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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.W., a Person Coming Under the Juvenile Court Law.	B241719 (Los Angeles County Super. Ct. No. CK27306)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DARRYL W., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Darryl W. (Father) appeals from jurisdictional findings and the ensuing dispositional order that removed his daughter, L.W., from his physical custody and ordered him to participate in reunification services, including monitored visitation. Father contends that the evidence was insufficient to justify the juvenile court's finding of jurisdiction pursuant to Welfare and Institutions Code section 300, subdivision (b),[1] claiming there was no substantial evidence to support the finding that domestic violence had occurred between Father and L.W.'s Mother, Kelly W. (Mother), on more than one occasion.[2] We disagree and affirm the juvenile court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

I. Initiation of Dependency Proceedings

L.W. (born in May 2006) came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in early January 2012 when her parents engaged in an angry verbal confrontation in her presence that culminated in Father striking Mother in the face and Mother calling the police.

DCFS filed a section 300 petition on January 11, 2012, alleging that Mother and Father have a history of engaging in violent altercations in the child's presence, including the incident of January 6, 2012, during which Father struck Mother in the face. The petition further alleged that Father physically abused the child by striking her buttocks with a belt and a wire hanger.

Mother explained to a social worker that she and Father had been divorced for two years and Father had visitation with L.W. every other weekend. On January 6, 2012, she and Father argued over the telephone about what time he would bring L.W. home to

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

[2] Mother is not a party to this appeal.

Mother. When Father and L.W. arrived, she met them outside and tried to discuss the matter with Father. He hit her in the face in L.W.'s presence. Mother tried to take a picture of Father's license plate with her cell phone and Father tried to take the phone from her. Father left and Mother called the police. They arrived, interviewed Mother and L.W., and subsequently filed a report.

Mother told the social worker that Father had anger management issues. In 2009, she had obtained a restraining order against him because he had threatened her. She could not locate the restraining order and did not know if it remained in effect. She did not think Father had physically abused the child but stated that he verbally abused L.W. During the confrontation Father said to L.W., "'Fuck you — you want to be with your Mamma.'" Mother said that Father frequently referred to L.W. using derogatory terms.

L.W. told the social worker that she saw Father hit Mother in the face and saw them fight over Mother's cell phone. Father said to her, "you acting like your motherfucker mamma you want stay with your mamma." L.W. said she was displeased with Father for what he had done and might not want to visit with him for a while. She said Father had hit her with a belt and a wire hanger on the buttocks but she never had any marks or bruises as a result. She said Mother used proper discipline with her. She felt safe with both of her parents.

L.W.'s half-brother T., age 15, was not home when the incident occurred. He said he had never witnessed any domestic violence between Mother and Father.[3] L.W. had never told him Father abused her. T. denied any physical abuse by Father. Also present in the home was L.C. (born April 2010), L.W.'s half-brother. The social worker was unable to reach Father to discuss the situation with him.

DCFS recommended that L.W. be permitted to remain in Mother's custody and that Father's visits with L.W. be monitored. It recommended that Mother and Father both participate in individual counseling, parenting classes, and a domestic violence program.

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3 Father is not T.'s biological father, but T. referred to him as his stepfather.

At the detention hearing on January 12, 2012, the court found a prima facie case for detaining the child from Father. Counsel for L.W. informed the court that she did not wish to have visitation with Father at that time, although she might be amenable to visitation in a neutral setting with a DCFS monitor. The court granted Mother's request for a temporary restraining order against Father and granted monitored visitation for Father to be held at the DCFS office.

II. The February 16, 2012 Jurisdiction and Disposition Report

On February 16, 2012, DCFS filed a jurisdiction and disposition report. Father's live scan results indicated, among other entries, that he was convicted of petty theft in 1982, grand theft from a person in 1984, kidnapping in 1988, first degree murder in 1988, misdemeanor battery in 1997, and driving under the influence of alcohol in 2003 and 2010. The results also indicated Father had been arrested in 1996, 1998, and 2006 for infliction of corporal injury on a spouse and in 1996 for willful child cruelty. The 1996 child cruelty incident involved his sister, who he reportedly choked, dragged approximately 30 feet, and threw against a wall.

