. was the victim of exploitation and general neglect by Mother. The caller stated R.R. and Mother had appeared at a Student Attendance Review Board meeting because R.R. had run away from home three times in the past month and had "school related issues." The Department began an investigation in response to the referral.

A department social worker interviewed R.R. at her school. R.R. said she lived with Mother, and her older sister G.R. lived with Father in a separate home. When asked what led to her parents' separation, R.R. said "they had a discussion and decided to separate." A school counselor, however, told the social worker that Mother had removed herself from the family home because "[F]ather drinks a lot and would become aggressive."

The social worker then interviewed Mother at her home. Mother admitted she recently separated from Father because he physically and verbally abused her. Mother stated that the last incident of domestic violence occurred about nine months earlier, in June 2015. At that time, Father punched Mother in the face, and G.R. and R.R. intervened and tried to separate the parents from fighting.

Mother said she left the home after the June 2015 attack, but returned a month later, accompanied by a law enforcement officer, to pick up the girls because they were not attending school. Mother was able to take R.R. with her, but G.R. preferred to remain with Father and the officer declined to force G.R. to leave, telling Mother that G.R. was old enough to decide with whom she wanted to live.

During the interview with the social worker, Mother also revealed she continued to have unwanted contact with Father since leaving him. Father remained responsible for transporting R.R. to school, and Father was given Mother's address and phone number so both could participate in addressing R.R.'s academic problems. Since then, Mother reported that Father frequently called and threatened her when he was intoxicated—including an instance approximately two months earlier (i.e., in January 2016) when he texted her a photograph of a gun with a message stating “this is the gun that I’m going to use on you.”¹ Mother told the social worker that Father was most aggressive and abusive when under the influence of alcohol, and she said she hoped to move

¹ During the interview, Mother showed the social worker the image of the gun she received.

soon because she was afraid of Father and did not want him to know where she lived.

The Department subsequently interviewed G.R. at her school. G.R. said she was living with Father, her adult sister, her brother-in-law, and her nephew. G.R. said she was not afraid of Father and preferred to live with him because his home was closer to her school. G.R. acknowledged that, in her words, Father “drinks here and there.”

Mother and R.R. thereafter visited with a mental health assessor recommended by the Department, and the assessor called the social worker to provide a report on the assessment. As related by the social worker, Mother told the mental health therapist that Father’s physical abuse had been ongoing for 12 years and she had tried to hide the abuse from her children. R.R. reportedly told the therapist that she had recently been cutting herself and was upset with Father because he drinks a lot. During the mental health assessment session, R.R. also reportedly “expressed being triggered by [F]ather’s excessive drinking, not seeing her sister, and boot camp [that she attended after Mother enrolled her].”

With the Department’s investigation still underway, Mother called the social worker on April 4, 2016, and stated she had visited G.R. the previous day while Father was not at home. Mother expressed concern that G.R. was not eating well. Mother also disclosed that Father had called her later in the evening on the same day she had gone to visit G.R.; Mother said she hung up once she could tell Father was intoxicated.

The next day, April 5, the Department sought and obtained a warrant to remove the girls from Father’s physical custody. The Department executed the warrant the following day, taking

both girls into custody at school and then releasing them to Mother. The social worker left her business card at Father's residence, along with details of planned dependency court proceedings, on the day the children were taken into custody. Father did not contact the social worker until two days later, April 8. When they spoke, Father denied there had ever been domestic violence in the home, he denied threatening to harm Mother, and he denied having a history of substance abuse.

The Department filed a dependency petition on April 11, 2016, alleging G.R. and R.R. had suffered, or were at substantial risk of suffering, serious physical harm as a result of the parents' "12 year history of engaging in violent altercations" and Father's alcohol abuse, "which renders [Father] incapable of providing regular care for the children." In the domestic violence count of the petition, the Department specifically alleged Father had threatened Mother by sending her the text message with the picture of the gun and Mother had "failed to protect the children in that [Mother] allowed [Father] to have unlimited access to the children." At the initial detention hearing on the petition, the juvenile court did not detain G.R. from either parent but ordered R.R. detained from Father and released her to Mother. The court also entered a temporary restraining order protecting Mother against Father.

