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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ELENA K., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A. K.,

Defendant and Appellant.

B235140

(Los Angeles County
Super. Ct. No. CK85607)

APPEAL from an order of the Superior Court of Los Angeles County,
Anthony Trendacosta, Referee. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

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INTRODUCTION

A. K. (Father) appeals from a juvenile court order sustaining jurisdictional allegations that his 16-year-old daughter, Elena K., was a person described by Welfare and Institutions Code section 300, subdivision (b).¹ We find that substantial evidence supported the jurisdictional finding sustaining allegations that Elena K. was a person described by section 300, subdivision (b), and affirm the order.

FACTUAL AND PROCEDURAL HISTORY

Detention and Section 300 Petition: On November 29, 2010, the DCFS received a referral alleging physical and emotional abuse and general neglect of Elena K. After Elena told a school counselor about physical abuse by Father, El Segundo Police officers responded to El Segundo High School regarding a child abuse report.

Elena was interviewed, and stated that Mother and Father were married but separated due to Father's domestic violence. Father did not live in the home but Mother allowed him to come and go as he pleased. Elena said Father was very domineering. In the November 26, 2010, incident, Elena said that when Father asked her to play Monopoly with him, she told him she had plans to visit a friend. Shortly thereafter Father arrived at Mother's home and repeated his desire to play Monopoly, but Elena said she was not in the mood to play Monopoly. Father responded that if Elena did not make him happy, she would not go out with her friend. The argument escalated. Elena said Father was in a very bad temper, used profanity, and called her names like "bitch, stupid, no good, lazy." Father threw her iHome alarm clock against the wall and stepped on it. As she customarily did when Father became angry, for fear of being hit, Mother left the house and did not protect Elena. Father then hit Elena about twenty times with an open hand to the face and head, and grabbed her arm so hard that she was still sore three days later. Elena left and went to a friend for fear of her life. The next day Elena returned home, but remained afraid of Father because Mother allowed him to stay in the home. On Monday, November 29, 2010, Elena disclosed the abuse to a school counselor, saying

¹ Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

she was very frightened of Father and would not want to return home since Mother would rather keep an abusive husband and drive away her daughter. Elena stated that as long as Father was in the home she wanted nothing to do with her family.

Father was interviewed, and stated that he had the right to discipline his child and to run his home without interference by outsiders, and stated the DCFS and El Segundo police were interfering in his family business and he would consult his attorney. Father vehemently refused to participate in counseling and anger management. He said nothing was wrong with him and that if there were issues they were from Elena. When the CSW told Father that Elena would be detained and placed in protective custody, Father answered that he did not care and that the DCFS could do whatever they wanted.

Because Elena's safety could not be assured in the parents' home, she was taken into protective custody and placed in a foster home.

A CSW again interviewed Father on December 1, 2010. Father stated that he came from a different culture, where children are mandated to obey parents and authority figures. He said that in the past few months Elena had become defiant, disrespectful, and manipulative in the home and found excuses to avoid doing anything asked of her. Father stated that he never hit Elena or asked her to leave the home, and attributed Elena's problems to her friend Jessica B., whom he believed indoctrinated and manipulated Elena. Father stated that he had arguments with Elena but denied ever hitting her. Father denied any domestic violence in the home.

The CSW interviewed Mother, who said Elena had become rebellious in the past few months and lied to get her way. Mother also stated, however, that Elena was a good child but needed to stay away from bad influences, and her friends were exerting too much influence on Elena. Mother complained that Jessica B. manipulated Elena. Mother denied that domestic violence occurred in the home.

On December 2, 2010, the DCFS filed a petition alleging that Elena was a person described by section 300, subdivision (b), in that on November 26, 2010 and on at least one other occasion, Father inappropriately disciplined Elena, which endangered her

physical and emotional health and safety and placed her at risk of physical and emotional harm, danger, physical abuse, and failure to protect.

At the December 2, 2010, detention hearing, the juvenile court found that a prima facie case was established for detaining Elena as described by section 300, subdivision (b), and ordered Elena detained from the parents and placed in the care and custody of the DCFS. The juvenile court ordered the DCFS to provide reunification services, ordered Elena to receive individual counseling, ordered the DCFS to refer the parents to family counseling and parenting for teens, and ordered a Team Decision Meeting to develop a plan to return Elena to Mother's home with Father out of the home.

Adjudication: On December 6, 2010, the DCFS returned Elena to Mother's home contingent on Father agreeing to remain out of the house until a December 10, 2010, pre-release investigation hearing. At a Team Decision Meeting on December 9, 2010, Father could not provide the DCFS with a commitment to remain out of the house until the December 28, 2010, pre-resolution conference hearing. At the December 10, 2010, hearing, however, Father agreed to remain out of the home during court proceedings and Elena was ordered released to Mother.

