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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JAMAAL B., Jr., et al., Persons
Coming Under the Juvenile Court
Law.

B280227
(Los Angeles County
Super. Ct. No. DK19876)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JAMAAL B., SR.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.
Kristen Byrdsong, Juvenile Court Referee. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for
Defendant and Appellant.

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

Jamaal B., Sr. (Father) appeals a December 21, 2016 order in which the dependency court determined it had jurisdiction over his two children, Jamaal B., Jr. (Jamaal Jr.) (age nine) and Jaylen B. (Jaylen) (age eight) (collectively, the Children), and ordered informal agency supervision of the family pursuant to Welfare and Institutions Code section 360, subdivision (b).¹

STATEMENT OF FACTS AND OF THE CASE

1. Referral and Detention Report

The family was brought to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in an August 25, 2015 referral in which the reporting party described two incidents involving Jaylen. On August 16, 2016, Jaylen became violent at school, hitting, biting and kicking school staff. Three days later, he charged other children while at school, swearing and screaming. This conduct resulted in his being placed in a restraint and the school being placed in “lock down.” The police were called and during a police officer’s contact with Jaylen, the child attempted to reach for the officer’s gun. Jaylen was then suspended from school.

During the events this date, Jaylen stated he wanted to hurt himself (but did not have a plan). He also threatened to hurt other people if he did not get his way. He had made similar comments while at camp that summer. Jaylen was considered a danger to himself and others and was hospitalized on a 72-hour hold pursuant to section 5585.20.²

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

² Section 5585.20 allows a minor to be held for 72 hours to be evaluated and treated for mental disorders.

On September 20, 2016, a staff member at Jaylen's school reported to the DCFS case social worker (CSW), "I have known [Jaylen] since he was in kindergarten, he has always been emotional but nothing to this extreme. Something must have happened this summer because when he came back, he started having a lot of behavior issues, he was very aggressive with the other kids and the staff members. The first week of school, he made threats that he is going to kill the staff. He reported [Father] hits him and shows him bad movies. Jaylen also reported his dad has beat[en] up his girlfriend. Mother is a single mother who tries to provide for [Jaylen] and his brother."

Jaylen resided with his mother, Tiffany C. (Mother), but had spent time with Father the summer before these events, after being kicked out of two summer camps. During the investigation following these incidents, Jaylen stated that Father "beat him up all summer and called him 'bastard.'" "[T]his summer, my dad was not nice to me. He whooped me with a belt and sandal on my butt." Jaylen "does not like to visit his dad at his dad's house." Father's girlfriend, Crystal L. (Crystal), "calls him names like the B and F word." She "hits [Jaylen] with a back scratcher on his butt over his clothes when he does not listen to her." Jaylen also reported Crystal hits his half sibling sister with a sandal, and hits his half sibling brother.³

Mother reported she and Father are still married but have lived separately since Jamaal Jr. was two years old. Jaylen "does not act this way at home." Mother also reported verbal and/or domestic violence during her relationship with Father. "One day I came home and he kept saying, 'bitch,

³ On September 2, 2016, DCFS generated a companion referral relating to these two other children, Jazmine and J.B. DCFS concluded that allegations of physical abuse by Crystal and Father towards the half siblings of the Children were unfounded, and that allegations of emotional abuse by Crystal towards those children were inconclusive. Jazmine and J.B. are not subjects of this appeal.

bitch, bitch' like he was calling me 'mom, mom, mom.'" Mother stated they "used to argue verbally and push each other. I would push him as self-defense. We never beat each other." After this name-calling incident, she took the Children and left Father.

Mother and Father do not have a custody order, and Mother tries "not to have [Father] visit the kids because I don't know what is going on in his house. He has a bad attitude." She stated the Children "don't feel comfortable spending the night [at Father's house]. They told me they don't want to spend the night at dad's house. I don't know what happened at father's house."

Jamaal Jr. reported that Mother disciplines him by taking away items such as video games, and that Father disciplines him by "punching him on his chest with a fist." "It does not really hurt but he hits us hard." Jamaal Jr. said the last time that happened was when he was seven years old. On three occasions, he had seen Father and his girlfriend fight by "pushing each other."

Jaylen reported that "this summer, my dad was not nice to me. He whooped me with a belt and sandal on my butt. He also calls me the bastard name."

When interviewed on September 7, 2016, Father reported he had been in foster care for 10 years when he was younger. Father admitted to having been arrested for robbery when he was 17 years old, and reported an arrest in 2011 for sale of controlled substances, but denied currently selling controlled substances. He disclosed marijuana use, that he possesses a medical marijuana card, and that he smokes two to three times per day but not when the Children are in his home, or only if they are in a separate room. He

keeps the marijuana where the Children will not have access to it. He denied alcohol use and was willing to submit to drug testing the next day.