In preparation for a later-scheduled jurisdiction hearing, the Department prepared a report that, among other things, summarized additional interviews of the parents and their daughters. Mother, in her interview, said Father is "really a good person" when he is sober. But she said his drinking was out of control and he had hit her for "years," including several occasions when fights would erupt in the girls' presence despite Mother's

attempts to avoid fighting in front of the children. Mother said she did not call the police or report any of the violence because she was scared of Father. He had, for instance, “put a gun to [her] head and threaten[ed] to kill [her].” Mother also reiterated that Father continued to threaten her by phone after she left him, and Mother played two voicemail messages for the Department investigator (of unknown dates) in which Father could be heard threatening to hurt Mother and her family while slurring his words and sounding intoxicated. Father, in his interview, maintained he had never hit or threatened Mother in any way.²

G.R. told the Department she had been living with Father since the detention hearing (as the court’s order permitted) because he was “more flexible” than Mother. G.R. said she recalled her parents having verbal fights but she claimed she did not recall seeing “them laying hand[s] on each other.” G.R. also told the Department that she would see Father “drinking here and there but not intoxicated to the point [of] . . . barfing everywhere.” When the Department interviewed R.R., she admitted she had seen her parents fight once—two or three years earlier when Father punched Mother on her arm. R.R. said Father would come home drunk and “[h]e was drunk when they would fight.” According to the Department’s report, R.R. had

² Father did admit he would “drink occasionally” when he went out with his friends. Father also said that the “best thing would be for my daughters to be with their mother. But if [G.R.] doesn’t want to go live with her I have to support her and let her stay here with me.”

been refusing to have any visits with Father during the ongoing dependency proceedings.

The juvenile court held the jurisdiction and disposition hearing in June 2016. The court received the Department's reports in evidence, as well as two exhibits offered by Mother, and heard argument from counsel. The Department asked the court to sustain the petition, citing, among other things, Mother's interview statements and the text and picture of the gun referenced in the Department reports. Father argued he and Mother had been separated for over a year and there was thus no current risk to either of the girls. Father additionally intimated there was insufficient proof that any significant violence between the parents had occurred because "a lot of this is [Mother's] word against . . . Father's" Mother argued she should be "dismissed from the petition" because the Department had not shown "a current nexus for Mother's ability in failing to protect her children." Mother emphasized it had been almost a year since the last physical altercation between her and Father occurred, and Mother contended she had made significant efforts since then to protect herself and her children. Minor's counsel ultimately took no position on whether the court should assume jurisdiction.

The juvenile court sustained the domestic violence and alcohol abuse allegations in the petition under Welfare and Institutions Code section 300, subdivision (b).³ In explaining the basis of its ruling, the court stated: "I find that the most recent episode [of domestic violence] was early this year consisting of

³ The court struck a petition count alleged under Welfare and Institutions Code section 300, subdivision (a).

Father sending a text message to Mother with a picture of a gun stating he's going to use it. And the fact that there has not been a physical incident since the parents separated due to domestic violence, I find, does not mean that there's no longer a risk. [¶] The fact is that [R.R.] is having behavioral problems. The parents share two children together. They're going to be in contact going forward. And I believe that there is still a risk of further violence, and I believe that the children are at risk as a result.”⁴ The court further found the children were at risk of serious harm from Father's alcohol abuse, specifically highlighting the voicemails Mother played for the Department investigator and R.R.'s statement that she was “triggered” by Father's excessive drinking.

Proceeding to disposition, and after inviting further argument from all parties, the juvenile court continued R.R.'s placement with Mother and ordered R.R. removed from Father's physical custody. The court ordered that Father would retain physical custody of G.R. The court additionally entered a permanent restraining order to protect Mother from Father, but allowed “peaceful contact” between the two if necessary for school functions or to permit the unmonitored visitation between Father and R.R. that the court ordered (provided Father tested “clean” for drug and alcohol use). Although Father did not argue against removal of R.R. from his custody, or suggest during the hearing that there were any reasonable alternatives to removal, he entered an objection for the record to the disposition order the court made.