The DCFS jurisdiction report reported that Elena stated that when she went to school the following Monday, she went to a counselor for advice. She stated that she thought she could not go home and that the counselor misunderstood that as abuse and called the police. Elena admitted that she and Father frequently argued. She said the arguments arose because she wanted to be with her friends, not with her parents, and stated that Father grew up differently and expected different things from her.

Elena's school counselor, Stephanie Burns, stated that Elena told someone on her water polo team that she did not know if she could go home. The coach sent her to the counselor, whom she told that she had not wanted to play Monopoly with Father and told him she wanted to go to her friend's house. Burns stated that Elena said Father became angry at Elena and that Father slapped her on the top of the head. Burns asked her if this was the first time that happened. Elena answered that he had hit her before, but he left no bruises on her because he knew better than to do that. Burns concluded that Elena had

some “fear issues” with Father and did not know if she had a home to go to that night. Burns reported to a child abuse hotline.

Burns stated that Elena and Mother told her about a previous incident in which the El Segundo police arrested Mother on September 20, 2010. The police were called to a potential domestic dispute. Father had become out of control, and Mother told him there was a knife in the kitchen and she was not afraid to use it to protect herself and Elena. Although the police arrested Mother, she was in one room and the knife was in another room. The police report of the incident stated that Father let himself into the apartment, but Mother told him she did not want him inside and that Elena did not want to speak to him. An argument ensued. Mother attempted to prevent Father from gaining access to the room, and told him if he did not leave she would get a knife and began to walk to her bedroom. Before reaching the bed where the knife was hidden she heard Father leave the apartment. Elena and Jessica B. were in the apartment, but when Father arrived and began to argue with Mother, they barricaded themselves inside Elena’s bedroom and braced the door to keep Father from entering. They heard Mother say she would get a knife if Father did not leave. Father described the incident differently. He said that when he arrived, argued with Mother, and said he needed to speak with Elena, Mother told him she did not want him to speak with Elena and Elena did not want to speak with him. Father said Mother was not going to stop him from speaking to Elena. Mother took his right hand and left arm and pulled him away from Elena’s room. Then she ran to her bedroom, grabbed a 16-inch kitchen knife, held it over her right shoulder, and charged at him. Father left the apartment and called 911.

During the investigation the police interviewed Elena, who said she had a normal relationship with Mother and was happy living with her, but did not like to visit Father and was afraid of him because he hit her. The last time Father hit her was Thanksgiving 2009, when they were on a seven-day road trip. Elena said Father hit her about 20 times per day. In one incident, when she was not video-recording the trip properly, Father became angered and hit Elena on the face with the back of his hand. Throughout the trip, he punched her in the arms and legs. Father’s hits to the face, arms, and legs resulted in

bruising. Elena said Father had a bad temper, angered easily, and called her names in Serbian like “cow,” “retard,” and “moron.” Elena stated that when Father became angry, she feared him and anticipated being hit. She had never seen her parents hit each other, but they did not get along.

The DCFS also interviewed El Segundo Police Detective Lemus, who stated that although Mother was arrested and charged with assault with a deadly weapon, the police should have brought in Father. Before speaking with the parents, Lemus spoke with Elena, who told him Father had hit her “about 20 times.” Elena also told Lemus that during a cross-country trip a year earlier, Father hit her 20 times a day.

The DCFS attached a written statement, dated December 9, 2010, by Elena, which stated that the CSW wrote false statements in the detention report.

The DCFS recommended that the juvenile court declare Elena a dependent child of the court and order family maintenance services.

The matter was set for a contested adjudication hearing.

As of March 30, 2011, Mother reported that she had not enrolled in any programs and did not feel that DCFS intervention was necessary or appropriate. There was no information whether Father had enrolled in any programs. Elena reported no visits with Father.

On March 30, 2011, the juvenile court adjudicated the matter and heard testimony by Christina Lin, the dependency investigator assigned to this case. She testified that Elena was the victim of Father’s emotional abuse, because Elena told the police she feared Father, to the extent that she had to leave the house. Coupled with Elena’s statements on different occasions that Father hit her 20 times on the head, Lin believed that was emotionally unhealthy for a child. Lin admitted that Elena did not tell Lin that Father hit her.

Elena K. also testified. She denied that Father hit her 20 times on the head, and denied she was ever hit by Father. She also denied that she told El Segundo police officer Humphrey, her school counselor Stephanie Burns, or investigating CSW Felix Nwoso that Father hit her. She testified that she made it clear to Nwoso that Father had

not hit her, and denied telling Nwoso she was afraid of Father. Although she admitted telling Nwoso she was afraid to go home, it was because she did not want her parents to ground her. Elena testified that she never saw her parents engage in physical altercations. Although she heard them argue, none of those arguments caused her to be so fearful that she barricaded herself in her room. She stated that she was not afraid of Father or uncomfortable around him, that her parents were good parents, she loved them and wanted to be with them, and wanted her father home.