DCFS reported that in February 2006, when Mother was pregnant with L.W., Father and Mother were involved in a domestic dispute in front of a police station. A police officer observed Mother deliberately drive her car into Father's car, which was being driven by another woman. Father then got into the car with Mother and tried to punch Mother, repeatedly poked her in the eye, and yelled profanities at her, all while police officers attempted to restrain him. Several officers had to forcibly subdue Father. Father appeared to be intoxicated at the time. Shortly thereafter, at a hearing in Father's criminal case in which Father was charged with spousal battery, Mother said she did not want to seek a protective order. Father said he and Mother were separated and that Mother had previously vandalized one of his cars. He had reported that incident to the police.

In 2010, there was another incident in which Mother obtained a temporary restraining order against Father and apparently sought a permanent restraining order.

Father filed a declaration in opposition in which he stated that Mother claimed he had beaten her on a regular basis, but he denied that and pointed out there were no police reports or medical records to substantiate her claim. He also denied that he had threatened to kill or harm her son T. T. filed a declaration in those proceedings stating Father (referred to by T. as "my stepfather") did not threaten to kill him, that he had never heard or seen Father abuse L.W., and he had never heard Father threaten to kill Mother.

When the social worker interviewed T. in February 2012 regarding these dependency proceedings, T. said that about once a year when Father drinks too much he "goes off," yelling, cussing, and maybe hitting someone; he did not say who would get hit but said he had never seen Father touch Mother. However, Mother had told T. that Father hit her. T. said that Mother had engaged in domestic violence and was hit by his father and by Father (his stepfather). T. said that his younger half-brother L.C.'s father did not hit Mother, nor did her current boyfriend. He said that he and Mother were not afraid of Father, but L.W. might be afraid of Father when he had been drinking because Father gets crazy when he drinks.

L.W.'s maternal aunt told the social worker that she had never witnessed any domestic violence between Mother and Father. She had heard both of their sides regarding restraining orders they each had sought against the other and she was not sure who to believe. She described the parents as being like oil and water but said they both loved the child.

The social worker also interviewed L.W. again. The child said she had not seen Father hit Mother at any other time besides the incident on January 6, 2012. Father had spanked her on the buttocks with cardboard from a wire hanger on about three occasions and sometimes cursed at her and Mother. L.W. said she once saw Father have a fistfight with T. Also, L.W. said Father acted crazy and yelled when he drank alcohol and L.W. was afraid of him at those times. She felt he needed help to stop drinking alcohol. L.W. said Mother did not curse at her but sometimes spanked her with a belt or her hand. The

social worker noticed a scab on the child's hand and L.W. said that she had burned herself while using an iron.

Father told the social worker that he loved L.W. and wanted to be part of her life, but he did not believe that he was the problem and he was not willing to participate in any court-ordered services. Father said he had done nothing wrong and he should be able to visit with L.W. at any time. Mother said she was willing to follow court orders.

DCFS recommended providing Mother with family maintenance services and Father with family reunification services. DCFS also filed an amended section 300 petition adding the allegation that Mother physically abused L.W. by hitting her on the buttocks with her hand and a belt.[4] In addition, on March 2, 2012, DCFS filed a section 300 petition regarding abuse and neglect by Mother of L.W.'s two brothers. Mother was arraigned on the amended section 300 petition regarding L.W. and the new section 300 petition regarding her half-brothers on March 6, 2012. The matter was continued until March 29, 2012.

III. Walk-on Request Regarding Father's Visitation

On March 28, 2012, Father's counsel walked on a request that the court order DCFS to ensure Father was given his full two-hour weekly visits. Father said he had not seen L.W. for two weeks. The court ordered DCFS to prepare a written visitation schedule for Father and ensure that he received monitored telephone contact with L.W.