Father stated Jaylen has “anger issues and acts out for attention.” Father “spanks [the Children] on the bottom with an open hand, denied leaving marks or bruises” and denied ever using objects or hitting a child on the chest. He denied his girlfriend Crystal hits the Children, as they are not biologically hers. He reported the Children spend four days per month with him. He denied any domestic violence between himself and Crystal, and denied any domestic violence between himself and Mother. Father reported on his October 13, 2016 statement regarding parentage that he provided “over \$1000 per month in child support for my kids.”

Although Father denied any domestic violence in his relationship with Mother, DCFS reported “mother was physically abus[ed] by the father.” Jamaal Jr. had seen Father and Crystal fight by “push[ing] each other about three times.”

On October 3, 2016, the Children were detained from Father’s custody pursuant to a probable cause warrant and were permitted to remain in Mother’s home, in her custody.

2. The Detention Petition and Detention Hearing

On October 13, 2016, DCFS petitioned to have the Children declared dependents of the court (§ 300). DCFS alleged serious physical harm or the substantial risk thereof (§ 300, subd. (a)): that Father struck Jamaal Jr.’s chest with his fists; that Father struck Jaylen’s buttocks with a belt and sandal; and that Father and Crystal had a history of engaging in violent confrontations in front of the Children, exposing them to serious harm.

DCFS also alleged Father failed to protect the Children, resulting in actual harm to the Children or in a risk of harm (§ 300, subd. (b)(1)). DCFS

separately alleged Father failed to protect Jaylen from physical abuse by Crystal, and Father had abused the Children and had been under the influence of marijuana while providing the Children with care and supervision. Based on the physical abuse allegations, DCFS alleged the abuse of each child placed the other at risk of harm as the sibling of an abused child (§ 300, subd. (j)).

At the detention hearing on October 13, 2016, the court found Father to be the Children's presumed father. The court found DCFS had demonstrated a prima facie case that the Children were persons described by section 300, subdivisions (a), (b), and (j), and detained them, releasing them to the care of Mother.⁴ Father was granted visits with the Children to be monitored by a DCFS-approved monitor. The court set the matter for a jurisdictional hearing on December 19, 2016, and an adjudication hearing on December 21, 2016.⁵ Mother and the Children appeared on October 18, 2016, at which time Mother was determined to be a non-offending party to the petition.⁶

⁴ The court did not find that a prima facie case had been made with regard to the substance abuse allegations DCFS had asserted against Father.

⁵ On December 19, 2016, the jurisdictional hearing was continued to the adjudication hearing date of December 21, 2016.

⁶ At his arraignment, Father indicated no Native American ancestry, and the court found the Indian Child Welfare Act (ICWA) did not apply to him. Mother made conflicting representations concerning her Native American ancestry. On August 31, 2016, Mother had "denied having any ICWA in her family." On October 11 and 18, 2016, Mother filed Indian Child Inquiry Attachments which first deny, then allege, Indian ancestry. Also, on December 6, 2016, Mother stated she was neither a registered member of, nor enrolled in, any Indian tribe.

Because Father does not assert as error the court's failure to complete the investigation of Mother's ICWA claim and the orders of the court keep the Children in her care, we do not otherwise address this issue. "[T]he federal

3. The Jurisdiction/Disposition Report

DCFS filed its Jurisdiction/Disposition Report on December 19, 2016. Jamaal Jr. had been interviewed again on December 6, 2016. He now “denied that father hit his chest as a form of physical discipline,” and stated Father would “play fight” with him, but he wasn’t hitting him to be mean. “We were just playing together.” “I don’t get hit with a belt because I listen to daddy.” He had only witnessed Father hit Jaylen “with a belt ‘one time,’” and he stated Crystal “doesn’t hit us, she doesn’t hit people. Well maybe her own kids, but not us.” He also now denied ever witnessing Father and Crystal engage in any physical altercation or push each other; and he denied that Father or Crystal ever smoked marijuana or drank alcohol.

Jaylen was also interviewed again. He stated, “[Father] would sometimes hit Jamaal [Jr.] but not anymore because we know our consequences.” When asked if Father has hit him, Jaylen “shook his head ‘no’ and started to smile.” The CSW “told Jaylen it is important that he tell the truth,” at which point Jaylen added, “He didn’t punch me, he whooped me with a belt,” but he denied sustaining any bruises or marks from being hit by the belt. He also denied being scared of Father. He stated Crystal “‘whooped’ him with a back scratcher ‘one time’” and, like his brother, he denied seeing any physical altercations between Father and Crystal.

DCFS noted that the Children had reported different facts regarding Father and Crystal when interviewed in October 2016.

regulations and the California Welfare & Institutions Code require more than a bare suggestion that a child might be an Indian child.” (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [appeal presenting only abstract or academic questions need not be addressed].)