⁴ The court also expressly found that Mother failed to protect her daughters from the domestic violence with Father.

II. DISCUSSION

The juvenile court’s jurisdiction findings are supported by sufficient evidence. As we will explain, the principal challenge to the findings leveled by Mother and Father—that there was evidence of past domestic violence but no current risk of harm to the children—fails in light of Father’s post-separation violent threats to Mother and other evidence in the record that entitled the juvenile court to conclude there was an ongoing risk to G.R. and R.R.’s safety. Removal of R.R. (but not G.R.) from Father’s physical custody was also warranted by much the same evidence, as well as Father’s refusal to acknowledge the problems that led to the juvenile court’s dependency findings.

A. *Standard of Review: Substantial Evidence*

“In reviewing a challenge to the sufficiency of the evidence supporting the [juvenile court’s] jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We view the record in the light most favorable to the juvenile court’s orders, and Mother and Father, as the parties challenging those orders, bear the burden to show there was no evidence of a sufficiently substantial nature. (*Ibid.*; *In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

This same substantial evidence standard of review applies to Father’s challenge to the disposition order removing R.R. from his custody. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80; *In re F.S.* (2016) 243 Cal.App.4th 799, 811-812; *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; see also *In re I.J.*, *supra*, 56 Cal.4th at p. 773 [“In reviewing . . . the jurisdictional

findings *and disposition*, we determine if substantial evidence . . . supports them”], emphasis added.)

B. Substantial Evidence Supports the Court’s Jurisdiction Findings

A juvenile court may assert jurisdiction over a child pursuant to Welfare and Institutions Code section 300, subdivision (b)(1)⁵ where “[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” (§ 300, subd. (b)(1); see also *In re R.T.* (Jul. 20, 2017, S226416) __ Cal.5th __ [2017 WL 3082219, *4 [first clause of section 300, subdivision (b)(1) “requires no more than the parent’s ‘failure or inability . . . to adequately supervise or protect the child’”].) “Although ‘the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection. [Citations.] A parent’s past conduct is a good predictor of future behavior.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; see also *In re F.S.*, *supra*, 243 Cal.App.4th at pp. 814-815.)

⁵ Undesignated statutory references that follow are to the Welfare and Institutions Code.

There was substantial evidence before the juvenile court that G.R. and R.R. were at substantial risk of harm from their parents' domestic violence and Father's alcohol abuse. The evidence that Mother and Father had a history of domestic violence—including Mother's interview statements, R.R.'s interview statements, and the texts and voicemails seen and heard by Department personnel—was quite substantial. And it is well-established, of course, that proof of domestic violence between parents is usually sufficient to establish the requisite risk of harm to satisfy section 300, subdivision (b)(1). (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 135 ["Even though [their daughter] had not been physically harmed, the cycle of violence between the parents constituted a failure to protect her 'from the substantial risk of encountering the violence and suffering serious physical harm or illness from it'"]; *In re R.C.* (2012) 210 Cal.App.4th 930, 941-942; *In re E.B.* (2010) 184 Cal.App.4th 568, 576 ["Both common sense and expert opinion indicate spousal abuse is detrimental to children[,]” and “[p]ast violent behavior in a relationship is “the best predictor of future violence””]; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Further, there was also substantial evidence that Father's alcohol abuse, which triggered his violent behavior and impaired his ability to adequately supervise his daughters—especially the younger R.R.,⁶ exposed G.R. and R.R. to a substantial risk of harm.