Stephanie Burns testified that Elena came to Burns's office on November 29, 2010, because she was concerned about whether she could go home. Because of a conflict with her parents the previous evening, she was concerned about whether they did not want, or would not allow, her to come home. Burns testified that Elena told her that Father had hit her head by a slap with an open hand, which hurt her. Burns called the El Segundo police, and Officer Humphreys responded. Burns testified that Mother shared information about a prior domestic dispute.

The juvenile court stated that Elena's statements made to the police, the social worker, and the school counselor were closer to the truth than her testimony recanting those statements. The juvenile court found that Elena was a person described by section 300, subdivision (b), and continued the matter for a dispositional hearing.

Disposition: At the dispositional hearing on May 25, 2011, the juvenile court determined pursuant to section 360, subdivision (b) that Elena was a person described by section 300, ordered Elena, Mother, and Father placed under DCFS supervision for a period consistent with section 301, and terminated jurisdiction.

Father filed a timely notice of appeal.²

² The order for informal supervision under section 360, subdivision (b) is the equivalent of a dispositional order, an appealable order from which jurisdictional findings are subject to review. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1260-1261.)

ISSUES

Father claims on appeal that substantial evidence did not support a finding of serious physical abuse.

1. Standard of Review of Jurisdictional Allegations

Section 300 sets forth the grounds for juvenile court jurisdiction over those declared dependent children of the court. Pursuant to subdivision (b), a child who “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse” is within juvenile court jurisdiction and may be adjudged a dependent child of the court. The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child subject to the petition comes within juvenile court jurisdiction. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379.)

This court reviews jurisdictional findings according to the substantial evidence test, and thus we review the evidence before the juvenile court in the light most favorable to its order. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.)

2. Substantial Evidence Supported the Jurisdictional Findings

The issue is whether substantial evidence supports jurisdictional findings that Elena was a person described by section 300, subdivision (b) in that Father failed or was unable to supervise or protect Elena adequately in that he inappropriately disciplined Elena, endangering her physical and emotional health and safety and placing her at risk of physical and emotional harm.

During a police investigation of domestic violence in November 2010, Elena said she did not like to visit Father and was afraid of him because he hit her. Elena stated that during a seven-day trip in 2009, Father hit her about 20 times per day. In one incident, when she was not video-recording the trip properly, Father became angered and hit Elena on the face with the back of his hand. Throughout the trip he punched her in the arms and legs, resulting in bruising. Elena said Father had a bad temper, angered easily, and called her names in Serbian like “cow,” “retard,” and “moron.” Elena stated that when Father became angry, she feared him and anticipated getting hit.

On November 26, 2010, when Elena and Father argued after she refused to play Monopoly with him, Elena said in the ensuing argument Father was in a bad temper, used profanity and called her names like “bitch, stupid, no good, lazy,” and threw her iHome alarm clock against the wall and stepped on it. Father then hit Elena about twenty times with an open hand to the face and head, and grabbed her arm so hard that she was still sore three days later. When Elena returned to school on Monday, she disclosed the abuse to a school counselor and said she was very frightened of Father.

Although Father denied hitting Elena and Elena’s testimony at the adjudication hearing recanted her earlier statements, the trial judge found those recantations not credible. The juvenile court stated that Elena’s statements to the police, the social worker, and the school counselor were closer to the truth than her testimony recanting those statements. Under the substantial evidence test, we uphold the lower court’s findings if substantial evidence supports them. This court does not evaluate witnesses’ credibility, reweigh the evidence, or resolve evidentiary conflicts. Instead we draw all reasonable inference in support of the findings, consider the record most favorably to the juvenile court order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) We find that substantial evidence supports the juvenile court’s jurisdictional findings that Elena was a person described by section 300, subdivision (b).

Father argues that even if Father slapped Elena’s head and grabbed her arm as she walked away, that did not cause serious physical harm. Section 300, subdivision (b), however, states that a child comes within the juvenile court’s jurisdiction where she “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 . . . her parent . . . to adequately supervise or protect the child[.]” (Italics added.) In considering whether to sustain a dependency petition based on the parent’s failure to protect the child pursuant to section 300, subdivision (b), evidence of past conduct may be probative of current conditions and in some cases a risk to a child’s physical health and safety is inherent in the absence of adequate supervision and care. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1650.)

The evidence supported the determination that Elena was at risk of serious physical harm. Besides the evidence that Father hit Elena repeatedly during a seven-day trip in 2009, on November 26, 2010, Father angrily chased Elena, hit her head, and forcefully grabbed her arm. Mother left the house when Father became angry with Elena and did not protect Elena from Father on November 26, 2010. There was evidence that Father regarded himself as in control of Elena and required her obedience, became angered when he did not get his way, and that his anger led to excessive, inappropriate physical discipline. The juvenile court drew the reasonable inference that because inappropriate physical discipline had occurred and would continue to occur, there was a risk of serious physical harm to Elena.

We affirm the jurisdictional findings.

DISPOSITION

The order is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.