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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

COUNTY OF LOS ANGELES
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

GARY G.,

Defendant and Appellant.

B269806

(Los Angeles County
Super. Ct. No. CK54620)

APPEAL from an order of the Superior Court of
Los Angeles County, Julie F. Blackshaw, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal,
for Defendant and Appellant.

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

INTRODUCTION

Gary G. (father) appeals from the juvenile court's jurisdictional findings and dispositional order. He argues insufficient evidence supports the court's findings under Welfare and Institutions Code¹ section 300, subdivision (c), that he verbally abused his minor daughters, Gabriela G. (Ga.) (born in 1998) and Gr. G. (Gr.) (born in 2000), causing them to suffer serious emotional harm. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

This is the fourth time the children have come under the jurisdiction of the juvenile court because of the conduct of mother and father. In February 2004, the children were declared dependents of the court as a result of mother's drug use and father's physical abuse of mother and Gr. In October 2007, the children were again declared dependents of the court because of mother's drug use. In June 2012, the children were declared dependents of the court for a third time because of mother's drug use, mental health problems, and physical abuse of Ga. Father was granted sole legal and physical custody of the children in December 2012.

On December 10, 2014, the Department of Children and Family Services (Department) received a referral alleging father had verbally abused Gr. Earlier that day, Gr. reportedly told father that she wanted to kill herself, to which father responded, "I guess you might as well kill yourself." Gr. was later

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

² Because mother does not challenge the jurisdictional findings against her, we focus primarily on the facts relevant to the jurisdictional findings against father.

evaluated at her high school by the Department of Mental Health's Psychiatric Mobile Response Team. Gr. denied having thoughts of suicide or wanting to hurt herself, and she was cleared to return home.

One of the Department's social workers interviewed Gr., Ga., and father about the allegations in the referral. Gr. reported that father likes to argue with her, yell and curse at her, and belittle her. He often compares Gr. to mother, telling Gr. that she will end up just like mother, which hurts Gr.'s feelings because she knows mother is a drug addict. Father also likes to argue with Gr., and when she does not engage him, he becomes angry.

When asked about the incident leading to the referral, Gr. claimed it occurred a long time ago. Although she could not remember exactly when it occurred, Gr. described the incident as follows. After she complained to father that she had been through " 'a lot' " in life, he made fun of her, saying " 'poor little [Gr.], you have it so hard.' " When she then told him she was thinking about killing herself, father responded, " 'well maybe you should go ahead and do that.' "

Gr. was experiencing anxiety living in father's house. She described the house as a monster, where the doorway was a mouth that would eat her every time she went inside. Gr. told the social worker she could no longer live with father, but she did not know where else she could go because she could not live with mother, who continued to use drugs.

Ga. confirmed that father and Gr. often argue with each other. Ga. described an incident when Gr. apologized to father after one of their arguments. Father continued to be hostile toward Gr., responding, " 'fuck you and fuck your apology.' " When Gr. is around, father tends to leave Ga. alone because she refuses to engage him in arguments. Ga. reported that she is not

afraid of father and did not believe that she needed to be removed from his custody. However, she described her family as “ ‘fucked up’ ” and in need of help.

The children provided the Department with recordings of father yelling and cursing at them. During one recording, father became angry after the children apparently were not satisfied with the food he provided them. The following is an excerpt from the recording:

FATHER: We ain't [*sic*] going home until we find chicken nuggets[.] I'm going to keep you motherfuckers out until 3 in the morning. I got a fucking full tank of fucking gas, cool, cool. We're taking off[.] [W]e'll go down to San Diego[.] [W]e'll drive all night.

CHILD: I don't give a fuck you are lucky you are ruining my fucking appetite, alright? . . . [¶¶] Don't get me nothing.

FATHER: No, no I'll get you some.

CHILD: Nah I'm good[.] [W]ell I'm not eating that shit, oh well I'm not eating that shit.

FATHER: Good[.] that's even better, that's even fucking better.

CHILD: Alright[.] it should be[.] [A]light[.] it should be.

FATHER: That's that [*sic*] is really, really fucking perfect[.] [T]hat is even better. I like that even better[.] [I]t'll all be for nothing because it's all for nothing anyway! It's all for nothing any fucking way. So this, that, that'll be a perfect fucking symbol of our relationship: all for nothing.

