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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ASHLEY S. et al.,  
  
Persons Coming Under the Juvenile Court Law.

B238918  
(Los Angeles County  
Super. Ct. No. CK89740)

LOS ANGELES COUNTY DEPARTMENT OF  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.S. and RACHEL P.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles County,  
Donna Levin, Referee. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for  
Defendant and Appellant A.S.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and  
Appellant Rachel P.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County  
Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and  
Respondent.

Rachel P. (Mother) and A.S. (Father) appeal from the juvenile court's jurisdictional and dispositional orders regarding their three children Ashley S. (born Dec. 2004), Kendell S. (born Nov. 2007), and R.S. (born Sept. 2008). Father contends that the evidence is insufficient to support the court's findings under Welfare and Institutions Code section 300, subdivisions (a), (b), and (c), while mother challenges only the subdivision (c) finding.<sup>1</sup> Both parents challenge the court's dispositional order removing the children from their custody. We affirm.

### **BACKGROUND**

In September 2011, the parents were arrested for child endangerment based on the unsanitary condition of the family home and their neglect of the children's well-being. The children were taken into protective custody, though the criminal case was later dismissed.<sup>2</sup> The children were later placed with the maternal grandmother in the family home which by then had been cleaned up.

The arresting deputy sheriff reported that when she entered the house, she smelled the strong odor of animal urine making it difficult to breathe and observed animal feces on the floor and walls throughout the house. The carpeting was soaked with animal urine and made a sloshing noise as she walked. Four dogs and five cats lived with the family in the 1000 square foot condominium. All three children were filthy and had matted hair and rotting teeth. There was spoiled food on the kitchen counter, old dish water in the sink with bugs floating in it, and dirty dishes throughout the kitchen. The deputy spoke to Mother, who said that

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<sup>1</sup> All undesignated section references are to the Welfare and Institutions Code.

<sup>2</sup> The deputy district attorney handling the case told the assigned social worker from the Los Angeles County Department of Children and Family Services (DCFS) that the dismissal was based on the granting of a motion to suppress evidence and exclusion of evidence relating to the condition of the home.

she and Father had had an argument that day about watching television. Father had called her a bitch, but had not turned violent. Mother stated that Father is “smart and has been in the system and knows how far he can go.” She also said that she had tried to leave in the past, but Father threatens that she and the children will regret leaving him.

When interviewed by the assigned DCFS social worker (see fn. 2, *ante*), Mother denied that the house was in an unsanitary condition and stated that because the arresting deputy arrived in the morning she had not had time to clean up yet or attend to the children. Father asserted that the house was “in compliance with the law.”

Mother denied any “physical incidents” of domestic violence with Father. As we have discussed, she reported that he “has said ‘kiss the kids good bye’” when they argued, but she believed that such statements “were not threats but threats by insinuation.” The arguments were generally about money, because they were unemployed. Mother admitted having called 911 on Father a “bunch” of times because of arguments. She would ask the police to take him away, but the police would leave because Father has no place to go.

Father denied ever striking Mother. The maternal grandmother reported that Father was verbally abusive to Mother but not the children. She did not know of any physical violence between the parents, but “[w]hen [Father] gets mad, he punches holes in the wall.”

The assigned social worker spoke to Ashley, who was six and the only child capable of giving a statement. Ashley said that Father constantly yelled at Mother, and once slapped Mother in the face. She stated that they had a lot of dogs and cats, and that her Mother would clean the home but Father would mess it up. In a later interview, she said that sometimes Father strikes Mother with his hand,

pushes her, and throws things such as shoes at her. Mother sometimes pushes Father and runs away. Mother and the children sometimes flee and sometimes lock Father out. Ashley is scared and cries when Mother and Father fight. She said that the fights sometimes occur three to four days in a row. She said that Mother “pushes” Father so she can get past him and that Ashley “tr[ies] [her] hardest to push him back so [Mother] can pass” but cannot.

Dental examinations of the three children revealed that all three had several cavities. Each of the two younger children had to have four teeth extracted because of infection.