IV. The Jurisdiction and Disposition Report for the Section 300 Petition Regarding L.W.'s Half-brothers

In late March 2012, DCFS reported that Mother denied that she and Father had a history of domestic violence. She acknowledged that they had verbal disputes in the past and had made threats but she denied any physical violence had occurred prior to the January 6, 2012 incident. Mother said she did not wish to discuss the matter again. She

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[4] In addition, on March 2, 2012, DCFS filed a section 300 petition regarding abuse and neglect by Mother of L.W.'s two half-brothers.

said she had already provided DCFS with all relevant information and that any further information could be found in previous reports. Mother told an "Up Front" family preservation evaluator that she had struggled with controlling her violent behavior for a long time and had been suffering from depression and anxiety for the last month.

Mother maintained that her physical discipline of L.W. was appropriate. She voiced the opinion that a five-year-old was capable of using an iron under supervision. However, after L.W. burned herself Mother no longer allowed her to use the iron. Mother said the burn was minor, indeed L.W. had not cried out or even told her about the burn until the next day. At that time Mother applied first aid and did not feel further medical attention was required.

L.W. told the social worker she had not seen Father since January 2012 because he did not want to visit with her at the DCFS office. She said she loved Father and was not fearful of him. L.W. confirmed that the burn had not hurt much when it happened and she had not told Mother about it right away. She had been ironing because she wanted to help Mother.

The social worker questioned T. about the fistfight L.W. had described. T. said he had "popped" L.W.'s hand because she broke his radio. Father did not like T. doing that and the two had argued and "tussled." T. did not feel his family needed DCFS supervision.

On March 29, 2012, the juvenile court held a pretrial resolution conference. DCFS filed a second amended petition regarding L.W. and a first amended petition regarding her half-brothers. The second amended petition regarding L.W. added allegations that Mother physically abused L.W. and that L.W. sustained a burn when Mother allowed her to use an iron. The court continued the matter until the following month to permit the parties to engage in mediation.

On April 19, 2012, the matter was on calendar for adjudication for all three children. The court found that DCFS had not conducted due diligence in trying to locate the boys' fathers, and continued the matter. Father told the court he still had not been given his full visitation. His visits had been cut short by the social worker. The court

ordered DCFS to ensure Father received two-hour visits, to provide Father with a written visitation schedule, and to permit increased telephone contact for Father. The court continued the matter until May 25, 2012.

V. The May 25, 2012 Jurisdiction and Disposition Hearing

DCFS filed a brief report informing the court that Father had received a written visitation and telephonic contact schedule on April 11, 2012, and had signed an acknowledgement of its receipt. Nonetheless, Father maintained he had not received a schedule. The social worker also reported that she had suggested to Father that he participate in conjoint family therapy with L.W. in order to increase his bond and communication with his child. He responded, "I ain't doing none of that."

On April 6, 2012, the social worker arrived with L.W. 30 minutes late for a visit with Father. L.W. said hello to Father but he did not acknowledge her, instead confronting the social worker about being late. L.W. said she had to use the bathroom but did not make it there and urinated on herself. The social worker helped her clean up as much as possible but she did not have a change of clothes. Father became angry, cursed at the social worker, and said he was not going to let his daughter "sit in no piss." He then left without saying goodbye to L.W. The social worker noted that the paternal aunt was supposed to monitor the visit but she was not present. She later told the social worker Father was supposed to pick her up and transport her to the visit but he had not done so.

The following week, the visit occurred as planned with the paternal aunt monitoring. L.W. was happy and playful, at one point approaching Father and hugging him, but Father mostly sat and watched her play. The social worker indicated efforts should be made to encourage the parent-child bond. The social worker also observed that during Father's monitored telephone contact with L.W. their conversations were limited in scope and brief. On May 1, 2012, Father left a voicemail message for the social worker stating, "I am through with this monitored visits and telephone contact." The following day, the social worker spoke to Father. He confirmed that he was not doing

any more monitored visits. He said he wanted unmonitored visits and telephone contact. He said, "I have not done anything and I want full custody of my daughter. Everything is in her [Mother's] favor and she is not coming to court or nothing." Father did not visit with L.W. thereafter.