Father denied that Gr. had recently told him she was having thoughts of suicide, and he claimed he had never encouraged her to kill herself. He believed it would be reckless of him to encourage Gr. to do such a thing because Gr. had a history of self-harming and had tried to kill herself before. However, when describing his parenting philosophy and style, father acknowledged he purposefully “ ‘grinds’ ” his daughters down, claiming it was good for them because they needed to learn how

to survive on their own. Father told the Department that he was “in agreement” if Gr. no longer wanted to live with him.

On December 16, 2014, the Department filed a section 300 dependency petition alleging the children came within the provisions of section 300, subdivisions (b) (failure to protect), (c) (serious emotional damage), and (j) (abuse of sibling). The subdivision (b) and (j) allegations pertained to mother only and addressed her continued drug use. The subdivision (c) allegations pertained to both father and mother. The c-1 allegation alleged the following: “[F]ather . . . emotionally abused [Gr.] by calling [her] demeaning and derogatory names and by berating [her]. [F]ather told the child to kill herself when [she] expressed suicidal thoughts. . . . [F]ather constantly compares the child to [her] mother . . . , whom the father views in an extremely negative manner. The emotional abuse of the child by the father has resulted in the child expressing suicidal ideation, requiring ongoing psychological therapeutic intervention. Such ongoing emotional abuse of the child on the part of the father places the child at substantial risk of suffering serious emotional damage as evidenced by aggressive behavior toward herself.” The c-2 allegation alleged mother emotionally abused Gr. by telling her that she is worthless and not welcome in mother’s home.

At the detention hearing, the court found a prima facie case and released Ga. to father’s custody, while ordering Gr. detained from father’s custody and placed in shelter care. The court granted father and mother monitored visitation with Gr.

On January 26, 2015, Gr. went “AWOL” from her group home. Three days later, the court issued a protective custody warrant for her (§ 340). Gr. would remain AWOL until early November 2015, when she voluntarily returned to her group home.

On February 9, 2015, the Department filed a jurisdiction and disposition report. The report summarized interviews the Department conducted with father, Gr., and Ga. after the detention hearing but before Gr. went AWOL. Gr., Ga., and father all denied that father had ever told Gr. to kill herself, and Gr. denied ever wanting to kill herself. However, father confirmed that, before the current allegations arose, Gr. had received treatment at a psychiatric hospital in New Jersey after she expressed suicidal thoughts.

Gr. described another incident when father belittled her, comparing her to a stripper and telling her that she would be “‘swinging off a pole and . . . [was] not going to be shit.’” Gr. did not want to return to father’s custody because she needed time “to work on herself” and was feeling much better since leaving father’s custody. The Department’s report also described the only visit father had with Gr. after the detention hearing. The visit did not go well and lasted for only a few minutes because Gr. and father got into an argument.

On July 24, 2015, Ga. and father got into a violent argument. Father yelled profanities at Ga., calling her a “bitch” and telling her she was “not worth anything.” Father told Ga. to “‘[g]et the fuck out, and do not come back home.’” Ga. called the police after father became physically aggressive with her, reportedly slamming her head into the wall and punching her arm. Ga. told the Department that father often verbally and physically abused her, but he was always careful not to leave marks on her body. Ga. did not report the abuse earlier because she did not want to live in a foster home. However, after the July 24, 2015 incident, she could no longer tolerate living with father.

Ga. was having difficulty coping with father’s abuse. Her grades had dropped to Ds and Fs because of the stress she was

experiencing living in father's home. She also felt like she no longer wanted to live, and she was experiencing "bad" anxiety and having difficulty sleeping. Although she had seen a therapist who prescribed her medication, her symptoms did not improve while she continued to live with father.

A social worker interviewed father about the July 24, 2015 incident. Father confirmed that he and Ga. got into an argument. However, he blamed Ga., claiming that she was the one who regularly engaged in verbal abuse. He no longer wanted Ga. to live in his home, telling the social worker that she was an "ungrateful bitch." The social worker also heard father say to Ga., " 'just get out of here and leave me the fuck alone, smart ass little bitch.' " Father consented to the Department detaining Ga. from his custody and placing her in a foster home.

On August 4, 2015, the court granted the Department's ex parte application to remove Ga. from father's custody, and she was placed in a group home. A few days after she moved into the group home, Ga. reported that she no longer felt suicidal, her stress had substantially decreased, and she was having no difficulty sleeping.

A few days later, the Department tried to interview father again about his altercation with Ga. Father refused to discuss any allegations that he had abused Ga., and he told the Department to leave him alone and that it could take care of Ga. and Gr.