DCFS filed a section 300 petition regarding the children, which, in its final amended form, contained the following allegations: (1) under subdivision (a), that the parents’ history of violent altercations endangered the children’s safety; (2) under subdivision (b), that the unsanitary condition of the home and neglect of the children endangered their safety; (3) under subdivision (b), that the failure to provide the children with appropriate dental care threatened their health; and (4) under subdivision (c), that the parents’ history of violent altercations placed the children at risk of serious emotional damage. At the disposition hearing, the prior DCFS reports were admitted. The court credited the deputy sheriff’s description of the home and Ashley’s description of domestic violence, and sustained the allegations of the petition as amended. The court ordered the children removed from the parents’ custody and placed them under the supervision of DCFS for suitable placement.

## **DISCUSSION**

### **I. Sufficiency of the Evidence to Support Jurisdiction Under Section 300, subdivisions (a), (b), and (c).**

Father contends that the evidence is insufficient to support the court's findings under Welfare and Institutions Code section 300, subdivisions (a), (b), and (c), while Mother challenges only the subdivision (c) finding. We conclude that the evidence is sufficient to support the court's findings. Of course, "[w]e affirm a juvenile court's jurisdictional and dispositional findings if they are supported by substantial evidence. [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.' [Citation.]" (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.)

#### **A. Subdivision (a)**

"Section 300, subdivision (a), provides that jurisdiction may be assumed if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm inflicted nonaccidentally by the child's parent. The court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citations.] The court may consider past events in deciding whether a child presently needs the court's protection. [Citations.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 165-166, fn. omitted.)

Here, Ashley's statements to the social worker described incidents of domestic violence between Mother and Father, and Ashley said she was frightened of Father when they fought. There was also evidence that Father threatened Mother and the children. Mother told the deputy sheriff who arrested her that she

had tried to leave Father in the past, but he had threatened that she and the children would regret leaving him. Mother attempted to downplay such threats when interviewed by the social worker. She reported that Father has “said ‘kiss the kids good bye’” during arguments, but Mother characterized such statements as not being real threats, merely “threats by insinuation.”

Father contends that the violence between him and Mother was not the type of “horrendous violence” described in *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599, in which the court held that the father’s assaults on the mother in the child’s presence created a danger that the father’s nonaccidental assaults on the mother could result in unintentional injury to the child. Father’s assertion misses the mark. Here, there was evidence that Father threatened the safety of the children if Mother left him. That threat, in conjunction with the evidence of Father’s violence against Mother, creates a substantial risk not that the children might be collateral victims of nonaccidental conduct as in *Giovanni F.*, but that Father might direct violence at the children themselves.

The evidence of Father’s threats also distinguishes this case from *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717, in which “[t]he physical violence between the parents happened at least two, and probably seven, years before the DCFS filed the petition” and “[t]here was no evidence that any of the children were physically exposed to the past violence between their parents and no evidence of any ongoing violence between the parents who are now separated.” The *Daisy H.* court found the evidence insufficient to support jurisdiction under section 300, subdivision (a), but that case did not involve any evidence of threats by the father against the children such as are present here.

## **B. Subdivision (b)**

“The three elements for jurisdiction under section 300, subdivision (b) are: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the [child], or a ‘substantial risk’ of such harm or illness.” [Citations.] ‘The third element, however, effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citations.]” (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.)

Here, the neglectful conduct by the parents was their failure to protect the children – the family home was in an atrociously unsanitary condition, the children were unkempt and dirty, and they had not received proper dental care. As a result of the parents’ neglect, the children suffered from cavities and rotten teeth. Indeed, the younger two children each had to have four teeth pulled because of infection. Moreover, given the extent of the neglect, the court could reasonably infer that at the time of the hearing, there still remained a substantial risk that the children would suffer physical harm in the future.

Father contends that by the time of the jurisdictional hearing, the family home had been cleaned up and the children had received dental care. True, but these things occurred only after DCFS intervention. Given the extreme nature of the parents’ abdication of parental responsibility in caring for the children, and the parents’ need for as yet uncompleted counseling and compliance with the case plan, there remained a substantial risk that the children would suffer further harm from the parents’ neglect if left in the parents’ custody.