⁶ We find it significant in this regard that Father admitted the “best thing would be for my daughters to be with their mother,” but stated he nevertheless continued to allow G.R. to stay with him. Mother told the Department that G.R. stayed with Father because G.R. knew she would not have the same freedom if she lived with Mother and Father allowed G.R. “to be

Mother and Father argue, however, that the domestic violence between them posed no risk of harm that persisted to the time of the jurisdiction hearing. They emphasize they had separated by the time of the hearing and the last physical violence between them had occurred a year earlier in June 2015 (i.e., the altercation when G.R. and R.R. intervened and attempted to stop them from fighting). In support of their contention, the parents cite *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*) and cases that stand for the general proposition that only a current risk of harm will suffice as a foundation for jurisdiction.

In *Daisy H.*, the mother claimed the father choked and pulled her hair, but the incident happened “at least two, and probably seven, years” before the dependency petition was filed. (*Daisy H.*, *supra*, 192 Cal.App.4th at p. 717.) There was no evidence the alleged hair-pulling and choking occurred in the children’s presence, the children denied ever seeing domestic abuse between their parents, and they stated they were not afraid of their father. (*Ibid.*) On these facts, the *Daisy H.* court found the evidence insufficient to support a finding that the acts of domestic violence placed the children at a substantial risk of physical harm, stating: “Physical violence between a child’s parents may support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the

out.” In addition, R.R. told the mental health assessor that Father’s heavy drinking upset her and was one of the triggers for her self-harming behavior.

child physically or placed the child at risk of physical harm.”

(*Ibid.*)

This case is different than *Daisy H.* in just about every respect. Most importantly, there is credible and solid evidence from which the juvenile court could conclude (and did conclude) violence between Mother and Father was reasonably likely to continue absent court intervention. Father continued to harass and threaten Mother after their separation, going so far as to send her a picture of a gun along with a threat to kill her. That threat occurred just two months before initiation of the Department’s investigation (and five months before the jurisdiction hearing)—a marked contrast from the facts in *Daisy H.* In addition, Mother went to Father’s home to visit G.R. knowing his threats had continued since their separation and obviously well-aware of their prior violent history. While Father was not present at the time, and Mother apparently remained of the view that Father was “really a good person” when sober, there was no guarantee that Father would not unexpectedly return home drunk, which would again expose G.R. to a risk of serious physical harm. More broadly, as the juvenile court observed, each parent had custody of one of the daughters and there would thus inevitably be occasions where the parents would interact even if living separately. These ongoing interactions and Father’s expressed eagerness to continue the violence make this a much different case than *Daisy H.*

Other features of this case also differ from *Daisy H.* Here, there is evidence that the violence did occur in the children’s presence (R.R. admitted witnessing a prior fight and Mother described the June 2015 altercation where both G.R. and R.R. were present), whereas in *Daisy H.* the children were not present

when the mother and father fought. It is true that, like the children in *Daisy H.*, G.R. expressed no fear of Father, as did R.R. initially. But R.R. later refused to visit with Father, and the juvenile court was entitled to infer (particularly in light of R.R.'s statements to the mental health assessor) that the refusal indicated she did harbor some fear of Father.⁷ Plus, Father's categorical denial of the violence is itself evidence that contributes to the risk of harm and further supports the need for juvenile court supervision and services to ameliorate that risk. (*In re D.P.* (2015) 237 Cal.App.4th 911, 918 [jurisdiction appropriate where parents had a history of domestic violence and the mother continued to minimize domestic violence and failed to demonstrate a willingness to change].)

Although Father was undoubtedly the instigator of the violence between the parents, it bears highlighting that the evidence is also adequate, under the deferential standard of review that applies, to support the jurisdiction findings against Mother. By her own admission, Mother had a 12-year history of violence with Father but took no action during that time to report the abuse. Her efforts to seek a restraining order once dependency proceedings began are commendable, but the juvenile court could reason that action came too late to inspire confidence that Mother had overcome her prior inability to address Father's violence. Indeed, other evidence suggested she had not: Mother

⁷ In any event, the lack of expressed fear is not dispositive. (*In re R.C.*, *supra*, 210 Cal.App.4th at p. 942 [affirming juvenile court's jurisdiction finding based on the father's domestic violence even though one of the children who witnessed one of the violent episodes still "embraced [the father] fully"].)