On September 25, 2015, the Department filed an amended dependency petition, adding an allegation under section 300, subdivision (c), that father emotionally abused Ga. by berating her and calling her demeaning and derogatory names (c-3 allegation). The Department further alleged Ga. was then currently diagnosed with major depression, which father was

aware of, and that father's verbal abuse had caused Ga. to exhibit symptoms of anxiety, lack of sleep, and suicidal ideation.

On November 9, 2015, Gr. contacted the Department and reported that she was ready to return to her group home. The court recalled the protective custody warrant issued for Gr. and set a jurisdiction and disposition hearing for January 8, 2016.

The Department interviewed father before the jurisdiction and disposition hearing. He expressed remorse for causing the children to suffer, and he claimed he did not realize his cursing, yelling, and derogatory name-calling had hurt the children or that they took his words seriously. He blamed his conduct on his experience working on docks with other men, which is where he developed his "sense of humor." He also claimed he was not used to raising small children, especially girls.

At the January 8, 2016 jurisdiction and disposition hearing, neither mother nor father appeared, but father was represented by counsel. The court admitted into evidence all of the reports the Department filed throughout the children's case; father did not present any evidence. After amending the c-3 allegation to remove the phrase "suicidal ideation," the court sustained all of the allegations in the amended petition and declared the children dependents of the court. It ordered both children to be removed from father's custody, granted father, but denied mother, reunification services, and granted mother and father monitored visitation.

On May 19, 2016, while this appeal was pending, Ga. turned 18. At the six-month review hearing held on July 8, 2016, the court declared Ga. a non-minor dependent of the court. The court also found father was not in compliance with his

court-ordered case plan and terminated his reunification services.³

Father filed a timely appeal from the court's dispositional orders.

DISCUSSION

1. Standard of Review

We review a juvenile court's jurisdictional findings for substantial evidence. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) We will affirm the findings if they are supported by evidence that is reasonable, credible, and of solid value. (*Ibid.*) "We do not evaluate the credibility of witnesses, attempt to resolve conflicts in the evidence or determine the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]" (*Ibid.*) We can affirm jurisdiction if any one of the grounds alleged in the dependency petition is supported by substantial evidence. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763 (*Drake M.*)).

2. The Merits of Father's Appeal Should Be Addressed

The Department urges us not to address father's challenges to the jurisdictional findings against him because, regardless of the outcome of father's appeal, the juvenile court will retain jurisdiction over the children based on the unchallenged findings

³ On our own motion, we take judicial notice of the juvenile court's July 8, 2016 minute order.

against mother. The Department is correct that a jurisdictional finding that is good against one parent is good against the other, meaning that a juvenile court may maintain jurisdiction over a child even if only one parent is offending. (See *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 (*Alysha S.*) [“the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent”]; see also *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16 [same].) However, there are circumstances where it is appropriate to review one parent’s challenge to jurisdictional findings, even though the other parent does not challenge the findings as to him or her. For example, the court in *Drake M.* rejected an argument identical to the one raised by the Department in this case and considered the father’s jurisdictional challenge even though jurisdiction would have been sustained based on allegations against the mother. The court in *Drake M.* explained its reasoning as follows: “ ‘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 [trial] 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.’ [Citation.] However, we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation]. [¶] Here, the outcome of this appeal is the difference

between father's being an 'offending' parent versus a 'non-offending' parent. Such a distinction may have far-reaching implications with respect to future dependency proceedings in this case and father's parental rights. Thus, although dependency jurisdiction over Drake will remain in place because the findings based on mother's conduct are unchallenged, we will review father's appeal on the merits." (*Drake M., supra*, 211 Cal.App.4th at pp. 762-763.)

The same rationale applies here. If we refuse to address the merits of father's claims, he will have no meaningful opportunity to challenge his status as an offending parent, a status that could have a significant impact on his ability to maintain parental rights over the children. We therefore exercise our discretion to reach father's challenge to the court's jurisdictional findings.

3. Substantial Evidence Supports the Court's Jurisdictional Findings as to Father

The court sustained two allegations against father, both under section 300, subdivision (c). Under that provision, a juvenile court may exercise jurisdiction over a child when he or she "is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care." (§ 300, subd. (c).) "The statute thus sanctions intervention by the dependency system in two situations: (1) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment." (*In re*

Alexander K. (1993) 14 Cal.App.4th 549, 557.) Where the petition alleges the child's emotional harm or risk of emotional harm is the "fault" of the parent, the Department must prove:

(1) offending parental conduct; (2) causation; and (3) serious emotional harm or risk thereof, as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. (*Ibid.*)