### **C. Subdivision (c)**

Section 300, subdivision (c), requires proof that “[t]he child 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.” Here, from Ashley’s statements to the social worker, it was clear that the parents engaged in domestic violence in the presence of the children. She said that Father strikes Mother with his hand, pushes her, and throws things such as shoes at her. Mother sometimes pushes Father and runs away. Mother and the children sometimes flee and sometimes lock Father out. She said that the fights sometimes occur three to four days in a row. She said that Mother “pushes” Father so she can get past him and that Ashley “tr[ies] [her] hardest to push him back so [Mother] can pass” but cannot. Ashley is scared and cries when Mother and Father fight. The maternal grandmother reported that Father sometimes punched holes in the wall. There was also evidence that Father had threatened the safety of Mother and the children if Mother left him.

Father and Mother contend, in substance, that none of the children have demonstrated severe anxiety, depression, withdrawal, or aggressive behavior, that the reported domestic violence was isolated, and that Ashley’s level of fear and distress is not severe enough to meet the requirements of section 300, subdivision (c). We disagree. Father’s threats against Mother and the children create a substantial risk of severe emotional trauma to the children should he ever attempt to carry through. Moreover, Ashley described conflict and violence between the parents, fights that may last for days, fleeing from Father and locking Father out, physically coming between Father and Mother in an attempt to push Father away to let Mother pass, and crying and being frightened when the parents fight. This is



not a case of mere name-calling between the parents (*In re Daisy H, supra*, 192 Cal.App.4th at p. 717), a contentious but nonviolent custody battle (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379), or reliance on a faulty “unstated presumption that in the absence of proof of abusive parental acts, certain emotional disturbances in a child, under certain circumstances, will nevertheless be attributed to the fault of the parent” (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 560-561). This is a case in which, as a matter of common sense, it may reasonably be inferred that Father’s threats and the circumstances described by Ashley would place any child of Ashley’s age (6) and younger siblings at substantial risk of serious emotional damage.

## **II. Sufficiency of the Evidence to Support the Dispositional Order**

Mother and Father contend that substantial evidence does not support the dispositional order removing the children from their custody. We find no abuse of discretion.

““A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]’ [Citations.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

We have already discussed the evidence of neglect and domestic violence, including Father’s threats. Given that evidence, we can find no abuse of discretion in the court’s determination that the parents presently cannot provide proper care for the children, and that the children will suffer detriment if they remain with the parents.

Relying on *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 56-61, Mother contends that a reasonable alternative was available which the court was obligated to adopt: ordering her to “participate in parenting classes and counseling while residing with and caring for her children under DCFS supervision . . . with the grandmother in the home.” However, *Jeannette S.* is distinguishable. It involved a mother whose only failure was her inability to keep her house clean. The reviewing court set aside an order removing the child from the mother’s care, finding that placing the child with the mother under stringent conditions such as requiring the removal of all animals from the home or the use of a homemaker service was a reasonable alternative. (*Id.* at p. 60.) By contrast, in the instant case, the dismal condition of the family home was only one circumstance suggesting Mother’s inability to care for her children. In addition, Mother neglected the children’s health – all had rotting teeth, and the two youngest had to have four teeth removed because of infection. Further, Mother had failed to protect the children from domestic violence, despite Father’s threats directed specifically at the children. In these circumstances, and considering that the focus must be on alleviating the threat of harm to the children, we conclude that leaving the children in Mother’s care under even the strictest of DCFS and grandmotherly supervision was not sufficient to reasonably ensure that the three children would not suffer detriment from Mother’s demonstrated inability to care for them.

Father contends that the court abused its discretion in restricting his visitation with the children to monitored visits in the DCFS office twice a week for two hours each visit. We find no abuse. The evidence supported findings that Father failed to provide a sanitary home, neglected his children’s dental care, engaged in domestic violence, and threatened Mother and the children. Under these circumstances, the court’s visitation order is clearly reasonable.

**DISPOSITION**

The orders are affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.