The jurisdiction and disposition hearing regarding L.W. and her brothers was held over several days at the end of May 2012.[5] Father testified that the reason L.W. was in the court system was because the system refused to stop Mother from vandalizing his property. Regarding the incident of January 6, 2012, Father maintained that he only pushed Mother after she tried to rip off his license plate. Father told the court he wanted full custody of L.W. because Mother put the child in dangerous situations, such as when she shoplifted while pregnant with L.W. and had an altercation with a security guard that resulted in Mother suffering a broken arm. He said Mother had also rammed her car into his vehicle while she was pregnant with L.W. He also said L.W. had been kicked in the stomach by Mother while she was fighting with her boyfriend, that Mother was a gang member and lived in a rival gang's neighborhood, and that at one point Mother had called and threatened to shoot him. Father further testified that L.W. injured herself at school and needed stitches, and the school had been unable to contact Mother. He said he was concerned about L.W.'s school attendance while in Mother's care, a concern he had expressed previously.

Father said he stopped participating in monitored visits because it reminded him of being incarcerated. He asked the court to place L.W. in his custody.

The court sustained the count based on section 300, subdivision (b) (failure to protect), stating Mother and Father had a history of engaging in violent altercations in the child's presence that placed her at risk of harm.

The court proceeded to consider disposition over the following two days. L.W.'s half-brother T. testified that he felt L.W. was safe in both Mother's and Father's care. He

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[5] Mother and DCFS reached a mediated agreement regarding the amended petition language as to Mother. The court dismissed T. from the petition and sustained it as to L.W. and L.C.

acknowledged that Mother had thrown a television at him a few years before, but noted that it had not hit him. He confirmed that Mother's arm had been broken while she was pregnant with L.W. when she resisted a store security guard.

The maternal aunt testified she had heard Mother and Father had engaged in domestic violence but she had never witnessed it. She also knew Mother had suffered a broken arm while shoplifting. She had heard that Mother threw a television at T., and Father told her that Mother had rammed into his car. Regarding the incident when L.W. was hurt at school and required stitches, she testified that Mother had told her she was going to be away for several hours and asked her to "listen out" for L.W. She and Father had gone to the hospital to attend to L.W. Asked if she had any concerns about L.W. being in Father's custody, the maternal aunt responded, "I just prefer my brother-in-law not do so much drinking. And that is pretty much it."

Counsel for DCFS asked the court to remove L.W. from Father's custody and continue to order monitored visitation, and to maintain L.W. in Mother's custody. Minors' counsel agreed with county counsel's arguments, asking the court to leave the children placed with Mother. She referenced Father's criminal history, including his conviction of first degree murder. Father's counsel argued Father was a responsible, devoted, appropriate parent, as opposed to Mother. She argued Mother had repeatedly been the aggressor in conflicts with Father but DCFS was nonetheless biased in Mother's favor. Counsel argued L.W. was at risk in Mother's care and the court should instead order that Father have physical custody of L.W. Mother's counsel did not take a position regarding removal of L.W. from Father's custody, but submitted on DCFS's recommendation that the children remain in her custody.

The court ordered that L.W. be removed from Father's custody and placed in the home of Mother. The court specifically noted L.W.'s fear of Father when he drank alcohol. The court ordered Father and Mother to participate in a 52-week domestic violence program, a parenting program, and individual counseling. The court ordered that there be no corporal punishment of L.W., to which Father took exception, citing the Bible's reference to "spare the rod, spoil the child."

This timely appeal followed.

Thereafter, Father's appellate counsel filed a request for judicial notice asking this court to take judicial notice of a certified copy of a minute order dated February 27, 1995, indicating Father was found not guilty of first degree murder and of a docket indicating Father was found not guilty on May 21, 2007, of committing spousal battery against Mother. We granted the request for judicial notice as to the existence of the records.