Mother also provided an additional statement. She had seen Father and the Children “‘playful’ like play fighting,” but had “no knowledge of Father hitting Jamaal [Jr.] in the chest as a form of discipline.” She had “no knowledge of Father hitting Jaylen with a belt,” had “never seen marks or bruises on Jaylen,” and had received no reports from Jaylen of physical abuse by Father. She had no knowledge of Crystal hitting the Children, and no knowledge of any domestic violence issues between Father and Crystal. By this time, Mother was monitoring visits once per week between Father and the Children. The CSW was unable to reach Father for an additional interview.

4. The Jurisdiction and Disposition Hearing

The court held a combined jurisdiction and disposition hearing on December 21, 2016. All parties were present through counsel; Father was present in person. The DCFS October 13, 2016 Disposition Report and December 19, 2016 Jurisdiction/Disposition Report, including all attachments, were admitted into evidence without objection.

Following arguments by counsel, the court modified the allegations that Father had “physically abused” the Children to allege he had “inappropriately used physical discipline” on the Children, and sustained these modified allegations (under § 300, subd. (b)). The court sustained the allegations of failure to protect due to physical abuse by Crystal and due to the history of Father and Crystal having engaged in violent altercations in the presence of the Children (also pursuant to § 300, subd. (b)). The court also modified the allegations of physical abuse of sibling (§ 300, subd. (j)) and

sustained those modified allegations and the allegations of failure to protect as to Father and Crystal.

The court dismissed the allegations the Children were at risk of serious physical harm (§ 300, subd. (a)), finding none of the physical discipline rose to the level of actual or threatened physical abuse.

The court found the Children to be persons described in section 300, sustained the petition as amended, and issued an alternative disposition order (§ 360, subd. (b)) as requested by the Children’s counsel.⁷ Father timely filed his appeal.⁸

CONTENTION

Father contends the petition should have been dismissed because there was not substantial evidence the Children had been harmed or were at risk of harm as required to bring them within section 300, subdivisions (b) and (j). We disagree.⁹

⁷ The minute order for this hearing correctly states that the court made an order pursuant to section 360, subdivision (b) and that the court placed the Children and their parents “under DCFS supervision for a period consistent with WIC 301” (six months). That order conflicts, however, with the reporter’s transcript of proceedings insofar as the minute order indicates that the court removed the Children from Father’s physical custody. The reporter’s transcript contains no such order; the minute order is clearly in error on this point.

We reconcile this conflict between the reporter’s transcript and the minute order in favor of the reporter’s transcript. (*People v. Smith* (1983) 33 Cal.3d 596, 599; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 249 [citing cases].) Thus, this contention by Father lacks merit.

⁸ Mother is not an offending parent, and is not a party to this appeal.

⁹ Father errs in his additional contention that the court ordered removal of the Children from Father’s custody. As we set out in footnote 7, *ante*, the reporter’s transcript confirms that no such order was made; the minute order is in error.

DISCUSSION

Substantial Evidence Supports the Dependency Court's Findings

A. *Legal Standards*

1. Substantial Evidence

To support jurisdiction in a dependency proceeding, DCFS must prove to the court “by a preponderance of evidence” that “the minor is a person described by Section 300.” (§ 355, subd. (a).) “In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ (*In re Heather A.* [1996] 52 Cal.App.4th [183,] 193; see *In re I.J.* (2013) 56 Cal.4th 766, 773.)” (*In re R.T.* (2017) 3 Cal.5th 622, 633.) The appellant bears the “burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

2. Section 300, Subdivision (b)(1)

A finding pursuant to section 300, subdivision (b)(1) requires a showing of “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness. (§ 300, subd. (b)(1).) This must be “as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.” (*Ibid.*; see also *In re R.T.*, *supra*, 3 Cal.5th at p. 634 [evaluating whether the parent caused the harm or the risk of harm].)

The court may consider past events in deciding whether a child presently needs the court’s protection. (*In re Diamond H.* (2000) 82

Cal.App.4th 1127, 1135-1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; see also *In re N.M.* (2011) 197 Cal.App.4th 159, 165-166.) However, a parent's past conduct does not establish a risk of harm to the child unless there is reason to believe the endangering conduct will reoccur. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.) Because dependency jurisdiction turns on the risk to the child ““at the time of the [jurisdictional] hearing”” (*In re M.M.* (2015) 240 Cal.App.4th 703, 719), the propriety of jurisdiction due to a child's exposure to domestic violence under subdivisions (a) and (b) of section 300 turns on whether the “violence was an ongoing problem.” (*In re M.M.*, at p. 720.)