said Father had repeatedly threatened her by phone but she had not yet managed to change her phone number; she knew there was a risk of violence if she encountered Father but went to his home to visit G.R.; she persisted in the view that Father was really a good person when sober, which tended to minimize all that had transpired (and continued to transpire) between them. In other words—indeed, the words of section 300—there was substantial evidence Mother had demonstrated an inability to adequately supervise or protect her daughters, which gave rise to a substantial risk of serious physical harm.⁸

Moreover, Mother and Father have focused their arguments almost entirely on the domestic-violence-based jurisdiction finding and largely ignored the alcohol abuse basis for jurisdiction. There was strong evidence that Father’s excessive consumption of alcohol continued to be a problem (one he failed to acknowledge) at the time of the jurisdiction hearing.

⁸ Mother also argues the juvenile court’s decision to refrain from removing G.R. and R.R. from Mother’s custody “indicated that the court did not believe that the girls were at substantial risk of serious physical harm in [Mother’s] care and custody.” As Mother must know having joined in Father’s briefing on appeal, the argument is meritless in light of the differing standards of proof that govern juvenile court jurisdiction findings on the one hand, and removal determinations on the other. We quote the passage of Father’s brief that makes the point: “Thus, even though a child may be found a dependent, she may not be removed from her parents’ custody ‘unless 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.]”

And, as the facts of this case make clear, his alcohol abuse was a problem that impacted his ability to adequately supervise and protect his children, especially R.R. (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 452-453 [the father's supervision of the children while under the influence of marijuana posed a risk of harm because the marijuana use had a negative effect on the father's demeanor towards the children].) The alcohol abuse jurisdiction finding would alone warrant affirmance of the jurisdiction determination. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

C. Substantial Evidence Supports the Juvenile Court's Removal of R.R. from Father's custody

“A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [].) ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ (*In re Diamond H.* [(2000)] 82 Cal.App.4th [1127,] 1136.) The court may consider a parent's past conduct as well as present circumstances. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900 [].) [¶] Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. (*In re Kristin H.* [(1996)] 46 Cal.App.4th [1635,] 1654; § 361, subd. (c)(1).)” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.) A court's finding of jurisdiction over a child is *prima facie* evidence that the child

cannot safely remain with the parent. (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 135.)

Here, our discussion of the substantial evidence supporting the jurisdiction findings applies equally to the unpersuasive contention that no substantial evidence supports the juvenile court's order removing R.R. from Father's physical custody. Father's excessive drinking and the violent temper that it apparently triggered provided an ample basis to conclude there was a substantial danger to R.R.'s physical health unless removed from his custody. In fact, R.R. herself identified Father's drinking as one of her "triggers" and she further admitted to engaging in physically self-harming behavior.

Father argues removal was inappropriate by relying on three decisions that are inapposite. In two of them, the reviewing court reversed a removal order because the abuse was an isolated incident and the offending parent had either expressed remorse or had been fully cooperative in taking advantage of services offered by the child protection agency. (*In re A.E.* (2014) 228 Cal.App.4th 820, 826; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) Those, of course, are not our facts. Father also relies on *In re Ashly F.* (2014) 225 Cal.App.4th 803 and argues there were reasonable alternatives to removal that went unconsidered, namely, unannounced visits by Department personnel to ensure Father was participating in services. This, however, was not a reasonable means of protecting R.R. At the time of the juvenile court's disposition order, Father was in complete denial that he had a problem with alcohol or domestic violence, and unannounced visits would not prevent Father from drinking to excess, with all its demonstrated negative collateral consequences. (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 170

[substantial evidence supported removal order where, among other things, parent was in denial about physical abuse].)
Removal of R.R. was proper.

DISPOSITION

The juvenile court's orders are affirmed.

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BAKER, J.

We concur:

KRIEGLER, J., Acting P.J.

DUNNING, J.*

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