DISCUSSION

I. The Jurisdictional Findings and Order

Before asserting jurisdiction over a minor, the juvenile court must find that the child comes within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) The burden is on DCFS to "'"prove by a preponderance of the evidence that the child . . . comes under the juvenile court's jurisdiction."'" (*Ibid.*, quoting *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) "On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value." (*Veronica G.*, *supra*, 157 Cal.App.4th at p. 185.) Issues of fact and credibility are questions for the trier of fact, and we may not reweigh the evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) "If there is any substantial evidence, contradicted or uncontradicted, which will support the judgment, we must affirm." (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In

such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.)" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) In addition, the section 300 petition need only contain allegations against one parent to support the exercise of the court's jurisdiction. (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554.) Thus, in order to successfully argue for reversal of the juvenile court's order adjudicating L.W. to be a dependent of the court, Father would have to demonstrate that no basis exists for any of the jurisdictional findings made against either Mother or Father. Father has not attempted to refute the court's exercise of jurisdiction over L.W. based on Mother's conduct. Nonetheless, we will discuss the court's findings against Father in order to demonstrate that Father's contentions are without merit.

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child. Exposing children to domestic violence is a sufficient basis for a finding of jurisdiction under section 300, subdivision (b). (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) "[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk." (*Ibid.*)

Father argues that substantial evidence does not support the jurisdictional finding that his and Mother's domestic violence placed L.W. at risk. He contends that the evidence showed there was only a single incident of physical violence between the parents and that such an incident was not shown to be likely to recur. The record demonstrates otherwise.

T. said he had not witnessed violence between Father and Mother, but that Mother had told him it had occurred. Likewise, the maternal aunt said she was aware that there had been domestic violence in the relationship, although she was not sure whether to believe Father or Mother (presumably about the instigation and extent of the violence).

T., L.W., and the maternal aunt agreed that Father loses control when he drinks alcohol, which he apparently does frequently, and T. said he would occasionally hit someone. L.W. was fearful of Father when he drank because he would get "crazy." He frequently used abusive language and cursed at L.W. and others.

There can be no serious claim that the incident of January 6, 2012, was the only occurrence of a physical altercation. Mother's and Father's statements to that effect are not credible. Although Father was not convicted of spousal battery arising out of the events of 2006 in front of the police station, the record makes quite clear that the parents both engaged in dangerous conduct because they could not control their anger at one another.[6] Six months pregnant, Mother deliberately drove her car into Father's vehicle and then Father began trying to punch Mother in the head and poked her eyes, all in full view of several police officers. Father was so infuriated at Mother he had to be forcibly subdued by the police. Father did not dispute that account of the incident, and testified at length that Mother had repeatedly vandalized his property. Mother had obtained a restraining order in the past and had apparently sworn in seeking that order that Father had beaten her on a regular basis. Clearly the relationship between Father and Mother has been characterized by intense acrimony since before L.W. was born, which has erupted into physical attacks on more than one occasion. There is every reason to expect that violence will occur once again if dependency jurisdiction were not established to protect L.W. from her parents' inability to control their anger at one another. We readily find that substantial evidence supported the court's jurisdictional finding.

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6 While we granted Father's request for judicial notice, we are not persuaded that the information contained therein has any significant bearing on the matters on appeal, let alone that it requires reversal of the juvenile court's orders. A *conviction* of spousal battery is not required to prove past domestic violence, especially in this case where the essential facts of the 2006 incident were spelled out by numerous participants in the proceedings. In addition, the juvenile court did not place any particular reliance on the mistaken existence of a prior murder conviction. In any event, Father failed to call the juvenile court's attention to the mistake in a timely fashion.

II. The Dispositional Order

Section 361, subdivision (c)(1) provides that a dependent child may not be removed from parental custody unless the juvenile court finds by clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and that there exist no reasonable means by which the minor's physical safety can be protected without removing the minor from the parent's physical custody. Thus, "[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate." (*In re Diamond H*. (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Father staunchly refused to participate in services, even to comply with monitored visitation in order to see L.W., as he maintained he had done nothing wrong. This demonstrated a troublesome obstinacy, an inability to control his anger in order to respond to L.W.'s needs, and a refusal or inability to understand or acknowledge how his behavior affected L.W. The record plainly demonstrates that Mother and Father have a volatile relationship that has adversely affected L.W. and will continue to do so if the parents do not learn to act appropriately with one another. Because Father refuses to participate in any services and recognize a demonstrated problem with anger management and alcohol abuse, the court's dispositional order removing L.W. from his custody and ordering that visits be monitored is entirely appropriate. Accordingly, we affirm the juvenile court's dispositional order.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.