3. Section 300, Subdivision (j)

“Subdivision (j) applies if (1) the child's sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (§ 300, subd. (j).)” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) “The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ ([*In re*] *Maria R.* [2013] 185 Cal.App.4th [48,] 64.)” (*In re I.J.*, at p. 774.)

B. The Court Properly Found It Possessed Jurisdiction Under Both Subdivisions (b) and (j) of Section 300.

1. The Evidence Supports the Physical Discipline Allegations

In the October 2016 Detention Report, Jaylen reported Father “beat him up all summer.” This was supported by similar statements Jaylen had made to an administrator or teacher at his school, and to another member of the school staff who had known him personally for years, and who stated an independent belief that because of Jaylen’s behavioral changes on his return to school in the fall of 2016 “[s]omething must have happened this summer.” Jaylen had earlier reported that Father repeatedly directed offensive language at him while Jaylen stayed with him in the late summer of 2016. Jaylen also reported that Crystal hit him with a back scratcher on his butt, over his clothes.

Jamaal Jr. reported in October 2016 that Father disciplined him by punching him on his chest with his fist. Mother reported the Children “don’t feel comfortable spending the night [at Father’s house]. . . . I don’t know what happened at father’s house.”

The court found a failure to protect (§ 300, subd. (b)(1)) resulting from inappropriate physical discipline, indicating substantial concern about the future safety of the Children. The evidence summarized here and set out in detail, *ante*, constitutes sufficient substantial evidence to support the court’s finding that the endangering conduct had occurred and would reoccur in the future (*In re Yolanda L.*, *supra*, 7 Cal.App.5th at pp. 993-994) and that Father’s conduct posed a risk of serious harm to the Children.

In support of his assertion that there was not sufficient substantial evidence to warrant the court’s determination, Father highlights statements the Children made at the time of the December 2016 Jurisdiction/Disposition

Report which conflicted with statements they had given when interviewed for the October 2016 Detention Report. When asked in December 2016 about whether Father hit him, Jaylen “shook his head ‘no’ and started to smile.” When reminded by the CSW that he must tell the truth, he said “[h]e didn’t punch me, he whooped me with a belt,” while denying any bruises or marks were made. Jamaal Jr. now denied Father hit him on the chest at all.

It was a function of the dependency court to evaluate such conflicts in the evidence and determine which are the more credible. It is clear from the record that the court determined the earlier descriptions of Father’s conduct to be credible. The court also indicated it harbored fears for the Children’s future physical safety, “given what the court believes has happened.” As previously noted, “[I]ssues of fact and credibility are the province of the trial court. [Citations.]” (*In re R.T.*, *supra*, 3 Cal.5th at p. 633.) “It is not our role to interfere with the trial court’s assessment of the witnesses’ demeanor and credibility.” (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 824.)

2. The Evidence Supports the Domestic Violence Allegations

With regard to DCFS’s allegations that the Children were not protected from risk of harm due to domestic violence between Father and Crystal. (§ 300, subd. (b)(1)), Jamaal Jr. reported in the October 2016 Detention Report that Father and Crystal fight by “pushing each other.” As also reported then, the Children did not feel comfortable spending the night at Father’s house. The evidence of physical confrontation and “pushing” involving Father (which Mother separately reported in her own prior relationship with Father) supports the finding that Father’s involvement in physical altercations with his spouses and girlfriends was an “ongoing problem.” (*In re M.M.*, *supra*, 240 Cal.App.4th at p. 720.)

Jamaal Jr.’s statement on this issue in the December 2016 Jurisdiction/Disposition Report differed from his statement in the earlier report; however, as noted *ante*, we resolve all conflicts in the evidence and indulge in all reasonable inferences that may be derived from the evidence in favor of the dependency court’s findings. (*In re Madison S.* (2017) 15 Cal.App.5th 308, 318.) We conclude that substantial evidence supports the dependency court’s exercise of jurisdiction under this statute.

3. The Evidence Supports the Potential Abuse of Sibling Finding

The facts sustaining the petition under section 300, subdivision (b) fully support sustaining the petition under section 300, subdivision (j). Father’s improper physical discipline of each of the Children placed both that child and his sibling in danger of further serious physical harm and abuse. The conduct of Crystal toward the Children did as well. As noted, *ante*, under section 300, subdivision (j), the endangerment of one child is sufficient basis to sustain the determination of potential endangerment of the sibling. (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) The dependency court correctly sustained the allegations under this statute.¹⁰

¹⁰ As discussed in the body of this opinion, the petition alleged multiple bases upon which the court may, and did, sustain the petition. While we sustain the petition under both subdivisions (b) and (j) of section 300, it would be sufficient to affirm on either basis. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773 [“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,” quoting *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.])

DISPOSITION

The December 21, 2016 order is affirmed.

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GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

HOFFSTADT, J.

* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.