Here, the evidence supports the court's jurisdictional findings under section 300, subdivision (c). Father's verbal abuse of Gr. and Ga. was extensive. He often violently shouted and cursed at them and called them demeaning names. His conduct drove both Gr. and Ga. from his home because they could no longer tolerate his aggressive, insensitive, and violent behavior. Most importantly, his conduct caused both children to suffer serious emotional harm. Gr. experienced anxiety whenever she entered father's house, describing the house as a "monster" that would "eat her" when she walked inside. She also showed signs of depression, expressing feelings of helplessness and suicide. Ga. also experienced severe anxiety, stress, and depression because of father's conduct. She told the Department that, while she was living with father, she was unable to sleep and began to feel like she no longer wanted to live. Her grades at school also began to drop because of the stress and anxiety caused by father's behavior. However, all of Ga.'s symptoms began to subside once she stopped living with father.

Father relies on *In re Brison C.* (2000) 81 Cal.App.4th 1373 (*Brison C.*) to argue that the children did not face a serious risk of harm at the time of the jurisdiction hearing because he acknowledged his behavior was inappropriate. In *Brison C.* the appellate court reversed jurisdictional findings that the child had suffered or was at significant risk of suffering serious emotional harm. (*Id.* at p. 1383.) The child in that case was caught in the middle of his parents' contentious divorce and custody dispute,

causing him to have nightmares, fear his father, and express a desire to commit suicide if forced to live with his father. (*Id.* at pp. 1376-1377.) On appeal, the court determined that, even assuming the parents' conduct constituted emotional abuse, the evidence did not show the child was "seriously emotionally disturbed or that he was in substantial danger of suffering serious emotional damage." (*Id.* at p. 1376.) The court noted both parents had "recognized the inappropriateness of their past behavior and of commenting to Brison about the other," had "expressed a willingness to change their behavior patterns and to attend counseling and parenting classes," and showed no signs that they were "incapable of expressing their frustration with each other in an appropriate manner." (*Id.* at p. 1381.)

Father's reliance on *Brison C.* is misplaced for at least two reasons. First, Gr. and Ga. actually suffered emotional harm as a result of father's conduct. Second, the record is replete with evidence demonstrating father was unwilling to change his behavior to improve his relationship with his daughters. Although father acknowledged his behavior was inappropriate, he never took responsibility for his actions or demonstrated a willingness to change. Instead, he deflected the blame for the consequences of his behavior to other people. For example, father claimed he developed his personality working "on the docks" with other men and that, as a result of that experience, he was not prepared to raise girls. But father had nearly 18 years in Ga.'s case, and nearly 16 years in Gr.'s case, to learn how to behave appropriately around the children, and yet he never took the initiative to do so. Father also tried to shift the blame to Gr. and Ga., telling the Department that they were the abusers and he was the victim. Aside from deflecting responsibility for his actions, father made it clear he was unwilling to improve his behavior by maintaining throughout the underlying proceedings

that the children should live somewhere else if they could not tolerate his behavior.

Father also argues that the fact that Ga.'s anxiety, depression, and difficulty sleeping largely subsided after she was placed in shelter care shows she was no longer suffering emotional harm or was at a serious risk of suffering such harm. As a result, father argues, the court erred in sustaining the section 300, subdivision (c), allegation pertaining to Ga., because she did not face a current risk of harm at the time of the jurisdiction hearing. It is true that a court may not sustain jurisdiction over a child based solely on past conduct, when there is no evidence that the child faces a current risk of harm. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 ["While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm"].) However, the fact that Ga.'s condition improved significantly after moving away from father does not mean that she was no longer at a risk of suffering emotional harm at the time of the jurisdiction hearing. To the contrary, such evidence strongly suggests father was the cause of Ga.'s emotional harm (demonstrated by the fact Ga.'s condition improved once she was removed from father's custody), and returning her to father's custody would place her at a serious risk of suffering similar harm in the future.

In sum, we conclude substantial evidence supports the juvenile court's jurisdictional findings under section 300, subdivision (c), that father's verbal abuse caused Gr. and Ga. to

suffer serious emotional harm. Accordingly, we affirm the court's jurisdictional findings.⁴

DISPOSITION

The juvenile court's jurisdictional findings and dispositional order are affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.

⁴ In its respondent's brief, the Department includes an argument defending the court's removal order issued at the disposition hearing. Father, however, does not separately challenge that order. Instead, he argues the order should be reversed because the court's jurisdictional findings are not supported by substantial evidence. Because we conclude substantial evidence supports those findings, and because father does not separately challenge the removal order, we do not address the Department's argument concerning that order.